

## **Decision Session – Executive Member for Finance and Performance.**

Report of the Assistant Director of Regeneration and Asset Management

### **Applications for Community Right to Bid under the Localism Act 2011**

#### **Summary**

1. This report details applications to list the following assets as Assets of Community Value (ACV), for consideration by the Council.
  - a. The Murton Arms (formerly the Bay Horse) Public House, Main Street, Murton, York. An application has been received by Murton Parish Council,
  - b. New Earswick and District Indoor Bowls Club, Huntington Road, Huntington, York. An application has been received by New Earswick & District Indoor Bowls Club.

#### **Background**

2. The applications have been received, for a decision by the Executive Member in the Council's statutory capacity as an Asset of Community Value (ACV) listing authority.
3. The purpose behind these provisions is to ensure that property (land and building) assets which are currently used to the benefit of the local communities are not disposed of without the local community being given a fair opportunity to bid for these assets when they are put on the open market. This right is not simply to accommodate 'public assets' but also private assets, the test is whether such assets are viewed as 'assets of community value'. These assets therefore could be currently owned by the public, private or voluntary sector.
4. The definition of 'land of community value' is set out in section 88 of the Localism Act 2011. To be considered as an asset of community

value the land or property must be satisfy either of the following criteria:

- a. an actual current non-ancillary use of the building or other land furthers the well-being or social interests of the community and whether it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social well-being or social interests of the local community

OR

- b. there is a time in the recent past when an actual non-ancillary use of the building or other land furthered the social well-being or social interests of the local community and it is realistic to think that there is a time within the next 5 years when there could be non-ancillary use (whether or not the same use as before) that would further the social well-being or social interests of the local community
5. There is no exhaustive list of what is considered to be an asset of community value but cultural, recreational and sporting interests are included. Excluded specifically are residential type properties (such as hotels, housing in multiple occupation and residential caravan sites) and operational land of statutory undertakers.

### The process

6. The regulations set out how potential assets can be listed which in brief is as follows:
  - **Nomination** – this can be by a voluntary or community body with a local connection. Includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils).
  - **Consideration** – the local authority have 8 weeks to make the decision. Under the Council's procedures the Executive member is the decision maker. If the nomination is successful the asset details are entered onto the 'Community Value list' – see below – and also the local land charges register. If unsuccessful then the details are entered onto an 'unsuccessful nominations' list for a period of 5 years to prevent repeat nominations. The owner can request a review of the decision which must be completed within 8 weeks and the owner can further appeal within 28 days of the review outcome to a Tribunal.

- **Disposal of assets on the list** – if a building or piece of land which is on the list is going to be sold with vacant possession then the owner of the asset needs to give notice to the local authority. There is then a 6 week moratorium period for any community group to express interest in writing and if they do then a 6 month period for that group to prepare it's bid. After that period the owner can market the property and any bid from the community group will be considered with bids from other interested parties. There is no guarantee that the offer from the community group will be successful as the owner of the asset will dispose of the property in accordance with its own criteria for disposal. There are a number of exceptions contained within the legislation that mean that this moratorium period does not apply and the owner does not need to give notice of it's intention to sell. This includes when there is a legally enforceable requirement, which pre-dates the listing, to sell to a specific party.
- **Compensation** – the presence of the land or building asset on the community value list may result in additional expenditure or a loss to the owner and therefore the owner can apply for compensation from the local authority. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value)..

### **The Murton Arms Public House.**

7. The freehold of The Murton Arms is in two ownerships. The public house itself is owned by Mrs Ruth Yeadon. The land to the rear including the pub car park is owned by Sophie Pauline Cougan. The nomination is being made by Murton Parish Council, who have confirmed that both ownerships are included in their application. Legal Services have confirmed that a nomination must be considered by the Council if the nominator is someone who meets the eligibility criteria specified in the relevant legislation and if the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012. Murton Parish Council is an eligible organisation. In accordance with the regulations, the freehold owners and the occupiers of the property have been informed in writing that the application has been made. They have been invited to make representations regarding the nomination.

Murton Parish Council state in the nomination form that the public house was originally called the Bay Horse and was previously listed as an ACV when put up for sale by Enterprise Inns three years ago. The present owner bought the property, changed the name to the Murton Arms and then closed the pub after a short period, renting out the upstairs residential accommodation privately. The parish council is now in the process of forming a working party to pursue the purchase of the property to resume trading as a pub on behalf of the community.

8. Full details are provided in the nomination form in Annex 1.
9. A representation has been received from Mrs Ruth Yeadon objecting to the nomination, which is summarised below.

Mrs Yeadon purchased the property back in September 2016. It had been marketed for the previous 11 months by Enterprise inns with no other apparent interest.

She states that the property was refurbished to a high standard including decking to the front of the pub and many hours were spent by friends, family and tradesmen on it. Extensive marketing took place prior to opening in 2017.

Despite hard work and best endeavours, and significant financial outlay, she advises that the public house proved not to be a viable concern and with only 800 inhabitants in Murton there is only a very small catchment and relies on footfall and walk-ins. Concerted efforts were made to attract customers. Despite free offers, discounts, a website and facebook account, sufficient trade could not be attracted, she advises.

She considers that, evidence shows that the pub is not supported by the local people and that the loss of this facility would not cause harm to the local people and the social and economic life of the community. She asserts that there is no evidence of any village activity being curtailed by the closure, and the hub of the local community is the church hall, where many events take place, including birthday parties, anniversary celebrations, wine tastings and dinners. The villagers have raised a significant amounts of money for the hall, including £80,000 for the installation of a new commercial kitchen.

There are alternative pubs and other establishments in the area serving food and drink, including the Derwent Arms in Osbaldwick, the Museum of Farming close by, and the Murton Auction Mart. There is taxi rank opposite the pub and the village is on a bus route.

Mrs Yeadon has family to support and has not received any significant income from the property.

Since the pub closed, the property has suffered from attempted break-ins, fly tipping and intruders trying to gain access to the rear car park and land.

Mrs Yeadon adds that, in order for the pub to be listed as an ACV, its continuing use for a purpose which furthers the social wellbeing or social interest of the community has to be realistic.

10. Full details of the owner's submission are provided at Annex 2.
11. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the list, even where they are currently run as commercial businesses. This property has previously been listed as an asset of community value. In accordance with the ACV regulations the property was removed from the list when the property was sold on 23<sup>rd</sup> September 2016.
12. The application meets the basic criteria for listing. It is, therefore, recommended that the Murton Arms Public house, should be listed on the ACV register.

### **New Earswick and District Indoor Bowls Club**

13. The freehold of New Earswick & District Indoor Bowls Club is owned by Joseph Rowntree Housing Trust (JRHT). The nomination is being made by New Earswick & District Indoor Bowls Club. Legal Services have confirmed that a nomination must be considered by the Council, if the nominator is someone who meets the eligibility criteria specified in the relevant legislation, and if the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012.
14. New Earswick and District Indoor Bowls Club are an eligible body, as they are an unincorporated body, whose activities are concerned with the Council's area. They do not distribute any surplus/profits to their members and have at least 21 members, who live in the local area. In accordance with the regulations, the freehold owner of the property, and the occupiers of the property, have been informed in writing that the application has been made. They have been invited to make representations regarding the nomination.
15. New Earswick & District Indoor Bowls Club state in the nomination form that after embarking on a survival plan in 2005 the bowls club

has changed from a single sport members club to a community venue which is enjoyed by nearly 700 members and non-members that attend community sessions throughout the year. Along with the bowling club that has almost 450 participants the club is a venue for leisure activities including line dancing, tap dancing and keep fit. There is also social programme which includes ladies darts, quizzes and bingo based around the bar facilities. Additional community activities supporting bowling sessions for adults with learning and physical disabilities, Special Olympics training and boccia sessions for Alzheimer's Society and Age UK. The indoor bowls area is also adapted in the summer months to provide activities such as badminton, new age curling and table tennis, predominantly for disabled participants.

16. Full details are provided in nomination form in Annex 3.
17. A letter has been received from Joseph Rowntree Housing Trust objecting to the proposed listing stating that the club has been a tenant of part of the site since 1994, the latest lease renewal being in 2013 for a term of ten years. JRHT states that there has been an ongoing decline in members of the bowling club which has resulted in the club becoming economically unviable resulting in the club being unable to meet its rental payments and requesting financial assistance from JRHT. JRHT considers that the building (a former industrial building) is considered to be physically obsolete and several components of the building including the roof are approaching the end of their useful life. Part of the ground and first floor are excluded from the lease and are used exclusively by JRHT. The trust also states that the area that is currently used as car park cannot be considered to be of community value. The future use of the rest of the site, currently occupied by JRHT as offices and depot is under review and may form part of redevelopment plans for the site to provide affordable housing. JRHT states it is willing to support the relocation of the club to new facilities and as these could be located elsewhere in York the nomination is considered inappropriate.
18. Full details are provided in the owner's submission at Annex 4.
19. The Bowls Club has developed the community focus for the part of the building which it uses. Therefore the application meets the criteria of the legislation. It is noted that the lease does not cover the whole of the building nor the site, although it does give the Bowls Club the right to use the car park.

20. This property has previously been listed as an asset of community value, which included the car park.
21. The application meets the basic criteria for listing. It is therefore recommended that New Earswick Indoor Bowls Club should be listed on the ACV register.

## **Options**

22. The applications to list The Murton Arms Public House, and New Earswick and District Indoor Bowls Club as Assets of Community Value can either be accepted or rejected. There are no other options as sufficient information has been provided to make a decision.

## **Analysis**

### The Murton Arms, Main Street, Murton

23. The property has not been used as a public house since 2017/2018. However, the asset is still capable of being used as a public house and no planning consent has been given for a change of use. On this basis, and the fact the property was listed as an ACV prior to its sale to the present owner, it is felt that the application meets the basic criteria under paragraph 3.b of this report. The recommendation, therefore, is that the application is approved. If the asset is listed then the legislation states that the owners can, within 8 weeks of the decision date apply for a review of the listing as set out in paragraph 5 of this report.
24. Although there is no right of review by the applicants, if the decision was made not to list these properties this would have to be on the basis that the qualifying criteria as set out in the Localism Act 2011 had not been met. For the reasons set out in paragraphs 6 – 11 in this report, it is considered that they have been met.

### New Earswick and District Indoor Bowls Club

25. There is nothing contained in the Localism Act 2011 which prevents or prohibits part only of a building being listed as an ACV. If an eligible nominator submits a nomination in respect of part only of a

building and the decision maker considers that the nominated part satisfies the S.88 community benefit criteria then the Council is obliged to list the nominated part as an ACV. As the application meets the basic criteria for listing, the recommendation is that the application is approved. If the asset is listed then the legislation states that the owners can, within 8 weeks of the decision date apply for a review of the listing as set out in paragraph 5 of this report.

26. Although there is no right of review by the applicants, if the decision was made not to list these properties this would have to be on the basis that the qualifying criteria as set out in the Localism Act 2011 had not been met. For the reasons set out in paragraphs 12 – 17 in this report, it is considered that they have been met.

### **Council Plan**

27. A Council that listens to residents through working with communities and partners.

### **Implications**

28.

**Financial** – Compensation may be payable by the Council to the owner of any property which is listed. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

**Human Resources (HR)** – none

**Equalities, Crime and Disorder and IT** - none

**Legal** – Legal advice has been incorporated within this report.

**Property** – All property issues included in the report

**Other** – none



## Risk Management

29. There are no significant risks to these applications.

## Recommendations

30. The Executive Member is asked to consider:

- a. The listing of The Murton Arms (formerly The Bay Horse), Main Street, Murton, York, as an Asset of Community Value (ACV) for the reasons outlined above.
- b. The listing of the New Earswick & District Indoor Bowls Club, Huntington Road, Huntington, York, as an Asset of Community Value (ACV) for the reasons outlined above.

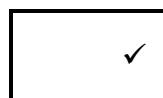
Reason: To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

## Contact Details

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Report  
Approved



9<sup>th</sup> 2020  
July

All



**Wards Affected: Osbaldwick and Derwent. Huntington and New Earswick.**

**For further information please contact the author of the report**

## Annexes

*Annex 1 – The Murton Arms, Main Street, Murton, York – Application to add to the list of assets of community value.*

*Annex 2 – The Murton Arms – Owner’s submission*

*Annex 3 – The New Earswick & District Indoor Bowls Club, Huntington Road, Huntington, York – Application to add to the list of assets of community value.*  
*Annex 4 – The New Earswick & District Bowls Club – Owners submission.*  
*Annex 5 – Current list of assets of community value*

Abbreviations used in the report

ACV Assets of Community Value