

## **Leader (incorporating Finance and Performance) Decision Session**

Report of the Assistant Director of Finance, Asset Management and Procurement

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

#### **Summary**

1. This report presents applications to list the following assets as Assets of Community Value (ACV), for consideration by the Council.
  - a. The Derwent Arms Public House, 39 Osbaldwick Village, Osbaldwick, York, YO10 3NP.
  - b. The Swan Public House, 16 Bishopgate Street, York, YO23 1JH.

#### **Background**

2. On 6<sup>th</sup> March 2014 Cabinet Member approved the proposals for the implementation of a process for the Community Right to Bid legislation to ensure the Council has a process in place for dealing with any applications and the establishment and maintenance of a list of Assets of Community Value. Three applications have recently been received under this legislation, for a decision by the Executive Member.
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 'community value' is set out in the regulations and can be summarised as

- The actual current use of the building/land furthers social well being or the social interests of the local community
  - Realistically this use can continue for the next 5 years
  - There was a time in the recent past where actual use furthered these aims.
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 which is decided by an ‘appropriate group’. The process adopted for CYC is an initial consideration by the Capital and Asset Board (CAB) which has cross-Council representation at a senior level (the Board is chaired by the Director of CBSS). A report is then written to the Executive Member for Finance Performance and Customer Service who will then formally take the decision. 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.
  - **The ‘Assets of Community Value’ List** – this needs to be published and reviewed regularly and must be accessible in electronic and paper format.
  - **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 its 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). This compensation is determined by the local authority (the adopted policy states that this is carried out by the Capital Asset Board) and the owner can have the compensation reviewed within 8 weeks and appeal to a Tribunal if still not satisfied. It should be noted that compensation can only be claimed by private owners (no compensation for public authorities) and the government has not provided any funding for this compensation (or for any costs associated with any of these provisions). However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value.

7. For nominated property to be included on the Council's ACV register the Council must consider that the property falls within the statutory definition of 'land of community value' which is that either:

- (i) A current principal use of the property furthers the social well-being or social interests of the local community and there is a realistic prospect of such use continuing

OR

- (ii) A principal use of the property in the recent past has furthered the social well-being or social interests of the local community and

there is a realistic prospect of such use commencing again within the next 5 years

If the nominated property falls within either (i) or (ii) and the nominators are a group entitled to submit the nomination then the local authority must list the asset as an ACV.

8. It should also be noted that changes to the General Permitted Development Order have been made with effect from the 6<sup>th</sup> April 2015, which means that where a pub is listed as an asset of community value a planning application is required for a change of use or demolition of the pub building. However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value

**Derwent Arms Public House, 39 Osbaldwick Village, Osbaldwick, York.**

9. The freehold of The Derwent Arms is owned by Punch Partnerships Ltd. The nomination is being made by Osbaldwick Parish Council on the basis that The Derwent Arms and attached field are an integral and important part of Osbaldwick Conservation Area as recognised in 2004. It is a meeting point for community groups and sports teams, and offers a wealth of activities for a wide range of age groups. The Parish Council considers that The Derwent Arms boosts the social wellbeing of the community, and as such, is valued as an asset to this particular area of the city.
10. The field was used in the distant past for cricket and football as well as allotment plots. The field hosts the Village Gala once a year and has hosted an annual bonfire on 5<sup>th</sup> November organised by the pub, although there hasn't been one for the last two years. The Caravan Club use the field four times a year for related events.
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.
12. If the decision is taken to include this application on the list of assets of community value, the owner has the right to request the Council to review its decision. The deadline is eight weeks from the date written

notice of listing was given, or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.

### **The Swan Public House, 16 Bishopgate Street, York**

13. The freehold of The Swan is owned by Punch Partnerships Ltd. The nomination is being made by Bishopthorpe Road Traders Association (BRTA) on the basis that The Swan is the epitome of a thriving community pub and is highly valued by a comprehensive cross-section of the local community. It provides a safe and inclusive meeting place for people of all ages and from all demographic groups. The building is grade 2 listed and the business has been recognised in regional awards from the Campaign for Real Ale and The Press. The pub raises funds for various charities, has darts team, hosts a popular weekly quiz and holds regular festival events. The Swan supports local businesses and the lessee was a fully supportive founder member of the BRTA.
14. 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.
15. If the decision is taken to include this application on the list of assets of community value, the owner has the right to request the Council to review its decision. The deadline is eight weeks from the date written notice of listing was given, or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.

### **Implications.**

16. **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** – Organisations falling within any of the following categories are eligible to submit an ACV nomination relating to property within their local area:

- (i) a parish council
- (ii) a charity, non-profit making company or community interest company with a local connection to the nominated property
- (iii) an unincorporated association which has at least 21 members registered to vote in the local area

The organisations who have submitted the nominations covered by this report fall within the above criteria and are therefore entitled to submit their ACV nominations.

Paragraph 7 of the report contains the statutory definition of 'land of community value'. If the listing authority considers that a nominated property falls within that definition then it must include the property on its ACV register.

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

**Other** – none

## **Risk Management**

17. There are no significant risks to this application.

## **Recommendations**

18. The Executive Member is asked to.

- a. Agree to the application to list the Derwent Arms Public House as an Asset of Community Value (ACV) as the criteria have been met for the reasons set out above. With regard to the adjacent field included within this application, the Executive Member is asked to consider the amount of usage specified in the application and decide on whether this constitutes a principal use. If it does, then the field will come under the statutory definition of 'land of community value' and should be listed as an ACV.
- b. Agree to the application to list The Swan Public House as an Asset of Community Value as the criteria have been met for the reasons set out above.

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

## Contact Details

### Author:

Tim Bradley  
Asset Manager  
Asset and Property Management  
Tel No.553355

### Chief Officer Responsible for the report:

Tracey Carter  
Title - AD Finance Property  
Procurement

Report  
Approved



Date 7 October  
2015

### Specialist Implications Officer(s)

Implication Legal  
Name Andy Docherty  
AD Governance and ICT  
Tel No. 551004

All

**Wards Affected: Osbaldwick and Micklegate**

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

### Annexes

Annex 1 – The Derwent Arms Public House – Application to add to the List of community assets

Annex 2 – The Swan Public House - Application to add to the List of community assets

Annex 3 – Current list of assets of community value