

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 an application from The Friends of the Bay Horse, to list The Bay Horse, Murton Way, Murton, YO19 5UQ, as an Asset of Community Value (ACV), for consideration by the Council.

Background

2. On 6th March 2014 the 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 City of York Council 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 Customer and Business Support Services). A report is then written to the Leader (incorporating Finance and Performance) 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 a 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 6th 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

The Bay Horse Public House, Murton Way, Murton, York.

9. The freehold of The Bay Horse is owned by Unique Pub Properties Theta Ltd. The nomination is being made by The Friends of The Bay Horse on the basis that the public house is the only public meeting place and community centre in the village. Any evening will show that the pub furthers the social well-being and interests of the local community through its food, drink and facilities as a meeting place. In addition, a tug of war club meets in the paddock behind the pub, there is a monthly 'ladies lunch', a very popular quiz night on Wednesdays, and regular themed restaurant evenings.
10. The Friends understand that the pub, financially, is breaking even on a monthly basis, suggesting that it could be brought into profitability through community involvement. The pub's current owners are not able to invest in facilities that would make it more profitable, leaving the current tenants stuck for improving trade. For instance the Murton Village Design Statement from 2005 showed that the residents had a desire for a children's play area. Using the pub to host such a facility could be a way of building up trade and putting the pub back in the centre of the Murton village community.
11. Unique Pub Properties Theta Ltd is a subsidiary of Enterprise Inns, who have responded to the application as follows.
12. The pub is not unique in the area and there are other pubs in the immediate vicinity offering a range of services and facilities.
13. The pub sits within a conservation area and any change of use would be subject to the usual planning process.

14. The pub is currently on the market for sale on an unrestricted basis and has been since November 2015. They think it likely that any interested party would look toward continued pub use.
15. The community group state that one of the reasons for the nomination is in fact to allow them to raise funds and purchase the property. They feel it is unlikely that the community group would be able to raise the funds required for the purchase.
16. The community have failed to support the pub over the years. They have marketed the pub to let for over 12 months and have had little interest.
17. The current tenant has tried a variety of events to attract local custom with little success or support from the community.
18. Over the last 5 years, Enterprise have spent in excess of £100,000 on improvements to the property and this has had little impact on the sustainability of the property as a business.
19. 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.
20. 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.

21. **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

22. There are no significant risks to this application.

Recommendations

23. The Executive Member is asked to agree to the application to list The Bay Horse 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

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**Report
Approved**



Date 11 February
2016

Specialist Implications Officer(s)

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Wards Affected: Osbaldwick and Derwent

All

For further information please contact the author of the report

Annexes

Annex 1 – The Bay Horse Public House – Application to add to the List of
community assets

Annex 2 – Letter from Enterprise Inns

Annex 3 – Current list of assets of community value