

29th June 2015

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 asset as Assets of Community Value (ACV), for consideration by the Council
 - a. Melbourne Public House, 6 Cemetery Road, York (from Friends of Melbourne Public House)
 - b. Holgate Allotments, Ashton Lane, Holgate (from Holgate Allotment Association)
 - c. Clementhorpe Malt House, 19/21 Lower Darnborough Street, York (from Clementhorpe Community Association)

Background

2. On 6th 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 Cabinet 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 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). This compensation is determined by the local authority (it is suggested 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 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 Melbourne Public House, Cemetery Road, York

9. The freehold of The Melbourne is owned by Enterprise Inns. The nomination is being made on the basis that The Melbourne is a popular public house used by all sectors of the local community as a place to get together for social events. There are a number of groups who meet in the building and there the pub hosts teams, such as dominos and pool, who play in the local leagues. It has large rooms which is sub-divided and is suitable for wide variety of uses including live music. A copy of the nomination form is included at Annex 1. The nominators have specifically stated that with 'the recent and ongoing improvements being implemented by the landlord and landlady this is a pub which has been turned round and now appears to be a viable business'.
10. 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.
11. Enterprise Inns are currently in discussion with Changing Lives, a national, registered charity which provides specialist support services for thousands of vulnerable people and their families, every month. They work with people experiencing homelessness, addiction and a range of other problems by reaching out in to communities. They offer specialist support services for women and families and provide employment opportunities for their clients. A number of public meetings have been held by the organization with local residents to explain their proposals for the use of this building as a centre for supporting people in transition with

the type of issues detailed above, rebuilding lives and integrating them back into the community.

12. Enterprise Inns have sent a response to the nomination which is included at Annex 2 which states
 - a. The company approved the disposal of this site in January 2015 as despite investment in the property it is considered not sustainable due to it's restricted trading area and no opportunity to provide catering facilities
 - b. A marketing campaign over 18 months only attracted 6 applicants to take over as manager of the pub and none of these progressed to a substantive agreement
 - c. CBRE have marketed the pub for sale since January 2015 and there has been no interest.
 - d. The company are therefore pursuing alternative uses for the site
 - e. They therefore consider that the nominator has not given evidence that there is a realistic prospect of a use continuing which furthers the social well-being or social interest (a requirement of section 88 (1) of the Localism Act.
13. Enterprise Inns therefore request that the application be rejected.
14. 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. Enterprise have indicated that they will consider this review.
15. The application appears to meet the first criteria for listing set out at 7(i) in that it is currently used for community amenity but it is arguable that it does not meet the second criteria set out at 7(ii) in that it is not realistic to think that a community use can continue given the evidence from the owner that its current use is not commercially viability. The legislation does not require the same use to continue, merely any other principal use which would further the social well-being of the community. The applicant has not provided any detail of any other use apart from the current use which might enable an assessment of the realistic potential for future community use. It is therefore impossible to make a hard and fast judgement on its eligibility from the information included in the application and if the listing were to be agreed it is possible that an appeal might be made on these grounds. However on balance it is considered that the minimum criteria for listing have been met.

Holgate Allotments, Ashton Lane, Holgate Road, York.

16. The freehold of Holgate Allotments is owned by City of York Council. The nomination is being made on the basis that the allotments provide growing/green space for people who would otherwise not have access to outdoor space, benefits to physical and mental wellbeing, an educational resource for adults and children of all abilities, a place of social inclusion, enhancing community pride and involvement, contributing to biodiversity and benefitting the environment. In addition the allotments fulfil the aims of the City of York Council's 'A community vision for Holgate'.
17. The asset is eligible for listing and comes under the responsibility of Parks and Open Spaces. And the Head of this Service has confirmed that he has no objection to the proposed listing.

Clementhorpe Malt House, 19/21 Lower Darnborough Street, York

18. The freehold of Clementhorpe Malt House is owned by City of York Council. It has been vacant for many years and was previously used by the Council for storage of museum and other archives although this use ceased in 2007. When the Council acquired this property in 1963 it had been vacant then and its previous use had been as a malthouse since its construction in the mid-to-late 19th century. Many of the original features and equipment remain in the building and it is listed (Grade II). It therefore has never been used by or for the community and there is no continuing community use in the building or adjoining land.
19. The application by the Clementhorpe Community Association states that this building could be used by the community with the aim of turning the space into a community hub that would express the history and cultural significance of the area and demonstrate the Victorian legacy in the building. In addition the provision of artists' studios, a micro-brewery and a cafe would be investigated
20. It is considered that this application does not meet the criteria for the legislation to apply as the building has never been used for a use which furthers the well-being or social interests of the community and is therefore not eligible for listing as an asset of community value.
21. City of York Council, as owners of this building, have responded to this nomination by stating

- a. The building has been vacant for many years and various attempts have been made to find a viable use for it, including the inclusion of it in the Genius consultation project of January 2012. Following interest shown by a number of developers a public report was submitted to Cabinet.
- b. In January 2014 the Council's Cabinet approved the sale of the building to Northminster properties for conversion to 6 town houses. The sale was subject to obtaining planning consent, which was submitted and consulted upon in early 2015 and in June 2015 this consent was approved and Northminster are ready to complete the sale contract and proceed with the conversion.
- c. Because this contract has already been signed even if the property were listed it would be exempt from the owner giving notice of its intention to sell.
- d. If the Council were to consider withdrawing from the sale then Northminster could either require the Council to proceed to completion or to seek compensation which would be substantial based on the amount of work done and funds committed so far.

Implications.

- 22. **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

- 23. There are no significant risks to this application.

Recommendations

- 24. The Leader is asked to:
 - a. Agree to the application to list The Melbourne Public House, Cemetery Road as an Asset of Community Value as the criteria have been met for the reasons set out above.
 - b. Agree to the application to list Holgate Allotments as an Asset of Community Value as the criteria have been met for the reasons set out above.
 - c. Reject the application to list the Clementhorpe Malthouse as an Asset of Community Value as the criteria have not 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.

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**Report
 Approved**

Date 19 June
 2015

Specialist Implications Officer(s)

Implication Legal
 Name Andy Docherty
 AD Governance and ICT
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All

Wards Affected: Fishergate, Micklegate and Holgate

For further information please contact the author of the report

Annexes

Annex 1 – The Melbourne PH, Cemetery Road – Application to add to the List of community assets

Annex 2 – Letter from Enterprise Inns

Annex 3 – Holgate Allotments – Application to add to the List of community assets

Annex 4 – The Clementhorpe Malthouse – Application to add to the List of Community Assets

Annex 5 – Current list of assets of community value