

Cabinet Member Decision Making session – Finance Performance and Customer Service

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 from Rawcliffe Parish Council to list the Mitre Public House, Shipton Road, Rawcliffe, York, and the Save the Fox Inn Campaign to list The Fox Inn, 168 Holgate Road, York, as Assets of Community Value, for consideration by the Cabinet Member.

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. Two applications have been received under this legislation, for a decision by the Cabinet member.

The Mitre Public House, Shipton Road, York

3. The freehold of The Mitre is owned by Enterprise Inns. The nomination is being made by Rawcliffe Parish Council on the basis that The Mitre is the only public house within the parish to offer 'community facilities' and as such is a valued amenity to the local people. 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 Mitre boosts the social wellbeing of the community, and as such, is valued as an asset to this particular area of the city.

4. A letter from the owners Enterprise Inns has been received objecting to the proposed listing. A copy of their letter is attached at annex 2. The basis for their objection is that the local community already benefits from an ample number of community facilities, including public houses, in close proximity to the Mitre. For this reason the owners believe the public house should not be listed as an asset of community value.

The Fox Inn, Holgate Road, York

5. The freehold of the Fox Inn is owned by Punch Taverns. The application by a group of local people called 'Save the Fox Inn', is on the basis that the public house is an irreplaceable part of York's heritage, and deserves its place at the centre of the Holgate Community and should be extended during the daytime. The public house's owners are currently in financial difficulties and at the time of the application there had been a string of temporary landlords and the building was in a poor state of repair. Since then a major refurbishment of The Fox has taken place and the running of the public house has been taken over by the Ossett Brewery.
6. Solicitors acting for Punch Taverns have challenged the application for various technical reasons, including the fact that the nomination form only included four names as members, thereby not complying with the requirement for at least twenty one members. The 'Save the Fox Inn' group have since supplied details of sixty-eight members. Legal Services' view is that the application submitted is valid under the relevant legislation.
7. 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. Given that The Mitre and Fox Inn have a distinct community focus, the applications fit the criteria of the legislation. If the decision is taken to include these public houses 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.

8. Financial – none

Human Resources (HR) – none

Equalities, Crime and Disorder and IT - none

Legal – The Council need to comply with the Localism Act 2011 which is in force now. The Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 require local authorities to maintain a register of assets of community value situated within their area, including an obligation to properly consider applications received to add properties to the register. The Council must also maintain a list of land that has been unsuccessfully nominated for inclusion on the Assets of Community Value register.

It is understood that the respective owners of The Mitre Pub and The Fox Inn have indicated to the Council that they object to the nomination of those properties/the potential listing of those properties as Assets of Community Value, including (in the case of The Fox Inn) claims from the owner's lawyers that the application form lodged is defective/does not meet the requirements of the relevant legislation.

In light of this if the Council decides to add these properties to the register of Assets of Community Value then the owners may request a review of the Council's decision or may appeal to court/seek a judicial review or may seek compensation from the Council (see below as to the owner's rights of challenge and compensation). If the owners appeal to court/seek judicial review of any decision by the Council to list as Asset of Community Value then the Council would need to decide whether to defend such appeals (incurring legal costs including potentially the owner's legal costs). It is considered the Council would have a reasonable case for arguing it is entitled to list the nominated properties as Asset of Community Value if that is the decision maker's determination but I cannot guarantee any court challenge by the owners would be unsuccessful.

If an owner of land objects to the listing of its land as an Asset of Community Value, it can request a review of the Council's decision – the request must be submitted to the Council within 8 weeks of the date on which the Council issues any decision to list the land as Asset of Community Value. On receipt of a review request from the owner, the Council must review its decision – the review has to be carried out by and determined by an officer of 'appropriate authority' who was not

involved in the original decision. If the owner requests an oral hearing as part of the review process the Council is obliged to hold one – the owner or their representative is entitled to make representations/comments to the Council. The Council must complete any review process and issue its decision within 8 weeks of the date on which the Council received the review request. The Council's decision following any review must be notified to the owner in writing, including the reasons for the Council's decision. If following a review the Council concludes that the land should not have been listed as an Asset of Community Value, then it must remove the land from its Asset of Community Value register, notify the person who nominated the land in writing (including its reasons) and add the land to the Council's list of unsuccessful Asset of Community Value nominations.

If after a review the Council decides the land was correctly listed as an Asset of Community Value then the owner of the land can appeal to court – any appeal must be filed at court by the owner within 28 days of the date on which the Council issues its review decision. The owner might also challenge by way of judicial review but that is an expensive process that the owner would probably be reluctant to undertake.

If an owner incurs financial loss or expense which they would probably not have incurred if their land had not been listed as Asset of Community Value then they can claim compensation from the Council by lodging a claim in writing within 13 weeks of the expense or loss having been incurred. The Council would be obliged to properly consider a request and notify the owner in writing of its decision, including the Council's reasons. The owner can ask the Council to review its decision, whether a refusal of compensation or on the amount of compensation offered. On completion of the review the owner is entitled to appeal to court. The Council is entitled to reclaim from government costs of compensation paid by it over £20,000 in a financial year (either for a single claim or for a number of smaller claims).

Criteria for Nomination and Listing as Asset of Community Value:

Section 88 of the Localism Act 2011 defines 'land of community value' as being *a building or other land in a local authority's area:*

- (i) *whose actual current use (not an ancillary use) furthers the social wellbeing or social interests of the local community, **and** in the opinion of the local authority 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 wellbeing or social interests of the local community

OR

- (ii) whose actual former use (not an ancillary use) in the recent past furthered the social wellbeing or interests of the local community, **and** in the opinion of the local authority it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community

‘Social Interests’ are defined as including cultural, recreational and sporting interests.

A local authority can only add a property to its list of Assets of Community Value following receipt of a ‘community nomination’.

A ‘community nomination’ is an application/nomination submitted by either:

(a) a parish council in relation to property within that council’s area

or

(b) a ‘voluntary or community body’ which has a ‘local connection’ with land in the local authority’s area

A ‘voluntary or community body’ includes parish councils, an unincorporated body with at least 21 members who are individuals that does not distribute any surplus/profits to its members or a community interest company.

It is presumed that the site of the Mitre Pub is within Rawcliffe Parish Council’s area. If that is the case then Rawcliffe Parish Council does not need to have a ‘local connection’ with the site. If however the Mitre Pub is outside of Rawcliffe Parish Council’s area then it needs to have a ‘local connection’ with the site in order to submit the application/nomination – it will have a ‘local connection’ if it shares the boundary of the site with another parish council or if its area is within City of York Council’s area. Rawcliffe Parish Council would therefore appear entitled to nominate the Mitre Pub as an Asset of Community Value.

Even though the application/nomination form lodged by 'Save The Fox Inn' campaign group in relation to the Fox Inn stated that the group had 4 members, it is understood actually has at least 68 members. (It is believed the group perhaps mistakenly thought the question on the application form was asking how many officers/officials the group had). It is therefore considered the campaign group is a 'voluntary or community group' for the purposes of the Localism Act and the ACV Regulations. A voluntary or community group (other than a parish council) is deemed by the legislation to have the necessary 'local connection with land in a local authority's area' if its activities are wholly or partly concerned with either the local authority's area or a neighbouring authority's area – the Save The Fox Inn campaign group would appear to satisfy this condition and so it appears they are entitled to nominate that pub as an Asset of Community Value.

Under the relevant legislation, an Asset of Community application/nomination must include the following information:

- (a) a description of the nominated land including its boundaries
- (b) a statement of all the information considered by the nominator in deciding to nominate the land (including the names of any current occupants and the names and addresses of all those owning/holding a freehold interest in the land [if different to the identity of the occupants])
- (c) the nominator's reasons for considering that the local authority should register the land as Asset of Community Value
- (d) evidence of the nominator's entitlement to submit a nomination (except for parish councils in whose area the land is situated)

The Council needs to satisfy itself that the applications received from Rawcliffe Parish Council and Save The Fox Inn campaign group contain the above information.

Procedure following receipt of an Asset of Community Value Nomination:

On receipt of an Asset of Community Value nomination the Council is obliged to:

- (i) consider the nomination – the Council is supposed to reach a decision on whether to list the nominated land as an Asset of Community Value within 8 weeks of receiving the nomination
- (ii) accept the nomination if it meets the qualifying criteria listed above
- (iii) add the nominated land to its register of Assets of Community Value if the Council considers that the land satisfies the criteria
- (iv) give written reasons to the nominator if the Council does not accept the nomination, explain to them why the land cannot be listed as an Asset of Community Value and add the land to its list of unsuccessful Asset of Community Value nominations
- (v) keep the owner of the land informed of the receipt and progress/consideration of any nomination it receives in relation to that person's land

If the Council decides to list nominated land as Asset of Community Value it must notify the following:

- (i) the owner of the land, any tenant of the land and any occupier of the land (if the occupier is not the owner)
- (ii) the relevant parish council if the land falls within a parish council's area
- (iii) the person who lodged the nomination/application
 - the notice to the owner must draw their attention to the consequences of the land being listed as an Asset of Community Value and mention the owner's right to seek a review of the Council's decision

Effect of listing land as Asset of Community Value:

If land is listed as an Asset of Community Value the effect is that if the owner wishes to dispose of the land they must the Council in writing. On receipt of such notification the Council would be obliged to:

- (a) amend the register to include the date on which such notification was received and also specify the date of expiry of the interim moratorium period (six weeks from the date of receipt of notification from the owner) and the date of expiry of the full moratorium period (six months from the date of receipt of notification).

(b) Notify the person who nominated the land to be listed as Asset of Community Value

(c) Publicise the information in the area in which the land is located

The owner is prohibited from selling Asset of Community Value land unless:

(A): they have notified the Council of their intention to sell

AND

(B) The interim moratorium period has expired without the Council having received a written express from any community interest group to be treated as a potential bidder for the land or the full moratorium period has expired

AND

(C) the 'protected period' has not expired (this is a period of 18 months from the date on which the Council receives the owner's notification of intention to sell – it is intended to protect the owner from repeated attempts to block the sale of the land as no there is no more than one moratorium during this period)

After the full moratorium period the owner can sell the land to whoever it wishes (provided the sale takes place within the 'protected period').

Property – none

Other – none

Risk Management

9. There are no significant risks to this application.

Recommendations

10. The Cabinet Member is asked to decide whether to add The Mitre Public House, Rawcliffe and The Fox Inn, Holgate Road onto the List of Community Assets

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
Dept Name Property
Tel No.(01904) 553360

Chief Officer Responsible for the report:

Tracey Carter
Title - AD Finance Property
Procurement

Report
Approved



Date 9 July 2014

Specialist Implications Officer(s)

Implication Legal
Name Gerard Allen
Senior Solicitor, Property Law
Tel No. (01904) 552004

Wards Affected: Skelton, Rawcliffe and Clifton Without

All

For further information please contact the author of the report

Annexes

Annex 1 – The Mitre – Rawcliffe – Application to add to the List of community assets

Annex 2 – Letter of objection from Enterprise Inns

Annex 3 – The Fox Inn, Holgate – Application to add to the list of community assets

Annex 4 – Current list of assets of community value