

Executive Leader (incorporating Finance and Performance) Decision Session

Report of the Assistant Director of Regeneration and Asset
Management

Application for Community Right to Bid under the Localism Act 2011

Summary

1. This report presents applications to list the following properties as Assets of Community Value (ACV), for consideration by the Council
 - a. The Blue Bell Public House, 53 Fossgate, York, YO1 9TF.
 - b. The Old Ebor Public House, 2 Drake Street, York, YO23 1EQ.

Background

2. 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.
- c.
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.
6. 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 process

7. 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 it's 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 Blue Bell Public House.

8. The freehold of the Blue Bell is owned by Punch Partnerships (PML) Ltd. The nomination is being made by the Blue Bell Conservation Group. 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. The Blue Bell Conservation Group are an eligible body as they are an unincorporated body whose activities are concerned with the Council's area, which does not distribute any surplus/profits to its members and which has 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 and no representations have been received.

9. The Blue Bell Conservation Group state in the nomination form that the Blue Bell has been servicing the York Community since 1798. It caters for people of all ages and is particularly used by the Elderly as a place of social interaction. The pub is used by hundreds of York Residents for social occasions and is the only intact Edwardian public house left in the City.
10. Full details are provided in the nomination form in Annex 1.
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. The application meets the basic criteria for listing and no objection has been raised by the owner to the nomination. It is therefore recommended that the Blue Bell Public House, 53 Fossgate, York, should be listed on the ACV register.

The Old Ebor Public House.

13. The freehold of the Old Ebor is owned by Mr P G Armitage of 15 Fordlands Crescent, York, YO19 4QQ. The nomination is being made by York Campaign for Real Ale. 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. The York Branch of CAMRA are an eligible body as they are an unincorporated body whose activities are concerned with the Council's area, which does not distribute any surplus/profits to its members and which has 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 and representations have been received from the owner of the pub.
14. The York Campaign for Real Ale state in the nomination form that the Old Ebor is a community pub for people to meet and socialise in a safe environment, including those people who meet for company. Several customers are from the local sheltered housing scheme at Bairstow House nearby. This type of demographic feel much more comfortable in the Old Ebor rather than the more well established and popular pubs in the vicinity such as the Swan and The Angel on the Green. Other pubs

that the Old Ebor's clientele did frequent have been lost, namely The Edward VII and The Cygnet.

15. The pub has good disabled access, is dog friendly, and has had a thriving darts team that has participated in the local leagues. It is hoped that this will resume at some point in the future.
16. The pub holds barbecues, beer festivals and live TV sport, which attracts the regulars and new customers alike.
17. Full details are provided in the nomination form in Annex 2.
18. The owner, Mr Philip Armitage has been consulted on the proposed listing and has responded as follows.
19. He states that the application is a response to rumours that he was going to close the pub down and redevelop it, due to past mismanagement of the pub. He cannot see any point in the application being made, because if the building were ever sold the three flats above the pub as well as the pub itself are worth a total of £700,000. This would be an impossible amount for the locals to raise.
20. Mr Armitage goes on to state that there are quite a few pubs in the area, so it is not the only local pub in the vicinity. It is not as though there are no alternatives. His intention is to keep the Old Ebor running as a pub as long as it is commercially viable and does not cause a disturbance to the residents of the flats above.
21. 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.
22. The application meets the basic criteria for listing. It is therefore recommended that the Old Ebor Public House, York, should be listed on the ACV register.

Consultation

23. Consultation has taken place with owners and occupiers of both public houses. Their responses are included above.

Options

24. The applications to list the Blue Bell and Old Ebor 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

25. As the applications meet the basic criteria for listing then the recommendation is that the applications are approved. If the asset is listed then the legislation states that the owner can, within 8 weeks of the decision date apply for a review of the listing as set out in paragraph 7 of this report.
26. Although there is no right of review by the applicants, if the decision was made not to list this property 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 8 – 22 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 Blue Bell Public House, 53 Fossgate, York, as an ACV, because it meets the required criteria.
- b. The listing of the Old Ebor, 2 Drake Street, York as an ACV, because it meets the required criteria.

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 3rd Oct 2017

All

Ward Affected: Guildhall and Micklegate

For further information please contact the author of the report

Annexes

- Annex 1 – The Blue Bell Public House – Application to add to the List of community assets
- Annex 2 – The Old Ebor Public House – Application to add to the list of community assets
- Annex 3 - Current list of assets of community value

Abbreviations Used in the Report

ACV - Assets of Community Value