

Executive Leader (incorporating Finance and Performance) Decision Session

9 April 2018

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 an application to list New Earswick Swimming Pool, Hawthorn Terrace, New Earswick, York, as an Asset of Community Value (ACV), for consideration by the Council.

Background

2. An application has 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 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
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. 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).

New Earswick Swimming Pool, Hawthorn Terrace, New Earswick, York

7. The freehold of New Earswick Swimming Pool is owned by Joseph Rowntree Housing Trust (JRHT). The nomination is being made by the Friends of New Earswick Swimming Pool (FoNESP). 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 FoNESP are an eligible body as they are a community interest company 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.
8. The FoNESP state in the nomination form that the pool is well used and provides facilities for the advancement of education for pupils of local schools and is of benefit for all the inhabitants of the local area.

It promotes social welfare, health and well being for users of all ages and abilities. The pool has 2,100 visits per week – 48 weeks of the year. There are more than 13 user groups who access the pool including competitive swimming clubs, disability swimming groups, military groups, rehabilitation groups, parent and toddler groups, and elderly care groups.

9. In the mid 1960's funds were raised by the local community to build the pool and the local community are as passionate about keeping this well used facility open.
10. Full details are provided in the nomination form in Annex 1.
11. JRHT have responded that following the announcement to close the pool on 31st March 2018 they encouraged the FoNESP to constitute themselves into a Community Interest Company (CIC). JRHT has supported FoNESP in submitting a business case to undertake an asset transfer to operate and maintain the swimming pool from April 2018, to prevent closure of the pool. If the business case is acceptable, and approved by the JRHT board, then steps will be taken to transfer operation and maintenance of the pool to the Friends. If a viable business case cannot be made, then there will be no option other than to close the pool. JRHT have, therefore, requested that the decision to nominate be deferred as the nomination is premature and unnecessary, because the community group are being given the opportunity to put forward a business case, which would facilitate a transfer.
12. JRHT contend that if no viable business case is brought forward, it will become self evident that the building will have no community value, as the premises will be closed, with no prospects of reopening. If this point is reached, listing the pool as an ACV would simply serve to frustrate the future of the pool.
13. The FoNESP have confirmed that they do not wish to defer the nomination.
14. The application meets the basic criteria for listing. It is, therefore, recommended that New Earswick Swimming Pool, should be listed on the ACV register.

Consultation

15. Consultation has taken place with owners and occupiers of the property.

Options

16. The application to list New Earswick Swimming Pool as an Asset 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

17. As the application meets the basic criteria for listing the recommendation is that the application is 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.
18. 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 – 10 in this report, it is considered that they have been met.

Council Plan

19. A Council that listens to residents through working with communities and partners.

Implications

20. **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

21. There are no significant risks to this application.

Recommendations

22. The Executive Leader is asked to consider:

The listing of New Earswick Swimming Pool, Hawthorn Terrace, New Earswick, York, as an Asset of Community Value (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 28/3/2018

All

Ward Affected: Huntington and New Earswick

For further information please contact the author of the report

Annexes

Annex 1 – New Earswick Swimming Pool – Application to add to the List of community assets

Annex 2 – Current list of assets of community value

Abbreviations used in the report

ACV Assets of Community Value

JRHT Joseph Rowntree Housing Trust

FoNESP Friends of New Earswick Swimming Pool

CIC Community Interest Company