

**Decision Session – Executive Member for
Finance and Performance.**

13 September 2021

Report of the Director of Housing, Economy & Regeneration.

Application for Community Right to Bid under the Localism Act 2011

Summary

1. This report details an application to list The Spread Eagle Public House, Walmgate, York as an Asset of Community Value (ACV), for consideration by the Council. The application has been received from the Campaign for Real Ale – York Branch.

Recommendations

2. The Executive Member is asked to consider:

Approving the listing of The Spread Eagle Public House, Walmgate, York, as an Asset of Community Value (ACV) for the reasons outlined below.

Reason: To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

Background

3. The 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.
4. 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.

5. 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. 88(1) 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. 88(2) 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
6. 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

7. The regulations set out how potential assets can be listed which in brief are as follows:
 - **Nomination** – this can be by a voluntary or community body with a local connection. This 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 further details in the report – 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. Neither the Localism Act nor the ACV Regulations give the nominating organisation any right to appeal a decision of the local authority that the nominated property is not an asset of community value/does not satisfy the necessary S.88 criteria referred to above.

- **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 is provided for that group to prepare its 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).

The Spread Eagle Public House

8. The freehold of The Spread Eagle Public House is owned by SWL Holdings Ltd. The nomination has been made by the Campaign for Real Ale – York Branch (“the Nominating Organisation”). 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 has been informed in writing that the application has been made. They have been invited to make representations regarding the nomination.

9. York CAMRA state in the nomination form that the Spread Eagle is a good old fashioned down to earth establishment that sells real ale and has an open and inclusive admission policy that appeals to different demographic social groups. The public house was first recorded in the late eighteenth century with the current building dating from the early nineteenth century. It has previously been named The Malt Shovel and the Bricklayers Arms. The pub serves the area of Walmgate as a local community gathering space. Prior to the pandemic it provided entertainment as a live music venue. The Spread Eagle has also hosted charity events over recent years. The spacious enclosed beer garden provides exterior space to socialise for the community.
10. The Spread Eagle is one of the few remaining pubs along Walmgate and although currently unoccupied, however it is being marketed.
11. Full details are provided in the nomination form in Annex 1.
12. No representations have been received from the property owner.
13. The application meets the basic criteria for listing. It is, therefore, recommended that the Spread Eagle Public house, should be listed on the ACV register.

Analysis

14. 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.
15. The Spread Eagle has not been open/trading as a public house since November 2020. The asset is still capable of being used as a public

house and no planning consent has been given for a change of use. The recommendation, therefore, is that the application is approved.

16. If the decision is to approve the ACV nomination application then the owner of the property has a statutory right to request a review of that decision by submitting a review request to the Council within 8 weeks of the decision date. (If the decision is to reject the ACV nomination application, the legislation does not give the nominating group any right to appeal that request though they could potentially seek a judicial review of the decision by submitting a J.R. claim to the High Court).

Options

17. The application to list the Spread Eagle as an Asset of Community Value can either be accepted or rejected. There are no other options as it is considered that sufficient information has been provided to make a decision

Council Plan

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

Implications

19. 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).

20. Human Resources (HR) – none

21. Equalities, Crime and Disorder and IT - none

22. Legal – Advice and comments have been sought from Legal Services and incorporated within this report.

23. Property – All property issues included in the report

24. **Other** – none

Risk Management

There are no significant risks to these applications.

Contact Details

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**Report
Approved**



02/09/2021

Ward Affected: Guildhall

For further information please contact the author of the report

Annexes

Annex 1 – The Spread Eagle Public House, York – Application to add to the list of assets of community value.

Annex 2 – Current list of assets of community value

Abbreviations used in the report

ACV Assets of Community Value