

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

11 April 2022

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 Derwent Arms, Osbaldwick, York as an Asset of Community Value (ACV), for consideration by the Council. The application has been received from Osbaldwick Parish Council.

Recommendations

2. The Executive Member is asked to consider the officer recommendation to:

Approve the renewal of the listing of Derwent Arms, Osbaldwick, York, as an Asset of Community Value (ACV) for the reasons outlined within this report.

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. According to Land Registry records the freehold of the site is owned by Punch Partnerships (PTL) Limited. However, the applicant has stated in the application that the freehold is believed to be in the ownership of Heineken UK. We trust this information is correct as we are aware of delays at the Land Registry which are resulting in

updates to transfers taking longer to process but have written to both Punch and Heineken to notify them of the application. The Derwent Arms was previously entered on the Council's list of ACV property on 14th March 2016 following an earlier ACV nomination received on 1st February 2016. Pursuant to Section 87(3) of the Localism Act 2011 land/property must be removed from the ACV list after 5 years from date of listing. This application is a request to re-add the Derwent Arms onto the Council's AVC list (for a further period of 5 years).

5. 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.
6. 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
7. 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

8. 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).

Derwent Arms Public House

9. According to Land Registry records, the freehold of the Derwent Arms site is owned by Punch Partnerships (PTL) Limited. We believe however that the freehold has been transferred to Heineken UK. The Derwent Arms is currently open and trading and has been trading as a public house since at least 1970. The nomination is being made by Osbaldwick Parish Council (OPC). 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. OPC as Parish Council for the area in which the nominated land is situated, are an eligible body entitled to submit a nomination for the purposes of the ACV regulations.
10. In accordance with regulations requiring that the owner of nominated property be notified of a nomination, based on the details we have from the Land Registry and the information provided by the applicant both Punch Partnerships Limited (PTL) and Heineken UK have been informed in writing that the application has been made. They have been invited to make representations regarding the information. The current tenant occupier of the Derwent Arms has also been advised. No response has been received from any of the parties consulted.
11. OPC state in their nomination that the pub and field/land behind it fall within Osbaldwick Conservation Area as recognised in 2004. The pub itself is considered by OPC to be a community hub and the focal point of the village.
12. According to OPC the pub field also has a long history of community use and value. Previous uses of the field were as cricket and football pitches and included providing a base for a successful pub football team. The village gala and annual bonfires have also been held on the field. The field also previously provided allotment plots and it is considered that this could be a potential use for the field in the future. The Parish Council state that the field is used at various times of the

year by the caravan club for camping and caravanning, this benefitting the pub and other local businesses.

13. They state that the ancillary uses of the pub are as a safe children's play area and football area for customers and local residents and the building and land furthers the social and wellbeing of the local community and customers of the pub along with being a community focal point being the location of the village gala.
14. Pursuant to Regulation 3 and paragraph 3 of Schedule 1 of the ACV Regulations "Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), or would be so required if paragraphs 1, 4, 5 and 10 to 11A of Schedule 1 to that Act were omitted" cannot be classed as land of community value and so cannot be listed as ACV. However, although the field behind the pub has occasionally been used for caravanning, Legal Services consider that a site licence is not required under Part 1 of the 1960 Act (not because of the exemption provisions specified in paragraphs 1, 4, 5, 5 and 10 to 11A of the 1960 Act). Accordingly it is considered that the prohibition specified in paragraph 3 of Schedule 1 of the ACV Regulations does not apply to the site. Therefore it is open to the Council to list the entire site (both the pub and the field) as ACV.

Analysis

15. 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 & Recommendation

16. The application to renew the listing of the Derwent Arms Public House 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. Based upon the information provided, it is recommended to renew the listing of the ACV for this property.

Council Plan

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

Implications

18. 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).

19. Human Resources (HR) – none

20. Equalities, Crime and Disorder and IT - none

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

22. Property – All property issues included in the report

23. Other – none

Risk Management

There is no significant risk to this application.

Contact Details

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**Report
Approved**



29/03/2022

All



Ward Affected: Osbaldwick and Derwent

For further information please contact the author of the report

Annexes

Annex 1 – Derwent Arms, Osbaldwick, York – Application to add to the list of assets of community value.

Annex 2 – Site Plan

Annex 3 – Current list of assets of community value

Abbreviations used in the report

ACV - Assets of Community Value

OPC – Osbaldwick Parish Council