

**Executive Leader inc Finance and
Performance Decision Session**

6 April 2017

Report of the Corporate Director - Economy and Place

Applications for Community Right to Bid under the Localism Act 2011

Summary

1. This report presents an application to list the Carlton Tavern Public House, 104 Acomb Road, York, as an Asset of Community Value (ACV), for consideration by the Council.

Recommendations

2. The Executive Member is asked to:

Agree to the listing of the Carlton Tavern, 104 Acomb Road, 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.

Background

3. 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.
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. 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
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.
7. 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

8. 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 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 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 Carlton Tavern, 104 Acomb Road, York

9. The freehold of The Carlton Tavern is owned by Marstons plc. The nomination is being made by the Friends of the Carlton Tavern. 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 Friends of the Carlton are an eligible body.

10. The Friends of the Carlton state in the nomination form that The Carlton Tavern is a valuable asset that enhances the social well being of and interests of the local community that they want to protect and cherish not just for now, but for future generations. There is no other pub nearby that offers the facilities that the Carlton has, including a disabled ramp and disabled toilet facilities. The large garden with protected trees brings in families from across the community.
11. The pub is used as meeting place for various local community groups including St Paul's Young at Heart Group and the West bank project. In addition, the pub and its regulars have charity fundraising days and have raised thousands for charity.
12. Holgate Windmill and the nearby War Bunker heritage sites use the car park facilities free of charge.
13. Full details are provided in the nomination form attached in Annex 1.
14. 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. A response has been received from their solicitors and is as follows.
15. The owner strongly objects to the nomination on the basis that the property is currently of insufficient local community value to warrant inclusion in the list. The property's main purpose is as a carvery and food provider, rather than a traditional public house, and doesn't offer the range of facilities provided by other public houses in the area. They name eight other pubs in the area that are better equipped than the Carlton Tavern.
16. The owners cast doubt on the use of the public house by local groups and that they meet elsewhere as well as the Carlton Tavern. The Landlord is not aware of the West bank project and their use of the property. The landlord holds a Northern Soul evening once a month,

but is considering discontinuing the event due to declining attendance.

17. It is the intention of the owners to sell the property for redevelopment as a care home. A high quality development is proposed that meets an identified need in the area. The home will be designed to encourage the wider community to share in the new facilities, which will include activity rooms, bar and cafe. It is intended that the new building will act as a community hub within the local area.
18. The full details of the owner's response are provided in the letter attached at Annex 2.
19. 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.
20. The application meets the basic criteria for listing. It is therefore recommended that the Carlton Tavern, 104 Acomb Road should be listed on the ACV register.

Implications

21. **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 - There are no significant risks to this application.

Contact Details

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Report
Approved

Date 29 March
2017

All

Ward Affected: Holgate

For further information please contact the author of the report

Annexes

Annex 1 – The Carlton Tavern Public House – Application to add to the List of community assets

Annex 2 – Letter from Shoosmiths (solicitors acting for Marstons plc)

Annex 3 – Current list of assets of community value

Abbreviations

ACV - Assets of Community Value