

Decision Session – Executive Member for Finance and Performance

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 assets as Assets of Community Value (ACV), for consideration by the Executive Member in the Council's statutory capacity as an Asset of Community Value (ACV) listing authority.
 - a. The Lord Nelson Public House, 9 Main Street, Nether Poppleton York.
 - b. Blacksmiths Arms Public House, Shipton Road, Skelton, York.
 - c. Lendal Post Office, 22 Lendal, York.

Recommendations

2. The Executive Member is asked to:
 - a. Agree the listing of The Lord Nelson Public House, 9 Main Street, Nether Poppleton, York as an Asset of Community Value (ACV) as it meets the criteria for listing
 - b. Agree the listing of the Blacksmiths Arms Public House, Shipton Road, Skelton, York, as an Asset of Community Value (ACV) as it meets the criteria for listing
 - c. Reject the application to list Lendal Post Office, 22 Lendal, York, as an Asset of Community Value on the grounds that the building when in use as a Post Office was exempt from the ACV legislation due to being an operational business premises.

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

Background

3. The purpose behind the provisions set out in the Localism Act 2011 are 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:

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

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 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 Lord Nelson Public House

7. The freehold of The Lord Nelson is owned by Act York Limited. The nomination is being made by Nether Poppleton Parish Council. 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.

Nether Poppleton Parish Council is an eligible organisation. In accordance with the regulations, the freehold owner occupier of the property has been informed in writing that the application has been made. They have been invited to make representations regarding the nomination.

8. Nether Poppleton Parish Council state in the nomination form that the Lord Nelson is the only public house that serves the traditional centre of Nether Poppleton village. It is a valuable and well frequented social and leisure facility boosting the social wellbeing of the community. Full details are provided in the nomination form in Annex 1.
9. 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. This property has previously been listed as an asset of community value.
10. A representation has been received from ACT York stating the pub is subject to an active planning application for improvements to the car park, beer garden landscaping and surface drainage. ACT York have also indicated that they may seek compensation from CYC for any financial costs or losses arising from listing as an ACV.
11. Negotiations in relation to a long term let of the pub are underway which is expected to secure the viability of the pub. ACT York states that listing as an ACV may have a direct consequence on negotiations in the immediate future to agree a tenant for the pub. ACT York states that this could result in a risk of closure of the pub.
12. ACT York also claim that the application misrepresents the truth regarding community value as it is not a busy pub frequented by many but supported by a small number of regular visitors. It is hoped that the investment in the past year will broaden appeal to the local community and associated sports groups for regular use.
13. ACT York claims that the pub is not popular with caravanners as it offers no facilities for them.
14. Act York claim that listing the Lord Nelson as an ACV increases the threat of closure and risks time and costs which would be better spent on improvements to the pub.
15. The application meets the criteria for listing. It is, therefore, recommended that the Lord Nelson Public House, Nether Poppleton, York, should be listed on the ACV register.

Blacksmiths Arms Public House

16. The freehold of the Blacksmiths Arms is owned by Samuel Smith's Brewery. The nomination is being made by Skelton Parish Council. 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. Skelton Parish Council 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.
17. Skelton Parish Council state in the nomination form that the Blacksmiths Arms has served the Skelton community for generations and for decades has been the only public house in the main village. It has also been a major social centre for a traditional part of village community life. It is currently closed for trading and has been for an extended period, which has resulted in a notable deterioration in Skelton's social cohesion.
18. Full details are provided in the nomination form in Annex 2.
19. A representation has been received from Samuel Smiths Brewery stating that it is a principle of the brewery to not sell or redevelop its pubs. The brewery has plans to carry out renovation work to the building, and is fully committed to re-opening the pub, once suitable new management is found. Samuel Smith's brewery does not believe that the Parish Council could ever be able to acquire the premises.
20. 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.
21. The application meets the criteria for listing. It is therefore recommended that the Blacksmiths Arms Public House, Shipton Road, Skelton, York should be listed on the ACV register.

Lendal Post Office, York.

22. The freehold of Lendal Post Office is owned by Post Office Ltd. The nomination is being made by The Guildhall Branch of York Labour Party. 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 Guildhall Branch of York Labour Party 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.

23. The Guildhall Branch of York Labour Party state in the nomination form that the Post Office building was custom-built in 1884 and was one of the last surviving late Victorian purpose-built post offices in use until 2019. They claim that the building is an asset to York citizens (and those living in the Guildhall Ward) and visitors to York and that it should retain its community based use.
24. Lendal Post Office closed in March 2019 with services being transferred to the nearby WH Smith store on Coney Street. The Post Office Ltd. undertook a short public consultation prior to the transfer of services and a campaign to retain the services on the existing site was unsuccessful. The application to list the former Post Office building as an Asset of Community Value has no impact upon the operational decision to move post office services from their original location. The application for ACV listing must only be determined by consideration of whether it meets the criteria for listing and must not take into account any views on the business that formerly operated from that building. Hence, the Executive Member is advised that the decision to list cannot relate to the rights and wrongs of any debate about the location of the delivery point for postal services.
25. Representations have been received from solicitors acting for the Post Office stating that the Lendal Post Office should not be listed as an Asset of Community Value for the following reasons.
 - I. Regulation 3 of the Assets of Community Value (England) Regulations 2012 ("the ACV Regulations") states that a building or other land falling within one or more of the categories specified in Schedule 1 of the ACV Regulations is not land of community value and therefore cannot be listed as an asset of community value. One of these exempt categories (pursuant to paragraph 4 of Schedule 1) is 'operational land' as defined by Section 263 of the Town and country Planning Act 1990 (1990 Act). Property is 'operational land' if it is land/property '*which is used by the provider,*

or a company associated with it, for any purpose in connection with the provision of a universal postal service' OR in which the provider, or a company associated with it, holds an interest for any such purpose”

- II. Lendal Post Office is one of a number of post offices acquired during the last century that were owned by the Post Master General and later vested in the Post Office by virtue of the Post Office Act 1969. This specifically allows for such land to be treated as operational land for the purposes of section 263 of the 1990 Act.
 - III. In addition, the Lendal Post Office accepted mail items on behalf of the Royal Mail Network and therefore it qualifies as operational land as it was used by a universal provider in accordance with section 263(2E) of the 1990 Act. Post Office Ltd acts as Royal Mail's agent in accepting and processing mail within the postal service and it was thus providing services integral to the business of Royal Mail.
26. Post Office Ltd.'s solicitors therefore contend that Lendal Post Office is operational land and so is not land of community value.
 27. In officers' opinion, Lendal Post Office is 'operational land' and so is not land of community value because officers consider it falls within the exemption specified at paragraph 4 of Schedule 1 of the ACV Regulations, because even though Lendal Post Office is not currently in use for the purpose of providing a postal service, it was acquired by Post Office Ltd for that purpose and is still owned by Post Office Ltd.
 28. The decision to list the Post Office as an ACV must consider:-
 - i. Whether the applicant is an eligible body as set out in regulation 6 of the legislation.
 - ii. Whether the premises meet the definitions of a community asset as set out in the legislation in section 88.
 29. Whilst the application to list Lendal Post Office as an ACV does meet the first of these criteria in that the nominating body is eligible, it does not meet the second criteria as the building itself is exempt from the legislation due to it being an operational property of a statutory undertaker.
 30. It is therefore recommended that the application to list Lendal Post Office as an Asset of Community Value is rejected.

Council Plan

31. The listing of Assets of Community Value supports the council plan ambition to listens to residents through working with communities and partners.

Implications

32.

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

33. If the assets are listed then the legislation states that the owners can, within 8 weeks of the decision date apply for a review of the listing as set out in paragraph 5 of this report.
34. Although there is no right of review by the applicants, if the decision was made not to list these properties this would have to be on the basis that the qualifying criteria as set out in the Localism Act 2011 had not been met.
35. If the Executive Member decides to agree the applications then there is risk that the landowner may seek a Judicial Review (JR) of the decision. If the Executive Member decides to reject the application then there is a risk that the applicant may seek a Judicial Review (JR) of the decision. In

both cases this can be both a long and costly procedure with significant legal costs for both parties.

36. Listing the building as an ACV would provide the opportunity for the applicants to make a bid to purchase the premises and the legislation prevents the owners from disposing of their building for a 6 month period to enable the applicants to make bid. It does not however require the owner to agree to dispose of the building to that applicant and bids would be considered alongside other market offers for the premises.

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**Report
Approved**



5 Sept 2019

All



Wards Affected: Rural West York, Guildhall

For further information please contact the author of the report

Annexes

Annex 1 – The Lord Nelson Public House, 9 Main Street, Nether Poppleton, York – Application to add to the list of assets of community value.

Annex 2 – Blacksmiths Arms Public House, Shipton Road, Skelton, York – Application to add to the list of assets of community value.

Annex 3 – Lendal Post Office, 22 Lendal, York – Application to add to the list of assets of community value.

Annex 4 – Current list of assets of community value

Abbreviations used in the report

ACV - Assets of Community Value