

Meeting:	Decision Session – Executive Member for Finance, Performance, Major Projects and Equalities
Meeting date:	12/12/2024
Report of:	Director of Finance
Portfolio of:	Executive Member for Finance, Performance, Major Projects and Equalities

Decision Report: Application for Community Right to Bid under the Localism Act 2011

Subject of Report

1. This report details applications to list the following properties as Assets of Community Value (ACV) for consideration by the Council.
 - a) New Earswick Swimming Pool, Hawthorne Terrace, New Earswick, York. An application has been received from the Friends of New Earswick Pool.
 - b) The Victoria Vaults Public House, 47-49 Nunnery Lane, York. An application has been received from the Campaign for Real Ale Ltd (York Branch).

2. The applications have been received, for a decision by the Executive Member in the Council's statutory capacity as an Asset of Community Value (ACV) listing authority.

Benefits and Challenges

3. This process is a statutory requirement. The process and the effects through the listing of an asset is set out in detail in this paper.

Policy Basis for Decision

4. The process is a statutory requirement.

Financial Strategy Implications

5. There are no financial strategy implications to this decision.

Recommendation and Reasons

6. The Executive Member is asked to consider the officer recommendations to:

Approve the listing of:

- (i) New Earswick Swimming Pool, Hawthorne Terrace, New Earswick, York; and
- (ii) The Victoria Vaults Public House, 47-49 Nunnery Lane, York;

as Assets of Community Value (ACV) for the reasons outlined within this report.

Reason: To ensure the Council meets its legislative obligations (pursuant to the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012) and promotes community access to community facilities.

Background

7. New Earswick Swimming Pool was previously entered on the Council's list of ACV property on 9th April 2018 following an earlier ACV nomination received on 19th January 2018. 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 New Earswick Swimming Pool onto the Council's AVC list (for a further period of 5 years).
8. The Victoria Vaults has not been listed previously.
9. The purpose behind these provisions is to ensure that property (land and building) assets which are currently used for principal/non-ancillary use(s) which benefit the local communities are not disposed of without the local community being given an opportunity to bid for these assets when the owner wishes to

dispose of the asset. 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.

10. 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.
11. 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

12. 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 has 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 disposed of (by way of either a freehold sale or granting of a lease for a Term of 25 years or more) 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. If they do, then a 6 month period (commencing from the date on which the Council had received notice of the owner's intention to dispose of the asset) 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 Community Ownership Fund

13. The Community Ownership Fund is a £150 million fund over 4 years to support community groups across England, Wales and Northern Ireland to take ownership of assets which are at risk of being lost to the community. The Fund is administered by the Government. Whilst there is no guarantee of success, this Fund is a potential source of financial assistance for community groups which could assist them in raising the necessary funding to buy the asset, in the event that it became available.

New Earswick Swimming Pool, Hawthorne Terrace, New Earswick.

14. The freehold of New Earswick Pool is owned by the Joseph Rowntree Housing Trust. The nomination is being made by the Friends of New Earswick Pool. 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 New Earswick Pool are considered as an eligible body. In accordance with the regulations, the freehold owner of the property and the occupiers of the property have been informed that the application has been made. They have been invited to make representations regarding the nomination.
15. The Friends of New Earswick Pool state in the nomination form that the pool was built in 1967, partly funded by village residents. The pool serves the community by being hired out to a wide variety of groups. New Earswick Swimming Club have used the pool since it opened. The pool is also used by groups who cannot access public baths, including the disabled, the elderly, schools for children with behavioural difficulties. We are advised that the pool is open 7 days a week and is operating at 95% capacity, with a footfall of around 1,300 per week. 80% of users come from within a five-mile radius of the pool, although some come from as far as Leeds and Thirsk. The "Friends" advise that the pool is extremely well used and is an important asset to the local community.
16. No representations have been received from the owner regarding the renewal of the listing.

17. Full details of the application are provided in the nomination form attached in Annex 1.
18. Based upon the information provided, it is recommended that the property's listing as an Asset of Community Value is renewed.

The Victoria Vaults Public House, 47-49 Nunnery Lane, York

19. The freehold of The Victoria Vaults is owned by Appleton Estates Limited. The nomination is being made by the Campaign for Real Ale Ltd (CAMRA) (York Branch). 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. CAMRA (York Branch) is considered to be an eligible body. In accordance with the regulations, the freehold owner of the property, and the occupier, have been informed in writing that the application has been made. They have been invited to make representations regarding the nomination.
20. CAMRA state in the nomination form that the Victoria Vaults is a community-based grass roots music venue trading in a thriving area of York known as Bishophill, located 5 minutes from the centre of York, opposite the city walls, and not far from the railway station. The pub is not part of a chain and is an ideal size to accommodate young and upcoming bands, holding enough to make the venue viable whilst not being too big for smaller bands.
21. CAMRA advise, that the Victoria Vaults is at the heart of York's vibrant and diverse music scene, appealing to different social groups. CAMRA advise that its significant contribution to the cultural life of the city has been acknowledged locally and nationally. CAMRA also advise that the pub has historically received grants from the Cultural Recovery Fund and City of York Council, as a crucial part of the local economy and a commitment to live music venues.

22. CAMRA advise that the current owners' plans for the Victoria Vaults include disposal of the property, not as a music venue. The owners have commissioned plans showing how the site can be redeveloped as three individual townhouses, subject to planning, with the site having been marketed as a Freehold for Sale with an 'excellent medium term redevelopment opportunity'. CAMRA advise that the Victoria Vaults should be protected thus as an Asset of Community Value.
23. CAMRA summarise the reasons why the Victoria Vaults should be listed as an asset of community value as follows;
 - Cultural – musical heritage, showcasing local talent, and a community hub.
 - Economic benefits – local jobs, tourism and enhancing the local economy.
 - Social value – safe and welcoming environment, strengthening community bonds, and preservation of the local character of the area.
24. Full details of the application are provided in the nomination form attached in Annex 2.
25. The solicitors acting for the property owner advise that the property was acquired by the current owner in 2013 and let as a free house. It operated as a pub with occasional live music. A new tenant took over in 2017, who concentrated on making it a live music venue. The rent was reduced to assist the tenant and grants were received from the government during Covid. They further advise that the current tenant took over in 2022, but by mid-2023 he asked to surrender his lease as he was losing too much money. The current tenant has compiled a list of the pub's trading to show that a small music venue in York is unsustainable (attached at annex 3). They advise that there are over 40 live music venues in York showing that there is an oversupply (list attached in annex 3).
26. The owners have also advised that they subsequently instructed an agent to market the freehold interest in the property subject to the lease or vacant possession. Despite extensive marketing no offers were received on this basis (list attached in annex 3). In the last two months an unconditional offer with vacant possession was received. This offer was accepted, and contracts have now been exchanged. They advise that the tenant has surrendered their

lease and that with no offers received from music venue or pub operators during the extensive marketing, the continued use as a music venue is unrealistic, advising that too many other opportunities exist close by.

27. The solicitor acting for the prospective new owner has also submitted a letter disputing the nomination. They have confirmed that their client has exchanged contracts with the existing owner and are therefore contractually bound to complete. They advise that they would not have showed interest in the property if they had known it was listed as an ACV or under consideration as an ACV. They advise that should the property be listed they will be applying to the upper tribunal for compensation in respect of VAT on their purchase.
28. The purchasers believe the application should be rejected on the following grounds;
29. They advise that the Victoria Vaults has been struggling financially for some time and it is not realistic to think that there can be a non-ancillary use which will further the social well-being or social interests of the local community. They advise that it has changed ownership many times since 2000 and further it is evident that everyone who has tried to run it, has struggled. Despite funding from grants and the local authority there has not been enough support from the local people, they say. They advise that the Facebook page has numerous posts confirming cancellation of events due to low ticket sales. They advise that there is no indication from the application as to whether those individuals listed would support a bid for the pub, and that they would use the property for something else that would benefit the locality, given that there is no demand for a pub. They advise that the purchasers are intending to provide housing for those within the locality, where there is rising homelessness and a shortage of housing.
30. The prospective purchaser has also made the following comments against the applicants claimed economic benefits.
 - Job creation – the previous tenants were struggling to keep the business running and surrendered their lease. The continuance would have resulted in redundancies and possible bankruptcy.

- Property value – The property was falling into disrepair. If left it would dilapidate and affect surrounding property values.
- Tourist attraction and Preservation of Local Character – they are hoping to keep the external parts of the building to maintain character, whilst splitting internally.
- Community building – the development of further houses will increase the size of the community.
- Social value – See annex to the letter for the number of pubs that are a stone's throw away.

31. Full details of the objections are attached in Annex 3 and 4.
32. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the ACV lists, even where they are currently run as commercial businesses. There are currently 13 pubs listed by the Council as ACVs.
33. Based on the information provided and that the property historically traded as a public house in close proximity to Bishopthorpe Road and the city centre, it is recommended that the property is listed as an Asset of Community Value.

Consultation Analysis

34. As required by the Assets of Community Value Regulations, the owners and occupiers of the properties have been consulted regarding the applications.
35. The results are contained in the background information on the individual properties.

Options Analysis and Evidential Basis

36. The applications to list, New Earswick Swimming Pool, and the Victoria Vaults Public House, as Assets 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.

37. If the decision is to approve the ACV nomination applications, then the owners of the properties have 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).

Organisational Impact and Implications

38.

- **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). We have not experienced any claims over the last 5 years but there is a possibility of a claim in respect of the Victoria Vaults application.
- **Human Resources (HR)** – None
- **Legal** – Advice and comments have been sought from Legal Services and incorporated in this report.
- **Procurement - None**
- **Health and Wellbeing** - The added protection of an ACV around a physical activity facility which caters for some of our more vulnerable and poorer residents has health and wellbeing benefits which should be considered in decision making.
- **Environment and Climate action** – No direct environmental impacts but buildings of community value are key and underpin a sense of place.
- **Affordability** - None
- **Equalities and Human Rights** – None
- **Data Protection and Privacy** – The completion of data protection impact assessment (DPIA) screening questions evidenced there would be no processing of personal data, special categories of personal data or criminal offence data processed, so there is no requirement to complete a DPIA.

- **Communications** - None
- **Economy** - None
- **Specialist Implications Officers** - None

Risks and Mitigations

39. There are no significant risks to these applications.

Wards Impacted

40. Huntington & New Earswick, and Micklegate.

Contact Details

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Annexes

- Annex 1 – New Earswick Swimming Pool, Hawthorne Terrace, New Earswick, York – Application to add to the list of assets of community value.
- Annex 2 – The Victoria Vaults Public House, 47-49 Nunnery Lane, York – Application to add to the list of assets of community value.
- Annex 3 – Current owner’s objection to the application.
- Annex 4 – Prospective owner’s objection to the application.
- Annex 5 – Current list of assets of community value.

Abbreviations used in the used in the report.

ACV – Assets of Community Value

DPIA – Data Protection Impact Assessment