Dear [redacted],

I write on behalf of The Vaults (York) Ltd to formally object to the second nomination submitted by the Campaign for Real Ale Ltd (York Branch) to list the above property as an Asset of Community Value (ACV).

We note that the Council invited comments by 31 March 2026. As a matter of law, the Council's statutory jurisdiction to determine this nomination expired on 16 March 2026. This objection is therefore submitted to establish the definitive legal record for the ensuing First Tier Tribunal, High Court Judicial Review, and Local Government Ombudsman proceedings.

The Owner objects to the nomination on the following eight statutory, procedural, and evidentiary grounds.

1. Expiry of Statutory Jurisdiction (Regulation 7) The nomination is out of time. Under Regulation 7 of the Assets of Community Value (England) Regulations 2012, a local authority must decide whether land nominated by a community nomination should be included in the list within 8 weeks of receiving the nomination.

This strict limit is explicitly confirmed in Chapter 4 (Paragraph 4.1) of the Government's Community Right to Bid Non Statutory advice note for local authorities. The Council's instructed barrister, Anthony Gill, formally admitted in his written response to the First Tier Tribunal (Ref: FT/CR/2025/0001, paragraph 55) that this fresh nomination was received by the Council on 19 January 2026. Therefore, the statutory deadline expired on 16 March 2026. The legislation contains no provision allowing a local authority to pause the statutory clock for validation or to unilaterally extend the deadline. The nomination has expired by operation of law, rendering any subsequent decision to list the property ultra vires.

2. Abuse of Process and Wednesbury Unreasonableness On 27 November 2025, the Council removed The Victoria Vaults from the ACV register, executing its statutory duty under Regulation 2(c)(ii) having concluded the land no longer met the definition of community value.

To entertain a duplicate nomination from the exact same body, relying on the exact same historical use, a mere 53 days after formally concluding the asset does not meet the statutory criteria constitutes an abuse of process. The Council is already in possession of the Viability Report and Tenant Report from the previous FTT proceedings. These documents definitively prove the previous operator suffered severe financial losses despite a reduced rent of £17,500 and receiving over £90,000 in government grants. A public authority cannot lawfully arrive at two contradictory statutory conclusions on the identical set of facts without rendering its decision making Wednesbury unreasonable.

3. Active Judicial Scrutiny and Retaliatory Abuse of Powers The Council is currently the Respondent in an active First Tier Tribunal costs application (Ref: FT/CR/2025/0001) concerning its unreasonable conduct in the previous ACV listing of this exact property. The Council voluntarily removed the listing on 27 November 2025 to avoid a substantive hearing, having already been legally barred from the proceedings by the presiding Judge. Entertaining a second duplicate nomination while the Tribunal is actively assessing the Council's prior maladministration presents as a clear abuse of statutory powers. Public bodies are bound by the Padfield principle; statutory powers cannot be used for ulterior motives or retaliatory action. Should the Council proceed with a relisting out of time, this new decision will be submitted to the presiding Tribunal Judge as compounding evidence of the Council's systemic unreasonableness and misuse of public funds.

4. Statutory Exclusion of Residential Premises (Schedule 1) The nomination is procedurally invalid. The red line boundary plan provided by the Nominator encompasses the entirety of the building. The first floor of this property comprises a separately rated, self contained residential flat. Schedule 1, Paragraph 1 of the ACV Regulations explicitly prohibits the listing of residential property. The Nominator's supporting letters explicitly request that the entire building be listed to provide an upstairs dressing room, office and accommodation. Attempting to use the ACV regime to appropriate a private residential dwelling is a fundamental breach of the statutory framework.

5. Legal Impossibility of the Nominator's Business Model (TV Harrison Principle) Under Section 88(2)(b) of the Localism Act 2011, it must be realistic to think that the community use can resume. The Nominator's primary evidence relies on operating the site as a dedicated 140 capacity grassroots music venue.

This operational model is unlawful. Condition 8 of the official City of York Council Premises Licence (CYC009072) explicitly caps the maximum occupancy at 90 persons (60 lounge, 30 bar), strictly noting this includes all staff and performers. A business plan reliant on 140 patrons operating within a venue legally capped at 90 persons would result in immediate closure by the Fire Authority and Licensing Officers.

In R (TV Harrison CIC) v Leeds City Council [2022] EWHC 130 (Admin), the High Court established that if a noncompliant scenario is so likely to occur as to render the compliant scenario unrealistic, it is determinative. It cannot be realistic to resume a community use based on an illegal, over capacity business model.

6. The Commercial Reality and the Council's Own Evidence The Nominator attempts to blame the venue's closure on mismanagement. This position is directly contradicted by the Council's instructed expert, Stapleton Waterhouse, who reviewed the property and concluded on 18 February 2026 that the use of the premises exclusively as a music venue is not viable and that the market has called time on the Victoria Vaults as licenced premises. Additionally, the Nabarro McAllister Viability Appraisal confirms the property has been stripped to a shell and requires £250,000 in capital investment to reinstate.

7. Withdrawal of Interested Parties The Nominator claims there are credible local operators ready to take over the venue. The commercial marketing reports provided by Carter Towler and Barry Crux prove otherwise. The reports confirm that the Joint Chair of the York Music Venue Network, who supplied a support letter for this nomination, inspected the property in April 2024 and declined to make an offer. Other live music consortiums who viewed the lease lacked experienced management, funding for fit out, and working capital, resulting in zero offers. The theoretical demand cited in the nomination has already been tested by the open market and proven baseless.

8. First Tier Tribunal Precedent on Unfunded Bids (Section 88(2)(b)) The Nominator offers only speculative letters of support without any funded business plan to overcome the £250,000 capital deficit or the freehold purchase price.

This violates established First Tier Tribunal precedent regarding the realistic to think test. This strict evidentiary threshold has been universally reaffirmed in the most recent wave of Tribunal decisions, including Kingston Apartments Yorkshire Limited v Kingston Upon Hull City Council [2025] UKFTT 542 (GRC), Forestscape Limited v Kings Lynn and West Norfolk Borough Council [2025] UKFTT 1027 (GRC), Satwinder Sandhu v South Oxfordshire District Council [2025] UKFTT 1306 (GRC), Dairygen Limited v Derbyshire Dales District Council [2025] UKFTT 669 (GRC), and Pavillion (Watford) Limited v Three Rivers District Council [2024] UKFTT 443 (GRC).

These rulings present a unified judicial consensus. Where a property requires significant capital expenditure, a community bid consisting merely of aspirational support letters without a costed, credible, and funded financial proposal fails the statutory test. A wish list does not equate to a realistic prospect of future use.

Conclusion The Council's statutory window to determine this nomination expired on 16 March 2026. The nomination is legally barred, relies on an illegal licensing model, attempts to appropriate a private residence, and has been proven financially unviable by the Council's independent expert.

Chapter 10 of the Government’s Non Statutory advice note for local authorities explicitly confirms that local authorities are liable for compensation claims resulting from ACV listings. Relisting this property while simultaneously defending an active £28,000 Tribunal costs claim regarding the Council's previous mismanagement of this exact asset represents a severe failure of financial governance. Exposing the local authority to compounding liabilities, including a new and substantial compensation claim under Regulation 14 for an ultra vires listing, engages the statutory reporting duties of the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.

The Owner respectfully demands that this nomination be formally rejected. Should the Council act unlawfully to relist the property, the Owner will immediately appeal to the First Tier Tribunal, pursue full compensation for all resulting losses, and seek a further order for costs on an indemnity basis.

Yours sincerely,

[redacted]

On behalf of The Vaults (York) Ltd