

Report of Chief Asset Management and Regeneration Officer

Report to Director of City Development

Date: 13 May 2014

Subject: Community Right to Bid Nomination – The Duke of Wellington Inn, Main Street, East Keswick, LS17 9DB

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Harewood	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. In line with the legislation and regulation set out in the Localism Act 2011, this report considers the nomination to add The Duke of Wellington Inn to the List of Assets of Community Value.
2. The council has received a nomination for The Duke of Wellington Inn from East Keswick Parish Council. Parish Councils are eligible to nominate property and trigger the moratorium period.
3. Officers conclude that the property's current use furthers the social interests and social wellbeing of the local community and it is realistic to think such a use can continue

Recommendations

4. The Chief Asset Management & Regeneration Officer is recommended to approve the listing of The Duke of Wellington Inn on the List of Assets of Community Value on the basis that all the criteria for listing have been met.

1 Purpose of this report

- 1.1 The purpose of this report is for the Chief Asset Management & Regeneration Officer to consider whether the nominated property should be included on the List of Assets of Community Value or whether it should be included on the List of Land Nominated by Unsuccessful Community Nominations in accordance with Part 5 Chapter 3 of the Localism Act 2011.

2 Background information

- 2.1 Part 5 Chapter 3 of the Localism Act 2011 details the legislation for Assets of Community Value and sets out the Community Right to Bid. The right came into force on 21st September 2012 and its purpose is to give communities a right to identify a property or land that is believed to further their social interests or social wellbeing and gives them a fair chance to make a bid to buy the property or land on the open market if the owner decides to sell. From the date the landowner informs us of their intention to sell eligible community groups have a period of six weeks to say whether or not they want to bid to purchase the property or land. If they do inform us that they want to bid, the landowner is prevented from disposing of the property for a period of six months (from the date they originally informed us of their intention to sell) unless it is to a community organisation. The landowner is free to dispose of the property at the end of the six month period however they see fit.
- 2.2 For property or land to be added to the List of Assets of Community Value, the nominator must be able to demonstrate and satisfy all the listing criteria as laid down in the legislation.
- 2.3 The property owners have submitted an objection to the listing.
- 2.4 There has been a national push by CAMRA to list pubs assets of community value. This has resulted in approximately 426 pubs being listed nationally.

3 Main issues

- 3.1 This report has been based on the assessment of the nomination received from the Parish Council which was received on 1st April 2014 and the property owner's objection which was received on 9th May 2014.
- 3.2 East Keswick is a rural village with a population of circa 1,224 residents.
- 3.3 A land registry search identified Unique Pub Properties Limited (a subsidiary of Enterprise Inns plc) as the property owner. They also own another pub in the village, The Old Star Inn, which has also been nominated as an Asset of Community Value and is being assessed simultaneously.
- 3.4 The nominated property operates as pub which is currently trading. The nomination covers the pub, outbuildings and car park to the rear. Discussions with the owner have established that there is no intention to close the business or convert it into another use.

- 3.5 For a property to be added to The List of Assets of Community Value, the nominator must demonstrate that a current non ancillary user furthers the social interests and social wellbeing of the local community and it is realistic to think that it can continue to do so whether or not in the same way.

Does the current main use further the social interest and social wellbeing of the local community?

- 3.6 The Parish Council consider that the property should be listed on the basis that it is well patronised by a cross section of the community and plays a pivotal role in village life. They detail that it is used as a venue to socialise with friends and claim that activities such as fundraising events take place there and therefore perceive the pub to be a genuine community hub.
- 3.7 There are two pubs in the village of East Keswick. Both have been nominated as Assets of Community Value and are owned by the same company. The landowner has stated in their objection that: *“I understand that there is at least another pub in East Keswick listed as an AVC and on the basis that there is also a community centre in between our two pubs, I was surprised that these pubs have been nominated and fail to see any specific reason why either pub should be blessed or burdened by an AVC listing. My understanding of an ACV listing is to support the continued use of a property by the public, in the absence of which the wellbeing of the local community would be affected. There appears to be no shortage of pubs or community facilities that would be capable of absorbing local demand should our pubs cease to exist, therefore are no grounds to list either of these pubs as ACVs.”*
- 3.8 There is no other pub in the village already listed as an Asset of Community Value. There are two pubs in East Keswick, both of which are owned by this landowner and both of which have recently been nominated by the parish council. East Keswick used to have three pubs until the Traveller’s Rest closed in 2010.
- 3.9 The Assets of Community Value Policy Statement produced by the Department of Communities and Local Government details Government’s rationale for introducing Community Right to Bid. Under the section entitled “Why Are We Introducing This Legislation” pubs are specifically mentioned. An example is given of a pub in the village of Sway in the New Forest and states that “the community missed the opportunity to put together a proposal to buy the pub because of lack of time”. Upon further investigation it can be established that this is a reference to the Forest Heath Hotel which closed down and was sold for development in 2010, despite a campaign to save it as a pub. Interestingly the Forest Heath Hotel was one of three pubs in the village of Sway, yet DCLG chose to use this as an example of an Asset of Community Value. There is nothing in the Policy Statement, the Non-Statutory Advice Note or the Regulations that states that pubs can only be considered if they are the only pub in the village. Therefore each nomination must be considered on its own merits.
- 3.10 The Localism Act and associated regulations do not state that land can only be of community value if it is the last such asset in the community. There may be some merit in such an argument if there were many such alternative facilities in a particular area and that such provision had led to an oversupply (such as in a town centre for example), but in this case there is only one other pub in the village. Given

that both pubs are in the same ownership, it could be that both are closed at the same time if the landowner decides to withdraw from the area. Indeed the landowner uses the term “*should our pubs cease to exist*” in their objection. If both pubs did close there would be no pub in the village.

- 3.11 On balance it is considered that the current use does further the social interests and social wellbeing of the local community.

Is it realistic to think that there can continue to be a non-ancillary use that will further the social interests and social wellbeing of the local community (weather or not in the same way)?

- 3.12 The Head of Property Services has valued the property at £400,000 on the basis that it could be covered into a residential property which could be within reach of the Parish Council if they chose to fund its purchase through the Public Works Loan Board, although such a sum is considered very significant for a parish the size of East Keswick.

- 3.13 However, it need not be realistic to think the nominating body or indeed any other third sector organisation could purchase the property. Rather the criteria is clear that the assessment is based on whether or not it is realistic to think an eligible use could continue (whether or not in the same way). If a private sector operator purchased the property and continued to run it as a pub then the criteria would be met. The consideration is then whether or not such a turn of events would be realistic. Given the pub has operated as such for a long time and is laid out as a pub, then it is considered realistic to think that such a use could continue.

4.1 Consultation and Engagement

- 4.1.1 The Council’s role is to assess the community nomination against the criteria set out in the Localism Act 2011, therefore no consultation and engagement is necessary.
- 4.1.2 Harewood Ward Members have been informed of the nomination and no response has been received.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Equality, diversity, cohesion and integration considerations do not form part of the eligibility criteria upon which nominations are assessed. However, consideration has been given to ensure that all people have an equal opportunity to nominate assets of community value

4.3 Council policies and City Priorities

- 4.3.1 The Council has an obligation under the Localism Act 2011 to assess nominations under Community Right to Bid.

4.4 Resources and value for money

- 4.4.1 The Localism Act contains a right to appeal for private landowners, ultimately with them being able to take the Local Authority to a first tier tribunal if they are dissatisfied with a decision on a nomination and are still dissatisfied after a formal internal appeal. If a first tier tribunal finds in the landowners favour, the Local Authority is liable for all costs of the tribunal.

The Act also gives the landowner a right to compensation if they incur costs or loss of value directly from complying with the Assets of Community Value legislation. This compensation is payable by the Local Authority.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The City Solicitor confirms that the conclusions and recommendations in this report represent a reasonable and proper application of the statutory criteria for determining whether the nominated property is an asset of community value.
- 4.5.2 The Chief Asset Management and Regeneration Officer has authority to take the decisions requested in this report under Executive functions 1 and 10 (specific to the Director of City Development) of the Director of City Development's sub delegation scheme.
- 4.5.3 The proposal constitutes a significant operational decision and is therefore not subject to call in.

4.6 Risk Management

- 4.6.1 The report has no risk management implications.

5 Conclusions

- 5.1 In order to be included on the Lists of Assets of Community Value, all listing criteria as laid down in Part 5 Chapter 3 of the Localism Act 2011 must be satisfactorily met.
- 5.2 Consideration has been given to the landowner's objection, particularly the point that there is another pub in the village and other community assets. There is nothing in the regulations or guidance issued by Government to say that only the last pub or community facility in a village can be listed as an Asset of Community Value. Indeed the example given in the Policy Statement was one of three pubs in that particular village. In the absence of any such guidance the nomination can only be assessed on its individual merits.
- 5.3 The landowner has stated that there appears to be no shortage of other community facilities in the village to absorb demand should the nominated property close. While it may be true that patrons of the Duke of Wellington could, in such circumstances, use the Old Star Inn instead, that fact alone does not prevent the current use of the nominated property from furthering the social interests or social wellbeing of the local community.

5.4 The nominators have set out that there is current community use, and it is considered that such use furthers the social interests or social wellbeing of the local community. It is also considered realistic to think that the use can continue. All of the criteria have therefore been met and the property should be added to the List of Assets of Community Value.

6 Recommendations

6.1 The Chief Asset Management & Regeneration Officer is recommended to approve the listing of the nomination of The Duke of Wellington Inn on the basis that it meets the criteria laid down in the Localism Act 2011 and that the property is added to the List of Assets of Community Value.

7 Background documents¹

- Redline boundary plan

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.