

**Report of**     **Asset Management Service**

**Report to**    **Head of Asset Management**

**Date:**        **13<sup>th</sup> April 2015**

**Subject:**     **Community Right to Bid Nomination for Whitakers, 49 Kirkgate, Otley, LS21 3HN**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Otley & Yeadon		
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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number:		

### Summary of main issues

1. In line with the legislation and regulations set out in the Localism Act 2011, this report considers the nomination to add Whitakers, 49 Kirkgate, Otley, LS21 3HN to the List of Assets of Community Value.
2. The Council has received a nomination from The Otley Pub Club which is an unincorporated community group. They are eligible to nominate the property, but not trigger the moratorium period, bid for the property or legally purchase the property.
3. The nomination is one of 19 received simultaneously for pubs in Otley. The nomination states that Whitakers have been serving the people of Otley since 1841 and boasts having the only large 'proper' garden in the town centre which is very popular in the summer months.
4. Officers conclude that the property's current use furthers the social interests of the local community and it is realistic to think that this can continue in the future.

### Recommendations

5. The Head of Asset Management is recommended to add Whitakers, 49 Kirkgate, Otley, LS21 3HN to the List of Assets of Community Value.

## **1 Purpose of this report**

- 1.1 The purpose of this report is for the Head of Asset Management to consider whether the nominated property should be added to 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 21<sup>st</sup> 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 purchase the property or land on the open market if the owner decides to sell. From the date the landowner informs the Council of their intention to sell, eligible community groups have a period of six weeks to confirm whether or not they wish to submit to bid to purchase the property or land. If they do inform the Council 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 the Council 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 to whomever they see fit.
- 2.2 On 26<sup>th</sup> January 2015 Government Ministers announced their intention to change the law to remove permitted development rights for pubs that are listed as Assets of Community Value. At present a pub's owner can change use to certain uses (including retail) or demolish the pub without seeking full planning consent. The new law, which will take effect from 6<sup>th</sup> April 2015, will require a full planning application to be submitted for such activities if the pub is listed as an Asset of Community Value.
- 2.3 The nomination is for Whitakers public house which is located within the Otley and Yeadon ward (please see the red line boundary plan at appendix 1). The Executive Member for Transport and the Economy, Ward Members and Area Support (Citizens and Communities) has been made aware of the nomination. No response has been received.
- 2.4 There has been a national campaign by CAMRA to list pubs as Assets of Community Value. This has resulted in approximately 461<sup>1</sup> pubs being listed nationally and they make up 36% of all assets listed nationally. The Development Control Services collected data from 134 local planning authorities and their analysis highlighted that, of the 189 pub applications assessed, 155 were successfully added to the List of Asset of Community Value resulting in an 88% success rate. This is in the context of the average approval rate across all assets being 79%.

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<sup>1</sup> Data taken from CAMRA website and correct as of 10<sup>th</sup> November 2014

- 2.5 The freehold interest in the property is owned by a local couple. The property is leased to Punch Pub Company (PTL) Limited who has subsequently sub-leased the property. The lease to Punch pub Company (PTL) Limited is for a term of 15 years, which expires in March 2019. This also applies to their sub-lease which is under the same term.
- 2.6 The landowner has been identified and advised of the nomination. The letter gives landowners the opportunity to object to the nomination within 14 days from the date of letter. To date, the landowner has not submitted any objection to the potential listing and neither have any other interested parties.
- 2.7 The leaseholder has submitted an objection to the listing and has set them out in two parts. Part one outlines the objection for listing all 20 pubs nominated by Otley Pub Club (19 in Leeds City Council's area with a further one in Harrogate MBC's area as Otley is close to the North Yorkshire border). Part two details their objection to the document submitted by Otley Pub Club entitled "*Otley Pub Club – ACV NOMINATION FORMS FOR ALL THE PUBS IN OTLEY*" and the listing of all pubs in the town.
- 2.8 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 of the listing criteria as laid down in the legislation. The legislation states that buildings or land with a current use is considered to be of community value if, in the opinion of the authority, there is:
- a) an actual current use of the building or other land that is not an ancillary use which furthers the social wellbeing or social interests of the local community, and;
  - b) 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 wellbeing or social interests of the local community.'
- 2.8 For buildings or other land that do not have a current use, the legislation states that land is of community value, if in the opinion of the authority
- a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and
  - b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
- 2.9 It is important to note that if either of the criteria stated at 2.7 or 2.8 is met, then the Council must add the nominated asset to the List of Assets of Community Value.

### **3 Main issues**

- 3.1 This report has been based on an assessment of the nomination form and supplementary information document received from The Otley Pub Club. In addition, officers conducted a visit to each of the nominated pubs.
- 3.2 The nomination for Whitakers was received on 17<sup>th</sup> February 2015 from The Otley Pub Club, which is a locally based unincorporated community group with at least 21 members eligible to vote in the Leeds area. This has been subsequently checked with the Leeds City Council Electors team and it can be confirmed that The Otley Pub Club complies with paragraph 89(2)(b)(iii) of the Localism Act 2011 in being an eligible organisation within the local area.
- 3.3 As an unincorporated community group with a local connection, The Otley Pub Club is eligible to submit a nomination to register a property as an Asset of Community Value but not to trigger the moratorium in order to make a bid for the property. Therefore, the Otley Pub Club cannot purchase the nominated property.
- 3.4 The Otley Pub Club is a community organisation made up of local pub supporters. The club's Chairman, Greg Mulholland MP, is also the Chair of the parliamentary 'Save the Pub Group'. The Otley Pub Group is free to join, their 'Role and Constitution' states that their purpose is:
- For people to be kept informed of what is going on in the pubs
  - To campaign against pub closures and on other issues affecting local pubs and be the 'voice of pub supporters' in the town
  - For people to support, identify with and feel some 'ownership' of Otley's pubs as a community.
- 3.5 The Otley Pub Club has nominated 19 pubs in the Leeds District (as well as a further nomination which has been submitted to Harrogate Borough Council). Although each nomination is being assessed individually, it is important to note all the pubs in Otley have been nominated by the same community organisation.
- 3.6 Part one of the leaseholders objection makes comment to an extract from a ministerial forward to the advice from The Right Honourable Don Foster which (paraphrased) acknowledges how some local communities feel bereft of the loss of local assets that "...can help to contribute to the development of vibrant and active communities....". The leaseholder suggests that the motivation behind the legislation is to help "save the last pub/shop/hall standing in the communities" and not about listing assets en masse. There is nothing to suggest in either the legislation or regulations that the purpose of the legislation is to save the 'last' pub/shop/hall in the community.
- 3.7 Comment is made to the Assets of Community Value – Policy Statement (September 2011) produced by the DGLG which details how the purpose and aim of the listing of assets is to enable communities to have a fair opportunity to bid to purchase the asset should it come up for sale. The leaseholder suggests that "it is unlikely that the Otley Pub Club or any other community interest group would be in a position to raise the necessary funds to purchase one premises, much less 20

*premises*". It is not a requirement or consideration in the legislation or regulations for nominators to prove that they have the ability to purchase the asset if it became available. Indeed, the legislation would prevent unincorporated community groups from submitting a nomination if this was the intention. There are numerous examples of nationwide pubs being bought by community organisations, the Ivy House in London was the first to be listed as an Asset of Community Value and was subsequently purchased by a community organisation. The council is aware of a listed pub in Leeds on the verge of being bought, at market value, by an eligible community group. The relevant criteria on which nominations are to be assessed is whether or not an eligible use can continue.

- 3.8 In part two of their objection, the leaseholder makes the following statement "*The "test" regarding whether land or premises is of community value is detailed in section 88 (1) & (2) of The Localism Act 2011 ("the act"). As these premises are currently trading it is assumed that it is been suggested that it is a premises of community value pursuant to section 88(1) of "the act". Whether it is correct that all (or indeed any of the) public houses in Otley "need to be protected" is at best a matter of opinion but whether they do or not, it is not a justification for listing them as an asset of community value (ACV).*" The council is not making the case that the pubs need to be protected, the assessment is based on whether the criteria for listing, as detailed in section 88 (1) and (2) of the Localism Act 2011, has been met for each individual nomination.
- 3.9 The leaseholder has commented that it is academic as to whether Otley has the largest number of pubs per capita or is regarded as a 'famous pub town'. The Council concurs with this statement. However, it is fact that Otley Pub Club has nominated every pub in Otley and that fact is mentioned in each report. Assessment of each individual nomination has been made on its own merits.
- 3.10 Reference to the Otley Pub Club constitution has been made, with particular regard to the clubs purpose. The leaseholder states that "*It is noted that making nominations to list premises as assets of community value (or indeed any similar activity) is not part of the clubs purpose nor is making a bid to but one or twenty pubs*". The council have given regard to this and considers it irrelevant. It would not be expected to form part of an organisation's constitution.
- 3.11 The leaseholder makes the point that "*Otley Pub Club can claim to speak on behalf of its members, we would question what appears to be an (sic) desire speak (sic) on behalf of the town*". The legislation does not require the nominator to speak on behalf of the town as this would not be practical. The nominator has complied with paragraph 89(2)(b)(iii) of the Localism Act<sup>2</sup> which is the minimum requirement.
- 3.12 For a property to be added to The List of Assets of Community Value, the nominator must demonstrate that a current non-ancillary use furthers the social interests and social wellbeing of the local community and that it is realistic to think that it can continue to do so whether or not in the same way.

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<sup>2</sup> Localism Act 2011 (c.20), Part 5 Community Empowerment, Chapter 3 Assets of Community Value

***Does a current non-ancillary use further the social interests or social wellbeing of the local community?***

- 3.13 The Otley Pub Club state that 'Otley is a famous pub town' it has a reputation which is both nationally and internationally known. The established 'Historic Otley Ale Trail' links together the Otley pubs on a publicised trail which can be downloaded from the Otley Pub Club website.
- 3.14 A number of the Otley pubs date back to the 17<sup>th</sup> and 18<sup>th</sup> centuries and form an important part of the town's history and architecture.
- 3.15 Otley hosts a number of annual festivals and one off events such as: The Folk Festival; The Walking Festival; Otley Word Fest; The Victorian Faye; Otley Cycle Races; The Street Festival and the 'turning on' of the Christmas lights. The pubs play an integral role by providing more than food and drink. They provide venue hire and rooms for events to allow festivals to take place across the town rather than in one hall; amenity space for the local community and tourists visiting the town for an event; they add to and enhance the ambience of the town making it a place where people want to live and visit.
- 3.16 The nominator states that Whitakers has been serving the people of Otley since 1841 and it is especially popular with older people and families. In addition to serving beverages and home cooked meals, Whitakers plays hosts to regular quizzes and DJ music.
- 3.17 Further supporting information provided by the Otley Pub Club details how Whitakers boasts having the largest 'proper' garden in the town centre which is very popular in the summer months. Additionally, Whitakers host a local darts team and has been the base for a host of local organisations including the local clay pigeon shooting club.
- 3.18 It is considered by Leeds City Council that the current use does further the social interests and social wellbeing of the local community. Pubs are places where people go to drink and socialise. The setting of a pub is a social setting. To argue to the contrary would be to paint a picture of a pub being a place where people went to consume alcohol alone without interacting with other patrons. It is considered that such circumstances would be rare, and nothing has been provided to suggest that Whitakers is such a place. If the local community solely intended to consume alcohol, it is considered more likely they would do so in their own home, taking advantage of the lower prices available in shops and supermarkets. The fact that people are visiting a social environment supports the fact that they do so to further their social interests and social wellbeing.

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

- 3.13 Whitakers is currently open and trading. Nothing has been provided to suggest there are plans to change use or close. Therefore, it is realistic to think the current use will continue and that such use is eligible.

- 3.14 The criteria for listing as set out in paragraph 88(1) of the Localism Act 2011 is considered to have been met and the nominated land should be added to the List of Assets of Community Value.

## **4 Corporate Considerations**

### **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 The Executive Member for Transport and the Economy has been briefed.

Otley and Yeadon Ward Members have been informed of the nomination. No comments have 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.

- 4.4.2 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 Head of Asset Management has authority to take the decisions requested in this report under Executive functions 2(o) (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 potential risk implications as the landowner is able to request an internal review which could ultimately lead to a first tier tribunal.

## **5 Conclusions**

5.1 In order to be included on the List 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 The leaseholder has submitted an objection and raised a number of points within it. However, the Council's opinion is that the current use, that use being as a pubic house, is eligible. Pubs are places where people go to socialise, which furthers social interests and social wellbeing. Nothing has been provided to change that view for Whitakers.

5.3 The property has a current use that furthers the social interests of the local community and it is realistic to think that such a use can continue. Therefore the criteria as set out in section 88(1) of the Localism Act 2011 is considered to have been met and the nominated land should be added to the List of Assets of Community Value

## **6 Recommendations**

6.1 The Head of Asset Management is recommended to add Whitakers, 49 Kirkgate, Otley, LS21 3HN to the List of Assets of Community Value.

## **7 Background documents<sup>3</sup>**

7.1 Nomination form

7.2 Otley Pub Club supplementary document

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<sup>3</sup> 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.