

Report of **Asset Management Service**

Report to **Head of Asset Management**

Date: **13th April 2015**

Subject: **Community Right to Bid Nomination for the Horse & Farrier, Bridge Street, Otley, LS21 1QB**

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 the Horse & Farrier, Bridge Street, Otley, LS21 1QB 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 Horse & Farrier is a pub on Bridge Street in Otley. It offers a wide ranging menu and both indoor and outdoor spaces for hire. It is also one of the few places in Otley to offer accommodation.
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 the Horse & Farrier, Bridge Street, Otley, LS21 1QB 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 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 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 whomsoever they see fit.
- 2.2 On 26th 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 6th 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 the Horse & Farrier 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) have 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 461¹ 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%.

¹ Data taken from CAMRA website and correct as of 10th November 2014

- 2.5 The freehold interest in the property is owned by Beltowin Estates Ltd, a company based in Otley.
- 2.6 The landowner submitted an objection to the listing on 4th March 2015. They have stated that “We have difficulty in determining how a public house can further the social wellbeing of the community, or social interests of the community. The purpose of the Act is to prevent local communities from losing local amenities. The Property is one of twenty one public houses in Otley and therefore a local amenity would certainly not be lost if the Property was sold”. The objection goes on to state that “the use of the Property will no doubt continue to be a public house as it has for many years”. The objection goes on to set out how the current leaseholder has security of tenure and a right to renew under the Landlord & tenant Act 1954 and this is not overridden by the Localism Act 2011. It goes on to point out that any disposal would be as part of a going concern so any disposal would not be relevant disposal in terms of the Localism Act 2011.
- 2.7 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. 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, a supplementary information document received from The Otley Pub Club and the

objection received from the leaseholder's representative if there is one. In addition, officers conducted a visit to each of the nominated pubs.

3.2 The nomination for the Horse & Farrier was received on 17th 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 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.

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

3.7 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.

3.8 A number of the Otley pubs date back to the 17th and 18th centuries and form an important part of the town's history and architecture.

- 3.9 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.
- 3.10 The nomination form details that the pub is a social venue and a popular community pub. It hosts a variety of events and theme nights. It has a large function room and is one of the few venues in Otley to offer accommodation for visitors. Following the closure of The Bridge, the Horse & Farrier is now the closest pub to the River Wharfe.
- 3.11 The landowner's objection picks up on a number of technical points regarding the implications of listing. However, the test to assess eligibility is that laid out in the Localism Act 2011 as detailed at paragraphs 2.7 and 2.8 above. The objection sets out that the owner's representative has difficulty in determining how a public house can further social interest or social wellbeing, but doesn't make a case as to why this view is held. It then states that the purpose of the Act is to prevent local amenities from being lost and that as the subject nomination is for one of many pubs in Otley, there would be no loss of amenity. This point is not considered relevant to the test as to whether or not the property has a current eligible use. To accept that argument would mean that none of the pubs in Otley could be listed as an Asset of Community Value. The objection continues that any disposal would be a sale of a going concern and therefore would not be a relevant disposal in terms of the Act. While it is true to say that the sale of a going concern is an exempt disposal, the possibility of such a disposal is not itself a reason for not listing the property in the first place.
- 3.12 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 the Horse & Farrier 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 The Horse & Farrier is currently open and trading. Nothing has been provided to suggest there are plans to change use or close. Indeed, the landowner's objection states "...although, as we have previously stated, we doubt the Property

could further the communities [SIC] social wellbeing, the use of the Property will no doubt continue to be a public house as it has for many years.” Therefore, it is realistic to think the current use will continue. As stated in 3.12 the current use is considered eligible, therefore it is realistic to think an eligible use will continue.

- 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.
- 4.1.3 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 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 the Horse & Farrier, Bridge Street, Otley, LS21 1QB to the List of Assets of Community Value.

7 Background documents²

7.1 Nomination form

7.2 Otley Pub Club supplementary document

7.3 Land owner's objection letter

² 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.