

Report of Director of City Development

Date: 25th June 2015

Subject: Assets of Community Value Review - The Horse & Farrier, Bridge Street, Otley

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Otley & Yeadon	<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

1. Purpose of the Report

The purpose of this report is to consider the Review of the Assets of Community Value listing for the Horse & Farrier pub in Otley, which was made in accordance with the Localism Act (2011).

2. Background Information.

Part 5, Chapter 3 of the Localism Act (2011) details the rules for Assets of Community Value known as the Community Right to Bid. The right came into force in September 2012 and its purpose is to give communities a right to identify a property that is believed to be of value and to further their social interests or social wellbeing and gives them a fair chance to make a bid to buy the property on the open market, if the owner decides to sell.

2.2 In accordance with the process set out in the Localism Act (2011), The Assets of Community Value (England) Regulations 2012 and associated Government Guidance, Leeds City Council considered an application for the Horse & Farrier pub in Otley, to be added to their list of Assets of Community Value. The application was made on the 17th February 2015 by Otley Pub Club, which is an unincorporated community organisation.

- 2.3 Having considered the application, the Head of Asset Management approved the nomination on the 13th April 2015 and the asset was duly added to the List of Assets of Community Value.
- 2.4 The owner of the freehold title, Beltowin Estates Ltd, has sought to exercise their right to request that Leeds City Council review its decision in accordance with Section 92 of the Localism Act (2011). As required by the Regulations, the review must be conducted by a senior officer of the Council. The freehold title owner also asked to exercise their right under the Regulations to request an oral hearing as part of the review. Accordingly, in my capacity as the Director of City Development, I convened an oral hearing which took place on Thursday 4th June 2015 between 9.00am and 11.00am at Leeds Civic Hall.
- 2.5 On reflection, and having taken legal advice, it is apparent that Beltowin Estates Ltd is not the owner for the purposes of Part 5 Chapter 3 of the Localism Act 2011. Section 107(2) of the Act states that "*The owner of any land is the person in whom the freehold estate in the land is vested, but not if there is a qualifying leasehold estate in the land.*" In this case there is a qualifying leasehold estate in the land, the owner of that estate being Market Town Taverns plc. Section 92 of the Act only gives the owner of the land the right to request a review of the decision. This point has only been raised towards the end of the review process and after holding the oral hearing, I have chosen to conclude the review anyway. However, the findings of this report do not prejudice any review requested by Market Town Tavern plc. They have been contacted, advised that a property of which they are the owner has been listed and given eight weeks to seek a review. If they ask for a review I will consider any new information that they bring to my attention.

3. Main Points

- 3.1 During this review there were no representations made to question the procedure that Leeds City Council adopted in relation to the listing or the review, nor the validity of the nomination. At the start of the hearing all parties present were given the opportunity to raise any procedural issues and none were made. At the oral hearing, Beltowin Estates Ltd was represented by Sarah Tallant from Blacks Solicitors and Jake Towler from Carter Towler. Mr Mulholland did ask that it be recorded which party had requested the review.
- 3.2 The nominator was represented by Andy Fitzgerald who is the chair of Otley Pub Club, Greg Mulholland MP who is the president of Otley Pub Club and Bob McLaughlin who is a committee member for Otley Pub Club. In his capacity as the original decision maker for the listing, the Head of Asset Management also attended.
- 3.3 Blacks Solicitors, acting for Beltowin Estates Ltd, suggested that there had been an error of law in the Council's decision and interpretation of the Localism Act. First, they suggested that "the Landlord and Tenant Act 1954 is a 'pre-commencement

limitation' of the Act. As the Property is restricted in becoming a 'relevant disposal' consideration should be given to this when deciding to list the Property". A "pre-commencement limitation" is defined in Section 2(4) of the Localism Act, and is a statutory prohibition, restriction or other limitation which limits the operation of the general power of competence conferred on authorities by Section 1 of the Act. However, in determining a community nomination, the Council is not exercising the general power, but is discharging its duty under Section 90 of the Act, and therefore the provisions of Sections 1 and 2 are not relevant.

- 3.4 In relation to whether the Council should, in any event have regard to the possibility or otherwise, of there being a "relevant disposal" for the purposes of Section 95, under Section 90(3) the Council must accept a community nomination if the land nominated is in the Council's area, and "is of community value". Section 88 provides that a building or other land is of community value if in the opinion of the authority, certain conditions are met. There is nothing in the Act or Regulations to suggest that an authority is required, or entitled to not list a property if it considers that a "relevant disposal" is impossible or unlikely. In any event, whilst it is correct to say that there could not be a "relevant disposal" of the freehold interest, if a sale of the freehold were made subject to the current leasehold interest, it is possible that leasehold interest could be surrendered or forfeited whilst the land is listed. It cannot have been intended that in discharging their duty under Section 90(3), authorities were required to speculate about all the possible circumstances in which a "relevant disposal" might or might not occur, over the whole of the period during which the property would be listed.
- 3.5 The review centred on the eligibility of the asset to be listed in line with Section 88 of the Localism Act 2011. For ease of reference I set out the relevant section below:

88 Land of community value

(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—

(a) an actual current use of the building or other land that is not an ancillary use 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) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local 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.

- 3.6 Given that the site in question is currently in use, the question of eligibility in this instance focusses on sub-section 1. The key questions to determine here are:
- i. What was the use or uses of the building/land that constituted its “non-ancillary use”?
 - ii. Did this use “further the social wellbeing or social interests of the local community”?
 - iii. And whether it is realistic to think that can continue to be non-ancillary use of the building or land that will further (whether or not in the same way as before) the social wellbeing or social interests of the local community?
- 3.7 Given the way that Section 88(1) of the Act is set out, it is evident that a successful application must satisfy **all** of these points and if it can't then it **should not** be placed on the Council's List of Assets of Community Value.
4. On the basis of the questions identified above, to determine the outcome of this review I shall consider them all. However, it is common ground among all parties that the Horse & Farrier is a pub and that the use as a pub is non-ancillary. Furthermore, the pub continues to trade, there were no representations to the contrary from the land owner's representative or other information being available, to suggest any good reason why it might not be realistic to think the use can continue. The objection to the nomination provided by Blacks dated 4th March 2015 includes the statement that *“the use of the Property will no doubt continue to be a public house as it has for many years.”* I am therefore satisfied that the continuing use test is also met. The issue of contention that remains is whether or not the use as a pub furthers the social wellbeing or social interests of the local community.
- 4.1 The nomination form states that *“This is a social venue and a popular community pub. Various events and themed evenings are held which attract many Otley residents and visitors. One of the most popular is the regular 'Food and Beer Matching' meal nights, which is unique in Otley, and important in the context of our reputation as a famous pub town. It has a large room upstairs which can be hired for personal or group functions, and which provides an important venue for Otley Folk Festival's formal programme every year. Different organisations and societies also meet here, including the Otley Lions - a charity which raises funds for many good causes. The Horse and Farrier is also one of the few establishments to offer residential accommodation for visitors to Otley, which is vitally important for the continued vitality and wellbeing of the town”*. The nomination form goes on to point out *“There is a large outside area at the rear of the pub, which is used during major events in the town by groups such as folk dancers, walking and cycling groups, and private gatherings. The pub offers a more formal restaurant menu than the usual ordinary pub fare, and so provides another eating option for residents and visitors*

alike. Otley has recently lost one pub - The Bridge - on the same road as The Horse and Farrier, which now makes it the closest pub in town to the river Wharfe. The riverside is very popular with tourists, and since the riverside café also closed recently the Horse and Farrier is now the only place offering food and drink to those walking between the town centre and the river [apart from a fish and chip shop]"

- 4.2 The report of the Asset Management Service upon which the decision was taken, dated 13th April 2015, includes *"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"*.
- 4.3 In the 4th March objection letter, Blacks state *"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"*
- 4.4 In her submission Ms Tallant addressed this point as follows: *"The reasoning given the list the pub is provided in 3.12 of the report which states that the current use does further social interests and wellbeing of the community 'Pubs are places where people go to drink and socialise.' To list a property for this reason would mean that every single pub in the UK should be listed as we do not contest that a pub is a social setting where people socialise. There are 180 pubs and bars in Leeds City Centre, To give this reasoning would this mean that every single pub and bar would be listed in Leeds. If every place where you go to 'socialise' should be listed as a community asset then every café and restaurant would be listed as an asset of community value. The list would be endless as you could list gyms, shopping centres and cinemas. This was not Parliament's intention for the implementation of the Localism Act 2011"*.
- 4.5 All parties therefore accept that the Horse & Farrier is a social setting where people go to socialise. I do not accept the point made by Ms Tallant that if every place people got to socialise could be listed as an asset of community value. Specific examples given include cinemas and gyms. Chapter 88 of the Localism Act is clear that the eligible use must be non-ancillary. In my view the main use of a cinema is to watch a film. Indeed socialising during the film would surely interrupt it. Any

socialising would likely be ancillary. The same argument would apply to the gym, where the main purpose is to exercise.

- 4.6 Ms Tallant raised the number of other pubs in the vicinity. In the parts of Otley that fall within Leeds District there are 19 pubs currently trading. All 19 were nominated at the same time and all were added to the List of Assets of Community Value in April 2015. Blacks put forward that the presence of these pubs means that there would be no real loss of amenity if one of 19 pubs closed. Ms Tallant had, helpfully, submitted a written version of her oral submission before the hearing. In this she had put the term “real loss” in inverted commas, suggesting it was a quote. I asked Ms Tallant if this was a quote and if so, where the quote was from. Ms Tallant replied, after a further discussion about the source, that it was from Standard Notice SN06366. Following the hearing I have read the Standard Notice and the term “real loss” is not contained within it.
- 4.7 Council officers have looked at various documents produced by DCLG. The outcome of this is that the term “real loss” only appears in A Plain English Guide to the Localism Act: *“Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs. Local life would not be the same without them, and if they are closed or sold into private use, it can be a **real loss** (emphasis added) to the community”*.
- 4.8 Blacks suggested a “purposive approach” to the issue whether land is of community value *“For example a pub in a small village where it is the only public house and meeting venue for societies may be considered to be of community value; but less so if the area has multiple public houses and meeting venues”*. In addition, Blacks put forward *“Section 88 should not be interpreted literally and every case needs to be looked at separately assessing all the relevant factors. In particular, the community in which the land is based needs to be considered as a factor.... To register all 20 public houses in Otley as an Asset of Community Value defeats the purpose of the Act. It cannot be argued that if 1 out of 20 pubs is sold or closed, there would be a ‘real loss’ as there are already 19 other public houses, in a town where there are already a surprising number of public houses for its size”*. However, I am mindful that under Section 90(2) the Council is under a duty to “consider the nomination” and therefore to consider whether the land specified in the nomination is “of community value”. There is nothing in the Act or Regulations to suggest that the Council is required, or entitled at the same time to consider the overall provision of assets of community value in its area or whether other properties in the area are being used for a similar purpose. It would be very difficult for the Council to assess whether a particular pub in Otley furthered the local community’s social wellbeing or social interests in a way which was unique, or not, or whether those interests could be adequately served by the other pubs in Otley. In any event, in my view, such an exercise would go well beyond the Council’s duty under Section 90(3). Accordingly, I conclude that, there is no duty on the Council, as Blacks suggest, to determine

whether the property is an asset of the community which sets it apart from the other 19 pubs in Otley.

4.9 In forming this view I note that around 670 pubs are listed as Assets of Community Value nationally. Ten pub listings have been considered by the First Tier Tribunal. Of these, only one has been overturned by the tribunal and that was because the property had been purchased by an international fast food chain, so it was not realistic to think an eligible use could continue. In my view the number of pubs listed nationally shows there is a developing consensus that pubs are often found to be community assets as defined in the Localism Act 2011.

5. Corporate Considerations

5.1 Consultation and Engagement

5.1.1 During the course of the hearing on 4th June 2015 the following groups were given the opportunity to make representations:

- Landowner
- Nominator
- Head of Asset Management (as original decision maker)

5.2 Equality and Diversity / Cohesion and Integration

5.2.1 It is not necessary to conduct an Equality Impact Assessment screening as the report is predicated on the legislation relevant to the List of Assets of Community Value.

5.3 Council policies and City Priorities

5.3.1 There are no specific council policies or city priorities. This report is in line with the Localism Act 2011

5.4 Resources and value for money

5.4.1 There are no resource implications for the Council outlined in this report.

5.5 Legal Implications, Access to Information and Call In

5.5.1 This decision is declared as being exempt from Call In on the basis that the decision is urgent i.e. that any delay would seriously prejudice the Council's and the public's interests. This is because the review decision is a statutory process specified in the Act and the Regulations. There is no provision in the Act or Regulations for a consideration of a request for a review by elected Members, or for a further oral hearing, or for a further consideration of the evidence by the reviewing officer following a scrutiny hearing. Therefore, a scrutiny Call In could lead to the Council failing to observe the statutory process for the review of listing decisions, and to a lack of certainty in the decision-making process. In addition, this could lead

to a loss of confidence by the landowner or the nominator in the integrity of the process.

- 5.5.2 The Localism Act gives the landowner a right to take the decision of a review to the First Tier Tribunal. However, in this case Beltowin Estates Ltd is not the owner as defined in Section 107 of the Localism Act 2011. Therefore they will be unable to take the matter to the tribunal.

5.6 Risk Management

- 5.6.1 There are no risk management issues associated with this report.

6. Conclusion

- 6.1 Further to the Beltowin Estates Ltd's request for a review of the listing of the Horse & Farrier as an asset of community value, I have considered the oral and written evidence made available to me. The Beltowin's representative invited me to support their request for review on the basis that the land and property in question did not benefit the social wellbeing or social interests of the local community.
- 6.2 Having considered all of the arguments put to me, I do not agree with the position that a non-ancillary use of the building does not further the social wellbeing or social interests of the local community. I reach this conclusion on the basis that this pub is a place where people go to socialise, the specific activities identified in the nomination form, the accepted position that pubs can be assets of community value and the absence of significant and substantial evidence to the contrary in this case. In my view all of the requirements of Section 88(1) have been met and I conclude that Beltowin's request for a review is unsuccessful and that the property subsequently remains on the Council's list of Assets of Community Value.

7. Recommendation

Following the review procedure undertaken and the findings set out in this report, the Horse & Farrier is to remain on the Council's list of Assets of Community Value, albeit subject to a possible review by the landowner as defined in Section 107.

8. Background Papers¹

- 8.1 File for the Horse & Farrier Review.

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.