

Report of Director of City Development

Date: 22nd July 2015

Subject: Assets of Community Value Review – Otley Tap House, 66 Boroughgate, Otley, LS21 1AE

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

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

2. Background Information.

2.1 Part 5, Chapter 3 of the Localism Act (2011) details the rules for Assets of Community Value, also known as 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 Since 6th April 2015 pubs which are listed as Assets of Community Value can no longer benefit from Permitted Development Rights. If the owner of a pub on the list wants to change use or demolish the building, they now have to seek planning consent.

2.3 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 Otley Tap House 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.

- 2.4 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.
- 2.5 The property is owned by PH Properties (2008) Ltd and the pub business is run by a tenant. The owners have sought to exercise their right to request that Leeds City Council reviews 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 owner also asked to exercise their right under the Regulations to request a 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 Friday 10th July 2015 at 1.00pm at The Leonardo Building.

3. Main Points

- 3.1 The landowners were represented by Neil Henry and Nicola Hartle. The nominator was represented by Andy Fitzgerald who is the chair 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.
- 3.2 At the start of the hearing all parties present were given the opportunity to raise any procedural issues in relation to the procedure adopted by Leeds City Council in relation to the listing, review, or the validity of the nomination. No procedural issues were raised.
- 3.3 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.

- 3.4 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 there 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?
- 3.5 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.
- 3.6 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 Otley Tap House 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. I am therefore satisfied that the continuing use test is 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.
- 3.7 The nomination form states that *“The Otley Tap House is the most recent addition to Otley's pub 'estate', bringing the total number now promoted and supported by Otley Pub Club back up to 20 - the same as it was in the first quarter of the 19th century. Also, being situated right next door to The White Swan, and near The Manor House, it further enhances Otley's reputation to tourists as a famous pub town, and creates more interest for visitors on the Eastern edge of the town centre, which is visited less since the closure of The Civic Centre and the loss of the maypole! Since opening just before the Tour de France came through town in July 2014, the pub has gained a reputation for offering something a bit different in Otley. There has been a variety of bar food on offer, from tapas to traditional Yorkshire pork pie, and the small pub garden at the rear was busy all last summer. The Tap House is dog- and child-friendly during the day, being the only one in Otley with toddlers playing with toys and games. At night it has more of a wine-bar feel, but with a wide choice of real ales also on offer, and the pub has quickly gained a regular clientele. The pub has just obtained an extension to its licensed hours, as well as a music licence, so it now offers musical performances as well. There is also an open mic night for musicians and singers who might not otherwise have the opportunity to perform in front of an audience”*
- 3.8 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 Otley Tap House 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”.

3.9 The landowner did not submit an objection to the nomination itself. At the hearing I asked the landowner to explain their reasons for seeking a review. Their main points were:

- They have owned the property for 30 years and the downstairs was always, until recently, a retail shop.
- The property was on the market for a number of years before they were approached by an operator to lease the premises to run a pub.
- Otley Pub Club formally objected to the application for planning change of use.
- The pub has only been open since July 2014.

3.10 I asked the landowner to clarify who objected to the planning application because in the letter they submitted requesting a review they had stated it was Greg Mulholland MP. They confirmed it was Otley Pub Club and their reasoning was that they felt an additional pub in the town would adversely affect the viability of the other pubs. The objection was made in early 2014.

3.11 I then invited the nominator to make representations to support their nomination. I summarise their points as follows:

- Otley Tap House was part of a blanket nomination and they want the pubs in Otley to prosper.
- They acknowledged the questions about how a pub only opened 12 months ago could be an asset of community value. They pointed out that the legislation talks about current use and future use, but there is nothing about how long an asset has been used for.
- The Tap House is a successful pub and is popular with members of the rugby club and motoring club. It has open mic and buskers nights.
- It has almost created a twin pub with the White Swan next door. Otley is noted for its tradition of twin pubs.

3.12 I asked Mr Fitzgerald to clarify his comment about a blanket nomination and whether the subject nomination was 1 nomination for 19 pubs or 19 nominations for individual pubs. He clarified that there were 19 individual nominations which were all submitted at the same time.

3.13 I then asked Mr Fitzgerald how, between the pub opening in July 2014 and the time of the nomination in February 2015, the property had furthered the social interests

or social wellbeing of the local community. He responded that by use of people meeting there, parties, the barroom buskers events, use by the motor club and that Otley Pub Club had met there (maybe) twice.

- 3.14 I invited Ben Middleton as the Head of Asset Management and original decision maker to explain his reasons for adding Otley tap House to the List of Assets of Community Value. Mr Middleton summarised his report and in response to my question stated that he felt Otley Tap House had an eligible use as a pub used by the local community, including groups such as the local rugby and motor clubs.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 During the course of the hearing on 10th July 2015 the following groups were given the opportunity to make representations:

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

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 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.

4.3 Council policies and City Priorities

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

4.4 Resources and value for money

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

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 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.

4.5.2 The Localism Act gives the landowner a right to take the decision of a review to the First Tier Tribunal.

4.6 Risk Management

4.6.1 There are no risk management issues associated with this report.

5. Conclusion

5.1 Further to the landowner's request for a review of the listing of the Otley Tap House as an asset of community value, I have considered the oral and written evidence made available to me. The landowner 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.

5.2 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. The landowner's main case was that the property had not operated as a pub for long enough for its use to further the social interests or social wellbeing of the local community. I understand this point and it is one I have given careful consideration to. However, on balance, I conclude that the pub has now been open for over a year and sufficient evidence of eligible use of the property has been evidenced for me to consider that Otley Tap House furthers the social interests or social wellbeing 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. I have also considered Otley Pub Club's objection to the original planning application for the Otley Tap House. Whilst I conclude that the point put by Mr Pullan has merit, overall I note that Otley Pub Club's position that, with the benefit of hindsight, they no longer hold the view outlined in their objection and the original position has now changed. In my view all of the requirements of Section 88(1) have been met and I conclude that the landowner's request for a review is unsuccessful and that the property subsequently remains on the Council's list of Assets of Community Value.

6. Recommendation

6.1 The Director of City Development is recommended to review the decision to add Otley Tap House, 66 Boroughgate, Otley, LS21 1AE to the List of Assets of Community Value and agree that the asset should remain on the list.

7. Background Papers¹

7.1 None.

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.