

Report of Director of City Development

Date: 21st July 2015

Subject: Assets of Community Value Review – The Old Cock, 11 Crossgate, Otley, LS21 1AA

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 The Old Cock 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 Old Cock 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 in private ownership. The owners exercised 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 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 a hearing which took place at 1.30pm on Tuesday 14th July 2015 at The Carriageworks.
- 2.6 The landowners Mr Pullan and Ms Exley represented themselves at the hearing. 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. Main Points

- 3.1 Prior to the hearing the landowners' representative questioned Leeds City Council's procedure in relation to the hearing, specifically the presence of the nominator at the hearing. I asked Mr Pullan and Ms Exley at the start of the hearing if they wanted any matters to be treated confidentially or if they were happy to proceed in public. Mr Pullan stated that they were not happy that the nominator was present because they felt they "had precious little chance to put their views forward" during the nomination assessment. However, they were happy to proceed "as long as they (the nominators) do not object to our review". I took this to mean that they were happy to proceed as long as the nominators did not object to the property being removed from the List of Assets of Community Value. No further procedural issues were raised.
- 3.2 To address Mr Pullan's point about having little chance to put their views forward, officers confirmed to me that the landowners were contacted on 23rd February advising them of the nomination and giving them two weeks to submit an objection. A response was received on 3rd March, they spoke at length to the assessing officer shortly afterwards, submitted a subsequent further response setting out their reasons for objecting on 5th March and then sought clarification by email from us on 9th March. I am of the opinion that during the assessment of the original nomination the landowner was offered and took suitable opportunity to put their views forward and that such views were considered.
- 3.3 Mr Pullan read through a statement which had been prepared by his representative, who did not attend the hearing, which included the rationale for the landowner's objection:
- *There is nothing within the nomination which explains how the Old Cock is unique to the town.*
 - *There are many other pubs in the town with an equally wide selection of beer on tap and it cannot be said that the Old Cock is unique to Otley.*

- *The ACV definition requires an actual current use of the building by the local community. The property is a public house and there are precedents where this is recognised as community use. However, the nomination by the Otley Pub Club was a collective one for all the pubs in Otley and it is impossible to ascertain that any one of these pubs can be said to further the social wellbeing or interests of the local community. Should the Old Cock cease to exist there would remain a vast selection of similar amenities within a few metres meaning that the local community would still be able to further their social wellbeing and interest.*
- *The owners claim that at least half their trade is drawn from outside the town and even the nominees state that “the Old Cock attracts many additional visitors to the town because of its reputation”. Therefore the actual use is not uniquely furthering the social wellbeing or interests of the local community.*
- *The nomination goes on to claim that the Old Cock “forms an integral part of the Historic Ale Trail” yet the pub has only been established for 5 years.*
- *We contend that the nominations were submitted so that a resultant ACV listing may hinder any future planning applications for the pubs which are ACV listed and to create a publicity stunt to further the club’s president’s personal ambitions.*
- *The question is does the local community exclusively depend on the facilities at the Old Cock or do the community frequent the other pubs in Otley for that purpose?*
- *There is no definition in the Act or Regulations of a “local community” so it is for the local authority to determine this for each nomination. There is no easily identifiable settlement around the Old Cock other than a number of smaller groups of properties which suggests that the core trade for the pub is drawn from outside the “local community”.*

3.4 Mr Pullan added that at the same time the nomination for the Old Cock was submitted (as well as the other 18 pubs in the Leeds District), a nomination was submitted to Harrogate Borough Council and subsequently turned down.

3.5 I asked Mr Pullan if he took the view that the Old Cock is a social setting. He replied that “Pubs are places where people go to drink and socialise”. I then asked if, because of that, it furthers the social wellbeing or social interests of the local community. Mr Pullan replied that he didn’t think so and customers came in for a drink.

3.6 I had noted that in his submission Mr Pullan had used the word “unique” or “uniquely” five times. I asked him where the reference to “unique” had come from. Mr Pullan’s response was that all the pubs couldn’t be nominated and that it was illogical when there are so many other pubs nearby.

3.7 The Legal Services officer who was supporting me during the meeting asked Mr Pullan to clarify how often music was performed in the pub’s first floor. He confirmed it was every Tuesday but qualified his statement by adding that if the Old Cock closed they (the musicians) could go anywhere.

3.8 I then invited Otley Pub Club to make their representations to support their original nomination. Mr Fitzgerald acknowledged that, unlike the other pubs nominated by

the group, The Old Cock is owned and operated by private individuals. I asked Mr Fitzgerald to clarify his position and whether he was advocating that the property remained on the list. He answered that *“I would pay attention to what Lee and Linda are saying”*. I asked Mr Fitzgerald if The Old Cock was a social setting. He confirmed it was and that a person doesn't have to have a drink. I asked if he thought the Old Cock furthered social wellbeing or social interests. He replied that it did. I then asked him what he saw as the local community. He described the local community as Otley and its immediate environs.

- 3.9 The Head of Asset Management, Ben Middleton, then set out his reasons for taking the original decision. He also clarified that the subject nomination wasn't part of one blanket nomination, but one of nineteen individual nominations and The Old Cock's was considered on its own merits. I asked if there were any specific reasons why he felt The Old Cock met the criteria as set out at Section 88(1)(a) of the Localism Act. He replied that The Old Cock is a pub where people socialise. I asked him if, therefore, pubs were always Assets of Community Value. He said not necessarily if the pub was really part of a hotel or a bar in a restaurant. However, he would consider a property that was used as a pub to be an Asset of Community Value.
- 3.10 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.

3.11

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?
- 3.12 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.
- 3.13 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 Old Cock 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 landowner'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.
- 3.14 The nomination form states that "*Whilst based in a building that dates back to 1755 the Old Cock is one of the more recent additions to Otley's pubs having opened in September 2010. It has quickly established itself as a venue for good quality hospitality and fine beer. The Old Cock has already twice been named Leeds CAMRA pub of the year, and attracting many additional visitors to the town because of its reputation. It forms an integral part of the Historic Ale Trail and provides a venue for local organisations and events such as the Folk Festival, Victorian Fayre, Otley cycle races, Otley carnival etc. There is a regular folk music session in the upstairs room, for anyone who wants to come along to sing or play.*"
- 3.15 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 Old Cock 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*".
- 3.16 The landowner's statement addressed this point as follows: "*The property is a public house and there are precedents where this is recognised as community use. However, the nomination by the Otley Pub Club was a collective one for all the pubs in Otley and it is impossible to ascertain that any one of these pubs can be said to further the social wellbeing or interests of the local community. Should the Old Cock cease to exist there would remain a vast selection of similar amenities within a few metres meaning that the local community would still be able to further their social wellbeing and interest. The council states in 3.12 that pubs create a social setting. The question is does the local community exclusively depend on the facilities at the*

Old Cock or do the community frequent the other pubs in Otley for that purpose? It is not reasonable to nominate all the pubs in Otley because it is impossible to distinguish which ones actually further the social wellbeing or interests of the local community. The blanket nomination has created a farce and makes a mockery of the intentions of the Act which is to protect the social amenities when they are in danger of being lost and not when there are 19 other pubs with similar amenities close-by.”

- 3.17 Considering the landowner’s statement and Mr Pullan’s response when I asked him if he took the view that The Old Cock was a social setting and whether he thought it furthered the social wellbeing or social interests of the local community, it appears to me that the case being put forward is that this particular pub does not further social interests or social wellbeing because it isn’t unique and there are so many other pubs in the vicinity. 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 to determine whether the property is an asset of the community which uniquely sets it apart from the other 19 pubs in Otley.
- 3.18 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. I do accept that the listing cannot be linked to its inclusion on the “Historic Ale Trail”, given the age of the pub. That said, it is relevant to note its inclusion on the ale trail.
- 3.19 The landowner’s statement goes on to address the local community point: *“There is no definition in the Act or Regulations of a “local community” so it is for the local authority to determine this for each nomination. There is no easily identifiable settlement around the Old Cock other than a number of smaller groups of properties which suggests that the core trade for the pub is drawn from outside the “local community”*”. I agree that neither the Localism Act nor the regulations define what is meant by “local community” and that it is for the local authority to determine for each nomination. I find the definition put to me by the landowner of *“no easily identifiable settlement ... other than a number of smaller groups of properties”* too narrow. Instead I prefer Mr Fitzgerald’s description of *“Otley and its immediate environs”*. The Old Cock is a town centre pub and its local community is the people of that town and nearby areas. The landowner claims that over half their trade is drawn from outside the town. No evidence has been provided to confirm this claim, or any more detail provided as to a more exact fraction of users being from outside

the town. Nevertheless, I have considered the claim and my view is that there is still sufficient use by the local community for that use to be non-ancillary.

- 3.20 The landowner has also made the point that *“We contend that the nominations were submitted so that a resultant ACV listing may hinder any future planning applications for the pubs which are ACV listed and to create a publicity stunt to further the club president’s personal ambitions.”* It is true that adding a pub to the List of Assets of Community Value will result in the owner having to apply for planning consent for a change of use or demolition rather than taking advantage of Permitted Development Rights. However, this is not a consideration when assessing whether or not a nomination meets the criteria as laid down in the Localism Act and Regulations. Neither is the reason for the nominator to submit a nomination. However, having considered the information provided in the nomination by Otley Pub Club and from their presentation at the hearing, it is my view that they are a group of people who value the pubs in Otley and believe that Assets of Community Value status helps to protect those pubs’ futures.
- 3.21 Another argument made by the landowner is that *“The question is does the local community exclusively depend on the facilities at the Old Cock or do the community frequent other pubs in Otley for that purpose?”* I do not consider that the community must exclusively depend on the facilities for any nominated asset for it to be included in the List of Assets of Community Value. As stated earlier in this report, 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. Again, to do so would go well beyond the Council’s duty under Section 90(3).

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 During the course of the hearing on 14th 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 The Old Cock 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 In this case it is evident that the nominator has empathy with the owners as a consequence of the property being added to the list and asked that I consider what the landowner said during the hearing. However, once the property is added to the list there is no scope within the Localism Act or the Regulations for a nominator's regret or changed views to be reasons for a property to be removed from the list.

5.3 Having considered all of the arguments put to me, I conclude that the that a non-ancillary use of the building does 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 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 The Old Cock, 11 Crossgate Otley, LS21 1AA 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.