

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

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

**Date:**        **16<sup>th</sup> July 2015**

**Subject:**    **Community Right to Bid Nomination for Former Shoulder of Mutton pub/ Inkwell Arts, 31 Potternewton Lane, Chapel Allerton, Leeds, LS7 3LW**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Chapel Allerton		
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 building and garden of the former Shoulder of Mutton pub/ Inkwell Arts, 31 Potternewton Lane, Chapel Allerton, Leeds, LS7 3LW to the List of Assets of Community Value.
2. The Council has received a nomination from the Potter and Newts Neighbours, which is an unincorporated community group for the benefit of the local area with 21 members registered to vote in the local area. It does not distribute any surplus to its members. As an unincorporated group they are eligible to nominate the property but not trigger the moratorium period, bid for the property or purchase the property.
3. Inkwell Arts is part of Leeds Mind, an independent charity, and has been operating numerous activities for the community for the last 4 years from the former Shoulder of Mutton site. Activities include art and design and ceramic classes, which require a referral from a health professional and dance and meditation classes, and a café which is open to the general public.
4. Officers conclude that the property's current use furthers the social interests and social wellbeing of the local community and that it is realistic to think that such a use can continue for a period of twelve months.

## **Recommendations**

5. The Head of Asset Management is recommended to add the former Shoulder of Mutton, 31 Potternewton Lane, Chapel Allerton. Leeds LS7 3LW 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 whomsoever they see fit.
- 2.2 The nomination is for the former Shoulder of Mutton site which is located within the Chapel Allerton ward (please see the red line boundary plan at appendix 1). Ward Members and Area Support (Citizens and Communities) have been made aware of the nomination. No comments have been received.
- 2.3 The freehold interest in the property is privately owned. Part of the building is leased to Leeds Mind and occupied by Inkwel Arts, which is part of Leeds Mind. The current lease expires in July 2016.
- 2.4 The owner submitted objections to the nomination on 7<sup>th</sup> July 2015.
- 2.5 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.'
- 2.6 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.

2.7 It is important to note that if both of the criteria stated at either 2.5 or 2.6 are 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 site visit by the Leeds City Council case officer and objections made by the landowner.

3.2 The nomination for the former Shoulder of Mutton site was received on 29<sup>th</sup> May 2015 from Potters and Newts Neighbours, which has its own constitution. They are unincorporated and the names of the 21 members who are registered to vote in Leeds have been provided and checked and are eligible to vote against the electoral role. They do not distribute any surplus to their members; therefore they are eligible to nominate a property as an asset of Community value.

3.3 As an unincorporated group The Potters and Newts Neighbours is eligible to submit a nomination to register a property as an Asset of Community Value but not trigger the moratorium in order to make a bid for the property. Therefore, the Potters and Newts Neighbours, in its current guise, could not purchase the nominated property.

3.4 Inkwell Arts, who operate from the former Shoulder of Mutton, is part of Leeds Mind, an independent charity, who work with and support individuals with mental health problems. Leeds Mind currently provides annual funding in addition to money Inkwell Arts raise through local fundraising.

3.5 The Potters and Newts Neighbours have stated that the purchase of the site "*can be achieved through a combination of funding streams, which includes money from Leeds Mind, local and/or government grants, lottery funding, local fundraising, letting out space in the building, and by utilising the income from the substation on the property.*"

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 or 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?***

3.6.1 Inkwell Arts are part of Leeds Mind, an independent charity, who work with and support those individuals with mental health issues. They have been operating

from the former Shoulder of Mutton site for the past 4 years and over this time have organised a range of activities that includes the community as a whole and specific classes for those individuals with mental health issues, which require referrals from a health professional. The café, dance classes and mindfulness meditation are some of the activities that are open to the general public. Classes such as art and design and ceramics require a referral from a health professional and have a waiting list. It must be noted that those classes without the need for a referral can also be accessed by individuals with mental health issues.

- 3.7 Leeds Mind operates a varied menu of activities from the former Shoulder of Mutton site. Section 88(1)(a) of the Localism Act 2011 states that 'an actual use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community'. The nominated site is used by members of the local and wider community and it provides specific activities for those people with mental health issues. It is therefore considered that there is a current non-ancillary use that furthers the social interests and improves the social wellbeing of the local community.

***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)?***

- 3.7.2 The lease for Leeds Mind, for the ground floor and part of the basement of the building, runs until July 2016. Leeds Mind occupies the first floor of the building as well, however this is not part of the lease. A separate licence was granted for use of the garden area by Leeds Mind since July 2011 which was subject to a three months' notice on its use. Notice to terminate the garden use has been served on 29th January 2015.
- 3.7.3 City Development have been approached by the local MP's office and asked to search for new premises for Leeds Mind of similar size or larger than the space they occupy at the former Shoulder of Mutton site, with a garden area that can be utilised. However, Leeds Mind preference would be to remain and continue to operate their services from the former Shoulder of Mutton building and garden area.
- 3.7.4 The landowner has put forward several objections to the listing nomination on 7<sup>th</sup> July 2015. They are listed below.

**Potters and Newts Neighbours** - He believes that Potters and Newts Neighbours have been set up purely for the purpose of nominating the former Shoulder of Mutton to be listed as an asset of Community Value and that the nomination has been put forward to disrupt and delay plans for the future development of the site. He goes on to say that he believes that the nomination form states that Leeds Mind support the application, however when asked, Leeds Mind have denied any involvement and is concerned about the incorrect assumptions made by the group Potters and Newts Neighbours.

**The valuation and funding of the purchase of the former Shoulder of Mutton** - Firstly, the landowner has stated that he has no intention of selling any part of the former Shoulder of Mutton site in the foreseeable future. However, he would

like to address the valuation (£330,000) given in the nomination form as he had the property valued in 2011 by Sanderson Weatherall at £675,000. He goes on to disagree with the assumptions made about the financing that the applicants, Potters and Newts Neighbours have put forward. As Leeds Mind have a lease until July 2016, he states this would mean lottery grants, local government funding and local fundraising cannot be cited as viable financial resources. He goes on to say that they would not be able to achieve a mortgage due to responsible borrowing and dismisses the implication that the electric substation could contribute to the mortgage borrowing as it only generates £30 per annum income. He also states that the proposal to open the building for wedding receptions, parties and Christmas fairs as a revenue stream would be a conflict of use of the building for Leeds Mind's current service users.

**The Garden** – The landowner states that Leeds Mind had use of the garden area under a separate licence agreement which allowed them to use the land free of charge and was not part of the main lease. This has been revoked, as part of the terms of the licence agreement. The only right of access now is for the landowner.

**The Building** – Only a limited part of the building is leased out to Leeds Mind, not the building in its entirety. The lease is contracted out of the 1954 Landlord and Tenant Act which means that the tenant does not have security of tenure and has no right to extend the lease, which expires on 22<sup>nd</sup> July 2016. Therefore he states that Leeds Mind have no long-term interest in the building. He also states that the rest of the building is let to other commercial tenants.

**Covenant** – The nominators have put forward the point that Agnes Lupton in 1925 placed a specific covenant on the property stating that the garden area should be used as a bowling green or remains as a garden. However, the covenant does allow other uses as set out below;

*“the said plot of land shall not be used for any other purpose than a bowling green with the necessary outbuildings or as the site of a private dwelling house with the usual outbuildings thereto or as private gardens only and no more than four detached houses or one detached house and two pairs of semi-detached houses shall be erected thereon”.*

3.7.5 In this section, the case officer will respond to all of the landowner's objections above;

**Potters and Newts Neighbours** - The Localism Act 2011 does not specify that the nominating group has to be an established group. As an unincorporated group The Potters and Newts Neighbours is eligible to submit a nomination to register a property as an Asset of Community Value.

**The valuation and funding of the purchase of the former Shoulder of Mutton** – At the nominating period the Localism Act 2011 does not require the nominating group to have an accurate valuation of an asset or an accurate business plan that details how the asset, if it were to be placed on the market, be purchased. As an unincorporated group, the Potters and Newts neighbours are eligible to nominate the property but not trigger the moratorium period and bid for the property or purchase the property.

**The Garden** – The garden area of the former Shoulder of Mutton is only part of the area that Leeds Mind operates their services. In terms of the Localism Act, Section 88 (1)(a) as set out in 3.7, the use that Leeds Mind have within the building is still of benefit to the local community.

**The Building** – The lease for Leeds Mind continues until 22<sup>nd</sup> July 2016 and so a non-ancillary service will be in operation for this period of time. The Localism Act 2011 does not specify a timeframe when describing a continued non-ancillary use that benefits the social wellbeing of the local community and as such a period of 12 months is considered ‘continued use’.

**Covenant** – As stated by the landowner, the covenant does detail other uses for the garden area.

A planning application was submitted on 27 November 2011 and subsequently withdrawn for a detached block of 9 flats to be located in the garden area of the site. Before the application was withdrawn, colleagues from planning had recommended that the application be refused, in part due to the fact that it would remove the use of the garden area, which is a recognised community facility, and as such would ‘adversely impact on the facilities users who are a particularly vulnerable section of society’.

3.8 Officers are of the view that while it is possible that a planning application could be resubmitted and approved, resulting in a residential development in the garden area, this is not the only realistic course of action;

- A new planning application has yet to be submitted and until the detail of that application is assessed, there can be no assurance consent will be granted.
- Furthermore, the landowner has also stated that he does not have any plans for the existing building.
- There is a realistic possibility that even if there is a residential development in the garden, the property could continue to be put to an eligible use, whether or not by Leeds Mind.
- Notwithstanding those possibilities, it is acknowledged by all parties that it is a fact that Leeds Mind will continue to use the property, at least until July 2016.

On balance, it is therefore considered that it is realistic to think an eligible use can continue.

3.9 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 Executive Member of Communities has been informed of the nomination.
- 4.1.3 Chapel Allerton ward members and colleagues in area leadership have been informed of the nomination. No response has 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 and social wellbeing of the local community. There are a number of realistic possibilities for the property's continued use and a number of these involve non-ancillary uses that further the social interests or social wellbeing of the local community. 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 former Shoulder of Mutton site, 31 Potternewton Lane, Leeds, LS7 3LW to the List of Assets of Community Value.

## **7 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</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.