

Report of **Asset Management Service**

Report to **Head of Asset Management**

Date: **27th August 2015**

Subject: **Community Right to Bid Nomination for The Crown Hotel, 128 High Street, Boston Spa, Leeds LS23 6BW**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Wetherby		
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 Crown Hotel, 128 High Street, Boston Spa, Leeds LS23 6BW to the List of Assets of Community Value.
2. The Council has received a nomination from The Neighbourhood Forum on 31st July 2015, which is an unincorporated community group, with 21 members registered to vote in the local area.
3. The Crown Hotel closed in the summer of 2012. The nomination states that the Crown Hotel was the only establishment within Boston Spa that in addition to a bar provided meals and bedrooms to let. The Royal, which offered similar facilities closed in 2003 and became a Costcutter Food Store. The Crown Hotel also hosted various social events on a regular basis for the community, which included jazz sessions, a bridge club, disco evenings and generally socialising over a drink.
4. Officers conclude that the property has had a use in the 'recent past' which furthered the social interests of the local community and it is realistic to think that it can be brought back into use which furthers the social interests or social wellbeing of the community within five years.

Recommendations

5. The Head of Asset Management is recommended to add the Crown Hotel, 128 High Street, Boston Spa, Leeds, LS23 6BW 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 a 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. At the end of the six month period, the landowner is free to dispose of the property 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. A public house is defined by the Town and Country Planning (use classes) Order 1987 (as amended), as an A4 planning unit and has permitted development rights to change planning use to; A1 retail, A2 financial services and A3 restaurant/café or to demolish the property without seeking planning consent. This new legislation, which took effect from 6th April 2015, requires 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 Crown Hotel, a Grade II listed building with car park and outbuildings, on a site extending to circa 1424 sq m (15,327 sq ft.), which is located within the Wetherby ward (please see the red line boundary plan at appendix 1). Ward Members, Parish Councillors, Area Support (Citizens and Communities) and Planning colleagues have been made aware of the nomination. No comments have been received.
- 2.4 The nomination for The Crown Hotel was received from the Neighbourhood Forum, on 31st July 2015, a newly set up community group in the village. The forum's activities are based wholly within Boston Spa. It has no financial history and does not distribute any surpluses to members. The group has 21 members whose names and addresses have been checked as registered voters in Leeds. As an unincorporated group they are eligible to nominate the property, but not to trigger the moratorium period, bid for the property or purchase the property.

- 2.5 In 2012, full and listed building planning applications were submitted to make alterations to the Crown Hotel to enable it to be converted to a retail store (app ref: 12/02156/FU & 12/02157/LI). Leeds City Council refused the application on the basis that that the premises could not be lawfully used as an A1 retail unit (as it was regarded as a Hotel) and that planning permission for the use of the site should be gained before works could be approved. The applicant submitted a Certificate of Lawfulness, to establish that the property was used as a public house (planning use class A4), which would mean that the property's use could be lawfully changed to a retail store (class A1) without requiring planning permission. The application was refused on the basis that the evidence submitted was not sufficient to prove that the site was used primarily as a public house. This decision was appealed and the planning inspector upheld the Appeal and found that the lawful use of the site was a public house falling within the planning A4 use class. Therefore the premises could be used as an A1 retail store without the need for a planning permission.
- 2.6 Boston Spa is a large village with a population of approximately 4,500, shortly to be expanded by two residential developments that are currently underway. On completion of these two schemes, anticipated early 2017, the developments will provide a further 275 houses and around an extra 850 residents.
- 2.7 Enterprise Inns PLC holds the freehold interest in the property, which is currently unlet and vacant. They submitted an objection to the listing on 31st July 2015.
- 2.8 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.'
- 2.9 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.

- 2.10 It is important to note that if both of the criteria stated at 2.8 or 2.9 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 the objections of the owner.
- 3.2 The nomination states that there were 4 pubs/hotels in Boston spa. The Admiral Hawke and the Fox and Hounds, which are both public houses and the Crown Hotel and the Royal Hotel which operated as a bar, restaurant and hotel. The Royal Hotel closed in 2003 and was converted to a Costcutter Food store and the Crown Hotel is currently vacant.
- 3.3 In August 2012, Enterprise Inns entered into an agreement with Tesco plc (subject to planning) to convert the building into an A1 retail unit. Leeds City Council refused planning consent as The Crown Hotel was considered a hotel and therefore did not have permitted development rights to change the use of the building without planning permission. This was overturned by a planning inspector, on appeal, in September 2014 on the grounds that the Crown Hotel was primarily used as a public house. Therefore, the premises can be used as an A1 retail store without the need for a formal planning permission, however, Listed Building consent will be required for any amendments to the building.
- 3.4 For a property to be added to The List of Assets of Community Value, the nominator must demonstrate that a current or 'recent past' 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.
- 3.5 ***Does a current non-ancillary use further the social interests or social wellbeing of the local community? Or did a non-ancillary use further the social interests or social wellbeing of the local community in the recent past?***
- 3.6 The nomination form details that before its closure in 2012, the Crown Hotel offered facilities that are not available at the other two pubs in the village, namely meals and rooms to let out and primarily as a bar where people gathered for social events. Local residents and groups used the venue for social occasions, such as listening to jazz music, a bridge club, disco evenings and as a general place to socialise over a drink with friends.
- 3.7 Leeds City Council have now classified The Crown Hotel as a public house (A4 use) as detailed in 2.5, thus allowing the building to have permitted development rights.
- 3.8 The Crown Hotel has been operating as a public house offering meals and rooms to let for a considerable length of time. The nominator details letters from 2 previous tenants that managed The Crown Hotel as a Public House from 1992 and there is pictorial evidence that dates the Crown Hotel back to 1897.

3.9 The landowner sent in 3 objections which are set out below with the case officer's response underneath each one;

- 1) The Crown Hotel has been closed since August 2012. The landowner refers to the term 'recent past' in section 88 2 (a) of the Localism Act. The case of R (Edgar) –v- Bournemouth (October 2013) is used to establish a timeframe for the term 'recent past'. Here, the Council found that 'recent past' was two years; a decision that was not overturned by the High Court on appeal. As it has been three years since the Crown Hotel closed (August 2012), the objection argued that the community use falls outside of the two year timeframe cited in the case.

The High Court did not, when considering this case, set 2 years as a limit for "recent past". The Court found that Bournemouth Council had reasonably considered what, in that particular case, the "recent past" might be defined as. Therefore, no upper limit applies and it is for Leeds City Council to determine whether the amount of time since its last eligible use can be considered to be within the recent past. Furthermore, the Department for Communities and Local Government (DCLG) view is that:

"with regard to 'recent past'...., it would leave it to the local authority to decide, since "recent" might be viewed differently in different circumstances.....in deciding whether a nominated asset should be listed, the local authority will need to exercise its duty to take all relevant matters into consideration."

In the case of The Crown Hotel there is evidence supplied by the nominator that the building has been in use to further the social interests of the local community, operating as a public house since 1992, and pictorial information dating the use of the Crown Hotel back to 1897. In the context of the building being used as a public house and hotel, for in excess of a 100 years, the three years that it has been closed is considered to be 'relatively recent'.

- 2) The second objection states that there are a number of Public Houses within Boston Spa and the surrounding areas that serve the wellbeing and social interests of the community. This is true, however, the nomination is in relation to The Crown Hotel and as such the question is whether or not that particular property is eligible, has to be considered in isolation. Under Section 90(2), the Council's duty is to "consider the nomination" and therefore to consider whether the land specified in the nomination is of "community value". There is no obligation however to assess whether the property did, or will further the social interests or social wellbeing of the local community in a way which is unique.
- 3) The third objection considers that it would be too costly to repair the Crown Hotel to a standard to open as a public house for future use, but provides no further details of the costs. The site visit by the case officer identified that the building appeared to be in a good state of repair inside and out. The Crown Hotel still has its bar intact and other relevant furnishings which would be necessary for it to re-open as a public house (appendix i). The nomination form also details that Enterprise Inns carry out periodic inspections and undertakes any work that is required. In the absence of detailed information to the

contrary, it is considered economically viable to refurbish the property to bring it back into its use as a public house.

- 3.12 It is considered by Leeds City Council that a non-ancillary use in the 'recent past' did further the social interests and social wellbeing of the local community. The setting of a pub is a social one and public houses are places where people go to drink and socialise. The fact that the local community frequented The Crown Hotel supports the fact that they did 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 Crown Hotel has been closed since 2012. However, before it closed, it had a non-ancillary use that furthered the interests and social wellbeing of the local community.
- 3.14 Officers are of the view that whilst it is possible that The Crown Hotel may remain closed or have its use changed under the permitted development rights; this is not the only realistic course of action. As illustrated in 3.6 The Crown Hotel had an existing client base that used the venue to further their interests and social wellbeing before it closed in 2012. The village of Boston Spa is expanding and expected to gain circa a further 850 residents once the two residential developments are completed, it could therefore be argued that if The Crown Hotel were to re-open, it could do so with a larger client base than before and therefore be an establishment that furthers the interests and wellbeing of the local and wider community in the future.
- 3.15 On balance, it is therefore considered that it is realistic to think The Crown Hotel would have an "eligible use" in the future.
- 3.16 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 Communities and the Executive Member of Regeneration, Transport and Planning have been informed of the nomination on 26th August 2015.
- 4.1.3 Wetherby ward members, parish councillors, colleagues in area leadership and planning have been informed of the nomination on 16th July 2015. No responses 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 had a non-ancillary use in the recent past that furthered the social interests of the local community and it is realistic to think that there could be an eligible use in the future. 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 Crown Hotel, 128 High Street. Boston Spa, Leeds, LS23 6BW to the List of Assets of Community Value.

7 Background documents¹

- 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.