

Report of **Asset Management Service**

Report to **Head of Asset Management**

Date: **12th September 2016**

Subject: **Community Right to Bid Nomination for The Merry Monk, Kirkstall Hill.
Leeds LS4 2TX**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Kirkstall		
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 Merry Monk, Kirkstall Hill, Leeds LS4 2TX to the List of Assets of Community Value.
2. The Council has received a nomination from Save the Merry Monk, 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. The Merry Monk was open and fully operational when the nomination was received on the 18th July. However, when the leasehold interest was bought from Unique Pub Properties Ltd by Blue pig Holdings Ltd, it closed and at the time of writing this report remains closed.
4. The nomination includes the pub building, the car park and the outside sitting area/beer garden. The two storey building has a public bar, and a function room. The pub hosted regular quiz nights, allowed use of the function room for community groups as well as hosting pool, darts and dominoes tournaments.

5. Officers conclude that the property has had a use in the 'recent past' which furthered the social interests or social wellbeing 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.

6. **Recommendations**

The Chief Officer Economy and Regeneration is recommended to add the Merry Monk, Kirkstall Hill, Leeds, LS4 2TX to the List of Assets of Community Value.

1 Purpose of this report

- 1.1 The purpose of this report is for the Chief Officer Economy and Regeneration to consider whether the Merry Monk, Kirkstall Hill, Leeds, LS4 2TX 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 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 Part 5 Chapter 3 of the Localism Act 2011 section (90) states if a local authority receives a community nomination, the authority must consider the nomination. The authority must accept the nomination if the land nominated is in the authority's area, is of community value and if the nomination is made by an eligible group.
- 2.3 On the 6th April 2015 the law changed removing the permitted development rights for pubs listed as Assets of Community Value. The new law requires a full planning application to be submitted for a change of use or demolition if the pub is listed as an Asset of Community Value.
- 2.4 There has been a national campaign by CAMRA to list pubs as Assets of Community Value. This has resulted in approximately 461¹ pubs being listed nationally and they make up 36% of all assets listed nationally. The Development Control Services collected data from 134 local planning authorities and their analysis highlighted that, of the 189 pub applications assessed, 155 were successfully added to the List of Asset of Community Value resulting in an 88% success rate. This is in the context of the average approval rate across all assets being 79%.
- 2.5 The nomination is for the Merry Monk pub site which is located within the Kirkstall 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.

¹ Data taken from CAMRA website and correct as of 10th November 2014

- 2.6 The freehold interest in the property is owned by Leeds City Council. At the time of receiving the nomination, an 85 year lease with a remaining term of 34 years was with Unique Pub Properties Ltd. However, on 22nd August, the long-term lease was taken over by Blue Pig Holdings Ltd. Therefore in line with section 107(2) Blue Pig Holdings is the owner and any restriction on disposal would affect their leasehold interest, not the council's freehold title.
- 2.7 The former leaseholder submitted objections to the nomination on 12th August 2016. The new leaseholder, Blue Pig Holdings was given the opportunity to submit their own objections, but declined stating that they were satisfied with the objections that had been submitted by the previous leaseholder.
- 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 either 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 objections made by the former leaseholder.
- 3.2 The nomination for the Merry Monk site was received on 18th July 2016 from Save the Merry Monk, which is an unincorporated group. The names of 21 people who are registered to vote in Leeds have been provided and checked against the electoral role. They do not distribute any surplus to their members and any

activities are wholly concerned with the Merry Monk site and any surplus applied for will be for the benefit of the area; therefore they are eligible to nominate a property as an asset of Community value.

3.3 As an unincorporated group Save the Merry Monk 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, Save the Merry Monk, in its current guise, could not purchase the nominated property.

3.4 Save the Merry Monk have stated that “ *if the owner would wish to sell the site, they would consider their options with the community and other organisations such as the Plunkett Foundation, who help people set up and run community co-operatives*”

3.5 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 or furthered the social interests and social wellbeing of the local community and that it is realistic to think that it can continue to do so, or be brought back into such a use within five years, whether or not in the same way.

3.6 The previous leaseholder, Unique Pub properties Ltd has submitted several objections to the listing nomination through their solicitors Gosschalks solicitors on 12th 2015. They are detailed below:

- The merry monk is not a building or land of community value and is not eligible for listing as an ACV.
- The nomination is made by a group which does not meet the requirements of section 89(2)(b)(iii) of the 2011 Act or the requirements of regulation 5(1)(c) of the Assets of Community Value. Gosschalks go onto say that regulation 5(1)(c) states that a nomination may be made by an unincorporated body of at least 21 individuals. These individuals must have a local connection. They argue that the nomination has been made by an individual who has ‘petitioned’ the 21 signatures to support the nomination.
- Gosschalks argue the following uses provided by the nominator to establish section 88(1) of the 2001 Act – current actual use of the property are not eligible. The supporting information from the nominator is in bold italics and the argument against the information from Gosschalks is in plain italics follows;
 - ***‘the pub enables local people to enjoy a range of drinks (and food)..’*** *the property is a public house, and its business is to sell drinks and food; the provisions of those drinks and food does not include a local requirement. The public house will sell all drinks to any individual if they meet the legal requirements to make such a purchase. They go on to say that the provision of drinks is a feature of every other public house in the vicinity of the property.*
 - ***‘The pub enables local people to meet and socialise..’*** *the property is open to people from any area, not simply the local*

community. In addition to this, the same applies for any public houses in the vicinity of the property.

- **'New research from Oxford University..'** this research has no bearing on the decision the council have to make pursuant to the 2011 Act and the 2012 Regulations.
- **'the pub hosts advertising for local events..'** the property is not an advertising venue and this, entirely ancillary, use is not a relevant consideration under the Act.
- **'There is a beer garden attached to the public house which is used and enjoyed by local people'** – the existence of a beer garden is not an integral part of the operation of a public house. This is an ancillary offering, as distinct from the primary offering (of drink and food), which may be used by some customers at some times. Were the public house to no longer provide a beer garden the local community would suffer no detriment to their social wellbeing.
- **'A children's play area for local families is available at the pub'** – this is not accurate. The children's play area is not provided for local families. It is provided for paying customers only. The provision of this facility is ancillary to the operation of a public house and were the area to be removed/no longer offered the local community would suffer no detriment to their social wellbeing.
- **'There are televisions screening sporting events...'** – this does not mean that the Property furthers the social community's wellbeing/interests. Televised sport is on offer to the local community in almost all public houses in the local area. Notwithstanding this the provision of such televisions is a very expensive ancillary offering and this is not required for the operation of a public house, the basis upon which this property has been nominated under the 2011 Act.
- **"There is good access for disabled people at the pub."** – this is a requirement of law and the will of our client and their tenant not to break this law is not indicative that the property furthers the social wellbeing/interests of the local community.
- **'There are good transport links available to and from the pub'** – the same applies to all public houses in the vicinity of the Property.
- **'This is the only pub in the village'** – this suggestion is very difficult to comment upon as Kirkstall is not a village. Furthermore there are numerous other establishments within Kirkstall which provide the same, or substantially the same, amenities and facilities as the Property. We would question why this 'point' has been included within the Nomination.

- ***‘There is free parking available which is accessed by the wider community.’*** – the same argument would apply to any public venue, of any description, in the vicinity of the Property if the same had a car park. Furthermore we can confirm that the use of the car park by any third parties other than those visiting the public house as patrons is prohibited by the occupational agreement in force. The Property has been nominated as an ACV on the basis that it is a public house and not an overflow or public car park, a use which has no connection with the public house use.
- ***‘The pub hosts regular quiz nights...’*** – this comment is questioned. The Property only reopened in May 2016 and, having checked the facebook page run by the operators (through which their advertising is operated), we can see a quiz night mentioned only once – on 10th May 2016 (copy print-out attached for reference).
- ***‘The pub has special value to local heritage and culture’*** – this comment is irrelevant for a number of reasons. Firstly, the Property is not a building of special heritage or cultural interest. Were this the case the building would be listed under the Planning (Listed Buildings and Conservation Areas) Act 1990, which it is not. In addition to this the listing of any property under the 2011 Act is not the appropriate way to protect a building if you believe it to be of historical or cultural importance.
- ***‘Regular car boot sales are held in the car park’*** - We can confirm that the use of the car park for the purposes of the holding of a sale is prohibited by the occupational agreement in force.
- ***“Meeting spaces are available for local community groups and charities to use”*** – no examples of such use are provided and we would suggest that this is because such use is infrequent (not least due to the periods of closure which the Property has experienced in the past). To consider what is irregular, potentially non-community, and passing use would be to ignore the overarching principle of the 2011 Act, which is to protect local communities. The 2011 Act is not simply to keep properties from being sold, notwithstanding there being no detriment to the local community if they are sold.
- ***‘...as it is the only place for several square miles available’*** – this is quite simply incorrect. We will discuss in greater detail below the other establishments which are in the vicinity of the Property however we would state that this point should not be considered.
- ***“The pub provides other important local services to the community including: employment opportunities for young people...”*** – this is not a relevant consideration under the Act. The employment of staff is not something which can be considered, under the 2011 Act, as furthering the social interests/wellbeing of the community.

- 3.7 Gosschalks state that “the facilities listed in the Nomination (see above) are common place. There are 15 public houses within a mile of the Property, all of which offer identical or virtually identical services as the Property. Gosschalks state that it is clear from the volume of nearby establishments offering the same/similar services as the property that the local community would not be at any risk of losing any social wellbeing, nor would the social interests of the community be damaged if the property was not listed as an ACV. Furthermore the local community’s interests would not suffer detriment if the property ceased to be a public house. There are numerous other businesses in the local area offering the same facilities to the community.”
- 3.8 The objection goes on “the abundance of rival pub businesses nearby has led to continuous and terminal decline of the pub business carried on at the property. There have been 6 tenants of the Property since February 2014, who have all tried (unsuccessfully) to revive the business. Overall trading volumes (including all beverages) are declining year on year with the current year tracking at []% per annum (‘pa’) below the year immediately preceding it. They go on to say that the continuing long term decline of the business carried on at the property means there is little or no goodwill left in the business and that many potential customers have chosen to go elsewhere some time ago.”
- 3.9 “For the reasons stated above the section 88(1)(a) test is not satisfied and it is not necessary to consider section 88(1)(b) of the 2011 Act. There is not an actual current use of the property that is not an ancillary use that furthers the social wellbeing or social interests of the local community. Section 88(2)(a) of the 2011 Act - Use of the Property in the recent past. Section 88(2) of the 2011 Act states that:-
- ‘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.
- 3.10 Gosschalks state that there is no statutory guidance on what constitutes ‘recent past’ for the purposes of section 88(2) of the 2011 Act. However it is settled law that:- a) It depends on the facts of the individual case (Scott v South Norfolk DC [CR/2014/0007]) b) It is not necessary to show lack of use for a period of 5 years or more or this would be explicitly set out in Section 88(2) of the 2011 Act (Worthy Developments v Forest of Dean DC [CR/2014/0005]).
- 3.11 Gosschalks state that the Merry Monk has repeatedly failed to attract a regular clientele. A pub restaurant business relies on regular trade to ensure repeat custom. Therefore ‘recent past’ in relation to a public house is shorter than it may be for other types of premises e.g. a community centre. They cite the High Court case of R (Edgar) v Bournemouth Borough Council (unreported, October 2013).

In this case the Court upheld Bournemouth council's decision to reject a nomination of Boscombe Centre for Community and Arts due to lack of community use of the property in the recent past.

- 3.12 The council's decision letter noted that as the 2011 Act does not establish a specific period in regard to the test of "recent past", the council had to consider what amounted to a reasonable period. Its view was that "recent" should, as a general rule, be regarded as more akin to a two-year, rather than a five-year, period, although the council recognised that it should exercise its discretion in each case and should not be fettered by a blanket or fixed policy. The council's position was that the most relevant factor had to be the length of the period that had elapsed since the community had last used the site. The ordinary dictionary meaning of "recent" was "lately, or that has just happened, belonging to a past period of time comparatively close to the present, not long past". They concluded that recent past may be less, even much less, than five years ago. The Court upheld the council's decision. It concluded that there was no error of law by the council, and the reasons given in their decision letter were proper and reasonable.
- 3.13 Gosschalks argue that the requirements of part (a) of Section 88(2) are not met. There has not been a time in the recent past when an actual use of the Merry Monk that was not an ancillary use furthered the social wellbeing or interests of the local community. They state that the local community stopped using the public house, preferring to take their custom elsewhere. For this reason they state that the business has failed and there is no goodwill. In any event, there has been nothing on offer at the Merry Monk which is not already on offer in the many rival businesses in the local area. As a result it cannot and has not furthered the social wellbeing or interests of the local community.
- 3.14 Section 88(2)(b) of the 2011 Act - Is it 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? The loss of the Property as a public house/restaurant would not appear to reduce the community's ability to meet its day to day needs, since there are 15 other public houses within 1 mile, which offer the same or similar facilities as those mentioned in the Nomination.
- 3.15 Gosschalks included a report produced by the Institute of Economic Affairs which evidences that a) there has been a steady decline in the number of public houses in the UK over the last 30 years b) Public houses have been closing at a rate of 50 per week and c) These closed pubs are not evolving into other, similar businesses. They are remaining closed for good. They conclude that the long term national trends and the empirical evidence on the fate of public houses after closure, it is not realistic to think the Merry Monk would buck these trends.
- 3.16 Officers have given regard to all of the information provided by the nominator and the landowner's representatives when assessing the nomination. It should be noted that some of the points raised by the nominator and addressed by the landowner's representative have varying degrees of relevance.

4 Did a non-ancillary use further the social interests or social wellbeing of the local community in the recent past?

- 4.1 The Merry Monk was built in the 1960's by John Smith's of Tadcaster. The freehold interest remained with the council. The lease for subsequent tenants of the Merry monk detailed a clause 3(4) that stated the use of the building on site *'to use the said building as licenced premises for the sale of beer, wine and spirits.'* This clause remains in the lease for another 34 years and has therefore been passed onto Blue Pig Holdings Ltd, the new leaseholder.
- 4.2 The Merry Monk ceased trading on 15th August 2016 and was still closed at the time of writing this report. However, the nomination form details that before the 15th August 2016, the Merry Monk operated as public house offering a place to socialise with drinks and food and had been doing so on and off since its opening in the 1960's.
- 4.3 It is considered by Leeds City Council that the use in the recent past, before the Merry Monk ceased trading on the 15th August 2016 does further 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 Merry Monk is such a place. If the customers solely intended to consume alcohol, it is consider 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. The Merry Monk was used as a pub and this use was non-ancillary and therefore fits the requirements set out in section 88(2)(a) of the Localism Act 2011.
- 4.4 The landowner's representative has questioned whether or not the Merry Monk was frequented by people from the local community. The nomination was supported by a list of 24 names and addresses from the local area. The objection itself points out that there are 15 other pubs within a mile of the Merry Monk, which itself suggests that pubs in this area serve a very local market. No evidence has been provided to suggest that the pub serves anything other than the local community and so it is reasonable to assume that there was at least some local use of the pub up to the point of its closure, and so quite clearly some relevant non-ancillary use in the "recent past".

Is it realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the building that will further the social interests or social wellbeing of the local community (whether or not in the same way)?

- 4.5 The lease granted by the council contains a use clause that the property can only be used as a pub. The new leaseholder has indicated that there are two possible options for the use of the Merry Monk site 1) Residential development and 2) Re-opening the Merry Monk as a public house. Discussions have taken place with colleagues in Land & Property and Housing Growth about a scheme which could

see the leaseholder purchasing the freehold (so the lease and any restrictions would disappear) and bringing the site forward for residential development.

- 4.6 It appears this use is likely. However, the owner has indicated he is considering re-opening the pub and his lease states that the property can only be used as a pub. When purchasing the leasehold, the owner did not ask for this to be changed. The building is still in place and the pub's fixtures and fitting remain. There may be questions over the viability of such an enterprise. Officers are of the opinion that there is more than one realistic future use for the property and that reopening as a pub within the next five years is a realistic prospect.
- 4.7 In answer to the eligibility of the group to nominate the Merry Monk, the Localism Act 2011 sets out that unincorporated groups can nominate. As an unincorporated group, whose individuals have been checked against the electoral register, Save the Merry Monk is eligible to submit a nomination to register a property as an Asset of Community Value. Indeed, Leeds City Council's nomination form states that the 21 people required to support the nomination must demonstrate that they live in the local community to where the asset in question is sited. In a similar case, a first tier tribunal, Punch Partnerships v Wyre Borough Council (CR/2015/0001), Punch had questioned the validity of the list of names put forward in the nomination form. The judge was satisfied that as Wyre Borough Council had checked the eligibility of those people against the electoral register for Wyre and therefore fulfilled the requisite local connection under the Asset of Community Value (England) Regulations 2012 that the nomination was eligible.
- 4.8 As part of the objections, Gosschalks have stated that there are a number of public houses in the vicinity that offer a similar service and serve the wellbeing and social interests of the community. This is of course true, however, 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.
- 4.9 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.

5 Corporate Considerations

5.1 Consultation and Engagement

- 5.1.1 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.
- 5.1.2 Executive Member of Communities has been informed of the nomination.
- 5.1.3 Kirkstall 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.

6 Conclusions

- 6.1 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.

- 6.2 The property has a "recent past" 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.

7 Recommendations

7.1 The Head of Asset Management is recommended to add the Merry Monk, Kirkstall Hill, Leeds LS4 2TX to the List of Assets of Community Value.

8 Background documents²

8.1 None

² 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.