

Report of **Asset Management Service**

Report to **Head of Asset Management**

Date: **25 September 2020**

Subject: **Community Right to Bid Nomination for The Royalty Inn, Yorkgate, Otley, LS21 2AU**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Otley & Yeadon		
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 The Royalty Inn, Yorkgate, Otley, LS21 2AU to the List of Assets of Community Value.
2. The Council has received a nomination from The Otley Pub Club which is an unincorporated community group. They are eligible to nominate the property, but not trigger the moratorium period, bid for the property or legally purchase the property.
3. The nomination is one of 16 received simultaneously for pubs in Otley. The Royalty Inn is located on Otley Chevin, about a mile and a half walk from Otley town centre.
4. Officers conclude that the property's current use furthers the social interests of the local community and it is realistic to think that this can continue in the future.

Recommendations

5. The Head of Asset Management is recommended to add the The Royalty Inn, Yorkgate, Otley, LS21 2AU 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 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 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. At present a pub's owner can change use to certain uses (including retail) or demolish the pub without seeking full planning consent. The new law, 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 The Royalty Inn which is located within the Otley and Yeadon ward (please see the red line boundary plan at appendix 1). The Ward Members have been made aware of the nomination and to date no responses have been received.
- 2.4 The freehold interest in the property is owned by Wellington Pub Company PLC and is managed by a landlord.
- 2.5 The landowner submitted an objection, via their solicitors Gosschalks, to the listing on 9 September 2020. They have stated that "The property is not a building or land or community value and should not be listed as an ACV because:
- 2.5.1 The Nominator has not produced sufficient evidence to demonstrate that they are a valid nominating group that meets the eligibility requirements of the Localism Act 2011 ('the 2011 Act') and the Assets of Community Value (England) Regulations 2012 ('the 2012 Regulations').

- 2.5.2 The Nomination is fundamentally flawed as it fails to establish the asset owner (this is an express requirement of Regulation 6 of the 2012 Regulations). The Property is registered at HM Land Registry and therefore this information is readily and publicly available to the Nominators.
- 2.5.3 The Property does not have a non-ancillary use which furthers the social well-being or social interests of the local community;
- 2.5.4 There has not been a time in the recent past when an actual use of the Property (that was not an ancillary use) furthered the social well-being or interests of the local community;
- 2.5.5 It is not realistic to think that there is a time in the next five years when there could be non-ancillary use of the Property that would further (whether or not in the same way as before) the social well-being or social interests of the local community.”
- 2.6 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.’
- 2.7 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.
- 2.8 It is important to note that if either of the criteria stated at 2.6 or 2.7 is 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 supplementary information document received from The Otley Pub Club and the objection received from the leaseholder’s representative. In addition, officers conducted a visit to each of the nominated pubs.

- 3.2 The nomination for The Royalty Inn was received on 17th February 2015 from The Otley Pub Club, which is a locally based unincorporated community group with at least 21 members eligible to vote in the Leeds area. This has been subsequently checked with the Leeds City Council Elections team.
- 3.3 As an unincorporated community group with a local connection, The Otley Pub Club is eligible to submit a nomination to register a property as an Asset of Community Value but not to trigger the moratorium in order to make a bid for the property. Therefore, the Otley Pub Club cannot purchase the nominated property. However, in considering this nomination, it is irrelevant whether the Otley Pub Club satisfies the requirements for a “community interest group” under Section 95, as well as satisfying the requirements for “a voluntary or community body with a local connection” under Section 89. It is entirely possible, and permissible under the Act for one community group to nominate a property, and for a different community group to later trigger the moratorium period.
- 3.4 The Otley Pub Club is a community organisation made up of local pub supporters. The Otley Pub Group is free to join, their ‘Role and Constitution’ states that their purpose is:
- For people to be kept informed of what is going on in the pubs
 - To campaign against pub closures and on other issues affecting local pubs and be the ‘voice of pub supporters’ in the town
 - For people to support, identify with and feel some ‘ownership’ of Otley’s pubs as a community.
- 3.5 The Otley Pub Club has nominated 16 pubs in the Leeds District. All the pubs in Otley have been nominated by the Pub Club and have all previously been added to the list of Assets of Community Value, and each of these listings have now reached their five year expiry date.
- 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 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. It is important to note that each nomination of each pub must be considered separately and on its own merits, and there is no presumption that because the nominated land is a pub, then it is automatically land of community value.

Does a current non-ancillary use further the social interests or social wellbeing of the local community?

- 3.7 The Otley Pub Club provide the following reasons in their nomination for thinking that the Council should conclude there is an actual, current, non-ancillary use which furthers the social wellbeing or social interests of the local community.
- 3.8 That ‘Otley is a famous pub town’ it has a reputation which is both nationally and internationally known. The established ‘Historic Otley Ale Trail’ links together the

Otley pubs on a publicised trail which can be downloaded from the Otley Pub Club website.

- 3.9 A number of the Otley pubs date back to the 17th and 18th centuries and form an important part of the town's history and architecture.
- 3.10 Otley hosts a number of annual festivals and one off events such as: The Folk Festival; The Walking Festival; Otley Word Fest; The Victorian Faye; Otley Cycle Races; The Street Festival and the 'turning on' of the Christmas lights. The pubs play an integral role by providing more than food and drink. They provide venue hire and rooms for events to allow festivals to take place across the town rather than in one hall; amenity space for the local community and tourists visiting the town for an event; they add to and enhance the ambience of the town making it a place where people want to live and visit.
- 3.11 The Royalty Inn is located on Otley Chevin about a mile and a half walk from Otley town centre. It is remote from any other buildings. The nomination form states that the Royalty is a historic pub having provided refreshments for walkers, horse riders and others at the top of the Chevin since 1874. The pub was closed for several months (re-opening in March 2014) and during that time Otley Pub Club claim to have had more enquiries from local residents than any other pub in Otley. The Pub Club believe its position and history make it an important Otley landmark. It is part of the Historic Otley Ale Trail and the nomination form sets out how the pub is used by some local organisations.
- 3.12 The Royalty's relatively remote location makes the case less clear that there is a local community whose social wellbeing or social interests are furthered. It is not in the town centre and is not a local village pub. However, the pub is only 1.5 miles from the centre of Otley and its unique remoteness offers something the other pubs in Otley do not. It is therefore considered that the pub serves the local Otley community.
- 3.13 The landowner's objections focus on the fact that the pub is in private ownership and as such should not be considered to further the community's social wellbeing or social interests. The Localism Act 2011 makes no exclusion for privately held land. Indeed, the Community Right to Bid: Non-Statutory Advice Note for Local Authorities produced by DCLG states at paragraph 2.4 "Nominated assets may be owned by anybody, including the local authority and the Crown".
- 3.14 The objection goes on to claim it is very relevant that there is no absolute certainty that the property must continue in its current use as, for example, it could be converted into retail premises without the need for planning permission. This point may be true, but the Localism Act does not seek absolute certainty. Instead, the criteria states that it must be "realistic to think" an eligible use can continue, whether or not in the same way. As an operational pub with no evidence submitted to make the case that the use can't continue, it is considered realistic to think its current use can continue.
- 3.15 The fact that the Nominator cannot be considered an "Unincorporated Body" in accordance with Regulation 5(1) of the Assets of Community Value (England) Regulations 2012/2421 (the "Regulations"); The landowner suggests that the

group has not provided sufficient evidence to confirm its validity as a nominating group. However, as mentioned above the Club have provided their Role and Constitution document, and evidence has been provided to the Council from the Club's Treasurer to confirm the following;

- Otley Pub Club is a non-incorporated community membership group.
- Otley Pub Club funds are very limited as standard membership of Otley Pub Club is free, premium membership is £10 which provides a small level of funds.
- Any and all funds are spent on the purposes of Otley Pub Club as laid out in the constitution (the promotion and protection of Otley's pubs).
- Therefore, it is clear that the Pub Club satisfy the criteria for a voluntary or community body with a local connection under Section 89(2) and Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012

3.16 The Treasurer confirms that Otley Pub Club has no surplus, but if at any stage they did, it would be spent on the purposes of Otley Pub Club as laid out in the constitution (the promotion and protection of Otley's pubs).

3.17 The Landowner states that the Nominator has failed to provide sufficient reason to believe that the Property satisfies the land of community value criteria under s.88 of the Localism Act 2011 (the "the "Act"), and no evidence that could be relied upon to substantiate its assertions.

- However, Regulation 6 of the 2012 Regulations does not require a nomination to include "evidence" of the various current uses, rather the nomination must include "the nominator's reasons for thinking" that the Council should conclude the land is of community value. Therefore, officers conclude that the Pub Club's nomination contains sufficient information to meet this requirement. However, the landowner is correct to say that the information in the nomination about the Property's historic or architectural merits is not relevant when assessing its current uses.

3.18 It is considered that the current uses of the Property do further the social interests and social wellbeing of the local community, and are not ancillary. In addition to the information provided in the nomination, it is generally accepted that 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 there is nothing to suggest that The Royalty 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 view that they do 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)?

- 3.19 The Royalty Inn is currently open and trading. As mentioned above, no compelling reasons have been given to think that a continuation of the current uses is not a realistic outcome. Therefore, it is considered reasonable for the Council to conclude that it is realistic to think the current uses will continue and that such uses will be eligible, and will not be ancillary.
- 3.20 Therefore, it is considered that the criteria for listing as set out in Section 88(1) of the Localism Act 2011 have been met and the Property 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 Otley and Yeadon Ward Members have been informed of the nomination. No comments have been received.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The public sector equality duty in the Equality 2010 must be considered whenever the Council is discharging any of its functions. The duty is to have due regard to the need to eliminate discrimination, harassment etc., and advance equality of opportunity and foster good relations between those who share a relevant protected characteristic and those who do not. This means the Council must assess the risk and extent of any adverse impact on people with a relevant protected characteristic, and the ways in which such risk may be eliminated, before reaching a decision. It is not considered that listing the Property as an asset of community value could give rise to any such risk.

4.3 Council policies and City Priorities

- 4.3.1 The Council has a duty under Section 90 of the Localism Act 2011 to consider community nominations, and to accept nominations if the land is in the authority's area and is of community value.

4.4 Resources and value for money

- 4.4.1 The Localism Act contains a right to appeal for private landowners, first by way of requesting the authority to carry out a listing review, and then by appeal to the first tier tribunal. If the tribunal found in the landowners favour, the authority could be liable for the costs of the appeal.

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 Act. This compensation is payable by the Local Authority.

4.5 Legal Implications, Access to Information and Call In

4.5.1 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) and under 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 given the landowner's rights of appeal mentioned above.

5 Conclusions

5.1 In order to be included on the List of Assets of Community Value, the statutory criteria referred to above must be met.

5.2 For the reasons mentioned above, it is considered reasonable to conclude that the statutory criteria have been met and the Property 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 Royalty Inn, Yorkgate, Otley, LS21 2AU to the List of Assets of Community Value.

7 Background documents

7.1 None