

## **BARNSELEY METROPOLITAN BOROUGH COUNCIL**

### **REPORT AND RECORD OF THE DECISION OF THE DIRECTOR OF LEGAL AND GOVERNANCE**

#### **ASSETS OF COMMUNITY VALUE UNDER THE LOCALISM ACT 2011**

#### **NOMINATION TO ADD THREE HORSESHOES PUBLIC HOUSE TO THE LIST OF ASSETS OF COMMUNITY VALUE**

**Report of the Director of  
Legal and Governance**

#### **Introduction**

The Localism Act 2011 introduced provisions that provide local groups with a right to add a building or other land for listing by the local authority as an Asset of Community Value where they are believed to be of value to their social interests or social well-being and where it is realistic to think that it can be used for the same purposes over the next five years.

#### **Background to this Nomination**

On 3 September 2015 the Campaign for Real Ale submitted a nomination to add Three Horseshoes Public House, Barnsley Road, Brierley, to the Council's List of Assets of Community Value.

On 3<sup>rd</sup> November 2015 the pub was added to the list.

On 4<sup>th</sup> November 2015 the then owner indicated its intention to dispose of the pub. This triggered an interim moratorium period of 6 weeks where any community group could indicate whether they wished to be considered as a potential bidder. No community group came forward during this period and so after 15<sup>th</sup> December the then owner was free to sell the pub.

A contract for disposal of the land was then sent to the council in January 2016. Upon receipt the Council was required by the legislation to remove the pub from the list. The land sale was subsequently completed.

On 11<sup>th</sup> October 2016 the Council received a second nomination to add the pub to the list of Assets of Community Value. There is nothing in the legislation to prevent a second nomination being made once a disposal of the land has occurred

#### **Authority**

On 22 October 2014 the Council's Cabinet authorised the Director of Legal and Governance to determine nominations to add land or buildings to the Council's List of Assets of Community Value, subject to:

- (i) The consultation of local ward members, the Senior Management Team, the Head of Strategic Property & Procurement and the Area Governance team with regard to each nomination in order to seek their comments.
- (ii) In situations where the Director of Legal and Governance considers that the nomination is contentious or of significant local importance, the nomination shall be referred to the Communities Cabinet Spokesperson for approval

### **The nomination**

#### **About the body making the nomination**

The nomination has been made by Campaign for Real Ale Limited ("CAMRA") and CAMRA is a company limited by guarantee. Under regulation 5 of the Assets of Community Value Regulations 2012 a voluntary or community body can include a company limited by guarantee that does not distribute any surplus to members. The First tier Tribunal case St Gabriel Properties established that a branch application by Camra is a valid nomination.

#### **About the nomination**

The application is in the same form and does not materially differ from that previously submitted. The report and decision previously made is attached

### **Consultation Responses**

The Director of Legal and Governance consulted all of the applicable persons with regard to the nomination.

The Area Governance team commented that they were not aware of any interest and if the pub has been closed for some time then that interest is unlikely to develop as time progresses to a point where there is a desire to form a coalition to reopen it. They were subsequently contacted by a local resident asking for advice on how to form a group to acquire and run the pub as an asset and are currently liaising with them.

The same local resident contacted the report writer who suggested she would organise 400-500 people to pay £500 each to generate money to purchase pub to use as a community asset as they have nothing else like it. She is contacting camra for further advice. She believes it was purchased by Dyson Homes for £180k and so the proposal is realistic.

Councillor Higginbottom provided an email she had recently received from another local resident seeking Councillor support to try and turn the pub into a community asset using money received from section 106 agreements

Councillor Ennis supports the application.

Asset management commented that the pub appears to have been closed since June 2015; there is no known interest from the local community since it was closed in turning it into a community asset. When it was open it was associated with anti-social behaviour. It appears to be unviable. There is a local club so the value of it as a community asset is questioned

#### Objection to the nomination

The new owner's representative makes the following points

- no bids were made when the property was listed as an asset in November 2015 and a sale of the land was proposed.
- The nomination is in their opinion made to cause nuisance rather than protect the community.
- Evidence of support from local people is required with a nomination
- Property has stood empty for some time and priority should be to put the building back to some use; to remain empty would be an eyesore and a security risk
- Nomination does not satisfy section 88 criteria as it is not in actual use

#### Assessment of nomination

Section 88 of the Localism Act 2011 defines "land of community value" as follows:

"(1)... a building or other land in a local authority's area is land of community value if in the opinion of the authority-

- (a) an actual current use of the building or other land that is not ancillary use furthers the social wellbeing or social interests of the local community, and
- (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

(2)... 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 social 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."

Section 88(6) then defines "social interests" to include cultural interests, recreational interests and sporting interests. A public house could be included within this definition.

Given that the pub has been closed since June 2015 it is section 88(2) that is relevant.

As pointed out by Asset Management, and notwithstanding the previous decision, the evidence of Camra on whether there has been an actual use in the recent past that furthers the social wellbeing and social interest of the local community is somewhat equivocal

In the three years prior to closure (which could be interpreted as the recent past) Camra indicate that the business went downhill with a succession of temporary owners, erratic opening and poor customer behaviour being allowed to happen. It is questionable whether in these circumstances the actual use of the pub furthered social wellbeing or social interest. Nevertheless the activities listed which occurred in the pub are sufficient, on balance, for the nomination to pass the test in section 88(2)(a) notwithstanding some inconsistencies e.g. on the one hand the pub and food menu were said to have gone downhill and on the other hand "the pub has a great food menu enjoyed by the local community"

Section 88(2)(b) – The pub was closed in June 2015 after three years of temporary management with erratic closures and sold in November 2015. This suggests that continuing the use has been problematic for some time.

It has now been sold. Neither Camra, the original nominating group, nor any other local community group came forward to express any interest as a potential bidder during the interim moratorium period. This would support a view that it is not realistic to think that a use of the building that furthers the social wellbeing or interest is possible. The initial response of the Area governance team and Asset Management support this view.

The evidence to the contrary is supplied by Councillor Higginbottom, which suggests money received via section 106 agreements could fund turning the building into a community asset. The contact by local residents to the report writer and area governance team suggest the potential for a community group to form and secure sufficient resources to acquire the pub and run it as a pub or for other community purposes

Planning policy confirms that there are no policies in the local plan that provide for section 106 contributions to be made specifically for community buildings or to support community uses. If there was a community group to propose acquisition the generation of funds, via this route does not look realistic for the next five years.

### **Elected Member Conflicts of Interest**

Not applicable.

### **Recommendation**

Although finely balanced it is recommended that the Three Horseshoes is added to the list of Assets of Community Value as there is recent actual use and with local

residents organising a community group, a realistic prospect of a community use of the pub within the next five years

**Decision taken**

~~1 Refer to Communities Cabinet Spokesperson for decision OR~~

~~2 The Three Horseshoes is NOT added to the Council's List of Assets of Community Value OR~~

3 The Three Horseshoes is added to the Council's List of Assets of Community Value

Date:

6/11/2017

Signed:

A handwritten signature in black ink, appearing to be 'A F' followed by a large, stylized loop.

Andrew Frosdick  
Director of Legal and Governance

