

Key Decision Required:	No	In the Forward Plan:	No
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CABINET

23 JANUARY 2015

WELL-BEING AND PARTNERSHIPS PORTFOLIO HOLDER

A.11 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: TRAFALGAR PUBLIC HOUSE DOVERCOURT
(Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To determine whether The Trafalgar Public House Dovercourt meets the criteria set out in the Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) following its nomination as an Asset of Community Value by Harwich Town Council.

EXECUTIVE SUMMARY

A valid nomination to register an asset of community value has been received from Harwich Town Council in respect of The Trafalgar Public House, 616 Main Road Dovercourt, Harwich Essex CO12 4LW as shown identified in the plan included within Appendix A.

If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in Section 88 of the Localism Act 2011 and The Assets of Community Value Regulations 2012.

The Government’s non statutory guidance defines an asset of community value as: “Building or other land whose main (i.e. “non-ancillary”) use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future”. The Report provides an assessment of the nomination.

The Cabinet should consider the content of the nomination against the statutory criteria and determine whether the asset should be included within the Council’s List of Assets of Community Value.

Taking the evidence provided into account it is recommended that the building nominated does meet the criteria set out Section 88 of the Localism Act 2011 (as shown in sections 1 and 2 of the table above). Accordingly it is recommended that the criteria are met and that the building should be listed as an Asset of Community Value.

RECOMMENDATION(S)

That Cabinet consider the Nomination and determine whether the nominated asset meets the definition of an asset of community value as set out in section 88 of the Localism Act 2011. Officers recommend that the asset meets the criteria set out in section 88 of the Localism Act 2011 and should be added to the list of Assets of Community Value.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Assets of Community Value exist in a range of forms and functions. Individual properties may contribute in different ways across the spectrum of Council priorities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There are circumstances where the Council may be required to pay compensation. It is hard to quantify this risk and it is therefore not proposed to make a specific allocation. The Advice Note issued by Department of Communities and Local Government (“DCLG”) states that if compensation exceeds £20,000 in any one financial year support can be requested through their burdens funding scheme.

Risk

The Trafalgar is still in use as a Public House although there is always some risk that the decision in relation to the nomination will be controversial whether it is listed or not.

LEGAL

If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in Section 88 of the Localism Act 2011:

- (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 an 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.

Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

Under Schedule 2 of the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, the determination of an appeal against any decision made by or on behalf of the authority can be made by the Executive or another Committee. It is considered that as Cabinet will be the decision maker of the outcome of the nomination, any review received should be considered and referred to the Community Leadership and Partnerships Overview and Scrutiny Committee, which already includes within its terms of reference review of Cabinet decisions.

The Assets of Community Value (England) Regulations 2012 (“the Regulations”) provide procedural detail to give effect to the assets of community value scheme. A report earlier on this agenda set out a proposed procedure for dealing with the nomination of Assets of Community Value in accordance with the Regulations. Consideration of the nomination has been delayed by the drafting of the procedure. However Officers have adhered to the draft procedure insofar as possible and it is now proposed that Cabinet considers the nomination in accordance with the procedure.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Assets of Community Value exist in a range of forms and functions. Individual properties may contribute in different ways across the spectrum of implications. The Act and Regulations are intended to increase public engagement.

Area or Ward Affected

Harwich East Central and Harwich West Central

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Act and Regulations, also collectively known and described as Community Right to Bid place a duty on local authorities in England and Wales to maintain a list of land in their areas that is land of community value as nominated by the local community.

The local authority must consider only if the nominated asset meets the criteria set out in Section 88 Localism Act 2011 in that it is satisfied:

- (a) the actual use, not an ancillary one, that furthers social wellbeing or social interest of the local community and
- (b) that there can continue to be a non-ancillary use, which will further the social well-being or social interests of the local community.

The Council must maintain:

- A list of assets that are held to be of community value; and
- A list of assets identified in unsuccessful nominations.

If land or buildings are placed on the list of assets of community value:

- They remain on the list for five years;
- They are subject to a local land charge;
- If the owner wishes to sell (some exemptions apply) the asset they must notify the Council;
- The Council must notify the nominator and publicise the potential sale;
- All community groups have a six week window to register their intent to bid for the asset;
- If no registration of intent is received the owner may then sell the asset as they see fit (subject to any normal legal processes);
- If intent is registered community groups are then allowed a further 20 weeks (strictly 6 months from the date of the owner's notice) to raise money, reach agreement or otherwise bid for the asset;
- The owner may sell to a community group at any time but is never obliged to do so;
- If no community bid is made or accepted within the six months the owner may then sell the asset as they see fit;
- No further bid or moratorium can be made for a period of 18 months from the owner's notice; and
- If the owner suffers financial loss as a result of the imposition of either moratorium the Council must compensate the owner.

The provisions of the community right to bid does not:

- Restrict who the owner of a listed asset can sell their property to, nor at what price;
- Confer a right of first refusal to community interest groups,
- Enable a community group to trigger disposal of a site;
- Place any restriction on what an owner can do with their property, once listed, if it remains in their ownership.

Only the owner of the land has the right to seek a review of the decision to include any land on the list in accordance with Section 92 of the Localism Act 2011. This must be done in writing within 8 weeks of the written notice of inclusion of the land in the list. The table below, based on guidance produced by the Public Law Partnership sets out an overview of what the Act and Regulations intend to constitute as an Asset of Community Value”.

Nature of use	Social use was/is				
	Never	Long Past	Recent Past	Present	Future
The Act intends to apply to Land and Buildings Where:					
(1) The main use of the land or building furthered the social wellbeing or social interests of the local community at the present time AND it is realistic to think that this can continue into the near future (even if the type of social use or benefit might change)*				✓	✓
(2) The main use of the land or building furthered the social wellbeing or social interests of the local community in the recent past AND it is realistic to think that this could again happen in the next five years (even if the type of social use or benefit might change)#			✓		✓
The Act does not intend to apply to land where:					
(3) The main use of the land or building furthered the social wellbeing or social interest of the local community some years ago but is not presently in use for a social purpose		✓			
(4) The land or building has not recently been, and is not currently, in use for a primarily social purpose.	✓				
(5) The land or building has been empty or derelict for many years and remains so today.	As applicable				

In their Guidance Public Law Partnership provide some helpful interpretation of these terms:

*This could apply to a broader set of activities and not just cultural, recreational and sport interests as provided by the Act. Working with local communities it could include: any land or building where the main purpose is for the provision of public services for education, health and wellbeing or community safety e.g. nurseries, schools, children's centres, health centres, surgeries, hospitals, day care centres, and residential care homes. Sport, recreation & culture e.g. parks and open green spaces, sports and leisure centres, libraries, theatres, museums and heritage sites, cinemas, swimming pools. Community services e.g. community centres, youth centres, and public toilets. Any economic use which also provides important local social benefits e.g. village shops, pubs, markets.

#What does it mean "realistic to think that this can continue into the near future"? For the use which is **currently ongoing**, the working assumption should be that the present use can continue into the future, unless the local authority is able to identify evidence that is unlikely to be the case. In other words where the asset is presently in social use there should be a **presumption of continued viability**, unless clear evidence suggests otherwise. For a **social use which has lapsed** and needs to be re-established the local authority will need to take a view on the realism of re-establishing this. A new approach can help to re-establish services that were previously not viable.

CURRENT POSITION

The Nomination Form has been submitted by Harwich Town Council (attached at Appendix A), and contains at B4 and B5 reasons why the nominators consider that the building is of community value and how the land could be acquired and used in the future. A plan of the area nominated is also included. The nomination states that the building currently trades as a public house fulfilling its role as a place for the local community to socialise, and enjoy activities in an area well served by public transport. The nomination also states this is adding to the social wellbeing of the community and with the immediate area forecast to grow in the coming years, is a vital resource. The request for listing as an asset would be to enable the local community to request the right to bid for the site should it be put up for sale to secure the continued use as a public house and the development of wider community benefits including, but not limited to a shop, post office and community centre.

In accordance with the Regulations the landowner has been notified of the nomination although the owner has not made representation. *However, if Officers receive a representation prior to the meeting of Cabinet it will be provided at the meeting for consideration.*

The Council is required to consider only whether the asset meets the criteria set out in Section 88 of the Act.

The building continues to trade as a public house but was recently sold by its former brewery owner to another as part of a wider transfer of public houses between the two parties. The Nomination request is being sought to allow the local community the time to raise the funding required to purchase the building should it be put up for sale again with the intention of continuing the main use which furthers the social wellbeing or interests of the local community.

Taking the above into account it is recommended that the building nominated does meet the criteria set out in Section 88 of the Localism Act 2011 (as shown in sections 1 and 2 of the table above). Accordingly it is recommended that the criteria are met and that the building should be listed as an Asset of Community Value.

BACKGROUND PAPERS FOR THE DECISION

Non-statutory advice note for local authorities produced by DCLG Community Right to Bid – October 2012

APPENDICES

Appendix A – Nomination Form (Redacted)

Tendring
District Council



LOCALISM ACT 2011

THE COMMUNITY RIGHT TO BID

NOMINATION FORM

A: You and your organisation

Your Name
Your Organisation (full official name) Harwich Town Council
Your position in the organisation
Organisation address (including postcode)
Daytime telephone no.
Email address
How and when can we contact you?*
Monday – Thursday 9am – 1pm

*other correspondence address or preferred way or time for us to contact you

Type of organisation

Description	Put a cross <input checked="" type="checkbox"/> against all those that apply	Registration number of charity and/or company (if applicable)
Neighbourhood forum		
Parish Council	<input checked="" type="checkbox"/>	
Charity		
Community interest company		
Unincorporated body		
Company limited by guarantee		
Industrial and provident society		

Unincorporated bodies only:

In the case of an unincorporated body, at least 21 of its members must be registered to vote in the Tendring District or an adjoining authority. If relevant, please confirm the number of such members. If they are registered to vote in the area of a neighbouring local authority, rather than in Tendring, please confirm which area that is.

N/A

Local connection

Your organisation must have a local connection, which means that its activities are wholly or partly concerned with the administrative area of Tendring District Council or a neighbouring local authority. Please explain what your organisation's local connection is.

Town Council

A6 Distribution of surplus funds (certain types of organisation only)

If your organisation is an unincorporated body, a company limited by guarantee, or an industrial and provident society, its rules must provide that surplus funds are not distributed to members, but are applied wholly or partly for the benefit of the local area (ie. within the administrative area of Tendring or a neighbouring local authority). If relevant, please confirm that this is the case, and specifically which area this applies to.

N/A

A7 More about your organisation

What are the main aims and activities of your organisation?

N/A

A8 Your organisation's rules

Please send us a copy of the relevant type of document for your organisation, and put a cross in the next column to indicate which one this is	
Memorandum and Articles of Association (for a company)	N/A
Trust Deed (for a trust)	N/A
Constitution and/or rules (for other organisations)	N/A

Part B: About the land or building(s) you are nominating

B1 Description and address

What it is (eg. pub, local shop)
Pub
Name of premises (eg. Royal Oak / Littletown stores)
The Trafalgar
Address including postcode (if known)
616 Main Road, Dovercourt, CO12 4LW

B2 Sketch plan

Please include (here or on a separate sheet) a sketch plan of the land. This should show:-

- The boundaries of the land that you are nominating
- The approximate size and position of any building(s) on the land.
- Any roads bordering the site.



Extract from Land Registry

B3 Owners and others with an interest in the building or land

You should supply the following information, if possible. If any information is not known to you, please say so.

	Name(s)	Address(es)
Names of all current occupants of the land		
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)		
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)	N/A	

B4 Why you think the building or land is of community value

Note that the following are not able to be assets of community value:-

- *A building wholly used as a residence, together with land "connected with" that residence. This means adjoining land in the same ownership. Land is treated as adjoining if it is separated only by a road, railway, river or canal.*
- *A caravan site.*
- *Operational land. This is generally land belonging to the former utilities and other statutory operators.*

Does it currently further the social wellbeing or social interests* of the local community, or has it done so in the recent past? If so, how?

The pub is currently trading and therefore fulfilling its role as a place for members of the local community to socialise and enjoy a drink in a responsible environment.

It provides an environment for the local community to enjoy activities such as pool and darts.

It is accessible by public transport therefore has a wide catchment area.

The pub is an historic coaching inn which still retains the saloon / lounge bar layout as opposed to the open plan layout of many modern pubs.

Like many areas across Tendring, the population of Dovercourt is forecast to grow with new housing developments and inward investment.

The Ministerial Foreword in the Government's own guidance for local authorities on assets of community value begins: "**from local pubs** and shops to village halls and community centres, the past decade has seen many communities lose local amenities and buildings that are of great importance to them."

Community pubs represent the very essence of a community asset, providing meeting place where social networks are strengthened and extended and where people can mix with others from different backgrounds to their own. Pubs host a wide variety of community-oriented events and activities that add considerably to local civic life.

As well as injecting an average of £80,000 into their local economy each year, pubs play a key role in raising money for local charities – it is estimated that the average pub raises around £3000 a year for charity. The Institute of Public Policy Research (IPPR) has used 'Social Return on Investment' methodology to quantify the wider social value which pubs generate for their communities, which cannot be captured in financial terms. These wider community benefits range from the amount of money the pub raises for charity to the reduced risk of social isolation through opportunities for pub-goers to make new friends and strengthen community ties. The IPPR's research found that each pub generates between £20,000 and £120,000 of wider social value to their communities¹.

¹ <http://www.iopr.org/publications/55/8519/pubs-and-places-the-social-value-of-community-pubs>

Could it in future further the social wellbeing or social interests* of the local community? If so, how? (This could be different from its current or past use.)

It has recently changed ownership from Greene King to Hawthorn Leisure as part of a wider transfer of pubs between the two parties. Although their initial plan is to continue trading, the change of ownership creates uncertainty as to whether the new owners may decide to cash in on the property's financial value, rather than its community value.

The aim of the ACV nomination is to secure the future of the premises as a public house. As noted below, as well as continuing as a public house it could diversify to provide additional community services, including a small shop or café etc.

**These could be cultural, recreational and/or sporting interests, so please say which one(s) apply.*

B5 How could the building or land be acquired and used in future?

If it is listed as an asset of community value, community interest groups (not just limited to your organisation) will get the opportunity to bid for it if it comes up for sale. Please set out how you think such a group could fund the purchase of the building or land, and how they could run it for the benefit of the community.

Should the current owners decide to sell a local community group would be able to consider buying the pub in order to secure its future as a public house. In addition to continuing to operate as a public house they would be able to look into offering additional services to maintain its ongoing viability. These could include, but not be limited to, including a small shop, crèche services, post office, community centre, café, etc.

As well as raising finance from a community share issue funds could be sought from grant organisations as well as help from support from organisations such as The Plunkett Foundation.