

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

24 APRIL 2015

WELL-BEING AND PARTNERSHIPS PORTFOLIO HOLDER

A.7 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE CROSS INN PUBLIC HOUSE GREAT BROMLEY
 (Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To determine whether The Cross Inn Public House Great Bromley 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 Great Bromley Parish Council.

EXECUTIVE SUMMARY

A valid nomination to register an asset of community value has been received from Great Bromley Parish Council in respect of The Cross Inn Ardleigh Road Great Bromley Colchester Essex CO7 7TL 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 below). 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 Cross Inn 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. In January 2015 Cabinet agreed a procedure for dealing with the nomination of Assets of Community Value in accordance with the Regulations.

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

Ardleigh and Little Bromley

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 Great Bromley Parish 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 not that well served by public transport. The nomination also states this facility is adding to the social wellbeing of the community and with the additional benefit that for the past 10 years The Cross Inn has also provided accommodation for Great Bromley Post Office the premises are providing vital resources to the community. 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 post office.

In accordance with the Regulations the landowner has been notified of the nomination and representation made on their behalf and by them is attached at Appendix B. The words used are those of the owner and their agent.

The representations make an assertion that the location sketch included in the nomination renders it invalid. This has been looked into by Officers and has been rejected.

In addition, the representation provides evidence that the businesses on the site are no longer viable because of lack of custom. However, it may be that a different business model could increase trade and that a pub and related businesses on the site could be viable in the longer term. At the time of printing evidence put forward by the owners arguing that it is not reasonable to think that the current uses could continue is not sufficient to override the initial presumption in the guidance that the current use could continue. Therefore it is the view of officers that it is reasonable to conclude that a similar business could take place and therefore the criteria set out in the regulations are met.

Any additional representations received from the nominator or the owner following printing of this report will be made available at the Cabinet meeting.

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 and provides accommodation for the Post Office facility. The Nomination was made by the Parish Council and a listing would allow the local community the time to raise the funding required to purchase the building should it be put up for sale, potentially 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)

Appendix B - Representations by and on behalf of the owners

Tendring District Council



LOCALISM ACT 2011

THE COMMUNITY RIGHT TO BID

NOMINATION FORM

A: You and your organisation

Your Name [redacted]

Your Organisation (if applicable) [redacted]

Your position in the organisation [redacted]

Organisation address [redacted]

Day [redacted]

Em [redacted]

How and when can we contact you?
By email any time

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

Type of organisation

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

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.

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.

[REDACTED]

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.

A7 More about your organisation

What are the main aims and activities of your organisation?

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	X
Memorandum and Articles of Association (for a company)	
Trust Deed (for a trust)	
Constitution and/or rules (for other organisations)	

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

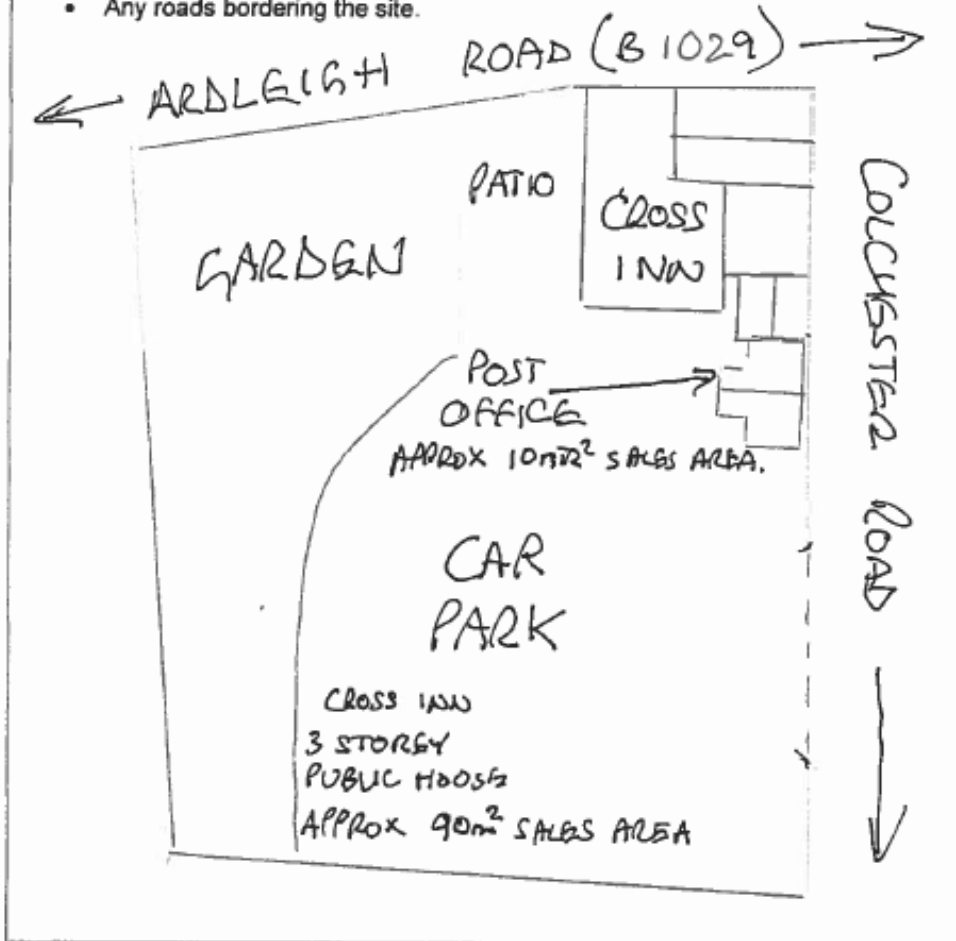
B1 Description and address

What it is (eg. pub, local shop)
PUBLIC HOUSE & POST OFFICE
Name of premises (eg. Royal Oak / Littletown stores)
THE CROSS INN & POST OFFICE
Address including postcode (if known)
THE CROSS INN, ARDLEIGH ROAD GREAT BROMLEY ESSEX CO7 7TL

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.



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)		

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 Cross Inn is a small village public house situated in the hamlet of Bromley Cross, part of Great Bromley. This hamlet is enjoined to the hamlet of Burnt Meath, part of Ardleigh, and together they are home to between 250 and 300 people. The Cross Inn has been the hub of this area for approx. 150 years and since 2005 it has also been home to the Great Bromley Post Office. As the only meeting place for local residents it has recently hosted meetings opposing a Solar Farm and the digging of a gravel pit. In addition, the pub garden has been used for many fund raising events.

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.)

Recently, Tendring District Council, against local opposition, granted planning permission for two houses to be built in the pub garden. Since then the opening hours have become very erratic and there is great concern locally that the business is about to be sold or closed. We believe that if it were added as a community asset enough interest exists locally to return it to its former usefulness. If it were allowed to be closed it would be a great loss to the 250/300 residents.

*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.

If The Cross came up for sale or closure, a fund would be set up to raise enough money for the purchase and immediate running costs, to allow it to be taken into community ownership. This has been done locally in Birtley, Suffolk, with 'The Cross at Alder', the 'Brook Tavern' in Washbrook and the 'Black Swan' in Wivenhoe. I believe that there is enough interest locally to allow this to happen.

Section C: Submitting this nomination

C1 What to include

- The rules of your organisation (question A8).
- Your sketch plan (question B2).

C2 Signature

By signing your name here (if submitting by post) or typing it (if submitting by email) you are confirming that the contents of this form are correct, to the best of your knowledge.

Signature

C3

You can

-  
- 

The Cross Inn, Ardleigh Road, Great Bromley



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 T: 01376 538538
 M: 07825 633573
 F: 01376 563240
 E: tony.collins@collinscoward.co.uk



Our Ref: CC/1681

31 March 2015

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 Weeley
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 CO16 9AJ

The Courtyard
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By Email: gburden@tendringdc.gov.uk

Dear Sirs

THE CROSS INN AND POST OFFICE – PROPOSED ASSET OF COMMUNITY VALUE

We refer to your letter of 24 March 2015 enclosing details of the proposed nomination of the Cross Inn and Post Office as an "Asset of Community Value". We note that the Plan at Section B2 is incorrect insofar that it includes land which is not within the operational land and has the benefit of planning permission for two residential units. Accordingly, the Nomination Form has been incorrectly completed and therefore invalid under the Localism Act 2012. We recommend that the application be made invalid and returned to the nominating party as such an error is incapable of correction under the application procedure. Failure to do so will leave the nomination open to legal challenge.

Notwithstanding this, the basis for the nomination is without merit. Section B4 claims the Cross Inn is the "only" meeting place for the public. This is not correct as the Parish Council has the Village Hall for public meetings. In fact the village Hall is used for a variety of community events including the New Year's Eve party, Bingo, Quiz Nights etc rather than local pubs including the Cross Inn. The Village Hall has an alcohol licence so in effect is a further "public house" for the community. There are other public houses in the immediate vicinity including the Haywain, The Snooty Fox, the Kings Arms and the Courthouse. In respect of post office provision there is a post office at Ardleigh. The Post Office has indicated that if there was sufficient demand then an outreach van would be used to serve the village instead of a permanent post office.

Section B4 also refers to a local population of 250 to 300 people without any factual basis of corroboration. This level of local population is insufficient to support either a post office or pub. To this end our client has been keeping a record of the usage of the facilities from 1 January 2015 until 9 March 2015. The following results can be established:

- (i) The average number of people attending the pub daily is 8 with a minimum of zero and a maximum of 20. The highest attendances are usually a Saturday and Sunday followed by Friday. The lowest usually occurs on a Monday-Thursday;
- (ii) The average number attending the post office per day is four with a low figure of two and a high figure of eight. Highest attendance is usually on a Monday;

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- (iii) The pub opens Mon-Sat from 12.00-15.00 and 18.00-23.00 and on Sunday 12.00-22.30. Therefore the average number of customers is one per hour.
- (iv) The post office is open Mon-Fri for 5.5 hours per day and 3.5 hours on a Saturday which therefore represents less than one customer per hour.

Survey of Usage of Cross Inn and Post Office – January to March 2015

Date	Jan 2015		Feb 2015		March 2015	
	Pub	PO	Pub	PO	Pub	PO
1	Closed	Closed	19	Closed	15	Closed
2	2	0	12	4	8	4
3	12	1	3	5	2	2
4	2	1	3	3	4	3
5	9	Closed	3	4	3	3
6	7	8	14	3	8	4
7	0	4	17	2	6	2
8	9	10	6	Closed	15	Closed
9	12	6	10	7		
10	9	5	3	6		
11	8	Closed	4	2		
12	13	6	3	3		
13	0	4	3	2		
14	2	5	18	4		
15	13	3	10	Closed		
16	16	4	12	8		
17	12	2	2	7		
18	12	Closed	2	4		
19	7	4	22	3		
20	5	4	14	2		
21	18	4	3	3		
22	2	5	9	Closed		
23	11	7	10	4		
24	16	3	3	6		
25	4	Closed	4	4		
26	10	5	3	3		
27	0	6	13	3		
28	1	9	2	4		
29	0	1				
30	18	2				
31	20	2				
Total	250	105	227	96	61	18
Av/d	8	4	8	4	8	3

It is clear from the foregoing that the pub and post office is not used as a community asset. The usage is so low that the business is unviable. We understand from the owner that Fleurets, the pub valuers, do not consider the business viable. Simply having the potential to change the future ownership to an asset owned by the local community will not address the fundamental problem that there is insufficient trade to enable the business to be operated viably.

We trust this information will assist with your assessment. In the first instance the nomination should be made invalid because it is factually incorrect. We trust this is of assistance but should you have any further queries please contact Tony Collins at this office.

Yours faithfully

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Andy White

From: JAMES MANN [Personal Data Redacted - AW](#)
Sent: 10 April 2015 11:22
To: Andy White
Subject: Cross Inn,Great Bromley -Nomination of ACV
Attachments: minutes-march-2015.pdf

Good Morning Andy

First of all thank you for taking the time to come and see us regarding this issue, it was very much appreciated.

Secondly could you please confirm the Cabinet meeting date regarding a decision on this matter

In terms of information from the estate agent this is not readily to hand as the report regarding viability is still in their hands and they hope to have sent it to me in the early part of next week and I shall forward it to you as soon as I have it .

Finally and the main reason for this e mail is the attachment of the March 2015 minutes of the Great Bromley Parish council minutes which became available last night regarding the nomination and I wish to raise some points regarding this . [Attachment Available on Parish Council Web Site](#)

I would like to draw your attention to Item 18 on the agenda as Cllr Perry raises concerns over The Cross Inn.

I think it should be pointed out that Mr Perry although declared an interest he is the former owner of The Cross up until 2011,who up until 2006 had change of use The Cross but allowed it to lapse and was subsequently refused by TDC on re application but now all of a sudden feels it should be made an ACV .

There is no evidence at the meeting or any subsequent discussion amongst the council as to why it should be listed by the other than you can take your dry cleaning there by Cllr Blowers .

Cllr Perry is then charged with registering the nomination bearing in mind the Parish Council are nominating the Cross I would have thought this would have been quite an important item on the agenda .The application has then been completed by Cllr Perry and sent without first seeking any approval by the Parish Council of its contents before submission and without notifying us ,not that they had to.

To this end as it was a council issue and no conferring of its contents was made between Cllr Perry and the council I can only be lead to draw the conclusion that the nomination is clearly made up of Cllr Perry's personal views and his alone and not that of the nominating group .

I believe this nomination is made out of malice and it is using the Parish Council as a vehicle to do so and the Cross Inn should not be made an asset on the basis of the flimsy evidence and quite frankly lack lustre effort of the Parish Council .

There is quite clearly no plan to back up the nomination or evidence any parishioners or groups are interested in its purchase and it is clear the Parish Council will not be driving any bid .

I feel that given this information the actions of the Parish Council ,the individuals involved and how this application has been made in general be called into question as part of the decision making process as to me this is not ,as I said, what an ACV should be used for .

I would be grateful if you could confirm receipt of this email

Kind Regards

James Mann