

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

4 SEPTEMBER 2015

WELL-BEING AND PARTNERSHIPS PORTFOLIO HOLDER

A.8 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE MAYBUSH INN, FARM ROAD, GREAT OAKLEY, HARWICH, ESSEX, CO12 5AL

(Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To determine whether The Maybush Inn, Great Oakley 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 Oakley Parish Council. No other criteria are pertinent.

EXECUTIVE SUMMARY

A valid nomination to register an asset of community value has been received from Great Oakley Parish Council in respect of The Maybush Inn, Farm Road, Great Oakley, Harwich, Essex, CO12 5AL as shown identified in the plan included within Appendix A as outlined in red marked PH (excluding the area outlined in green which is in separate ownership).

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 no other factors) 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 considers the Nomination and determines 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 Maybush Inn was still trading as a public house until March 2015. 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. An earlier report on this subject set out a proposed procedure for dealing with the nomination of Assets of Community Value in accordance with the Regulations and Officers have adhered to the procedure 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

Great and Little Oakley

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 wellbeing 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”.

The table below is not specific to this deal but is an overview of the criteria which can apply to each particular asset.

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 further 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 <i>some years ago</i> 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 Oakley 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, please note the area is marked red (PH) and excludes the area marked green.

The nomination states that the building until recently was trading 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. Although not on the Nomination further investigation has established it closed in March 2015. The nomination also states that should the community have the opportunity to purchase the premises they would look to offer additional services to maintain ongoing viability such as a community café and meeting place. The Nomination states the surrounding area is also forecast to grow in the coming years. 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. Since the Nomination was received the property is now being marketed for sale by the mortgagees on possession.

In accordance with the Regulations the landowner has been notified of the nomination and this has led to contact with the mortgagees in possession. Solicitors acting for the mortgagees in possession have made representation which is attached at Appendix B. However Officers do not consider the objections stated change the recommendation that the building does meet the criteria as the Council is required to consider only whether the asset meets the criteria set out in Section 88 of the Act.

The Nomination request is being sought to allow the local community the time to raise the funding required to purchase the building 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)****Appendix B – Representation from the mortgagees in possession (Redacted)**



LOCALISM ACT 2011

THE COMMUNITY RIGHT TO BID

NOMINATION FORM

A: You and your organisation

Your Name
Your Organisation (full official name)
Your position in the organisation
Organisation address (including postcode)
Daytime telephone no.
Email address
How and when can we contact you?*
At above address or via e-mail.

*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		
Parish Council	X	
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.

Parish 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 – Parish Council

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)	N/A
Trust Deed (for a trust)	N/A
Constitution and/or rules (for other organisations)	N/A – Parish Council

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 Maybush Inn

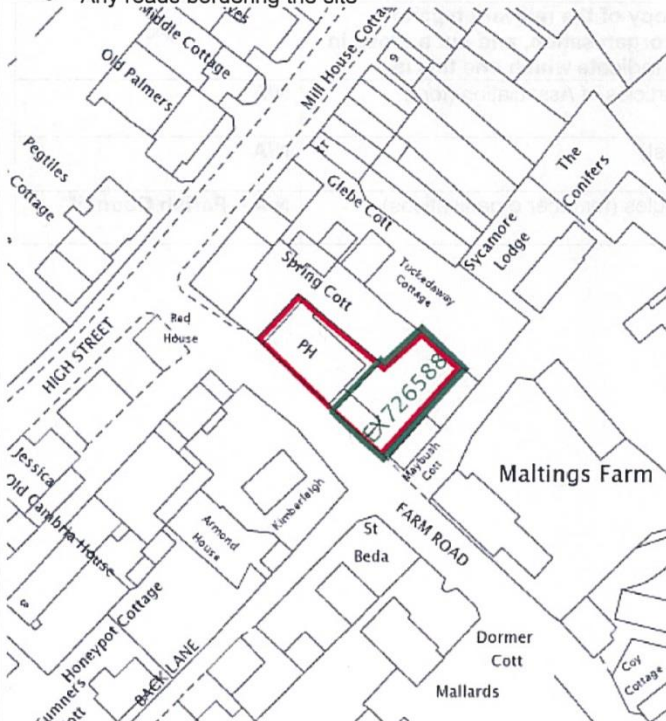
Address including postcode (if known)

Farm Road, Great Oakley, Harwich. CO12 5AL

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 – area marked in red but excluding area marked in green (Maybush House).

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	Believed vacant	Same as B1.
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)		Same as B1.
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)	Not known	

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?

Until very recently the pub was fulfilling its role as a place for members of the local community to socialise and enjoy a drink in a responsible environment.

It provided 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.

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

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.)

The aim of the ACV nomination is to help secure the future of the premises as a public house, to give the community time to find a way to save it. As noted below, as well as continuing as a public house it could diversify to provide additional community services.

**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.

It is hoped that the local community will be able to purchase 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, such as being a meeting place for local community groups, or being home to a community café, etc.

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

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 Where to send this form

You can submit this nomination:-

- **By post to:** Gill Burden Tendring District Council Thorpe Road Weeley Clacton on Sea Essex CO16 9AJ
- **By email to:** gburden@tendringdc.gov.uk

Representation from solicitors acting on behalf of the mortgagee in possession

The market value that the mortgagee achieves is affected due to the fact that whosoever buys the property would need to comply with the procedure when they decide to sell, or if they apply for a change of use. This has, we have found, to be a factor that limits the potential interest in the property.

We ought to notify before the deadline and set out that as a mortgagee in possession is exempt and that even if the property were to be listed as an Asset of Community Value a mortgagee sells free from the Statute. However the listing of a building such as this as an ACV means that our buyer would be burdened by it when they sold or tried for a change of use, this in itself could affect the saleability of the property now and cause a substantial delay.