

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

17 MAY 2016

WELL-BEING AND PARTNERSHIPS PORTFOLIO HOLDER

A.4 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE BLACKSMITHS ARMS 20 THE STREET LITTLE CLACTON, CLACTON ON SEA ESSEX CO16 9LQ

(Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
To determine whether The Blacksmiths Arms Little Clacton 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 Little Clacton Parish Council. No other criteria are pertinent.
EXECUTIVE SUMMARY
<p>A valid nomination to register an asset of community value has been received from Little Clacton Parish Council as shown identified in the plan included within Appendix A as outlined in red marked Blacksmiths Arms Inn.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Solicitors for the owners have argued that the criteria are not met but officers consider that they have been.</p> <p>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.</p>
RECOMMENDATION(S)
That Cabinet determines that the Blacksmiths Arms 20 The Street, Little Clacton, Clacton-on-Sea CO16 9LQ meets the definition of an Asset of Community Value as set out in Section 88 of the Localism Act 2011 and that the asset be added to the Council’s 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 Blacksmiths Arms is still trading 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. The owner’s solicitors have objected to the listing of the property raising some arguments about what is or is not the main use. Officers consider that these arguments are not successful.

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.

The Decision maker must consider the content of the nomination and the representations received on behalf of the landowner. The Officers’ recommendation is made based on the conclusion that the main use of the building as a public house furthers the social wellbeing and social interests of the local community including the activities referred to within the nomination form and these are not ancillary uses. It is realistic to think that this can continue into the near future therefore meeting the criteria as set out in the legislation.

The First Tier Tribunal (General Regulatory Chamber), which considers appeals concerning the listing of assets for community value, has decided that a public house is used by the community and use of a pub is not an ancillary use and that the use furthers the social wellbeing and social interests of the community.

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. As Cabinet is 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

Little Clacton and Weeley

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”.

The Act intends to apply to Land and Buildings where:

1. The main use of the land or building **furtheres 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), or;
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:

1. 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, or;
2. The land or building has **not recently been, and is not currently, in use for a primarily social purpose**, or;
3. The land or building has been **empty or derelict** for many years and remains so today.

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 Little Clacton 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 and the area is marked red.

The nomination states that the building is currently trading as a public house and therefore is fulfilling its role as a place for members of the local community to socialise and with the beer garden at rear it is accessible to families. The village is serviced by public transport making the premises available to a wider catchment area.

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 extending the food opening hours to provide a community café. 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.

In accordance with the Regulations the landowner has been notified and Solicitors acting for them have made a representation which, together with the subsequent exchange is attached at Appendix B. However, officers do not consider the objections made successfully evidence any failure to meet the criteria set out in Section 88 of the Act.

The representation principally seeks to assert that the activities listed in the nomination such as pool, darts and beer Garden are ancillary uses; that the main use is solely for the sale of beverages. The representation therefore seeks to argue that the nomination is invalid because the uses rehearsed are ancillary ones.

It is the opinion of officers that:

- The nomination in fact does include the sale of beverages as claimed by the owner's solicitor to be the main use: “...*place for members of the local community to socialise and enjoy a drink in a responsible environment*”
- The provision of darts, pool and beer garden as included in the nomination (and any number of similar activities common to pubs but which were not listed) are in fact integral, in varying proportions and extents, to the operation and marketing of pubs and indeed to the responsible sale of beverages.

Accordingly the nomination does include the main use which furthers community interests.

The Nomination is made with the stated intention of allowing the local community the time to raise the funding required to purchase the building, at the relevant time and in accordance with the provisions of the Act and Regulations, 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, specifically:

The main use of the land or building furthers 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.

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 solicitors acting for the owners and subsequent exchange

LOCALISM ACT 2011

THE COMMUNITY RIGHT TO BID

NOMINATION FORM

A: You and your organisation

Your Name
Your Organisation (full name) Little Clacton Parish Council
Your position in the organisation
Organisation address (including postcode) The Parish Office Youth and Community Centre Parish Hall Plough Close Little Clacton. CO16 9ND
Daytime telephone no.
Email address
How and when can we contact you?*
Tuesdays 2pm – 4pm

*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

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

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

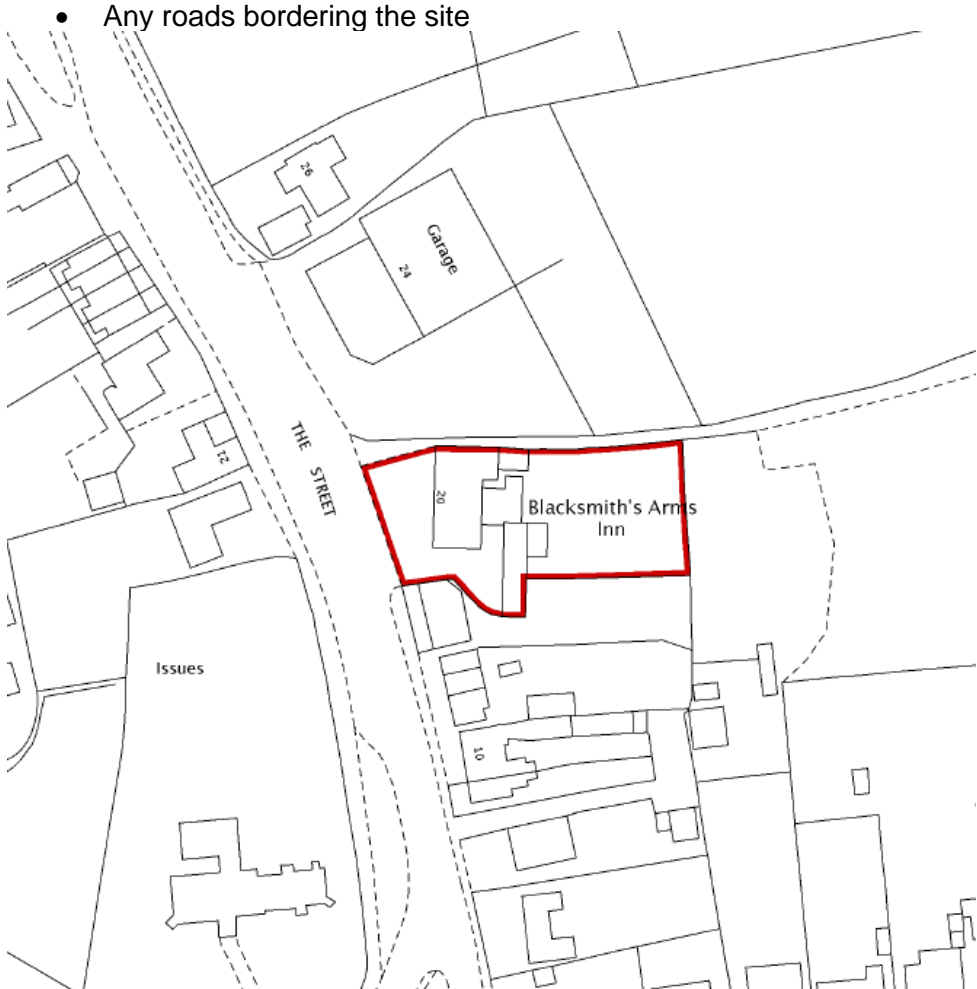
B1 Description and address

What it is (eg. pub, local shop) Pub
Name of premises (eg. Royal Oak / Littletown stores) The Blacksmiths Arms
Address including postcode (if known) 20 The Street, Little Clacton, Clacton-on-Sea. CO16 9LQ

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		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)		
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?

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 has a family friendly beer garden to the rear making it accessible to a larger proportion of the community.

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

Like many areas across Tendring, the population of Little Clacton 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.)

While it is believed the current tenants have a number of years remaining on their lease, there is always the chance that the freeholder may choose to sell the property.

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.

**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 to 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, such as crèche services or extending the food opening hours in the restaurant area to provide community café facilities.

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

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Our ref 301P/KM21/092777/000021
 Your ref

Gill Burden
 Skills and Community Projects Officer
 Tendring District Council
 Council Offices
 Thorpe Road
 Weeley
 Clacton on Sea
 ESSEX
 CO16 9AJ

Direct tel	+44 (0)333 006 0740	Date	19 February 2016
Direct fax	+44 (0)333 006 1493	Email	Kate.James@TLTsolicitors.com

Dear Sirs

**The Blacksmith Arms, 20 The Street, Little Clacton, Clacton on Sea, Essex
 Chapter 3 Localism Act 2011
 Objection to nomination as an Asset of Community Value**

We act for Spirit Pub Company (Leased) Limited. Our client is the registered owner of the property known as the Blacksmith Arms, 20 The Street, Little Clacton, Clacton on Sea, Essex (the **Property**).

The Property is the subject of an Asset of Community Value (**ACV**) nomination (the **Nomination**) made by Little Clacton Parish Council (the **Parish Council**) under section 90 of the Localism Act 2011 (the **Act**) and received by Tendring Borough Council.

Our client, for the reasons set out below, considers it would be unreasonable for the Council to accept the Nomination under section 90(3). The Property should not therefore be added to the ACV list provided for by section 87(1) of the Act.

Statutory requirements for an ACV nomination

- 1 The Council has a duty to consider the Nomination (Section 90(2)) but it must only accept nominations where the land nominated is within the authority's area and is an ACV (section 90(3)) of the Act.
- 2 In this instance, the test for an ACV is set out in section 88(1). The test is that the Council must be of the opinion that:
 - 2.1 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

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- 2.2 it must be 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.
- 3 The Council must of course act reasonably in the exercise of its judgement in the second limb of this test i.e. in determining what is realistic. In the absence of a statutory definition or case law to the contrary, the Council should adopt the ordinary meaning of the word 'realistic'. Therefore the second limb of the test can only be passed if future use is a practical rather than fanciful or aspirational use.
- 4 In both parts of the ACV test the use in question that is a social interest or wellbeing use must not be an ancillary use. What amounts to an 'ancillary use' is not defined by the legislation. Taking its ordinary meaning ancillary must require the social wellbeing or interest use identified in the nomination to be the main use to which the land or building is put. If it is not the main use then it cannot amount to a valid reason for the nomination of a property as an ACV.
- 5 Social interests are defined (section 88(6)) to include cultural interests, recreational interests and sporting interests.
- 6 There are also specific statutory requirements regarding nomination (regulation 6 of the Assets of Community Value (England) Regulations 2012 (the **Regulations**)). To amount to a nomination the nominator must include
- 6.1 a description of the nominated land including its proposed boundaries;
- 6.2 a statement of all the information the nominator has with regard to the owner and occupier of the land;
- 6.3 the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and
- 6.4 evidence that the nominator is eligible to make the community nomination.
- 7 If any of these elements are missing then a submission by a voluntary or community body cannot amount to a nomination for the purposes of the Regulations and cannot be a submission which the Council must consider under section 90 of the Act.

Objection to the Nomination

- 8 The Nomination and the covering letter from the Council are confused in that they talk about an opportunity for a local community group to purchase the Property should it come up for sale in the future. Section 98 of the Act states that:

(1) Subsection (2) applies if-

(a) after a local authority has received notice under section 95(2) in respect of land included in the authority's list of assets of community value, and

(b) before the end of the interim moratorium period that applies under section 95 as a result of the notice,

the authority receives from a community interest group a written request (however expressed) for the group to be treated as a potential bidder in relation to the land.

(2) The authority must, as soon after receiving the request as is practicable, either pass on the request to the owner of the land or inform the owner of the details of the request.

(3) In this section "community interest group" means a person who is a community interest group for the purposes of section 95(3) as a result of regulations made under section 95(6) by the appropriate authority

Section 95 states that:

(1) A person who is an owner of land included in a local authority's list of assets of community value must not enter into a relevant disposal of the land unless each of conditions A to C is met.

(2) Condition A is that that particular person has notified the local authority in writing of that person's wish to enter into a relevant disposal of the land.

- 9 In general terms, the effect of an asset being listed as an ACV is that an owner is required to notify the local authority as and when they intend to sell the asset. A community group would then have six weeks in which to ask to be treated as a potential bidder. If it does so, a sale can not take place for six months other than to a community group. This moratorium period is intended to allow the community group to come up with an alternative proposal.
- 10 In this instance, our client has given no notification to the local authority that it wishes to enter into a relevant disposal. As no notice under section 95(2) has been received by the local authority, the Parish Council, and indeed any other community group, are not entitled to request that they are treated as a potential bidder in relation to the Property. The wording of the Nomination and the Council's cover letter assumes that the listing of the Property is a forgone conclusion. Consequently, this element of the Nomination must be disregarded in its entirety.
- 11 In addition to the above, the Nomination fails to specify any actual current use of the Property that is not an ancillary use which furthers the social wellbeing or social interests of the local community. It also fails to describe, substantiate or evidence a non-ancillary use which the Parish Council believes has a realistic prospect of continuing to further (whether or not in the same way) the social wellbeing or social interests of the local community.
- 12 In their combined absence the Nomination cannot amount to a nomination for the purposes of the Regulations and the Council cannot reasonably or otherwise accept the nomination and add the Property to the ACV list.
- 13 A nominator is required to expressly state the reasons for thinking that the Council should conclude that the Property is of community value (Regulation 6(c)). By section 88(1) the use identified as furthering the social wellbeing or interest of the community must not be an ancillary use.
- 14 The Nomination appears to suggest that the reason for the nomination is that the Property is a pub. This fact alone does not mean that the Property amounts to an ACV. If it was Parliament's intention that every public house was an ACV, then that would



have been made clear in the legislation. It was not. Without more details of the use or evidence to support the Nomination, the Council cannot reasonably conclude that there is an actual current use of the Property that is not an ancillary use which furthers the social wellbeing or social interests of the local community.

- 15 The Nomination also states:
 - 15.1 Activities such as darts and pool take place
 - 15.2 There is a family friendly beer garden
 - 15.3 It is accessible to public transport
 - 15.4 The population of Little Clacton is forecast to grow.
- 16 The main use of the Property is the supply or sale of alcoholic and other beverages to the public, with or without the provision of hot food. The reasons given by the Parish Council for the Nomination are clearly all ancillary to the commercial use of the Property. Consequently, nothing in the Nomination is of relevance to the Council's ACV determination and should not form any part of the Council's considerations.
- 17 No evidence whatsoever has been provided to substantiate why the Parish Council considers the Property's main use furthers the social or cultural wellbeing of the community, as required by the ACV legislation, or how it could continue to do so.
- 18 It is not enough to merely assert, the Parish Council is required to provide reasons as to how and why the Property furthers the social wellbeing or interests of the local community and why it is realistic to think that it can continue to do so. Without that evidence little or no weight can be given to the Nomination.
- 19 The Nomination does not meet the requirements in Regulation 6 and therefore the Council is not obliged to accept the Nomination or to go on to consider the ACV status of the Property.
- 20 The Council has no discretion to accept nominations that do not comply with the requirements. Nor is it under any obligation to perfect nominations. In short it would be unlawful for the Council to place the Property on the list of successful ACV nominations.
- 21 Further, there are no less than 7 alternative public houses within a 2 mile radius of the Property and we enclose a printout from the website whatpub.com showing the location of other public houses in the local area. As such there are numerous other properties in the area offering the same facilities as those set out in the Nomination.

Conclusion

- 22 The Council must apply the correct test set out in section 88(1) of the Act.
- 23 The Nomination fails to identify why the use is an ACV use; fails to identify an actual current use of the Property that is not an ancillary use which furthers the social wellbeing or social interests of the local community and fails to set out why it is realistic to think that there can continue to be non-ancillary use of the Property which will further

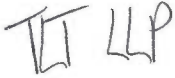
(whether or not in the same way) the social wellbeing or social interests of the local community.

- 24 In essence, the Nomination is suggesting that the Property should be listed because it is a pub. This is insufficient to satisfy the requirements of the Act.
- 25 The Council should not therefore continue with its determination of the Nomination under section 90(2) of the Act.
- 26 The Property does not amount to ACV and it should not be placed on the ACV list.

We request that the Nomination is rejected.

Please acknowledge receipt of these representations.

Yours faithfully

Handwritten signature in black ink, appearing to read "TLT LLP".

TLT LLP

Enc.



[Join CAMRA](#) | [Member Login](#)

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Search results for pubs near 'Blacksmith's Arms, Little Clacton'

[Close Map](#) [New Search](#)



Pub
 Club
 Hotel
 Off Licence
 Restaurant
 Other

Showing results 1 to 10 of 56

Order by: [Distance](#) [Name](#) [Town](#)



Blacksmith's Arms

20 The Street
Little Clacton
CLACTON-ON-SEA
CO16 9LQ

0.0 miles (0.0km)

Pub Features



Robin Hood

211 London Road
Great Clacton
CLACTON-ON-SEA
CO15 4ED

1.3 miles (2.1km)

Pub Features



White Hart

Clacton Road
Weeley Heath
CLACTON-ON-SEA
CO16 9ED

1.5 miles (2.4km)

Pub Features



Filter by Premises

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- Open Pubs Only
- Closed Pubs Only

Filter by Location

- Close to Bus Routes
- Close to Railway Station
- Close to Underground/DLR
- Close to Metro

Filter by Features

- Real Ale Available
- Real Cider Available
- Member Discount Scheme
- LocAle Accredited
- Beer Festivals
- Cask Marque Accredited
- Important Historic Interior
- Quiet Pub

Filter by Facilities

- Disabled Access
- Lunchtime Meals
- Evening Meals
- Pub Garden
- Parking
- Dog Friendly
- Family Friendly
- Accommodation
- Camping Nearby
- Events
- Function Room
- Traditional Pub Games
- Lined Glasses



Robert Burre
183 Burrs Road
Great Clacton
CLACTON-ON-SEA
CO15 4LN

1.5 miles (2.5km)

Pub Features



- Live Music
- Newspapers
- Real Fire
- Restaurant Area
- Separate Bar
- Smoking Area
- Sports TV
- Wifi



Plough
1 North Road
Great Clacton
CLACTON-ON-SEA
CO15 4DA

1.6 miles (2.5km)

Pub Features



Queens Head
16 St Johns Road
Great Clacton
CLACTON-ON-SEA
CO15 4BS

1.6 miles (2.6km)

Pub Features



Ship Inn
2 Valley Road
Great Clacton
CLACTON-ON-SEA
CO15 4AR

1.7 miles (2.7km)

Pub Features



Hope's Bar
197 Old Road
Clacton-on-Sea
CO15 3LT

2.1 miles (3.3km)

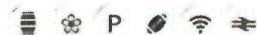
Pub Features



Queens Arms
189 Old Road
Clacton-on-Sea
CO15 3AX

2.1 miles (3.4km)

Pub Features



Bell Inn
High Street
Thorpe-le-Soken
CO16 0DY

2.3 miles (3.7km)

Pub Features



[1](#), [2](#), [3](#), [4](#), [5](#), [6](#)

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Campaign for Real Ale, 230 Hatfield Road, St Albans, Hertfordshire, AL1 4LW ([Map](#))

www.camra.org.uk | Email: camra@camra.org.uk | Tel: 01727 867201 | Fax: 01727 867670

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Town Hall
Station Road
Clacton on Sea
Essex CO15 1SE

Attn Katie James

TLT Solicitors
1 Redcliff Street
Bristol
BS1 6TP

BY EMAIL ONLY

Tel: (01255) 686933
Email: awhite@tendringdc.gov.uk
Please ask for : Andy White
Our Ref : ARW/arw/
Your Ref : 301P/KM21/092777/000021

10 March 2016

Dear Sirs

The Blacksmith's Arms Little Clacton
Nomination as an Asset of Community Value

Thank you for your letter of 19 February 2016 to my colleague Gill Burden. Your comments will be attached to the report that will be considered by the Council's Cabinet in due course, probably at its meeting on 15 April 2016. The report and agenda will be available on our web site in advance of the meeting and the relevant part of the meeting is open to the public if you or the owner wish to attend.

Your letter seems principally to assert that the activities listed in the nomination such as pool, darts and beer garden are ancillary uses; that the main use is solely for the sale of beverages. Therefore you argue that the nomination is invalid because the uses rehearsed are ancillary ones.

Having sought advice It is my opinion that:

- The nomination in fact does include the sale of beverages as claimed to be the main use: "...place for members of the local community to socialise and enjoy a drink in a responsible environment"
- The provision of darts, pool and beer garden as included in the nomination (and any number of similar activities common to pubs but which were not listed) are in fact integral, in varying proportions and extents, to the operation and marketing of pubs and indeed to the responsible sale of beverages.

Accordingly the nomination does include the main use which furthers community interests.

I hope that this is useful.

Yours sincerely

Andrew R White
ASSETS MANAGER



Our ref 301P/KM21/083946/001573
Your ref ARW

Andy White
Tendring District Council
Town Hall
Station Road
Clacton on Sea
ESSEX
CO15 1SE

Direct tel	+44 (0)333 006 0740	Date	11 March 2016
Direct fax	+44 (0)333 006 1493	Email	Kate.James@TLTsolicitors.com

Dear Andy

The Blacksmith Arms, 20 The Street, Little Clacton, Clacton on Sea, Essex

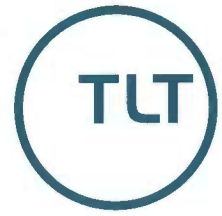
I write further to your letter dated 10 March 2016.

Without wishing to repeat what is set out in the letter of objection, anything other than the main use of the Property can not amount to a valid reason for a nomination, as any such use will by definition be ancillary. It cannot be said that pool, darts or a beer-garden are non-ancillary uses. They are clearly all ancillary provisions implemented in order to attract a greater number of paying customers to the Property for its primary purpose which is the sale of beverages. As such, the fact that these uses are available at the Property should not form any part of the Council's decision.

In addition to the above, the nomination fails to describe, substantiate or evidence a non-ancillary use which has a realistic prospect of continuing to further (whether or not in the same way) the social wellbeing or social interests of the local community.

The fact that the Property is a pub is not enough in itself for the Council to conclude that the Property should be listed as an ACV. The Parish Council have failed to provide any details or evidence to demonstrate why the Parish Council consider that the supply or sale of alcoholic and other beverages to the public furthers the social or cultural wellbeing of the community, as required by the ACV legislation.

In view of the above, and as further detailed in the objection letter, the Nomination does not meet the requirements in Regulation 6 and therefore the Council is not obliged to accept the Nomination or to go on to consider the ACV status of the Property.



Yours sincerely

Kate James
Solicitor
for TLT LLP

Andy White

From: Andy White
Sent: 14 March 2016 09:02
To: Kate James
Cc: Gill Burden
Subject: RE: Blacksmith's Arms Lt Clacton Your Ref : 301P/KM21/092777/000021 [TLT-TLT.FID3898890]

Dear Ms James.

Thank you for your letter.

This morning I have copied the text of regulation 6 from legislation.gov:

Contents of community nominations

6. A community nomination must include the following matters:

- (a) a description of the nominated land including its proposed boundaries;
- (b) a statement of all the information which the nominator has with regard to:
 - (i) the *names of current occupants of the land, and*
 - (ii) the *names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;*
- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and
- (d) evidence that the nominator is eligible to make a community nomination.

It appears to me that the nomination meets the criteria set out.

You have made an argument that some of the reasons in relation to section (c) listed by the nominator are not main uses. There is nothing in the regulation that says all reasons must relate to the main use for the nomination to be valid. I consider that this issue is for the authority to consider when determining the nomination.

Notwithstanding, it remains my view that the nomination in fact does refer to the sale of beverages (or more precisely the consumption of them) and that other matters referred to in the nomination are part of the main use.

Regards.

Andy White
Assets Manager.

From: Kate James [Kate.James@TLTsolicitors.com]
Sent: 11 March 2016 11:41
To: Andy White
Cc: Gill Burden
Subject: RE: Blacksmith's Arms Lt Clacton Your Ref : 301P/KM21/092777/000021 [TLT-TLT.FID3898890]

Dear Mr White

Please see the attached correspondence.

Kind regards

Kate

Kate James

Solicitor

for TLT LLP

D: +44 (0)333 006 0740

F: +44 (0)333 006 1482

www.TLTsolicitors.com

From: Andy White [<mailto:awhite@tendringdc.gov.uk>]

Sent: 10 March 2016 15:37

To: Kate James
Cc: Gill Burden
Subject: Blacksmith's Arms Lt Clacton Your Ref : 301P/KM21/092777/000021

Dear Ms James.

Please find attached letter.

Regards

Andrew R White
Assets Manager

Tendring District Council
Town Hall
Station Road
Clacton on Sea
Essex
CO15 1SE

01255 686933
awhite@tendringdc.gov.uk

www.tendringdc.gov.uk

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