

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

12 OCTOBER 2018

REPORT OF PORTFOLIO HOLDER FOR HEALTH AND EDUCATION

A.3 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE GLOBE INN CASTLEGATE STREET HARWICH ESSEX CO12 3HA

(Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To determine whether The Globe Inn 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 Tendring CAMRA Branch. No other criteria are pertinent.

EXECUTIVE SUMMARY

A valid nomination to register an asset of community value has been received from Tendring CAMRA Branch 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 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. 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 determines that The Globe Inn Castlegate Street HARWICH Essex CO12 3HA 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 Globe Inn 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.

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

Harwich East

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 Tendring CAMRA Branch (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.

The nomination states that the building is currently trading as a public house which furthers the social wellbeing and interests of the local community in various ways. The pub holds regular fundraising events, and contributes to a number of local festivals held in the Harwich area including The Harwich Ale Trail, Harwich Sea Festival and the Harwich Sea Shanty Festival. The Globe Inn is also a venue for live music and is where the local Shanty group practice during the year. The Globe Inn can claim to be the oldest still operating pub in Harwich and is a Listed Grade II building.

The pub hosts various teams including pool, crib and darts who all compete locally in the relevant leagues. The nomination states that the pub is frequented by both local people and those travelling from further afield to visit the area. The nomination states the pub gives a greater choice of places to visit and socialise in for the area and encourages community cohesion and a collective sense of wellbeing.

The nomination also states that should the property come up for sale the pub customers and wider Harwich community would like the opportunity to form a community interest group and bid for the pub if and when the owners decide to sell.

In accordance with the Regulations the landowner has been notified and representation has been received (attached at Appendix B). The owner's representative has stated the owner's objection to the ACV Nomination being successful citing their need for the property to be unencumbered to allow them to change the business model for The Globe Inn should this be necessary. A response has been sent explaining that only points relative to the validity of the nomination or the applicability of the criteria can be taken into account and not just an objection to the Nomination.

It is recommended 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 with the stated 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 on behalf of owners (redacted)

LOCALISM ACT 2011

THE COMMUNITY RIGHT TO BID

NOMINATION FORM

A: You and your organisation

Your Name
Your Organisation (full official name) Tendring Branch of CAMRA (Campaign for Real Ale)
Your position in the organisation Pub Protection Officer
Organisation address (including postcode) C
Daytime telephone no.
Email address
How and when can we contact you?* E-mail anytime

*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		
Charity		
Community interest company		
Unincorporated body		
Company limited by guarantee	X	01270286
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.

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.

- * The CAMRA Branch hosts two annual beer festivals in the local area
- * The Branch hosts meetings in the local pubs and the local area
- * The Branch nominates a local pub of the year in this area
- * The Branch presents awards to pubs in the area
- * The Branch runs campaigns to save local pubs in the area
- * The Branch writes a local newsletter about pubs and campaigns in the area

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.

CAMRA, the Campaign for Real Ale, is an independent consumer organisation campaigning for real ale, community pubs and consumer rights. CAMRA is a company limited by guarantee, registered in England with company number 1270286. CAMRA's national surplus is not distributed to its members and the individual CAMRA Branch activity where the pub is nominated is wholly or partly applied to the local authority area. The local CAMRA Branch submitting this nomination does not distribute any surplus it makes to its members in line with Section 5 of the regulations. The CAMRA branch has a local connection as demonstrated by the following activities which are run and funded by the branch within the local authority district.

The decision outlined that CAMRA and its local branches can be treated in a 'hybrid' way and relies upon CAMRA's status as a company limited by guarantee which does not distribute any surplus it makes to its members as well as the local branch's own activities that provide a local connection with the land/property nominated. The nomination is being submitted by the CAMRA Branch in line with Judge NJ Warren's First Tier Tribunal General Regulatory Chamber decision in *St Gabriel Properties Limited – v – London Borough of Lewisham and South East London Branch of CAMRA*

A7 More about your organisation

What are the main aims and activities of your organisation?
Tendring CAMRA Branch

A8 Your organisation's rules

Please send us a copy of the relevant type of document for your organisation, and put a cross in the next column to indicate which one this is	
Memorandum and Articles of Association (for a company)	X
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

Name of premises (eg. Royal Oak / Littletown stores)

The Globe Inn

Address including postcode (if known)

Castlegate Street
Harwich
CO12 3HA

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		The Globe Inn Castlegate Street Harwich CO12 3HA
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)	The Flying Trade Group	Europa House 4 Europa Way Harwich CO12 4PT
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 Globe Inn currently has 2 Darts teams that play in the local Darts league.

They also have 2 Pool teams which compete in the local Pool league.

The Globe also has a Crib team that competes in a local Crib league.

The Globe Inn contributes to a number of local festivals held within the Harwich area, these include:

The Harwich Ale Trail, an event which was set up and run by all the local landlords. This involves all the pubs in Harwich and is held over a 4 day period every year.

They support both of the local Beer festivals, one organised and run by CAMRA and an independent festival organised by the Harwich Town Brewing Co.

The Harwich Sea Festival and Lifeboat Day which is held every year and raises money for local charities.

The Harwich Sea Shanty festival which is held over a 3 day period every year featuring both local and international shanty groups. The Globe is one of the venues used for live music and it is also where the local Shanty group practice during the year.

The annual Essex & Herts Bike run which terminates in Harwich and raises funds for the Herts & Essex Air Ambulances.

The Globe Inn is also a popular venue to visit during the annual Harwich Sausage festival and is frequented by visitors, both local and from further afield, and on occasion the local Morris Dancers can be seen performing at the Globe Inn.

The Globe Inn is arguably the oldest, still operating, pub in

Harwich, first opening its doors to the public in 1753. The building was Listed Grade II by English Heritage in 1951 and still contains many of the original features such as original 17th Century timber frames.

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 pub gives local people a greater choice of places where they could meet and socialise in a welcoming environment. Such social interaction is also in the interests of the locality as a whole as it encourages community cohesion and a collective sense of well-being.

The Globe Inn, has been in the past, a hub of the community and provided a safe, family friendly atmosphere where people from all walks of the community could get together, join in local events run by local people and hopefully will continue to do so in the future.

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

5 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.

The reason for the nomination is to ensure that the building has the opportunity to continue as a public house serving both the local community and Harwich's many visitors.

The pub customers and wider Harwich community should have the opportunity to form a community interest group and bid for the pub if and when they do decide to sell.

Harwich is a growing area which has a thriving social community. There are plans for further dwellings to be built within the Harwich and Dovercourt area so it would make sense for this building to remain as a public house given its situation in the town,

There are various examples of community groups raising sufficient funds to purchase pubs as community ventures and successfully run them for the benefit of the local community. Indeed within the Tendring area we have the excellent examples of The Maybush in Great Oakley and The Cross at Bromley, which after being nominated as an ACV have been purchased by the community and are trading well with a lot of support from the local community.

Dear Ms Burden

Re: The Globe Inn, Castlegate Street, Harwich, CO12 3HA.

Thank you for your recent letter dated 16th August 2018 addressed to the Flying Trade Group Plc in respect of their property above.

I acknowledge receipt of the application to nominate the above property as an Asset of Community Value and the freehold owner wishes to object.

The property is held by the Flying Trade Group Plc which owns and operates a significant number of business interests within Harwich and the surrounding areas. These include food manufacture and distribution, owners/operators of various public houses, hotels and rental properties in addition to commercial developments and investments.

The Globe Inn has been run as a local public house for several years and the current plan is to maintain this operation. However, should the building become an Asset of Community Value, this could then restrict the strategic placement of the property in the future, hinder any transfer between business and resist any future expansion/alteration to the Globes operation.

We need to ensure the owner has full control of the public house as the business needs may change in the future and any ACV could have an impact on being able meet these. As an example, the ancillary use of the Globe Inn is being ignored and there may be the need in the future to expand into letting rooms which may then change the business model. At this stage we simply do not know how the Globe Inn will trade over the next few years and we have to be ready to adapt if necessary and this can only be achieved if the property is free from restrictions.

It should also be noted that if the objection to the ACV listing were to be un-successful then the owner reserves their right to claim loss and expense from the council which could also include costs as a result of the delay of any future sale.

As explained above, the owner has no wish to dispose of the property but must have the freedom to make the business adapt to meet the ever-changing needs of its customers and restrictions (such as an ACV listing) could hinder this ability. We hope the council can appreciate the need to keep this property free from listing and I would be happy to meet with the council in the future to discuss any possible changes, if you felt this would be an acceptable alternative.

We look forward to receiving feedback following the Cabinet meeting.

Yours sincerely,