

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

9 OCTOBER 2020

REPORT OF THE PORTFOLIO HOLDER FOR PARTNERSHIPS

A.4 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE ANCHOR INN 1 ANCHOR LANE, HARWICH ROAD, MISTLEY, ESSEX CO11 1ND (Report prepared by Gill Burden and Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To determine whether The Anchor 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 Mistley Parish Council. No other criteria are pertinent.

EXECUTIVE SUMMARY

A valid nomination to register an asset of community value has been received from Mistley Parish Council 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 Anchor Inn 1 Anchor lane, Harwich Road, Mistley, Essex CO11 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.

Risk

The Anchor Inn was still trading pre COVID 19. Covid 19 has had a significant effect on the hospitality trade. There is substantial risk that the property cannot be sold at a price acceptable to the owners as a trading premises.

The Property is currently on the market and there is a high chance that listing will result in the need to compensate the current owners.

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

Lawford Manningtree and Mistley

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.

Whilst COVID-19 restrictions including socially distancing are having a huge impact on the ability of pubs to function safely and viably, the ACV Legislation does not currently address recent COVID-19 restrictions. Therefore when considering if the nominated asset meets the criteria only the issued legislative guidance can be applied.

CURRENT POSITION

The Nomination Form has been submitted by Mistley 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.

The nomination states that the building is the last community service for Mistley and closure would have an emotional impact that would seriously affect the community infrastructure. The nominator also states they seek the opportunity and time to prepare a bid and business plan to buy or take over the pub. It should be noted that the property is currently being marketed for sale and has been for some time which is also detailed at Appendix B

In accordance with the Regulations the landowner has been notified and they have made representation (attached and partially redacted at Appendix B) that includes the fact the owner of The Anchor Inn has applied to Tendring District Council for Planning Permission to convert and demolish part of the structure.

Given the length of time the property has been on the market officers have asked the nominator what progress they have made with the proposals to purchase and operate the property as outlined in their nomination. The following response has been received:

“The Parish Council thought that it could not progress with its business plan until such time as the asset of community value application has been approved.”

The Council has received some feedback from the local community but it would wish to consult more fully by way of a Survey Monkey or similar.

It is recommended that the building does meet the criteria set out in Section 88 (2) (a) of the Act:

there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community

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 matter for consideration is

whether the building nominated does meet the criteria set out in Section 88 (2) (b) of the Localism Act 2011, specifically:

it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

Planning application has been made for the conversion of the building to residential use. In the current climate it seems unlikely that a purchaser will pay the current asking price for the premises if the applications are refused. Accordingly the result of a refusal may be that the price has to be lowered to a level at which some use within the current planning status becomes viable. Conversely it would appear that approval would potentially result in a higher value that could make such use unviable.

At the time of writing no planning decision has been published and the building may not be converted. Accordingly it is recommended that the criteria are met and that the building should be listed as an Asset of Community Value.

It may be that a planning permission or successful appeal would be a material change of circumstances that prompts a listing review.

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) <i>Mistley Parish Council</i>
Your position in the organisation <i>Parish Clerk</i>
Organisation address (including postcode)
Daytime telephone no.
Email address
How and when can we contact you?*
By email, phone and post. <i>Monday – Friday 9am – 5pm</i>

*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.

Mistley Parish Council is the first tier of local government and the level of government which is closest to its electorate and at the grass-roots of the local community. The Parish Council is also statutorily consulted on all planning and development in Mistley by Tendring District Council, i.e. the LPA (local planning authority).

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?

Mistley Parish Council is a local authority that makes decisions on behalf of the people in the Parish. It is the first tier and the most local level of government closest to the community. There are 11 volunteer Parish Councillors and a part-time paid Parish Clerk/Finance Officer and a part-time paid Warden/Cleaner.

The Council ensures that the facilities and land under its ownership are managed efficiently for residents and visitors to enjoy and strives to improve its services and facilities for the benefit of residents. The Council continues to endeavour to make a difference in our Community, whilst being open and transparent in its working.

The Parish Council is often the first point of contact for local people. The Parish Council aims to “sign-post” residents to the most appropriate level of local government. It has an important role to play in promoting the Village, representing its interests and supporting the work of different groups in the community.

A8 Your organisation’s rules

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

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

B1 Description and address

What it is (eg. pub, local shop)

Local Pub. The only Pub in the Village.

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

The Anchor Inn.

Address including postcode (if known)

1 Anchor Lane, Harwich Road, Mistley, Essex, CO11 1ND.

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.

Details attached.



LOCATION PLAN 1:1250

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		<i>Same as B1. Yes.</i> <i>The Anchor Inn, 1 Anchor Lane, Harwich Road, Mistely, Essex, CO11 1ND.</i>
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)		
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)		

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

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

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

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

The owner of the Public House has asked the Local Planning Authority if the Public can be demolished and two residential dwellings be erected on this site. However, there is no evidence to demonstrate that the public house has being marketed and no evidence of the business being unviable under an improved business case – possibly with a different public house owner. The change of use would be a loss of amenity in the community as this is the only public house in the Village.

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).

Community ownership plays an important role because if this much-loved pub closes there will be no pub in the Village and it will be the last community service for Mistley and will mean a huge loss. Closing the pub will have an emotional effect that will seriously affect the future economy and community infrastructure with nowhere to meet and no focus for the community life and there will be no community cohesion.

**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.

Mistley Community is a strong force and it brings creatively, business acumen and hands-on support, backed by and led by the Parish Council. The Community will pull together and own and run its own pub and take its plans through to fruition.

The opportunity to nominate this asset to be included on a list of 'Assets of Community Value', will pause the sale and demolition of a successfully listed asset for six-months, giving our community the opportunity and time to prepare a bid and get a business plan together. This will give us some time to gather resources to bid to buy or take them over the pub.

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also at
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Tiptree and Coggeshall

Tendring District Council

By [Email: gburden@tendringdc.gov.uk](mailto:gburden@tendringdc.gov.uk)

Your ref
Our ref DW/HS/. 006118.0013
Date 11 September 2020

Dear Sirs

The Anchor Inn Harwich Road Mistley Essex CO11 1ND

We write in response to your letter of 2 September to REDACTED of The Anchor Inn. Thank you for advising us that you have received a Nomination for the above property under the Community Right to Bid Provisions within the Localism Act 2011.

Our client objects to this Nomination. Further, as we shall demonstrate, there is no evidence upon which to justify the designation of The Anchor Inn as a building of community value. Indeed, it is not. The relevant statutory criteria are not met.

You will be aware that whether land is of community value is dealt with at Section 88 of the Localism Act 2011. It is unclear to us at least from the application and your letter whether you consider subsection (1) is engaged. We say this because, to all intents and purposes, no actual current use of the building is occurring.

However, even if there was an actual use, that use must be furthering the social wellbeing or social interest of the local community. In this regard the local community has made little or no use of the building for many years. It has not utilised the facility to assist with maintaining its viability as a public house. The applicant cannot therefore now maintain that the building is furthering the social wellbeing or social interest of the local community.

Furthermore, you also have to be satisfied under Section 88 (1) that it is realistic to think that the use of the building as a public house can continue. The business has been unviable for a number of years, despite the considerable efforts of the landlord in sponsoring various darts and sports teams. Moreover, there has also been considerable efforts to sell the property, but no purchase has come forward. This is indeed why planning permission is now being sought for the change of use to residential. We enclose a letter from our client's

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Consultants: David Whipps, Michael Wright
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accountant and the agents who are responsible for seeking to find a purchaser of the property, both of which accompany our client's planning application.

Turning to Section 88 (2) which will be engaged if you consider there is no current use, there again the building has not in the past been used to further the social wellbeing and social interest of the local community and further it has to be realistic that such a use is likely to continue for at least a period of 5 years. Here again the reality of the position is that there is considerably less demand in the neighbourhood for public houses. This is not a phenomenon unique to Mistley/Manningtree, but throughout the Country.

We are in any event at a loss to understand how the applicant can suggest that the building is of community value. Apart from the matters mentioned above, it must be born in mind that the Thorn Hotel itself is only 375m away and there are other public houses/other similar facilities within Manningtree, all of which within a reasonable walking distance. In short, there are plenty of licenced premises within the area to serve the community. It could also be said that by reducing the overall number of facilities it actually helps to maintain the viability of those remaining in a diminishing market.

It is interesting that the applicant has sought to make this nomination request at this point in time. It is highly likely that it was well known to the applicant that the premises were being marketed for sale and if the applicant was interested as they now suggest, they could have expressed an interest at that point in time and sought to negotiate the purchase of the property. The inference to be drawn is that the applicant simply seeks to delay either the grant of planning permission and/or the change of use of the premises.


We would also ask you to note that the application in itself is not entirely accurate. The applicant for example refers to The Anchor as "this much-loved pub" and that this is the only pub in the village. With respect, the applicant is wrong in both respects. If the pub was much loved, it would have been used and supported by the community. It has not been. Further, as mentioned already, it is not the only public house within the village.

The applicant also appears to be under the impression that under the existing planning permission, there is an attempt to demolish the entire premises. This is not correct. The bulk of the dwellings will remain and all that needs to be demolished is some later single storey additions. It is likewise wrong for the applicant to assert that there has been no marketing exercise.

In conclusion therefore we are entirely satisfied that the applicant has not made out the case for this building to be listed as a building of community value. Accordingly, we ask that the nomination be rejected.

Finally, we note that you are minded to refer this matter to an appropriate committee in due course and we should be grateful if you could let us know when this is to happen and to also let us have a copy of any committee report.

Yours faithfully



HOLMES & HILLS LLP

Redacted
The Anchor Inn
Harwich Road
Mistley
Essex
C011 1ND

21/05/2020

Dear Redacted

2

Re: Anchor Inn, Mistley, Essex.

I am writing to confirm the current position with regard the marketing of your property the Anchor Inn, Christie & Co commenced marketing of the property mid July 2018 at a freehold asking price of £425,000 to include the trade inventory with stock & glassware at separate valuation. Detailed sales particulars were produced and an entry made on our website at www.christie.com where we have over 70,000 registered users, As well as the details being emailed to circa 1,650 applicants registered on our extensive applicant data base with similar site requirements we also drive traffic to our website through trade press adverts such as in the Morning Advertiser,

This activity has continued with the ongoing marketing to date resulting in around 10 — 15 applicants viewing the sales details online per week resulting in a number of conversations with potential applicants seeking more information regards the property. In addition all potential applicants were made aware of the potential for alternative business uses that may be suitable for the property subject to the necessary planning and any applicants who showed further interest were encouraged to make their own enquiries to the local council. Unfortunately this activity has not resulted in any offers for the business despite our best efforts and matters have not been helped since 2016 by the UK's economic position as a result of the EU Referendum and the uncertainty in the following years throughout the licensed and commercial property markets. In addition the recent coronavirus pandemic has seriously affected the market since early March and will have ongoing ramifications for some time to come, with some operators talking of less than 70% of pubs actually re opening once allowed to.

I trust this covers matters — any queries please let me know.

RE: THE ANCHOR INN, HARWICH ROAD, IVIISTLEY, MA_NININGTREE, ESSEX,
C011 1ND

We have acted for the owners of the above premises for over 10 years,

During this period our clients have made every effort to make a success of the Public House.

The Public House has incurred losses for each of the last 8 years, despite every effort being made to make the business successful.

In December 2019 the business was dc-registered for VAT due to the declining turnover.

The Public House has now been shut for nearly 2 months due to the Coronavirus Pandemic with no indication of being able to re-open in the foreseeable future.

In view of the above, we do not believe that the Public House is viable and an alternative use should be sought.

Yours faithfully,