

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>Yes</b>
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## CABINET

18 DECEMBER 2020

### REPORT OF THE PORTFOLIO HOLDER FOR PARTNERSHIPS

**A.7 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE MANOR, RECTORY ROAD, GREAT HOLLAND, FRINTON-ON-SEA, ESSEX CO13 0JP** (Report prepared by Andy White and Gill Burden)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To determine whether The Manor 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 The Manor Reborn – an unincorporated body with more than 21 members registered to vote in the Tendring district. No other criteria are pertinent.

##### **EXECUTIVE SUMMARY**

A valid nomination to register an asset of community value has been received for The Manor 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 Manor Rectory Road Great Holland FRINTON ON SEA Essex CO13 0JP 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 Manor was still trading pre COVID 19 and provided takeaway food and a community shop during a period of the first lockdown but did not re-open as a public house when restrictions were eased. Consequently 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**

Thorpe Beaumont and Great Holland

### **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 The Manor Reborn (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 could be used to further the social wellbeing and interests of the local community in various ways. The nominating body states they would provide café facilities, special events for the elderly, charity fundraising events, quizzes, music nights and darts teams. It also states the possibility of a shop and or Post Office. It states that without the Public House none of that is possible. There is a Village Hall within 100 metres of the public house.

The nomination states The Manor Reborn intends to set up a Community Benefit Society and offer shares in addition to seeking advice and guidance from The Plunkett Foundation and CAMRA.

In accordance with the Regulations the landowner has been notified and have had discussions with officers but as yet have not formally asked for representation to be included. In addition the owners are co-operating with the nominating body and have allowed valuations of the premises and provided accounts to be viewed. If a formal response is received before the Cabinet meeting this will be included at the time.

Noting that the property has been for sale for some time Officers have written to the nominator asking what progress has been made previously in respect of securing finance to purchase The Manor and they responded they had been unaware the property was being marketed as a going concern.

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.*

A Planning applications have been made for the conversion of the building into a private dwelling. In the current climate it seems unlikely that a purchaser will pay the current asking price for the premises if the application is 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)**

**A: You and your organisation**

Your Name: REDACTED
Your Organisation (full official name): The Manor Reborn
Your position in the organisation: Member of the steering group
Organisation address (including postcode): c/o The Village Hall Manor Road Great Holland Essex CO13 0JT
Daytime telephone no.: REDACTED
Email address: REDACTED
How and when can we contact you?*: Preferably email in your working hours. Alternatively, telephone or mail OK.

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

**Type of organisation**

Description	Put a cross ✕ against all those that apply	Registration number of charity and/or company (if applicable)
Neighbourhood forum		
Parish Council		
Charity		
Community interest company		
Unincorporated body	X	
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.

Currently 44 members, all living in Great Holland. More than 21 are registered to vote in the Tendring District.

### **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 Manor Reborn is a group of Great Holland residents endeavouring to save our only village pub from permanent closure and possible conversion to a dwelling. It is possible that people from outside the village will join our group.

### **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.

There are currently no funds and there is no desire or requirement to make any surplus, just to cover, or contribute to, costs. If any contributions are made to help towards costs, any amounts unspent when a conclusion is reached will be put towards the setup and running costs of the venture (if successful) or given to a village resource e.g. the village hall (if unsuccessful).



## **A7      More about your organisation**

What are the main aims and activities of your organisation?

To find and execute a means to save our sole village pub, The Manor, from permanent closure.

## **A8      Your organisation's rules**

<b>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</b>	
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

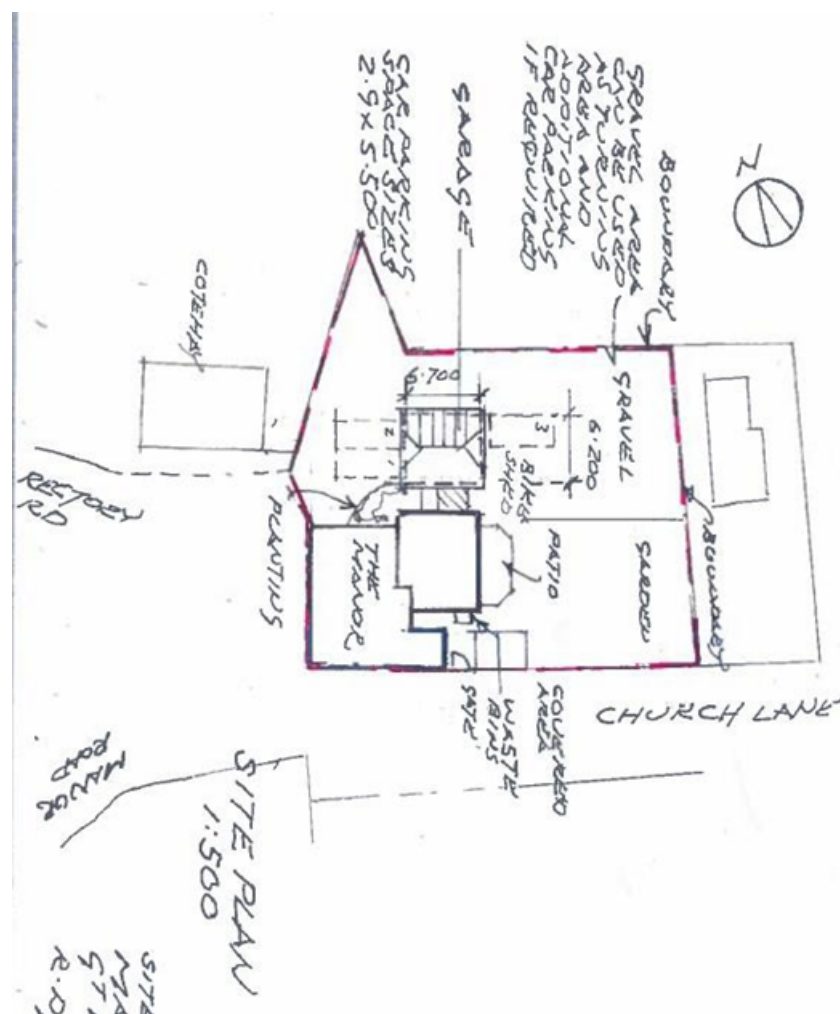
### nominating B1 Description and address

What it is (eg. pub, local shop)
Public house
Name of premises (eg. Royal Oak / Littletown stores)
The Manor
Address including postcode (if known)
Rectory Road, Great Holland CO13 0JP

### 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.



(AS PER PLANNING APPLICATION 20/00949/FUL)

**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.

	<b>Name(s)</b>	<b>Address(es)</b>
Names of all current occupants of the land	REDACTED	<i>Same as B1.</i>
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)	REDACTED	REDACTED
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)	N/A	

#### **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?

Yes! The Manor (formerly The Ship) has been a pub for more than 250 years. In that time it has provided sanctuary, support, entertainment, village cohesion, employment and a counter to isolation and stress. (People have commented on how they could go in on their own and feel comfortable).

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.)

Yes! All the benefits listed above.

We may be able to provide café facilities during the day, special events for the elderly, charity fundraising events, quizzes, music nights, darts teams etc. If the pub isn't there, we can't do any of these. Also the village is growing – how do new residents meet people if there are no amenities?

Additionally, it may be possible to add a shop and/or PO as we no longer have these in the village.

\*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.

We would propose to set up a Community Benefit Society and offer shares, with a minimum and maximum investment. There may be a small return on the shares if there are sufficient surplus funds to allow it in any year. ('Sufficient' would need to be defined so as to allow the venture to keep some reserves.) It may be necessary to finance any shortfall with a grant, loan or mortgage, or a combination of these.

Evidently we would need advice as to how to set up and run this ownership plan legally. There are organisations such as The Plunkett Foundation and CAMRA with a great deal of experience in this field and willingness to support groups in our position. We are in contact with both organisations, as well as other community pubs.

If finances allow, we envisage having a professional manager with volunteer staff, and paid staff if and when the business allows. Otherwise, it will be run by volunteers.

We will of course get as much information as we can, both specific to The Manor and general to this type of business, so we can produce budgets and forecasts and check that the business is viable before people commit their money. In the village we have working and retired tradespeople and professional people from the fields of fitting, hospitality, finance, IT, law and project management who have offered to give their services.

## **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

REDACTED