

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
-------------------------------	-----------	-----------------------------	-----------

## CABINET

19 MARCH 2021

### REPORT OF THE PORTFOLIO HOLDER FOR PARTNERSHIPS

**A.6. DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: THE NEVER SAY DIE PUBLIC HOUSE, 24 BROADWAY, JAYWICK SANDS, CLACTON-ON-SEA CO15 2EH**

(Report prepared by Andy White and Gill Burden)

#### **PART 1 – KEY INFORMATION**

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

To determine whether The Never Say Die 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 Jaywick Sands Revival Community Interest Company (CIC) and Charity Based Society (CBC). No other criteria are pertinent.

##### **EXECUTIVE SUMMARY**

A valid nomination to register an asset of community value has been received for The Never Say Die 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 Never Say Die Public House, 24 Broadway, Jaywick Sands, Clacton-on-Sea CO15 2EH 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 nominating body are the current occupiers of the The Never Say Die with a lease granted for five years which commenced 31<sup>st</sup> July 2020. It is still operating as a community hub supporting the local community with a range of endeavours such as Food Bank, Clothes Bank and Hygiene Bank. Jaywick Sands Revival also ran the community pub from July 2020 and intend to re-open initially outside and fully open when restrictions are lifted further.

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**

West Clacton and Jaywick Sands

### **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 Jaywick Sands Revival CIC (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 used to further the social wellbeing and interests of the local community in various ways. The nominating body state they provide vital practical support through the Community Hub they have established in the premises which includes Food, Clothes and Hygiene Bank, advice and support, social events and space for outreach services to hold surgeries such as Age Concern. In addition the Community Pub once re-opened will provide a safe environment for local people to meet. It is also intended to establish a local football team and there is a community farm being developed already.

In addition the Jaywick Sands Revival have stated their plans to develop a café for the elderly, annual street parties and engage with local vendors and businesses to help them promote and build awareness of their businesses.

The nominating body are also registered as a Charity Based Society through which they run the Community Pub and have been working with the Plunket Foundation to acquire funding to support a potential purchase of the premises. They are also actively engaging with other community based grant funding bodies.

In accordance with the Regulations the landowner has been notified and been given a period of time to make representation. To date no response has been received but if a formal response is received before the Cabinet meeting this will be included at the time.

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 current use and activities which further the social wellbeing and 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.*

## **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)**

**Asset of Community Value Nomination Form**

**: You and your organisation**

Your Name: Redacted
Your Organisation (full official name) Jaywick Sands Revival CIC
Your position in the organisation:
Organisation address (including postcode) 24 Broadway, Jaywick, CO152EH
Daytime telephone no.: 01255479090
Email address: Jaywicksandscic@gmail.com
How and when can we contact you?*
Monday, Tuesday, Thursday, Friday between 10am-3pm

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

**Type of organisation**

Description	Put a cross <b>X</b> against all those that apply	Registration number of charity and/or company (if applicable)
Neighbourhood forum		
Parish Council		
Charity	X	
Community interest company	X	11328700
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.

### **Local connection**

We as a community company and CBS have a massive connection to the community. We run a community hub which acts as an anchor within our community to bring people together through different endeavours such as, Food bank, clothes bank, baby bank, Hygiene bank school uniform drives, local events that help everyone in the community including the elderly, the disadvantaged and long term ill. We also run a community pub which is completely run and subsidised by the local community and grants we receive. The pub is a place for people in our community to come together in a safe place and find help and advice when needed. We also house Age concern once a month as well as having plans to start a local football team with mixed sexes as well as being open every day for people to come in and get help and advice whenever needed which is manned by volunteers. We also work with local groups to bring local resources to the community such as helping set up and run a local community farm, which is in the process of happening as well as giving opportunities to local people for job and skill training.

### **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 (i.e. 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.

All our excess funds, when we have some, will be going back into the community. As a CIC we have an asset lock and as a CBS we also have an asset lock.

### **A7 More about your organisation**



What are the main aims and activities of your organisation?

The Main Aims of our organisation is to help alleviate the deprivation in Jaywick Sands by helping its people improve their lives through self-sufficiency as well as make Jaywick Sands a safe and better place to live, work and visit, to hopefully increase our tourism rate.

We plan to bring our community together and make Jaywick Sands, as much as possible, self-sufficient and be able to help the local community without having to branch outside to ask for assistance.

We also run local events for people to create both social cohesion and self-reliance. We run affordable events, every year such as our Christmas Grotto, Santa's Sleigh ride to Jaywick and Clacton, Easter and Halloween events and anything we think could benefit our community.

We deliver food and hygiene parcels locally to those that cannot go out to get one, as well as helping the local elderly by linking them with Age concern and getting them the help and support to enable them to stay at home safely.

#### 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>	X
Memorandum and Articles of Association (for a company)	X
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**

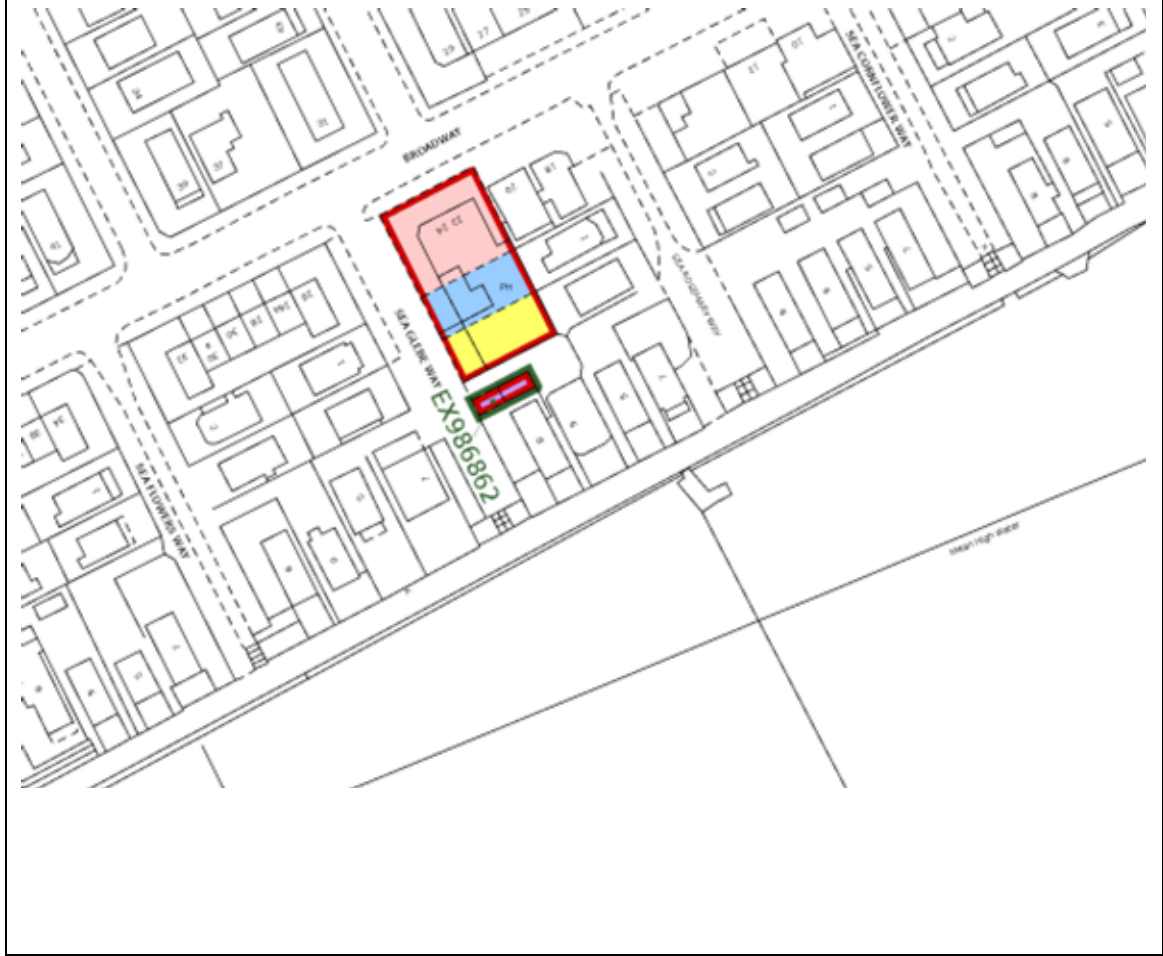
What it is (egg. pub, local shop) Community Pub and Community Hub
Name of premises (eg. Royal Oak / Littletown stores) The Never Say Die
Address including postcode (if known) 24 Broadway Jaywick CO15 2EG

**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.

I will attach the plans for the pub we received when we leased it



**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	Jaywick Sands Revival CIC JSRNSD Limited	Same as B1.
Names and current or last known addresses of all those owning the freehold of the land (i.e. owner, head landlord, head lessor)	Redacted	Redacted
Names and current or last known addresses of all those having a leasehold interest in the land (i.e. 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?

JSR CIC was established in 2018 by local people because they saw a need for the local people to get help and advice due to massive local deprivation. Local people banded together and created a group as a go to for locals to receive help and advice for the things they need. We then saw the opportunity to lease the local community pub as it has closed in lock down, and the owner had no intention of reopening. We saw this as a tragedy as this pub was a local institution and well used by the local community. Seeing the need and opportunity this pub would bring, we decided to lease the community pub and change the function room into a community hub. This then allowed us more space and an opportunity to expand our over stretched and under spaced services. Since then the pandemic has further increased the need for our services, especially regarding the food, clothes and hygiene bank as many people has been furloughed and lost their jobs locally and therefore need more assistance. We run all local services from the hub and pub as well as raising funds for good causes. We would not be able to run the services and have the impact we currently have if we didn't have the space for our services to run, and have the space to house the items we give out to the local community. The pub also gives us the opportunity to further our reach to different people within the community that we wouldn't have been able to reach otherwise.

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.)

In the future were looking to further our services more as well as increase the services offered. We will hopefully be organising a local football club, local get fit sessions and a local elderly café which will only help our community even more. We also intend to run more local events as well as an annual street party, to show off local vendors and local small businesses which increases exposure for local people and helps build their businesses and awareness.

\*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 are a CIC and intend to purchase the land and continue to run the services we already run here as well as increasing the opportunities for locals and alike. We have been working with Plunketts to acquire funding not only from them, but other sources within the funding and grant making community. Plunketts, the leading funder for buying community businesses are very excited to help us in our endeavour as they can see the opportunity the pub and hub is.

## 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
-----------------------

### C3 Where to send this form

You can submit this nomination:-

- **By post to:** Tendring District Council, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE
- **By email to:** gburden@tendringdc.gov.uk