

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

21 APRIL 2017

### REPORT OF LEISURE AND PARTNERSHIPS PORTFOLIO HOLDER

**A.5 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: YE OLDE CHERRY TREE CLACTON ROAD LITTLE OAKLEY HARWICH ESSEX CO12 5JH**

(Report prepared by Andy White and Gill Burden)

#### **PART 1 – KEY INFORMATION**

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

To determine whether Ye Olde Cherry Tree 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 Ye Olde Cherry Tree, Clacton Road, Little Oakley Harwich, Essex, CO12 5HJ 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

Ye Olde Cherry Tree 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**

Great Oakley and Little Oakley

## **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. A plan of the area nominated is also included.

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, hosts After Shoot meals and meetings, a Ladies Lunch, an annual Beer Festival and Vintage Tea Party as well as a fayre at Christmas and Easter.

The pub holds regular quiz nights and organises local Litter Picking as well as a charity car wash in their carpark. The pub hosts many private functions as well as hosting community events as well. There is live music promoting local bands as well as darts and pool teams who compete in the local league.

The nomination states that the pub is the hub of the community and provides a safe and family friendly environment for the community.

The nomination also states that should the property come up for sale the nominating group would consult with the local community to assess options which could include the potential for community ownership.

In accordance with the Regulations the landowner has been notified and no representation has been received. The owner is in fact supporting the Nomination although states he has no plans to sell in the foreseeable future. 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)**

REDACTED ALV NOMINATION

**Tendring**  
District Council



**LOCALISM ACT 2011**

**THE COMMUNITY RIGHT TO BID**

**NOMINATION FORM**

**A:** You and your organisation

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

\*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	<input type="checkbox"/>	
Parish Council	<input type="checkbox"/>	
Charity	<input type="checkbox"/>	
Community interest company	<input type="checkbox"/>	
Unincorporated body	<input type="checkbox"/>	
Company limited by guarantee	<b>X</b>	<b>01270286</b>

**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 pub 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?

**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>	<b>X</b>
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) Pub
Name of premises (eg. Royal Oak / Littletown stores) Ye Olde Cherry Tree
Address including postcode (if known) Clacton Road Little Oakley Harwich Essex CO12 5JH

## 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.*

	<b>Name(s)</b>	<b>Address(es)</b>
Names of all current occupants of the land	Current Licence Holder	Same as B1.
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)	Owners of the property	
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)	Leaseholder/Tenant	Same as B1

**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?

Regular Fundraising events are held at the pub with the proceeds being donated to the Essex Air Ambulance, Help Alexia Walk & the local Scout Hut.

After Shoot Meals & Meetings are held twice yearly, one is held at Christmas and the other is held at the end of the shooting season.

The local Parish Council hold regular Celebrations & Meetings at the pub where Parish matters are discussed.

Pub regulars arrange and run the local Tour De Taverns', which involves customers walking or cycling to visit other pubs within the area of Tendring whilst raising funds which are donated to the Essex Air Ambulance.

The Cherry Tree has a regular Pool Team which competes in the local league.

The pub also boasts 3 Darts Teams which play weekly in the local league during the regular season.

The Ladies Lunch is held every month and is attended by ladies who reside within the village.

The pub has held many events for the local community including Weddings/Funerals & other functions which may be booked by members of the community. It also holds special evenings such as a Burns Night supper which is open to all.

The Cherry Tree holds regular Live Music/Entertainment both in the evenings and at weekends which are well supported by the local community providing a platform for local musicians thereby contributing to the local culture.

The pub holds an annual Beer Festival which is well attended by the community as well as others from within the Tendring area who, regularly, travel to attend the festival.

Each year a Vintage Tea Party is held in the Beer Garden, weather permitting, and is well attended by the local community. It is open to all customers and all profits raised are donated to local charities.

Another regular event organised by the local community is the local Community Litter Picking, where members of the community meet at the pub and with the backing of the Parish Council walk through the village and collect and dispose of any unwanted litter that is found finishing off with a well-deserved drink back at the pub.

A regular event at the pub is the Charity Car Wash which is held in the pub Car Park. Anyone is allowed to bring their car along and regulars at the pub will clean your car with all profits being donated to charity.

An annual Christmas Fayre is held each year in which craft items made or donated by the local community are sold off with all profits being donated to charity.

An annual Easter Egg Hunt is held in the village with the pub being the centre of events.

A monthly Quiz Night is held at the pub and well attended by the local community with all profits from the night being donated to the Essex Air Ambulance.

Between the months of March and September each year, a group of local walkers meet at the pub before setting off on a pre-arranged walk around the local area and finally returning to the pub.

The pub has a beer garden which is used regularly by local families during the summer months making it a family friendly pub.

The pub serves hot and cold food on a regular basis and is frequented regularly by members of the local community catering for families with children to enjoy a meal out together.

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 enables local people to meet and socialise in a welcoming environment which, individually, they find rewarding and enjoyable. 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 Cherry Tree is the hub of the community and provides a safe, family friendly atmosphere where people from all walks of the community can get together and join in local events run by local people.

*\*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.*

The reason for the nomination is to ensure that the building has the opportunity to continue as a public house serving the local community. The pub customers and wider Village community should have the opportunity to form a community interest group and bid for the pub if and when they do decide to sell.

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.

### **Section C: Submitting this nomination**

#### **C1 What to include**

- The rules of your organisation (question A8).
- Your sketch plan (question B2).

#### **C2 Signature**

*By signing your name here (if submitting by post) or typing it (if submitting by email) you are confirming that the contents of this form are correct, to the best of your knowledge.*

Signature

**C3 Where to send this form**

You can submit this nomination:-

- **By post to:** Gill Burden Tendring District Council Thorpe Road Weeley Clacton on Sea Essex CO16 9AJ
- **By email to:** [gburden@tendringdc.gov.uk](mailto:gburden@tendringdc.gov.uk)