

## ASSETS OF COMMUNITY VALUE – COMMUNITY RIGHT TO BID NOMINATION – DELEGATED AUTHORITY:

The Royal Oak, Horsham Road, Handcross, West Sussex, RH17 6DJ

<b>Report to:</b>	<b>Peter Stuart</b> , Head of Corporate Resources – Corporate Estates and Facilities  <b>Cllr Judy Llewellyn-Burke</b> , Deputy Leader and Cabinet Member for Facilities and Corporate Estates	<b>Date: 19/11/2020</b>
<b>Author:</b>	<b>Joanne Johnston – Senior Estates Surveyor</b>	
<p>Authority under Recommendation 2.3 of the Cabinet Report dated 14<sup>th</sup> January 2013 (Assets of Community Value – Community Right to Bid) which authorises the Property and Assets Maintenance Manager <b><i>“in consultation with the Cabinet Member for Planning &amp; Regeneration or such other Cabinet Member as may be nominated by the Leader of the Council to determine any application under the Localism Act to list any building and/or land as an asset of community value”</i></b>.</p> <p>Under this authority, the Business Unit Leader for Corporate Estates and Facilities approves the following proposal:-</p> <p><b>Background</b></p> <ol style="list-style-type: none"><li>1. The Community Right to Bid was introduced by Part 5 of Chapter 2 of the Localism Act 2011, which requires the Council to maintain a list of land in its area that is of community value, which list is known as the Council's List of Assets of Community Value and the Act, and the Assets of Community Value (England) Regulations 2012 (“ACV Regulations”) establishes the regime for nominating and determining whether land and buildings should be entered onto the Council's List of Assets of Community Value.</li><li>2. Section 88 of the Act sets out the qualifying criteria that must be satisfied in order to be listed as an Asset of Community Value (“ACV”).</li><li>3. Section 88(1) concerns land that is in actual use at the time of the nomination and furthers community use, and provides as follows: “a building or other land in a local authority's area is land of community value if in the opinion of the authority:<ol style="list-style-type: none"><li>(i) 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</li><li>(ii) 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.”</li></ol></li><li>4. Section 88(2) concerns land that has in the recent past furthered community use and provides as follows: “a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority:<ol style="list-style-type: none"><li>(i) 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, and</li><li>(ii) 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.”</li></ol></li></ol>		

5. The statutory regime contains no definition of 'social wellbeing' or 'social interests' of the community. Section 88(6) of the Act expressly provides that 'social interests' include, in particular, cultural, recreational or sporting interests, but the phrase is not confined to those interests. Each local authority is to decide what interests it considers falls within the phrase. Social wellbeing could easily be described as those aspects of life that society collectively agrees are important to a person's happiness, quality of life and welfare. Being able to socialise with others, whether through a common interest or not, would easily satisfy that description and a venue that facilitates such social communion could easily be seen to meet the social interests of the community.
  6. The trigger for starting the listing process is the giving of a community nomination to the listing authority. A local authority has no power itself to list an ACV or to initiate the nomination process. There is no requirement that the owner be contacted by the nominator prior to the nomination and therefore, the first that the owner may become aware of a nomination is notification from the listing authority.
  7. Once a listing authority has received a community nomination, the listing authority has a duty to process the nomination within 8 weeks of receipt and must during that time determine whether the persons who have submitted the nomination qualify as a nominator and whether the nominated property meets the criteria for listing as an ACV. If the nominator meets the qualification criteria and the nominated property meets the criteria for listing, the listing authority must list the nominated property as an ACV.
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8. On 29 September 2020 the Council received a completed community right to bid nomination form from Slaugham Parish Community Land Trust Limited ("the Nominating Body") in respect of **The Royal Oak, Horsham Road, Handcross, West Sussex, RH17 6DJ ("the Nominated Property")**. The Nominated Property is shown edged red on the plan included with the nomination form and comprises the entirety of freehold title number WSX4176.
  9. The Proprietors of the freehold title WSX4176 are currently registered as being Wellington Pub Company PLC (Company Registration No. 3406623) care of Gosschalks of Queens Gardens Hull HU1 3DZ.
  10. The Act, the non-statutory advice provided by the Department for Communities and Local Government, regarding Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 No 2421 have been adhered to in determining whether the asset is a qualifying asset and the applicant a qualifying body to make such an application.
  11. If it is subsequently concluded that the Nominated Land is a qualifying asset within the Direct of Mid Sussex (not being within any excluded categories of property which cannot be nominated) and has been nominated by a qualifying body, Mid Sussex District Council, as the listing authority, must list the Nominated Land as an ACV and inform the following that the land has been so listed (and if removed from the list): -
    - a) The freehold owner of the asset;
    - b) The successful community nominator of the asset;
    - c) Any leaseholders of the asset;
    - d) The Parish or Town Council within which the property is situated.
  12. In addition, if the land is registered, the Council must apply for a restriction at the Land Registry in form QQ.

## Representations in support of listing

13. The Nominating Body has provided its representations in support of listing the Nominated Property in the nomination form. A plan showing the Nominated Property has been submitted along with the nomination form.
14. Section B4 of the Nomination Form asks the Nominating Body to explain why the Nominated Property is of community value. It asks: does it currently further the social wellbeing or social interests of the local community, or has it done so in the past? If so, how?

The Nominating Body responds as follows:

*'Dating back to the 17<sup>th</sup> century, the Royal Oak Inn has been an active, social focal-point for the Handcross locale. An attractive grade II listed, timber-framed, detached pub with pitched and tiled roof, re-faced with red brick on ground floor & tile-hanging above, it has always maintained a warm, welcoming, friendly ambiance for the local community.'*

15. Section B4 of the Nomination Form further asks the nominator to explain could the Nominated Land in future further the social wellbeing or social interests of the local community? If so, how?

The Nominating Body responds as follows:

*'well managed before recent lease negotiations broke down, the pub has provided a nexus for village social activities, quizzes, family parties, as well as the provision of excellent food, it provides a sociable, child/dog friendly atmosphere and remains in very good condition, having recently been restored – to rectify dilapidations at its recent lease end.'*

16. Section B5 then asks the Nominating Body: how could the building or land be acquired and used in future?

The Nominating Body responds as follows:

*'there is substantial local interest in maintaining the status of The Royal Oak as an existing Inn. We believe that the owners are substantially over-estimating the value of the lease. Their intention is unclear but may intend to seek an alternative use even though the building is listed as a public house. The community would like [the] opportunity to purchase the freehold should it arise, as we believe that it could be run successfully as a not-for-profit going concern. The community believes that funds could be raised from within the Parish possibly supplemented by borrowings to fund an acquisition. A manager would be employed to run the pub. The acquisition of the pub in Balcombe offers a model.'*

## Objections

17. Correspondence was sent by the Council to the registered freehold proprietors Wellington Pub Company PLC ("the Owners") on 9<sup>th</sup> October 2020, inviting them to make representations in response to the nomination of the Nominated Land by the Nominating Body. The Council has received, in a correspondence dated 18 November 2020 together with supporting documentation, the following representation from the Owners:
18. In response to the Nominating Body's representations in the first question in section B4 of the Nomination Form (set out in paragraph 14 of this report), the Owners state as follows:

*'A property is not an [Asset of Community Value] by virtue of its history... The fact that, when it was open, the Property may have provided a warm and friendly atmosphere is in no way connected to*

*the local community but rather is simply because of the fact that it is a public house... We would note that simply being a pub is not enough to demonstrate that the Property (or indeed any property) furthers the social interests or social wellbeing of the local community.'*

19. In response to the Nominating Body's representations in the second question in section B4 of the Nomination Form, the Owners state as follows:

*'we would note that there are no current uses of the Property, which has been closed to the public for the majority of 2020 and is now (and has since April been) permanently closed...'*

*'the Nomination refers to the hosting of events, and the Nominators refer to quizzes and family parties. These events are events which do not (when taken on their own, as opposed to be placed into a grouping so as to create the impression of greater regularity) form a part of the primary use of the Property. Furthermore, we would note that the Nominators make no attempt to refer to any regularity of such uses, and we would suggest that this may well be indicative of the fact that they were, at best, infrequent.'*

*'the second part of this part of the Nominator's responses refers to uses of the Property which are not indicative of a value to the social interests and/or wellbeing of the local community but are rather simply reflections of the fact that the Property was used as a commercial public house. Given our comments upon this above, we will not reiterate these points. The final element of this section of the Nomination states that the Property is in good condition. This is indeed correct, and this is owing to Our Client's commitment to ensuring that this is the case. There is however nothing in this fact which has any relevance to the Localism Act 2011, nor is the condition of the property in any way appropriate for consideration as a part of determining the Nomination.'*

20. In response to the Nominating Body's representations in section B5 of the Nomination Form, the Owners state as follows:

*'the nomination of the Property without any provision of evidence to show that there are any uses which further the social wellbeing and/or interests of the local community as a response to this is, as a matter of fact, a gross misuse of the legislation.'*

## **Conclusions**

21. The **first** consideration for the Council is whether the nomination can be considered to be a 'community nomination' for the purposes of the Localism Act 2011

- Section 89(1)(a)(i) of the 2011 Act provides that land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value in response to a *community nomination*.
- Section 89 (2) of the 2011 Act states that a "community nomination" means a nomination which
  - (a) nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and (b) is made... (iii) by a person that is a voluntary or community body with a local connection.
- Regulation 12 of the ACV Regulations 2012 provides that '... a body is a community interest group in relation to any land if the body: (i) is an industrial and provident society which does not distribute any surplus it makes to its members (Reg. 5(1)(f)); and (ii) has a local connection with the land.'
- "local connection" is not defined within either the Localism Act 2011 or the ACV Regulations 2012, however the Non Statutory Guidance on the Community Right to Bid (October 2012) advises that '*for a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with*

*a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located)'*

Slaugham Parish Community Land Trust Limited (the Nominating Body) is a Co-operative and Community Benefit Society ("CCBS"). A CCBS (formerly known as an industrial and provident society) is a society registered under the Industrial and Provident Societies Act 1965. A registered society is a legal entity which exists independently of its members. It can act, sue and be sued and own property, land and other assets in its own name without the need for trustees (section 3(4), Co-operative and Community Benefit Societies Act 2014).

The Nominating Body is registered at Companies House with company number IP32329R. It is also registered in the Mutuals Public Register with registration number 32329R. The Nominating Body's registered office is Seaforth Hall, Cuckfield Lane, Warninglid, Haywards Heath, West Sussex, RH17 5UB – an address which is within 3.3 miles distance of the Nominated Property. In its most recent Annual Return form, the Society lists 4 Directors, the addresses for each of whom are not provided. The business of the society is stated at 7B.1 of the Annual Return as being 'provision of facilities for the benefit of the community of the Parish of Slaugham.'

The objects of the Nominating Body are set out in Article A2 of its Rules dated 14 March 2014, a copy of which have been provided to the Council. This Article states that *'the CLT [being the Slaugham Parish Community Land Trust] is formed to operate as a Community Land Trust for the benefit of the community being the people who live and/or work or otherwise hold a stake in the parish of Slaugham in West Sussex ("the area"). Its objects shall be to carry on for the benefit of the local community... (A2.4) the provision of community-based resources and/or facilities including recreation facilities'*

Article A3 of the society's rules states that *'the CLT shall not trade for profit.'* Article A4 states that *'Nothing shall be paid or transferred by way of profit to the members of the CLT.'*

For the reasons set out above, the Nominating Body can therefore be considered to have a local connection to the Nominated Property and the nomination can therefore be considered a "community nomination" in accordance with the requirements in section 89(1), and as defined in section 89(2), of the Localism Act 2011.

22. The **second** issue for the Council to consider is whether, in its opinion, the Nominated Property has *'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'* as per S88(1)(a) of the Localism Act 2011.

- 'Social Wellbeing' and 'Social Interest' are not defined with the 2011 Act or within the ACV Regulations, other than Section 88(6) of the Act expressly provides that 'social interests' include, in particular, cultural, recreational or sporting interests, but the phrase is not confined to those interests.
- Each local authority is to decide what interests it considers falls within the phrase. As advised in paragraph 5 of this report, 'social wellbeing' could easily be described as those aspects of life that society collectively agrees are important to a person's happiness, quality of life and welfare.
- Being able to socialise with others, whether through a common interest or not, would easily satisfy that description and a venue that facilitates such social communion could easily be seen to meet the social interests of the community. It is reasonable to conclude that the Nominated Property fits this description of having recently been such a venue.
- However, the Nominated Property has been permanently closed since April 2020. It cannot therefore be said to have an "actual current use" that is not an ancillary use which 'furthers the social wellbeing or social interests of the local community.'

23. Where the Nominated Property does not meet the definition in S88(1) of the Act, the **third** consideration for the Council, as set out in S88(2) of the Localism Act 2011, is as follows:

- (i) *'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'; and*
- (iii) *it must be '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'*

In regards to point (i):

- the property closed in April 2020, four months prior to the current nomination by the Nominating Body. Prior to its closure, the Nominated Property functioned primarily as a pub. When it was in operation as a pub, the Nominated Property would have been open to the general public, including to members of the local community, during opening hours.
- "social interests" is defined in section 88(6) of the Act as including: (a) cultural interests; (b) recreational interests; and (c) sporting interests. There is no statutory definition of what each of these aspects constitutes, however, as explained at paragraph 5 of this report, each local authority is to decide what interests it considers falls within the phrase.
- As detailed in paragraph 22 of this report, the Nominated Property can reasonably be considered to meet the description of being a venue which furthers the 'Social Wellbeing' and 'Social Interests' of the local community.
- It is therefore reasonable in this instance for the Council to conclude that, prior to its recent closure and therefore within the 'recent past', the Nominated Property would have provided a hub for the local community that furthered the social wellbeing and social interests of the local community by providing a venue for members of the local community to commune socially. It could therefore be reasonably considered to have been of community value within the recent past as per S88(2)(a) of the Act.

In regards to point (ii):

- When relying on community use in the recent past the issue will be whether there is a realistic prospect that there could be a future community use of the Nominated Property which is not an ancillary use.
- The test does not require the likely future use of the Nominated Property to be determined but rather to determine whether future community use is one of a number of realistic options for the building (*Worthy Developments Limited v Forest of Dean DC CR/2014/0005 paras 18 and 19*).
- The test is not whether such future use is wholly unrealistic but whether it is realistic to think that there could be such a relevant non-ancillary use in the next five years (*Judge Lane at para. 26 in General Conference of the New Church v Bristol CC supra.*)
- In *Evenden Estates v Brighton and Hove City Council* Judge Lane stated "that what is "realistic" may admit a number of possibilities, none of which needs to be the most likely outcome" (CR/2014/0015 at para. 15).
- It is noted that until very recently the Nominated Property was used as a pub, which, as detailed earlier in this paragraph, could be construed to have been a non-ancillary use that would have furthered the social well-being or social interests of the local community.
- The Nominated Property is also said to currently be in 'very good condition' – a fact that is not disputed by the Owners in their response to the Nominating Body's nomination.

- Therefore it is reasonable and realistic in this instance to think that there could again within the next five years be a non-ancillary use of the building... that would further the social wellbeing or social interests of the local community.

For the reasons listed above, the Nominated Property can reasonably be considered to meet the criteria set out in S88(2) of the Act.

24. The Nominated Land does not contain residential property that is not ancillary to its primary use as a pub and therefore does not fall within the exemptions contained in paragraph 1 of Schedule 1 to the Assets of Community Value (England) Regulations 2012 ("the 2012 Regs").

Regulation 3 of the 2012 Regs provides that a building or land specified in Schedule 1 is not land of community value (and therefore may not be listed).

### Decision

25. As a result of the above considerations, the decision is given to list the property known as The Royal Oak, Horsham Road, Handcross, West Sussex, RH17 6DJ on the list of Assets of Community Value held by Mid Sussex District Council.

### **COPY OF THIS AUTHORITY TO BE PLACED ON THE PROPERTY FILE AND A COPY PROVIDED TO LEGAL WITH INSTRUCTIONS**

**Peter Stuart**, Head of Corporate Resources – Corporate Estates and Facilities

Signed 

**Cllr Judy Llewellyn-Burke**, Deputy Leader and Cabinet Member for Facilities and Corporate Estates

I concur with the decision made by the Head of Corporate Resources – Corporate Estates and Facilities.

Signed 