

	<h2>Community Leadership Committee</h2> <h3>14 April 2015</h3>
Title	<h3>Nomination of the Old Red Lion as an Asset of Community Value</h3>
Report of	Director of Strategy
Wards	Underhill
Status	Public
Enclosures	None
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Summary

The Localism Act 2011 introduced the Community Right to Bid (“the Right”), a new right for local people to nominate buildings or pieces of land that they believe contribute to the social interests or wellbeing of their local communities to be listed on a register of Assets of Community Value (“ACVs”), managed by the local authority.

The Right applies to public and private property, although there are a number of exceptions under the legislation, including private residences.

Where land is listed as an ACV, if an owner of a listed asset subsequently wishes to dispose of it, there will be a period of time during which the asset cannot be sold or a qualifying lease granted or assigned (a qualifying lease is a lease originally granted for a 25 year term). This period is known as a moratorium and would ultimately be for a period of six months. The moratorium is intended to allow community groups the time to develop a proposal and raise the required capital to bid for the asset when it comes onto the open market at the end of that period. The owner is under no obligation to accept a bid from the community group and can sell the property to whomever they wish once the six month moratorium is over.

Some recent policy developments have sought to create greater recognition of the social value pubs contribute to communities.

A nomination has been received to list the Old Red Lion as an Asset of Community Value and this report asks the Committee to make a decision on this nomination. Even though pubs may generally be considered “community assets”, this report considers that the Old Red Lion fails to pass the statutory tests set by the Localism Act 2011 to be considered an “asset of community value” and should therefore not be listed by the Council. This is on the basis that the Old Red Lion has now ceased trading and there is no evidence to suggest that there is a realistic chance of it reopening as a public house within the next five years.

Recommendation

That the Committee does not list the Old Red Lion as an Asset of Community Value on the basis that it has now ceased trading and there is no evidence to suggest that there is a realistic chance of it reverting to its use as a public house within the next five years.

1 WHY THIS REPORT IS NEEDED

The Community Right to Bid

- 1.1 The Localism Act 2011 (“the Act”) introduced a new right for groups of local people to nominate buildings or pieces of land which contribute to the “social wellbeing or social interests” of their local communities to be listed on a register of Assets of Community Value (“ACVs”), which the local authority is required to maintain.
- 1.2 Nominations can apply to public or private assets, although certain kinds of asset (such as private homes) are exempt.
- 1.3 The Act provides that the Council must consider whether the main use of the nominated asset does contribute to the social interests or wellbeing of the local community, and whether it is realistic to think it will continue to do this (whether or not the use remains exactly the same).
- 1.4 The Act defines social interests as ‘including cultural, recreational, and sporting interests’. There is no further definition.
- 1.5 The Act provides that land in a local authority's area which is of community value may be included by a local authority in its register of ACVs only:
 - (a) in response to a community nomination, or
 - (b) where permitted by regulations made by the appropriate authority.
- 1.6 In England a community nomination can be made by a parish council or by a voluntary or community body with a local connection as defined in the Assets of Community Value Regulations 2012 (“the Regulations”).

- 1.7 The statutory tests which the Council must apply when assessing a nomination are:
- (i) Its main use furthers the social wellbeing or cultural, recreational or sporting interests of the local community; and it is realistic to think that the main use will continue to further the social wellbeing or cultural, recreational or sporting interests of the local community; or,
 - (ii) Where the main use does not currently have such a community benefit, in the “recent past” it did have and the Council considers it likely that it would be able to have such a use in the next 5 years.
 - (iii) That the nomination is a community nomination made by a community or voluntary organisation or group which qualifies under the Act to make the nomination.
- 1.8 Where either criterion i) or ii), and criterion iii) of the above is met, the Council must list the land or building on its register of Assets of Community Value.
- 1.9 If the Council lists the nominated land, a restriction is placed on the land if the land is registered. If the owner wishes to sell the asset or to lease it for more than 25 years, then the owner is legally obliged to notify the Council. The Council will then inform the nominating group which signals an interim moratorium period of six weeks where the nominating group or any other eligible community group may register an interest in bidding for the asset. If during the six weeks a local community group expresses an interest in taking on the asset and continuing its community use, then the sale is delayed for a six month period. This is designed to give the community group the opportunity to raise funds to try to purchase the asset at market value.
- 1.10 The owner is under no obligation to accept the community’s bid over any other bid. There is no ‘right of first refusal’ for the community group, only the right to request the moratorium. The owner is free to work with other potential buyers and stimulate the wider market during the moratorium.
- 1.11 While the Act and Regulations do not state whether or not ACVs are material considerations in a planning context, the Government’s non-statutory advice note on ACVs advises that this is at the discretion of the local authority. The advice note states, as follows:
- the provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

(Community Right to Bid: Non-statutory advice note for local authorities, October 2012).

Barnet's planning procedures already take account of the social and community use of land or buildings when a planning application comes forward. Where an application in relation to an Asset of Community Value is being considered, the listing will be one of the considerations which can be taken into account by the relevant planning committee who can determine the appropriate weighting to be given to the listing.

- 1.12 The Act therefore has little or no impact unless an asset is being put up for sale or long term lease *and* local feeling about it is strong enough that local people have a constituted group in place to put in a proposal to buy it. Even if all these conditions are in place, the limitation is only the six-month delay, after which the owner can sell the asset to whomever they wish.
- 1.13 If an asset is listed, the asset owner has the right to appeal against this, initially through the Council's internal review process and subsequently through an appeal to the First Tier Tribunal.
- 1.14 If an asset is not listed, the Council must communicate its reasoning to the nominating group but the nominating group has no right to appeal against the decision.

Recent policy developments

- 1.15 The Government have committed to a review of all the Community Rights during the summer of 2015. The full scope of the review is not yet clear but there have been some specific recent developments which aim to create greater recognition of the social value contributed by local pubs:
 - On 26 January 2015, the Minister for Community Pubs announced that owners of listed Assets of Community Value, including pubs, would be required to apply for planning permission to change their use class.
 - On 23 March 2015, ministers held the UK's first Community Pubs day and launched a 'community asset certificate' available to any pub – although this is not related to the Assets of Community Value listing process.
- 1.16 More broadly, strengthening the restrictions the Act places on assets of community value, a Communities and Local Government Select Committee report published on 3 February 2015 recommended that the review of Community Rights should increase the moratorium on sale or lease of an ACV to nine months, as well as creating statutory obligations for ACVs to be considered as a material consideration. These recommendations have not yet been accepted but will feed into the Government's review of Community Rights due to take place in summer 2015.

Nomination of the Old Red Lion

- 1.17 The Enfield and Barnet branch of the Campaign for Real Ale (CAMRA) has nominated the Old Red Lion public house and its curtilage as an Asset of Community Value. This is an unincorporated group and has at least 21 individual members with a local connection.
- 1.18 The Old Red Lion was sold by its previous owners, McMullens Ltd, to Danescroft Land Ltd, and it ceased to trade as a pub on 28 February 2015.
- 1.19 The nominating group believes the property to be of community value on the grounds that:
- When it was a pub, it hosted a range of social and community activities as well as serving the community with good food and drink.
 - The pub was well-located at the heart of the community; a short walk from the Dollis Valley Estate and the closest public house to High Barnet Underground Station.
 - The public house has historical relevance, dating back to 1890 where it was used as a watering hole for stagecoaches before climbing Barnet Hill.

Application of statutory tests as set by the Localism Act 2011

- 1.20 The nomination comes from an eligible group and all relevant information has been provided. Criterion (iii) of the statutory tests set out in paragraph 1.7 above was therefore met.
- 1.21 At the time the nomination was received, the Old Red Lion was still trading as a pub, but as it ceased to do so on 28 February 2015, the asset cannot currently be said to further the social interests and wellbeing of the local community. On these grounds, it does not pass statutory test (i) set out in paragraph 1.7 above.
- 1.22 Written evidence was provided by the applicant that the asset's use as a public house contributed to furthering the social interests and wellbeing of the community, in the form of a variety of social activities. This is supported by the existence of a Facebook page for the pub, giving details of these events. There was, therefore, a time in the recent past when the asset furthered the social interests and wellbeing of the local community.
- 1.23 On the evidence submitted by the nominating group, it is considered unlikely that the pub will reopen and that the asset will have a community benefit in the next five years. The evidence submitted by the nominating group includes a news release from the previous owner, which states that the pub has already been sold. No evidence has been provided that the new owner has any interest in reopening the building as a pub. There is

also no specific evidence provided of interest by any local group in bidding for or reopening it; merely a general statement from the nominating group that they do not wish the pub to close. There is, therefore, a lack of any evidence that the building has a realistic prospect of reopening as a pub.

- 1.24 There is also evidence to suggest that there would not be enough demand to make running a pub in the area sustainable. The news release from the owner, provided by the nominating group, states that customer demand at the Old Red Lion had been falling for some time despite investment, and this statement is corroborated by data showing an upward trend in pub closures in the surrounding area. Residents also have access to another pub a short distance (185m) away, which suggests that there would be competition for any continuing demand for a pub in the area. This supports the idea that the prospect of the pub reopening is not a realistic one.
- 1.25 On these grounds, the nomination also fails statutory test (ii) set out in paragraph 1.7 above.
- 1.26 Even though pubs are generally considered “community assets”, the Old Red Lion fails to pass the necessary statutory tests set by the Localism Act 2011 to be considered an “asset of community value”.
- 1.27 This report therefore recommends that the Committee does **not** list the Old Red Lion as an Asset of Community Value.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The Old Red Lion does not pass the statutory tests set by the Localism Act 2011 to be considered an Asset of Community Value, for the reasons set out in paragraphs 1.21 – 1.27. The recommendation is, therefore, that the Committee does not list the Old Red Lion as an Asset of Community Value.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Council could decide to list the Old Red Lion as an Asset of Community Value, but this is judged to be inconsistent with the terms of the Localism Act 2011, as Assets of Community Value must have a realistic chance of furthering the social interests and wellbeing of the local community.
- 3.2 The asset owner has the right to appeal if they feel that their property has been wrongfully listed.

4 POST DECISION IMPLEMENTATION

- 4.1 The Old Red Lion will be recorded on the Register of Assets of Community Value as an unsuccessful nomination, and the nominating group informed,

in writing, of the outcome.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Community Right to Bid process contributes to the Corporate Plan's objective to promote family and community wellbeing and support engaged, cohesive and safe communities by fulfilling one of the rights granted to local communities under the Localism Act 2011.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 A decision not to list will have no impact on resources.

5.2.2 A decision to list the asset could expose the Council to costs if the asset owner decided to appeal this decision. If the listing were then overturned through the Council's internal processes there would be some costs in officer time to administer the review process. If the listing were then appealed through the First Tier Tribunal there would be a further cost to the Council in officer time, and in external legal fees of approximately £10,000. These costs would be managed within Council resources.

5.2.3 This exposure only applies if the nomination relates to an asset not owned by the Council, as the Council would otherwise be litigating against itself.

5.3 Legal and Constitutional References

5.3.1 The Localism Act 2011 gives the Council the responsibility to list assets nominated by local community groups as Assets of Community Value if these are deemed to pass the statutory tests set out in the Act.

5.3.2 Under the Council's Constitution (Responsibility for Functions – Annex A) the responsibilities of the Community Leadership Committee include:

- Grants to Voluntary Sector within the remit of the Committee
- Registration and Nationality Services
- Emergency Planning
- Civic events

- To maintain good community relations with Barnet's diverse communities ensuring that all communities have the opportunity to participate fully in the Borough's affairs.

- To approve any non-statutory plan or strategy within the remit of the Committee that is not reserved to Full Council or Policy and Resources.

5.4 Risk Management

- 5.4.1 There are no risks associated with the decision not to list as an Asset of Community Value.

5.5 Equalities and Diversity

- 5.5.1 No negative differential impact on people with any characteristic protected under the Equality Act 2010 has been identified with regard to this nomination.

5.6 Consultation and Engagement

- 5.6.1 A draft amendment to the Council's Community Right to Bid policy was carried out between 11 February and 24 March 2014. The results of that consultation were set out in a report taken to the Community Leadership Committee on 25 June 2014 and the Council's guidance on the Community Right to Bid amended following agreement of that report.
- 5.6.2 More specifically, the nominating group has been engaged in dialogue as part of the process of administering the nomination, and given opportunities to submit evidence to support their claim.

6 BACKGROUND PAPERS

- 6.1 Community Right to Bid: Consultation and recent developments (Community Leadership Committee, 25 June 2014)
<http://barnet.moderngov.co.uk/documents/s15687/Community%20Right%20to%20Bid%20Report.pdf>.