

	<h2>Community Leadership Committee</h2> <h3>15 October 2015</h3>
<p style="text-align: right;">Title</p>	<p>Nomination of the White Lion pub, 50 St Albans Road, EN5 4LA as an Asset of Community Value</p>
<p style="text-align: right;">Report of</p>	<p>Director of Strategy and Communications</p>
<p style="text-align: right;">Wards</p>	<p>High Barnet</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>Yes</p> <p>This decision is urgent because there is an 8 week statutory timescale to respond to Community Right to Bid nominations, starting from the date the Council receives the nomination. The nomination for the White Lion was received on 9th September 2015, making the deadline for a response 4th November 2015.</p>
<p style="text-align: right;">Key</p>	<p>No</p>
<p style="text-align: right;">Enclosures</p>	<p>Plan of nominated asset</p>
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<h2>Summary</h2>
<p>The Localism Act 2011 introduced the Community Right to Bid (“CRTB”), 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.</p>
<p>CRTB applies to public and private property, although there are a number of exceptions under the legislation, including private residences.</p>
<p>Where land is listed as an ACV, if the owner subsequently wishes to make a ‘relevant</p>

disposal' (to sell the asset or grant a qualifying lease, which is one originally granted for a 25 year term) they must notify the local authority. This triggers an interim moratorium period of six weeks, during which time a community group can register interest in putting together a bid for the asset. If a community group registers interest, this triggers a full moratorium period of six months, during which time the owner may not make a relevant disposal of the asset, except to a community group. 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 a community group and can sell the property to whomever they wish once the six month moratorium is over.

In order to decide whether to list an asset as an ACV, the Act provides that the Council must consider whether the current or recent main use of the nominated asset contributes to the social wellbeing or social interests (defined as 'cultural, recreational or sporting interests') of the local community, and whether it is realistic to think it will continue to do so in the next 5 years (whether or not the use remains exactly the same).

A nomination has been received to list the White Lion pub, 50 St Albans Road, EN5 4LA. (High Barnet ward) as an Asset of Community Value. This report asks the Committee to make a decision on this nomination.

The nomination describes a range of sporting and recreational activities that happen at the pub, as well as other uses that further social interest, such as providing space for local charities to meet. By nature, a pub exists to provide for the sporting and recreational interests of the community, so it may be assumed that the uses of the asset which further social wellbeing and social interests are the main uses. Therefore, **the current main use of the asset contributes to the social wellbeing and social interests of the community.** There are currently no known plans to close the pub, so **it is realistic to think that use of the asset will continue to contribute to the social wellbeing and social interests of the community.**

The nomination is an eligible nomination. The Localism Act 2011 provides that in order to be eligible, the nomination must be made by a community organisation or group which qualifies under the Act to make the nomination. The Barnet and Enfield branch of Campaign for Real Ale (CAMRA) has made its application as a company limited by guarantee (a status which qualifies under the Act), relying on the status of the national CAMRA organisation. Previous precedent from a first tier tribunal decision, and evidence of local connection submitted by the Barnet and Enfield branch of CAMRA, establish that the Barnet and Enfield branch of CAMRA is able to rely on the national organisation's status as a company limited by guarantee. This is in line with the intention behind the Localism Act 2011, which is to make it easy for groups with a genuine local connection to nominate assets that are important to their communities.

Recommendations

That the Committee agree that the White Lion Pub should be listed as an Asset of Community Value and added to the Council's Register based on the statutory criteria set out in the Localism Act 2011, and the evidence provided in the nomination.

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 in order to decide whether to list a nominated asset as an ACV, the Council must consider whether the main use of the asset contributes 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 (if the asset is not owned by 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 a full moratorium is triggered and 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 group'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 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 came into force on 6 April 2015. It states that in the case of a public house which is not a community asset (ACV) that prior to development (including demolition) the developer must send a request to the local planning authority as to whether the building has been nominated as an ACV. Development cannot take place for 56 days following this request. This also applies to demolition of public houses too. The Amendment removes Permitted Development rights for change of use or demolition of a public house that is ACV registered. This means that since the introduction of the Order, much greater weight is given in planning to public houses which are registered as ACV. Any change of use or re-development of an ACV registered public house requires planning permission. Previously such changes could be made without requiring the consent of the local planning authority.
- 1.12 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.
- 1.13 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

- 1.14 The Government is currently reviewing the Right. The review is on-going and there is no closing date as it is not a formal consultation. Government will be talking to a small number of stakeholders, including a sample of local authorities where moratoria have been triggered, community groups, and property owners associations through August and September 2015. The Council is contributing to the review as an interested party.
- 1.15 A Communities and Local Government Select Committee report published on 3 February 2015 recommended that the review of the Right should increase

the moratorium on sale or lease of an ACV to nine months, as well as creating statutory obligations for ACV status to be considered as a material consideration in planning matters. These recommendations have not yet been accepted by the Government but will feed into the review.

Nomination of the White Lion pub

- 1.16 The Barnet and Enfield branch of Campaign for Real Ale (CAMRA) has nominated the White Lion, 50 St Albans Road, EN5 4LA. The enclosed plan sets out the boundaries of the nominated asset.
- 1.17 The White Lion is currently owned by Fuller Smith & Turner Plc. They, along with the current occupier of the premises, have been notified that this nomination is currently under consideration.
- 1.18 The nominating group considers that the main current use of the land furthers social wellbeing and interests of the community on the grounds that:
- The pub hosts advertising for local events.
 - There is a beer garden attached to the pub, which is used and enjoyed by local people.
 - The pub provides facilities for playing darts.
 - The pub provides screenings of sporting events, which are attended by local people.
 - Local sports teams use the pub, including the Potters Bar and District darts teams.
 - Free wifi is available for customers.
 - Meeting spaces are available for local community groups and charities to use.
 - The pub provides employment opportunities for local people.
 - The restaurant and other facilities are used for family gatherings and parties.
- 1.19 There are no known plans to close the pub.

Application of statutory tests as set out in the Localism Act 2011

Main use of asset furthers social wellbeing or social interests of community

- 1.20 The legislation sets a broad and loose definition of 'social wellbeing and social interests'. The activities listed at paragraph 1.19 are sufficient to demonstrate that a number of uses of the asset fall within the definition of 'cultural, recreational, and sporting interests'.
- 1.21 Use of the asset to contribute to the social wellbeing and social interests of the community may be considered the main rather than ancillary use because a pub by nature exists to provide for the cultural, recreational and sporting interests of the community and it may be assumed the activities listed at paragraph 1.19 are the main activities carried out on the premises. The nomination sets out that there is good access to the pub because of good transport links and disabled access. The fact that the pub is easily accessible

to a range of people in Barnet and the neighbouring area further strengthens the argument that the main use of the asset contributes to the interests of the community.

- 1.22 There are no known plans to close the pub, which means it is realistic to think the main use of the asset will continue to further social wellbeing and social interest of the community.
- 1.23 Taken together, points 1.20-1.22 establish that criterion (i) of the statutory tests set out in paragraph 1.7 above have been met. The main use of the land does further the social wellbeing or social interests of the community and it is realistic to expect that it will continue to do so.

The nomination is eligible

- 1.24 The Barnet and Enfield branch of Campaign for Real Ale (CAMRA) has made its nomination as a company limited by guarantee (a status which qualifies to make nominations under the Act), relying on the status of the national organisation.
- 1.25 This is in line with the first tier tribunal decision in *St Gabriel Properties Ltd v. London Borough of Lewisham*, which found that the local branch of CAMRA in that case was able to rely on the status of the national organisation for the purpose of making CRTB nominations. The Barnet and Enfield branch of CAMRA has provided evidence to demonstrate that it satisfies a number of criteria that were important in the *St Gabriel Properties* case, namely that:
- The local branch is connected to the national organisation by allocation of members in accordance with their geographical location.
 - The local branch's activities are concerned with Barnet and the neighbouring area, as demonstrated on its website and in minutes of its meetings.
 - Part of the organisation's surplus is used for the benefit of Barnet and the neighbouring area, as demonstrated by CAMRA's financial support for the London Drinker Beer & Cider festival in Camden, and nominations of pubs in Barnet by the Barnet and Enfield branch of CAMRA for inclusion in CAMRA's publication 'The Good Beer Guide'.
- 1.26 First tier tribunal decisions are not binding, but it is recommended that the Committee accepts this as a useful precedent for establishing eligibility to nominate that is in line with the intention behind the Localism Act 2011, which is to make it easy for groups with a genuine local connection to nominate assets that are important to their communities.
- 1.27 Criterion (i) of the statutory tests set out in paragraph 1.7 above has been met.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The White Lion meets the statutory tests established 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 lists the White Lion as an Asset of Community Value.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Council could decide not to list the White Lion as an ACV, but on balance it is judged that the nomination provides sufficient evidence that the statutory criteria set out in the Localism Act 2011 have been met. If the Committee is in agreement with this judgment, the Council must list the nominated asset as an ACV.
- 3.2 An owner has the right to appeal if they feel that their asset has been wrongly listed.

4. POST DECISION IMPLEMENTATION

- 4.1 The White Lion will be recorded on the Register of Assets of Community Value as an ACV. Both the nominating group and the owner of the property will be 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 2015-2020 Corporate Plan's objective to develop a new relationship with residents that enables them to be independent and resilient and to take on greater responsibility for their local areas 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 The asset does not belong to the Council and there are no financial implications to this decision.

5.3 Social Value

- 5.3.1 There are no social value considerations as this decision does not relate to a service contract.

5.4 Legal and Constitutional References

- 5.4.1 The Localism Act 2011 obligates the Council 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.
- 5.4.2 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.

5.5 Risk Management

5.5.1 There are no risks associated with the decision to list the White Lion pub as an ACV.

5.6 Equalities and Diversity

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

5.7 Consultation and Engagement

5.7.1 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.

5.7.2 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.

5.8 Insight

5.8.1 No specific insight data has been used to inform the decision required.

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>.