

	<p>Community Leadership Sub-Committee 30 June 2016</p>
<p style="text-align: center;">Title</p>	<p>Community Right to Bid nomination: the Lord Nelson, 14 West End Lane, High Barnet, EN5 2SA</p>
<p style="text-align: center;">Report of</p>	<p>Stephen Evans, Interim Chief Operating Officer</p>
<p style="text-align: center;">Wards</p>	<p>Underhill</p>
<p style="text-align: center;">Status</p>	<p>Public</p>
<p style="text-align: center;">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 Lord Nelson was accepted on 16 May 2016, making the deadline for a decision 11 July 2016.</p>
<p style="text-align: center;">Key</p>	<p>No</p>
<p style="text-align: center;">Enclosures</p>	<p>Appendix A: Plan of nominated asset</p>
<p style="text-align: center;">Officer Contact Details</p>	<p>Hannah Chillingworth, Strategy Officer (hannah.chillingworth@barnet.gov.uk, 020 8359 3598)</p>

<p>Summary</p> <p>The Localism Act 2011 (“the Act”) introduced the Community Right to Bid (“CRTB”) “the Right”), a new right for qualifying local groups to nominate buildings or pieces of land that they believe contribute to the social wellbeing or social interests of their local communities to be listed on a register of Assets of Community Value (“ACVs”), managed by the local authority.</p> <p>Where land is listed as an ACV, if the owner subsequently wishes to make a ‘relevant disposal’ (to sell the freehold estate in the asset with vacant possession or the grant or assignment of a qualifying lease, being one originally granted for a minimum 25 year term) they must notify the local authority in writing. This triggers an interim moratorium period of</p>
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six weeks, during which time the nominating group, or any other 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. No further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the local authority of wishing to sell).

In order to decide whether to list an asset as an ACV, the Act provides that the council must consider whether the nomination has come from a group eligible to make a nomination, as defined in the legislation; and whether the current main use of the nominated asset contributes to the social wellbeing and 'cultural, recreational or sporting interests' of the local community, and it is realistic to think it will continue to do so. Alternatively, if in the opinion of the council, there is a time in the recent past that the main use of the nominated asset furthered the social wellbeing or interests of the local community and it is realistic that during the next five years there will a main use of the nominated asset (whether or not the same use as before) that will further the social wellbeing or social interests of the local community.

A nomination has been received to list the Lord Nelson, 14 West End Lane, High Barnet, EN5 2SA (Underhill ward) as an Asset of Community Value. **This report recommends that the asset is listed as an Asset of Community Value.**

The nomination is an eligible nomination. The Barnet and Enfield branch of Campaign for Real Ale (CAMRA), which nominated the Lord Nelson, is a local branch of the national CAMRA, a company limited by guarantee (a status which qualifies under the Act). Previous precedent from a first tier tribunal decision establishes that the local branches of CAMRA are able to rely on the status of the national CAMRA in order to satisfy the statutory definition of "a voluntary or community" body. The Barnet and Enfield branch of CAMRA has submitted evidence of a local connection, therefore satisfying the statutory criteria to be considered an eligible nominating group.

Pubs are designated as community facilities for the purposes of planning policy in the borough of Barnet, and this nomination has described a range of recreational and sporting activities that happen at the Lord Nelson, as well as other uses that further social interest, such as hosting charity events and providing free Wi-Fi. It is therefore reasonable to think that **the main use of the asset furthers the social wellbeing and social interests of the community.** There are currently no known plans to close the pub and the nomination sets out a variety of uses including as a meeting place for the local Bell Ringers Society and Polo Club, suggesting continued viability and demand. **It is realistic to think that use of the asset will continue to contribute to the social wellbeing and social interests of the community.**

Recommendations

That the Committee decide to list the Lord Nelson as an Asset of Community Value and that it is added to the council's Register of listed assets, 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 residential homes) are exempt.
- 1.3 The Act defines social interests as 'including cultural, recreational, and sporting interests'.
- 1.4 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.
- 1.5 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").
- 1.6 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.
- 1.7 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.

- 1.8 If the council lists the nominated land, a restriction is placed on the land if the land is registered. If the owner wishes to make a relevant disposal 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.
- 1.9 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 and at the end of the moratorium period can sell to any party.
- 1.10 Since the introduction of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 much greater weight is given in planning to public houses which are registered or nominated as an ACV. If the owner of a nominated asset or an asset that is listed as an ACV wishes to change the use or re-develop the public house, planning permission will be required. While not offering explicit protection for pubs, the Barnet Local Plan Policies CS10 and DM13 support the protection of community meeting places therefore if listed, this will provide greater protection for retention as a public house.
- 1.11 If the pub is listed as an ACV it may become a material consideration in any future planning decisions – this and the weight given to such considerations is at the discretion of the council. Under Para 70 of the National Planning Policy Framework, planners should already consider pubs as community facilities. Para 70 states: 'To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, **public houses** and places of worship) and other local services to enhance the sustainability of communities and residential environments'.
- 1.12 If an asset is listed as an ACV, 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. However, a nominating group can apply for judicial review of the local authority's decision.

Nomination of the Lord Nelson

- 1.14 The Barnet and Enfield branch of Campaign for Real Ale (CAMRA) has nominated the Lord Nelson, 14 West End Lane, High Barnet, EN5 2SA. The enclosed plan sets out the boundaries of the nominated asset.
- 1.15 The nomination states that the Lord Nelson is currently owned and operated by Young and Co.'s Brewery PLC. The owners and occupiers have been notified that this nomination is under consideration.
- 1.16 The nominating group considers that the main current use of the land furthers social wellbeing and social interests of the community on the grounds that:
- It is a site of historical interest – the nomination states that Richard Burton and Elizabeth Taylor visited the pub after filming Cleopatra and signed the wallpaper where their signatures remain today
 - There is a good home-cooked food menu
 - The pub is dog friendly
 - There are good transport links to the pub
 - The pub is full of bric-a-brac and has a collection of novelty salt and pepper pots that have been donated by customers returning from holiday
 - The local Bell Ringers Society and Polo Club regularly hold meetings at the pub as neither organisation has their own premises
 - The pub regularly holds charity fundraising events, for example, fundraising for Leukaemia research which was prompted by a local child suffering from the disease
 - Free Wi-Fi is available for customers which allows people to access the internet who otherwise wouldn't be able to – the pub therefore provides a vital facility for people wanting to use the pub for more than a social event
 - Free newspapers are provided at the pub
 - There is a garden attached to the pub which is used and enjoyed by local people, including families
 - The pub is a space for the local community to mark significant events such as births, deaths and marriages
 - The pub offers a dart board, quiz machine and board games. There is also a quiz night on Thursdays which is open to all
- 1.17 On balance, not all of the grounds set out in (1.16) are directly relevant to the statutory criteria, for example, good transport links, cannot be said to further the social wellbeing or social interests of the local community as defined in the Act. However, it is judged that the relevant grounds constitute sufficient evidence to demonstrate that the pub furthers the social wellbeing and social interests of the local community.
- 1.18 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

- 1.19 The activities listed at paragraph 1.16 are sufficient to demonstrate that a number of uses of the asset fall within the definition of ‘cultural, recreational, and sporting interests’.
- 1.20 The activities listed at 1.16 can be considered to be part of the main use, rather than merely ancillary use, because a pub by its nature is a community facility and taken together, the activities listed at paragraph 1.16 are amongst the main activities carried out at the premises. Simply being a pub does not mean that a nominated asset meets the statutory criteria; a nomination must set out exactly why they deem the pub to be an asset of community value and these grounds must not be an ancillary use of the nominated asset.
- 1.21 There are no known plans to close the pub and evidence of continued demand and financial viability means it is realistic to think the main use of the asset will continue to further social wellbeing and social interest of the community.
- 1.22 Taken together, points 1.19 – 1.21 establish that criterion (i) of the statutory tests set out in paragraph 1.6 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

- 1.23 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.
- 1.24 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 the statutory criteria, 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’.

- 1.25 Criterion (iii) of the statutory tests set out in paragraph 1.6 above has therefore been met.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The nomination of the Lord Nelson meets the statutory tests established by the Localism Act 2011 to be considered an Asset of Community Value. The recommendation is, therefore, that the Committee lists the Lord Nelson as an Asset of Community Value.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Community Leadership Committee could decide not to list the Lord Nelson 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 Lord Nelson 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 Sub-Committee include:

- To receive nominations and determine applications for buildings/ land to be listed as an Asset of Community Value (Community Right to Bid) when there is no scheduled meeting of the full Committee which falls within the eight week statutory deadline for determining applications.

5.5 Risk Management

5.5.1 There are no risks associated with the decision to list the Lord Nelson 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>.