



## Community Leadership & Libraries Sub Committee 19<sup>th</sup> January 2022

<b>Title</b>	<b>Community Right to Bid: Sebright Arms, 9 Alston Road, Barnet, EN5 4ET.</b>
<b>Report of</b>	Chairman of Community Leadership and Libraries Committee
<b>Wards</b>	High Barnet
<b>Status</b>	Public
<b>Urgent</b>	<p>Yes - there is an 8-week statutory timescale to respond to Community Right to Bid nominations, starting from the date the Council receives the nomination.</p> <p>The nomination for Sebright Arms was received on 24<sup>th</sup> November 2021, making the deadline for a decision 19<sup>th</sup> January 2022.</p>
<b>Key</b>	No
<b>Enclosures</b>	Appendix A – Application form Appendix B – Community Group description Appendix C – Examples of Community Events Appendix D – Title Deeds
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### Summary

The Localism Act 2011 (“the Act”) introduced the Community Right to Bid (“CRTB”). Under section 87 of the Act the Council must maintain a list of assets of community value in its area and a list of land nominated by unsuccessful community nominations. A building or other land is of community value if having regard to the Act and the Assets of Community Value (England) (Regulations 2012 in the Council’s opinion there is an actual current use of the building or other land which furthers the social wellbeing or social interests of the local community, and 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.

It is a 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”), maintained by the local authority.

Where land is listed as an ACV, if the owner subsequently wishes to make a ‘relevant disposal’ (to sell the asset or grant a qualifying leasehold estate, which is one originally granted for a term of at least 25-years) they must notify the local authority. This triggers an interim moratorium period of 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. However, if the asset is not disposed of within 18 months from the commencement of the interim moratorium period, then the moratorium period is re-triggered (12 months from the end date of the first moratorium period).

In order to decide whether to list an asset as an ACV, the Act provides that the Council must consider (i) whether the nomination has come from a group eligible to make a nomination, as defined in the legislation; and (ii) whether the current or recent main use of the nominated asset contributes to the social wellbeing or social interests (defined as including ‘cultural, recreational or sporting interests’) of the local community; and (iii) 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 from Dr Christopher Nightingale on behalf of the Sebright Arms Community Group to relist Sebright Arms, 9 Alston Road, Barnet, EN5 4ET (High Barnet ward) as an Asset of Community Value. **This report recommends that the asset is relisted as an Asset of Community Value.**

**The nomination is an eligible nomination.** The Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 (the “ACV Regulations”) provide 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 Sebright Arms Community Group have stated that they have a common interest in wanting to support and preserve the Seabright Arms public house and have stated that they collect no subscriptions, have no money of their own, and therefore has no accounts or money to distribute. Consequently, they are considered to be an ‘unincorporated body’ comprising of at least 21 local members and are eligible to make a nomination under regulation 5 (1) C of the ACV Regulations.

**The nomination meets the criteria of furthering the social wellbeing or social interest of the community.**

The nomination describes a range of recreational and sporting activities that happen at the pub, as well as other uses that further social interest, such as coordinating the local neighbourhood watch, hosting charity events and providing free wifi. Pubs exist to provide

for the sporting and recreational interests of the community, so it is 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. The outside was recently refurbished, and the nomination states it is popular locally and has regular local customers, 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 approve the relisting of the Sebright Arms as an Asset of Community Value, 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 (England) 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 realistic 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 building, a restriction is placed on the title to the land at the Land Registry if the building is registered, and a local land charge 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 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 and at the end of the moratorium period can sell to any party. However, if the asset is not disposed of within 18 months from the commencement of the interim moratorium period, then the moratorium period is re-triggered (12 months from the end date of the first moratorium period).
- 1.11 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.
- 1.12 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 under the Localism Act 2011 but may challenge under the general law (as with any decision).

### **Nomination of Sebright Arms**

- 1.13 Dr Christopher Nightingale, on behalf of The Sebright Arms Community Group (comprising of 37 local people) has renominated the Sebright Arms, 9, Alston

Road, High Barnet, EN5 4ET. Appendix D sets out the boundaries of the nominated asset.

- 1.1.4 The Sebright Arms Community Group are a group of local people who have a common interest in wanting to support and preserve the Sebright Arms public house. They are customers of the Sebright Arms and greatly value its presence as a focal point for the community. The group collects no subscriptions, has no money of its own, and therefore has no accounts or money to distribute. All members of the Sebright Arms Community Group are listed on the Barnet Electoral Role.
- 1.15 An initial application for Sebright Arms was made in March 2016 to list the Sebright Arms pub as an Asset of Community Value and this application was successful and was approved as a listing on the Asset of Community Value.
- 1.16 The Sebright Arms remains in the ownership of McMullen and Sons Ltd and is currently tenanted to the current landlord. Both have been notified that this renomination is currently under consideration and no objections have been received, as with the original application made, and subsequently approved in 2016.
- 1.17 The recent redecoration of the outside of the building has made it very attractive and will catch the eye of passers-by. Work has also been performed to upgrade the kitchen with food now being provided on six days a week. The pub also offers take-away food. It benefits from the experience of the landlord, Lucasz Szumski, who previously was head of food operations with a restaurant group.
- 1.18 The Sebright Arms is an off-centre pub and reliant on the community immediately around for its custom. Its location is at the centre of some 900 mainly Victorian terraced housing. As such, it has a stable base of customers in a densely populated and affluent residential area. The nominating group perceive this as a classic community pub, providing a strong local focus for social exchanges and participation in community activities. No other publicly accessible buildings in the immediate area, pub or otherwise, provide such a broad range of opportunities to engage with both formal and informal communal activities.
- 1.19 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 Sebright Arms is quite simply the social centre of the twelve or so of its neighbouring roads. Like all other public houses, its activities have been severely limited for a time by restrictions arising from the Covid crisis. However, even during the lockdown periods, the Sebright Arms has continued to serve the community. The examples of principle uses since 2016 are described in the following and are divided into three sections as below: pre-Covid (up to March 2020); restricted by Covid regulations (March 2020 to May 2021); post-Covid regulations (May 2021 to November 2021).’

### **January 2016 to March 2020 – pre covid**

- 1.20 The activities described in the 2016 ACV application continued with the pub hosting (free of charge) the committee meetings and AGM of the local residents' group, SPACES. It was not just SPACES meetings that it supported, but other groups have met there for free such as: the organising team of Barnet Medieval Festival, sub-groups of the Chipping Barnet Town Team, Christ Church vicar's group and members of Foulds and Christ Church Schools' PTAs. September 2019 saw another 'Party at the Pub' taking place where residents of surrounding roads were invited for an afternoon and evening of music (provided by local groups), food (Sebright barbecue and other food), Punch & Judy, table tennis, inter-road quiz game, etc. The landlord prior to the current one organised Irish music nights on Saturdays and also monthly quizzes.

### **March 2020 to May 2021 – restricted by covid regulations**

- 1.21 The Sebright Arms kept operating during the first lockdown by providing take-away food that could either be collected from an open side door or delivered by volunteers to those who were isolating at home. The value of this was acknowledged in the editorial of the SPACES Summer 2020 newsletter (attached to this report within Appendix C . The pub also provided a valuable service during the second lockdown with the legendary take-away fish and chips being the highlight of many weeks.

### **May 2021 to November 2021- post covid regulations**

- 1.22 Once restrictions were lifted, we were able to enjoy the improvements to the garden of the Sebright Arms and, for many, the memories of watching the European Cup football matches outside in the garden will linger for a long time. Gradually, usage of the pub has become more normal with SPACES holding its first non-virtual meeting at the start of November and the first post-Covid quiz has taken place. We hope to be able to hold our traditional residents' Sunday Christmas lunch this year having had to miss it last year due to the Covid situation.
- 1.23 There are no known plans to close the pub. The nomination states that it was refurbished recently which suggests and infers a degree of commitment and permanence, is popular locally and has regular customers.

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

- 1.24 Main use of asset further social wellbeing or social interests of community
- 1.25 The activities listed in paragraphs 1.20 - 1.22 are sufficient to demonstrate that a number of uses of the asset fall within the definition of 'Cultural, recreational and sporting interests.' A number of activities listed in the 2016 application also demonstrate that the asset falls within this definition and are likely to recommence post covid restrictions.

- 1.26 These uses may be considered as much a main use as that of the notional use as a pub itself because a pub by nature exists as much to provide for the cultural, recreational, and sporting interests of the community.
- 1.27 There are no known plans to close the pub and evidence of continued demand on viability, 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.
- 1.28 The original application in 2016 satisfied the statutory test and this subsequently will expire on 16<sup>th</sup> January 2022. The Council considers the 2021 application continues to satisfy the statutory tests and criteria.
- 1.29 The Sebright Arms Community Group (comprising 37 local people) has made the nomination, the Localism Act 2011 states that ‘nominations can be accepted from any unincorporated group with membership of at least 21 residents who appear on Barnet’s electoral roll or that of a neighbouring authority’ therefore Criterion (iii) of the statutory tests as set out in paragraph 1.7 of the report have been met.

## **2 REASONS FOR RECOMMENDATIONS**

- 2.1 The nomination of the Sebright Arms meets the statutory tests established by the Localism Act 2011 and the ACV Regulations to be considered an Asset of Community Value. The recommendation is, therefore, that the Sub Committee relists the Sebright Arms as an Asset of Community Value.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The Community Leadership Sub Committee could decide not to relist the Sebright Arms as an ACV, but on balance it is considered that the nomination provides sufficient evidence that the statutory criteria set out in the Localism Act 2011/ACV Regulations have been met. If the Committee is in agreement with this recommendation, 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 to the First tier Tribunal.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 The Sebright Arms 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 Barnet 2024 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.

### **Barnet's Draft Local Plan**

- 5.1.2 Barnet's Draft Local Plan was submitted to the Planning Inspectorate in November 2021 for Examination. This is a significant step in the progress of the Local Plan and the weight that can be given to it as a material consideration in planning decisions.
- 5.1.3 The Council, when determining planning applications involving loss of community facilities, will treat the listing of an Asset of Community Value as an indicator of local support and evidence that it furthers the social wellbeing and interests of residents. Policy CHW04 Public Houses relates to the safeguarding of pubs.
- 5.1.4 Around 70 pubs have closed in Barnet since 2000. The COVID19 pandemic lockdown and social distancing measures have had a significant impact on the hospitality sector with many pub businesses not surviving. However, COVID-19 has highlighted the contribution of pubs to well-being and as a valued community destination away from home. Whether alone, or as part of a cultural mix of activities or venues, pubs are often an integral part of an area's day, evening and night-time culture and economy. Public houses can be at the heart of a community's social life often providing a local meeting place, a venue for entertainment or a focus for social gatherings. Barnet's evidence on Public Houses highlights that once pubs are lost to other uses it is unlikely that they will be returned to their original use. This is likely to be exacerbated by the impact of COVID19 on the survival of pub businesses.
- 5.1.5 The Government has made a number of changes to the Planning Use Classes Order to help protect pubs. In May 2017, the Town and Country Planning Act (General Permitted Development Order) (England) (2015) removed permitted development rights that previously allowed the conversion of pubs and bars to other uses such as shops, restaurants and cafés without planning permission. This change in legislation offered greater protection for pubs and also incorporated a permitted development right allowing pub owners to introduce a new mixed use (A3/A4) providing flexibility to enhance a food offer beyond what was previously allowed as ancillary to the main pub use. A further change to the Use Classes Order in 2020 has deleted the 'A Use Class' including A3 and A4 and reclassified public houses, wine bars, or drinking establishments as Sui Generis (in a class of its own). This provides further protection for existing pubs.
- 5.1.6 While pubs have been closing, evidence highlights that micro-breweries in Barnet have been emerging as successful SMEs. Local breweries can help bring life back into pubs as well as create jobs for the local community, save on costs for logistics and create a community focus.
- 5.1.7 Listing a pub as an Asset of Community Value (ACV) gives voluntary groups and organisations the opportunity to bid for it if it is put up for sale. An ACV

listing does give communities an increased chance to save a valued pub or other local facility.

5.1.8 When assessing whether a pub has heritage, economic, social or cultural, value, the Council will take into consideration a broad range of characteristics, including whether the pub:

- is in a Conservation Area;
- is a locally- or statutorily-listed building;
- has a licence for entertainment, events, film, performances, music or sport;
- operates or is closely associated with a sports club or team;
- has rooms or areas for hire;
- makes a positive contribution to the night-time economy;
- makes a positive contribution to the local community; and
- caters for one or more specific group or community.

5.1.9 Where an application is based on a public house no longer being a viable commercial operation, appropriate marketing evidence will be required. This will need to show that there is no realistic prospect of a building being used as a public house in the foreseeable future and that the business has been marketed for at least 24 months as a pub at an agreed price following an independent valuation and in a condition that allows the property to continue functioning as a pub. The business should have been offered for sale locally and London-wide in appropriate publications and through relevant specialised agents. Adapting a public house for another community use would be preferable to its loss to another use.

#### **Policy CHW04 – Protecting Public Houses**

a. The Council will:

1. protect public houses where they have a heritage, economic, social or cultural value to local communities, and where they contribute to wider policy objectives for town centres; and
2. support proposals for new public houses in Growth Areas and town centres as part of mixed-use development.

b. Proposals that involve the loss of public houses with heritage, cultural, economic or social value will be refused unless there is no viable demand for its continued use and the property has been long term vacant for a period of at least 12 months. Evidence of continued marketing over a 24 month period will be required.

c. Where it is demonstrated that there is no demand for the public house the Council will support proposals for other community uses in accordance with Policy CHW01.

d. Development proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of the public house use will be resisted.

In considering proposals involving the loss of public houses the Council will take into account the listing or nomination of 'Assets of Community Value' as a material planning consideration.

5.1.10 Barnet's Draft Local Plan recognises the community value of public houses. The Council have introduced a new planning policy to protect public houses. It also sets out how the heritage, economic, social or cultural value of a public house can be considered. If the pub is listed as an ACV it will serve as a material consideration in any future planning decisions – this and the weight given to such considerations is at the discretion of the Council. From a strategic planning perspective there are no significant implications arising from listing the pub as an ACV.

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

5.2.1 The asset does not belong to the Council and therefore there are no financial implications to this decision.

## **5.3 Legal and Constitutional References**

5.3.1 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. The ACV Regulations set out the procedure to be followed in assessing a nomination.

5.3.2 Under the Council's Constitution (Article 7 Committees, Forums Working Groups and Partnerships, section 7.5) the responsibilities of the Community Leadership Committee include: To receive nominations and determine applications for buildings/land to be listed as an Asset of Community Value (Community Right to Bid).

5.3 When there is no scheduled meeting of the full Committee which falls within the eight-week statutory deadline for determining applications the Community 15 Leadership Sub-Committee receives the nominations and determines the applications.

## **5.4 Insight**

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

## **5.5 Social Value**

5.5.1 There are no social value considerations as this decision does not relate to a service contact.

## **5.6 Risk Management**

5.6.1 There are no risks associated with the decision to not relist the Sebright Arms as an ACV.

## **5.7 Equalities and Diversity**

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

5.7.2 Under section 149 of the Equality Act 2010, the council and all other organisations exercising public functions must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

5.7.3 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race, religion or belief; and sex and sexual orientation. The broad purpose of this duty is to integrate considerations of equality into daily business and keep them under review in decision making; the design of policies; and the delivery of services. 5.7 Corporate Parenting 5.7.1 As a Local Authority, we have responsibility for the children in care and care leavers within our borough. Corporate Parenting is about offering at least the same standards of care as would a 'reasonable parent' and ensuring that the decisions we make as a Council do not affect this cohort negatively. This report does not provide any implications for Barnet's children in care.

## **5.8 Corporate Parenting**

5.8.1 As a Local Authority, we have responsibility for the children in care and care leavers within our borough. Corporate Parenting is about offering at least the same standards of care as would a 'reasonable parent' and ensuring that the decisions we make as a Council do not affect this cohort negatively. This report does not provide any implications for Barnet's children in care.

## **5.9 Consultation and Engagement**

5.9.1 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.

5.9.2 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. Environmental Impact**

6.1 There are no direct environmental implications from noting the

recommendations. Implementing the recommendations in the report will lead to a positive impact on the Council's carbon and ecology impact, or at least it is neutral.

## **7. BACKGROUND PAPERS**

Community Right to Bid: Consultation and recent developments (Community Leadership Committee, 25 June 2014) [Community Right to \(moderngov.co.uk\)](#)

Minutes from the meeting of the Communities, Leadership & Libraries Committee, 9<sup>th</sup> March 2016 approving the initial application of the Sebright Arms to be listed as an Asset of Community Value - [Minutes of Previous Meeting.pdf \(moderngov.co.uk\)](#)