

Committee: Cabinet

Agenda Item

Date: 10 July 2017

13a

Title: Nomination for The Crown Public House to be listed as an Asset of Community Value

Portfolio Holder: Cllr Barker

Summary

1. The Localism Act 2011 introduces a concept of an 'Asset of Community Value'. Section 87 of the Localism Act places a duty of Local Authorities to 'maintain a list of land in its area that is land of community value'.
2. An Asset is of community value if (in the opinion of the local authority) either:
 - 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
 - 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.or
 - 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
 - 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.
3. The Act states that "social interest" "includes (in particular) each of the following – (a) cultural interest, (b) recreation interest and (c) sporting interests. Pubs can qualify as assets of community value if they meet the tests set out in paragraph 2.
4. The Council have received a request from Elsenham Parish Council to include The Crown Public House, Elsenham on the list of assets.
5. The purpose of this report is to enable members to determine:
 - a. Whether this is a valid nomination
 - b. Whether the use of the building (current or recent past) furthers the social wellbeing or interests of the community.
 - c. Whether it is realistic to think that in the next 5 years the building could be used to further the social wellbeing or interests of the community.

In considering these questions, members need to consider principal, rather than ancillary, uses of the building.

If members conclude that the answers to these questions are “yes”, the building should be included in the list of assets of community value.

Recommendations

6. To determine whether to include the Crown Public House, Elsenham on the Assets of Community Value list.

Financial Implications

7. There are direct financial implications arising at this stage which relate to the formal process of identifying and contacting asset owners and, if relevant, registering an asset as a Land Charge. These costs can be met from existing budget and staff resources.
8. There is also an unquantifiable financial risk to the Council, if there was a claim for compensation. This needs to be kept under review and at an appropriate time consideration should be given to establishing a contingency reserve to mitigate the risk to the Council’s budget. However, the potential liability should not be taken into account in deciding whether or not this is an asset of community value.

Background Papers

9. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Submission for consideration as Assets of Community Value and any representations

Impact

10.

Communication/Consultation	In line with paragraph 8 of The Assets of Community Value (England) Regulations 2012 the Council have taken all practicable steps to give information that it is considering listing the land to the owner of the land, freeholder and occupant. This has taken the form of letters and site notices.
Community Safety	No impact.
Equalities	The duty will affect all equally.
Health and Safety	No impact.

Human Rights/Legal Implications	Pursuant to s.19 Human Rights Act 1998 the Secretary of State has certified that in his opinion the Localism Act is compatible with the Convention rights.
Sustainability	If the land is included on the list of Community Assets it will form a Land Charge.
Ward-specific impacts	No impact.
Workforce/Workplace	Elsenham and Henham

Situation

a. Is this a valid nomination?

11. S89 of the Act states that land in a local authority area which is of community value may be included in its list of assets of community value only in response to a “community nomination”, or where permitted by regulation made by the Secretary of State. A community nomination means a nomination by a parish council in respect of land in the parish council’s area or “by a person that is a voluntary or community body with a local connection”.

12. The nomination is being made by Elsenham Parish Council. The Parish Council falls within the definition of a parish council for these purposes and the nominated land is within its area.

13. A nomination must also include:

- i. A description of the nominated land including its proposed boundaries.
- ii. Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
- iii. The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
- iv. The nominator’s eligibility to make the nomination.

It meets these requirements.

14. This is therefore a valid nomination under S89(2)(i).

b. Does the use of the building (current or recent past) further the social wellbeing or interests of the community?

15. The Crown Public House is operating as a public house. The test therefore is whether the 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.

16. Evidence has been submitted by the Parish Council in their nomination form of why it believes that the Crown furthers the social wellbeing or interests of the community. The nomination states that the Crown

- is the only public house in Elsenham and as such is the focal point for the community's social wellbeing and social interests (which include cultural, sporting or recreational interests);
- is used by the whole community including cricket teams, football teams and as a meeting point for many others;
- is favoured as a place to hold celebration birthdays, anniversaries and more poignantly the passing of local residents; and
- is the main meeting point for friends both old and young.

c. Is it realistic to think that in the next 5 years the use of the building could further the social wellbeing or interests of the community.

17. In considering this question, the test is whether it is "realistic" to think that the use of the building could further the social wellbeing or interests of the community. It is not a balance of probabilities test – realistic means "more than fanciful". The use does not have to be the same as that which took place within the recent past.

18. The Parish Council consider it is realistic to suppose that the pub could continue, over the next five years and more, to further the social wellbeing and social interest of the local community for the reasons set out in its application.

19. To date there is no current planning application relating to this property.

Representations

20. The Council has received no representations regarding the proposed asset of community value.

Conclusion

21. A valid nomination has been made to the Council.

22. Evidence has been put to the Council that the nomination furthers the social wellbeing or interests of the community through its venue as a public house for use by individuals and groups who used the property as a place to meet and socialise to further their cultural, recreational or sporting interests.

23. Members need to consider whether it is realistic to think that the property can continue to be used in a manner that furthers the social wellbeing and interests of the local community.

24. Consideration of these issues will lead the Cabinet to determine whether or not the Crown Public House, Elsenham should be included in the list of assets of community value.

Risk Analysis

25.

Risk	Likelihood	Impact	Mitigating actions
<p>The nominating body or the owner is unhappy with the decision reached.</p>	<p>High risk that one of the bodies will be unhappy with the decision.</p>	<p>The owner has rights of internal review and appeal and can claim for compensation.</p> <p>The nominating body does not have rights of review or appeal. If it felt the Council had acted unlawfully, it could seek to challenge by way of judicial review.</p>	<p>Carefully scrutinise submissions for inclusion on the Asset List so as to ensure only those which comply with the criteria are included.</p>

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.