

<b>Committee:</b>	Assets of Community Value Sub-Committee	<b>Date:</b>
<b>Title:</b>	Nomination of Hop Poles, Great Hallingbury as an asset of community value	14 December 2017
<b>Portfolio Holder:</b>	Cllr Susan Barker	
<b>Report Author:</b>	Sarah Nicholas, Senior Planning Officer, 01799 510454	<b>Key decision:</b> No

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## 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.
4. Assets of community value are buildings or land which involve the physical use by the community and include for example a village shop, pub, community centre, allotment or recreation ground.
5. The Hop Poles was originally listed as an asset in 2012 and the listing expires on 13 December 2017. Great Hallingbury Parish Council has re-nominated the Hop Poles Public House as an asset of community value.
6. The nomination was first considered by Cabinet on 30 November 2017 but it was decided to defer the decision to allow further consideration of the evidence of whether the primary use of the land furthers the social wellbeing and social interests of the community.

7. 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 welling 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**

8. That members determine whether to list the Hop Poles, Great Hallingbury as an asset of community value, having considered the statutory criteria.

### **Financial Implications**

9. 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.
10. 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**

11. 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.

### **Impact**

- 12.

Communication/Consultation	In line with paragraph 8 of The Assets of
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	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.
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	Broad Oak and the Hallingburys
Workforce/Workplace	No impact

## Situation

### a. Is this a valid nomination?

13. 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”.

14. The nomination has been made by the Parish Council falling within the definition of a parish council for these purposes and the nominated property is within its area.

15. 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.

16. If it meets these requirements it is 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?**

17. The Parish Council's nomination states that the Hop Poles Public House is situated in a central area of the village. The pub in the past has been a very popular venue for both residents and outside trade. Since the recession there appears to have been a decline in this trade but, The Hop Poles continues to be a viable asset.

18. The property is currently vacant and is being offered for sale. The District Council received notification that the property was on the market on 9 August 2017. The Parish Council were informed and invited to be treated, along with any community interest group, as a potential bidder for the asset. Within the prescribed 6 week period the Parish Council informed the District council that they were not in a position to purchase the property and has not received any written interest from a community interest group. The property is now within what is known as the protected period where the owner may sell the property on the open market. However if the property is still for sale after 9 February 2019 the community has to be invited to be treated as a potential bidder again.

**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.**

19. The Parish Council suggest that a Community Interest Group would need to involve the community, perhaps through a shares scheme, and apply for grants and/or a loan in order to purchase the public house.

20. Being situated in a central area of the village, the building could be used for a community meeting room, tea rooms, library and council offices. This could be a facility for a daily meeting point for both villagers and other local groups who may benefit from getting together. Also council's working groups meetings could be held here, and a weekly council surgery could be held. On a daily basis the premises could still operate as a public house and/or tea rooms.

**Representations**

21. A representation from the solicitors acting for the owners sets out their formal objections to the listing. The representation states the following:

Background – The Public House

By way of background, the Public House is currently empty, without a tenant, and has been for a period of over two years. During that time, the Public House has been marketed for sale, but there has been very little interest from any party seeking to re-open the premises as a village pub and any interest in that regard has not amounted to a confirmed sale. On the contrary, our clients' view is that the only genuine enquiries regarding the sale of the Public House, which have

had proper financial backing, have been received from property developers largely seeking to change the use of the premises.

Prior to the closure of the Public House, it was not trading well, due to a number of external factors which had affected the accessibility of the Public House to potential customers and restricted the license, meaning that the Public House could not compete with other local eating and drinking establishments. Particularly, our clients have found that there is not a desire for this venue to exist within the local village community. There are other popular restaurants in the locality, which are preferred by residents of the village, meaning that the closure of the Public House did not result in any genuine loss of amenity or facility within the village of Great Hallingbury.

## Objections to the Listing

Our clients' specific objections to the request made by the Great Hallingbury Parish Council are set out as follows:

### 1. Use of the land does not qualify

Our clients' first objection is that the use of the land does not qualify it as an Asset of Community Value within the scope of the legislation.

We have set out above the fact that the Public House is not currently occupied or trading, nor has it been for over two years. Even before the closure, the Public House was not well used or supported by the local village residents. In fact, we are instructed that local residents actively supported and even lobbied for the decision to restrict the license of the Public House in previous years, to prevent the garden and adjacent outside space from being used by the Public House for the purposes of the business.

In terms of the impact on the local community, we understand that Parliament has taken the view that at least 21 members of a community are required to benefit from an asset, in order for it to be capable of being an asset of community value and that figure is one which is to be applied across the whole country, including very small rural communities. In this case, as the Public House is not being used by any members of the local community, let alone 21, and has not been for over two years, it is clear that the Public House is not currently capable of furthering the social well-being or interests of the local community.

In terms of what can be considered social well-being, the benefit to the local community which the listing of the Public House is seeking to preserve is that of a drinking establishment. As stated above, the Public House was not well used prior to closure by the local community or at all and there are several other eating and drinking establishments within the area which are well used by the local community in preference to the Public House. The Public House is not unique or relied upon by the local community in any way and it certainly not essential to its social well-being.

Finally, in terms of future use, it is not realistic to determine that any qualifying use, which may have been accepted by the Council in previous years in order to

support the nomination, will resume in the future. This is due to the fact that the Public House is currently closed and has been for some time and there has been no agreed sale to an individual or company seeking to trade as a pub from the premises over the course of the past period of marketing. Further, the most likely scenario appears to be that the property will be sold to a developer who will seek to change the use of the premises to a residential dwelling(s).

## 2. No purpose in listing

Our clients' second objection is that there would be no purpose in listing the Public House as an Asset of Community Value.

This is because the purpose of placing an asset on the list is to provide the community with an opportunity to secure the asset in the long term. This asset has been on the market for many months and at no point has the claimed community body bid to purchase the Public House. In fact, as early as April 2014, our clients received a letter from the Clerk to the Great Hallingbury Parish Council stating quite plainly that:

*“the Parish Council are not able to support the Public House financially or otherwise”*

The letter further states that if the Public House is marketed for sale:

*“it would be nice to think that an ‘action group’ might be able to buy, but this is not something we can speculate at present.”*

A copy of the representation and letter from the Parish Council is attached for reference, from which is undoubtedly clear that those supporting the proposed listing would not bid if the Public House was being sold as a community asset. In these circumstances, it would therefore be wrong, and would serve no purpose, to list the Public House as an Asset of Community Value.

## **Conclusions**

22.

## **Risk Analysis**

23.

Risk	Likelihood	Impact	Mitigating actions
The nominating body or the owner is unhappy with the decision reached.	High risk that one of the bodies will be unhappy with the decision.	The owner has rights of internal review and appeal and can claim for compensation.	Carefully scrutinise submissions for inclusion on the Asset List so as to ensure only those which comply with the criteria are included.

		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.	
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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.