

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Executive Director Place

To: Portfolio Holder for Community Development
(Councillor G J Taylor)

Author: Karen Johnson – Community Development Officer

Subject: Asset of Community Value Nomination Request

Purpose: To consider a nomination for the Jolly Crispin Public House including Garden and Car Park in Lutton to be registered as an asset of community value

Recommendation(s):

- 1) That the nomination to register the Jolly Crispin Public House including Garden and Car Park is accepted; and
- 2) That the Jolly Crispin Public House including Garden and Car Park are added to the Council's register of successful Assets of Community Value

1.0 BACKGROUND

- 1.1 Under the Localism Act 2011 the Government introduced a number of rights for communities. One of these rights is called the "Community Right to Bid" and enables parish councils and certain local voluntary and community bodies to nominate land and buildings, which they consider contribute to the social well-being of the community, to be added to the Council's List of Assets of Community Value. If a listed asset is put up for sale it will potentially pause any sale for a six month moratorium period in order for the local community to raise finances and make a bid to buy it.
- 1.2 An asset can be listed if its main use currently benefits the community (or it did so in the recent past). Listed assets remain on the list for up to five years and a land charge will be registered against the property. When the five years have expired, an eligible organisation can submit a new nomination.
- 1.3 Where land or building is included on the list the owner of the property is prevented from selling the asset with vacant possession until the owner has gone through a process, set out in law, intended to give local community groups an opportunity to bid to purchase the property for the benefit of the local community. Where any sale with vacant possession does not comply with the process the sale may be invalid.
- 1.4 In addition, where the asset is a public house, existing permitted development rights to demolish or to change the building to uses which would normally be permitted, such as retail, are withdrawn. Any developer wishing to demolish a public house or change its use must seek planning permission once a Community Right to Bid nomination has been received and, if the asset is listed, for 5 years from the date of listing (or earlier if the asset is removed from the list earlier).
- 1.5 Having a public house on the market does not exempt an asset from listing. If the sale completes or even if contracts are exchanged, prior to listing then the 6 month moratorium

would not apply unless and until the pub was re-sold. If the pub and land are sold as a going concern all to the same person the 6 month moratorium shouldn't apply as this is an exemption to the moratorium under section 95(5) of the Localism Act.

- 1.6 Where an asset is listed the owner of the asset may require the Council to review the listing decisions. The Council has previously agreed that any review be undertaken by the Monitoring Officer. If the owner remains dissatisfied they then have a right of appeal to the First Tier Tribunal. Whilst the review is carried out, the asset will stay listed.
- 1.7 It is worth noting that owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal. The fact that compensation is potentially payable should not affect the decision. Any successful claims for compensation awards would have to be met by the Council.
- 1.8 It should be worth noting that at this stage the applicant does not have to provide a business plan or other financial information in order to back up their future expectations.

2.0 THE CURRENT NOMINATION

- 2.1 On the 31st August 2016, the Council received a completed application form (Appendix A) from the Save our Pub – The Jolly Crispin community group to nominate The Jolly Crispin public house, garden and car park in Luton (PE12 9HN) as an asset of community value. In order to be valid any nomination must comply with regulation 6 of the Assets of Community Value (England) Regulations 2012, so that the nomination must include:
 - A description of the nominated land including its proposed boundaries
 - A statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current, or last-known addresses of those holding a leasehold estate in the land
 - The nominators reasons for thinking that the Council should conclude that the land is of community value and,
 - Evidence that the nominator is eligible to make the nomination.
- 2.2 Nominations may only be made by certain organisations. The nominator in this case is the Save our Pub – The Jolly Crispin which is an approved community group. The nomination otherwise complies with the above requirements and has been validated.
- 2.3 A plan of the nominated asset, including its boundaries, which has been provided by the nominator is attached to this report (see Appendix A).
- 2.4 The Council has eight weeks from the date of receiving the validated nomination form to decide whether to list the asset. The Portfolio Holder for Community Development has been given the delegated powers to decide if the asset should be listed or not, in consultation with the Executive Director of Place and the local SHDC Ward Councillors.

3.0 DETERMINATION OF NOMINATIONS

- 3.1 The Council must now consider whether the asset meets one of the tests set out in section 88 of the Localism Act 2011 as follows. It should be noted that if either of the tests are met then the Council has no option other than to list the asset.

Test 1 – known as the “present and future” test

A building or land is of community value, and must be added to the list, if in the opinion of the Council

- an actual current use of the building or 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 land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

If the above test is not met then the Council must consider the following:

Test 2 – known as the “past and future” test

A building or land is of community value, and must be added to the list, if in the opinion of the Council

- there is a time in the recent past when an actual use of the building or 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 a non-ancillary use of the building or land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

3.2 An asset cannot pass the “present and future test” if it is not currently being used. Where this applies it is necessary to determine whether the use referred to in the nomination furthered the social wellbeing or interests of the local community at a “time in the recent past”.

3.3 There is no statutory definition or guidance as to what is meant by “time in the recent past”. Some authorities have treated the recent past as being within the last five years, probably because the same timeframe is referred to in the future condition, but there is no specific time period laid down. Tribunal decisions have indicated that “the expression is a relative concept” and what constitutes the recent past will depend on all the circumstances in a particular case. So for example if a public house has been used as a public house for 200 years then the “recent past” might be a longer period than a public house which has only been open for 20 years.

3.4 On the whole, factors which the Council should take into account when determining what constitutes the recent past include: -

- How long the asset has been used by the community
- The type of asset – for example “the recent past” may be longer when considering a school
- The nature of the use of the asset

3.5 It is also worth noting that the past use does not have to be shown to have been ongoing for a substantial part of the recent past, though trivial or very temporary use will be disregarded.

4.0 **CONSIDERATION OF THE CURRENT NOMINATION**

4.1 In support of their current nomination the nominator; Save our Local -The Jolly Crispin state in their application that they believe it meets the “past and future test”.

- 4.2 The buildings owners were notified of the group's nomination and given the opportunity to comment. There is no obligation on the Council to seek, or take into account when making its decision, any observations submitted by them. However, the Council cannot prevent them from submitting comments. The owners email feedback is attached as Appendix B.
- 4.3 It will be appreciated that some of this conflicts with information provided by The Save our Local – The Jolly Crispin group below.
- 4.4 In addition, Lutton Parish Council were also notified of the group's nomination and given the opportunity to comment and feedback the following: -

“Lutton Parish Council would like me to pass on their wholehearted support for the community right to bid regarding the Jolly Crispin public house. The Council feels very strongly that it should remain a pub, as it is the only remaining one in the village and has become a hub of community activity, which has been felt even more so since the pub closed. The Council will continue to support the 'Support Our Local' Group and hope to see the Jolly Crispin pub open to the public in the future”.

- 4.5 The Save our Local – The Jolly Crispin group believe that their nomination passes the “past and future test”. In their nomination they state that the public house has been serving the community for over 100 years and was last used for this purpose on the 22nd May 2016. The owners closed the public house after the quiz night held that evening. The group believe this is because it wasn't making enough money. They add that Lutton doesn't have a lot of amenities only a church and primary school. Whilst open, the group stated that it was a social meeting place in the village hosting numerous community events for all ages including wedding receptions, christenings, birthday parties, fund raising events and quiz nights.
- 4.6 The report author agrees that the nomination passes the past test whereby the past (non-ancillary) use furthered the social wellbeing or social interest (which includes cultural, recreational and sporting interests) of the local community. They have evidence that the pub has been serving the community for over 100 years and closed this year. They suggest that it was a popular meeting point in the village for a variety of social activities including family celebrations, fund raisers and by sports clubs.
- 4.7 As the public house is currently closed the report author considers that the “present and future test” hasn't been met. It is therefore necessary to consider the “past and future test” whereby the past (non ancillary) use furthered the social well-being or social interest (which includes cultural, recreational and sporting interests) of the local community.
- 4.8 The report author understands that the public house is being actively marketed by Guy Simmonds as a public house which suggests that the “future” test has also been met. The group want the pub to re-open and continue to serve the community as it has done for the last hundred years and become the hub of the village whereby people can leave their homes and interact with other community members and help keep the community spirit alive. In addition, the group are actively researching other funding sources including the community share scheme.
- 4.9 The following issues are considered to be relevant:
- a) Taking into account the “recent past” issues detailed earlier in the report it is considered that, on the basis of the information provided in the nomination, the asset meets the “past” test
 - b) As the asset is being actively marketed as a public house it is realistic for the report author to think that there is a time in the next five years when there could be a use of the building

(as a public house) which would further the social wellbeing or social interests of the local community

- c) Having a public house on the market does not exempt an asset from listing. If the sale completes or even if contracts are exchanged, prior to listing then the 6 month moratorium would not apply unless and until the pub was re-sold. If the pub and land are sold as a going concern all to the same person the 6 month moratorium shouldn't apply as this is an exemption to the moratorium under section 95(5) of the Localism Act
- d) Planning status – it is usual to consider the planning status of an asset during the listing process. Whilst there are no specific policies within the South Holland Local Plan 2006 which require the owners of public houses to meet any specific tests before a change of use of a public house can be secured, there are policies designed to retain existing employment uses where these benefit the locality. More pertinently, paragraph 70 to the National Planning Policy Framework (NPPF) seeks to guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. However, as no application has been received for any change of use of the public house there is no need to take this into account in determining the nomination.

4.10 Taking account of the above issues it is considered that both the “past” and the “future” tests have been met, and it is therefore recommended that the asset be listed.

5.0 OPTIONS

5.1 To do nothing. This may have legal implications as set out in the Localism Act 2011; or

5.2 To reject the nomination and add the Jolly Crispin public house including garden and car park to the Councils list of unsuccessful assets of community value

6.0 REASONS FOR RECOMMENDATION(S)

6.1 Based on the information provided the Council is satisfied that the Jolly Crispin public house including garden and car park meets the required legal tests and should therefore be listed as an asset of community value

6.2 Compliance with the Localism Act 2011

7.0 EXPECTED BENEFITS

7.1 In communities there are building and amenities that are important to them, a village shop, pub or recreation ground etc. The closure of these places can create lasting damage to those communities. Under the Localism Act 2011, voluntary and community organisations can nominate an asset to be included on a list of "Assets of Community Value". When this listed asset is to be sold, local community groups will in many cases have a fairer chance to make a bid for it on the open market.

8.0 IMPLICATIONS

8.1 Constitution & Legal

8.1.1 The consideration of nominations is an executive function in accordance with Section 9D of the Local Government Act 2000. The Council has 8 weeks to make a judgement about whether the asset meets the definition set out in section 88 of the Localism Act or whether it falls into one of the exempt categories.

8.1.2 The current application must be considered against the legal tests explained in the report. In the opinion of the report author it is considered that the asset meets the “past and future test”.

8.2 Corporate Priorities

8.2.1 The application needs to be determined in the light of the legal test and the Councils corporate priorities are therefore not relevant.

8.3 Financial

8.3.1 The owner of the Asset is entitled to compensation where they have incurred loss or expense which would be likely not to have been incurred if the land had not been listed. This could include, for example, delay in entering into a binding agreement to sell the land wholly caused by the disposal being prohibited, reasonable legal expenses arising from a successful appeal to the First Tier Tribunal etc... The fact that compensation is potentially payable should not affect the decision.

8.4 Risk Management

8.4.1 All risks are identified in the main report.

8.5 Stakeholders / Consultation / Timescales

8.5.1 The Council has previously agreed that the Portfolio Holder for Community Development be given delegated authority to determine whether an asset should be included on the Council’s List of Assets of Community Value, in consultation with the Executive Director of Place and the relevant Ward Councillors.

8.5.2 The Executive Director of Place had no feedback on the content of the report. In addition, the three local Ward Councillors were asked to comment upon the nomination and feedback the following.

Councillor Laura Eldridge: -

“Yes I agree that it passes the ‘past and future test’. I am more than happy to support this. As stated in the nomination form, Lutton is a small village with few amenities. Whilst I completely empathise with the current owners regarding the financial difficulties the public house has presented them with, it is wonderful to see that the loss of the building is being supported by the community and hopefully this will be a glimmer of hope for future trade and the village. I hope to see the pub open in the not too distant future and look forward to popping in for a drink”.

Councillor Jack Tyrell: -

“I agree that the Jolly Crispin passes the "Past and Future Test. I would like you to pass on my support for the community right to bid, regarding the Jolly Crispin. I am, very strongly in support of this remaining as a pub, as it is the last one in the village, it's very well saying there are pubs in Long Sutton, Gedney and Tydd St. Mary, however you would need to drive there. This pub was very busy with Sunday dinners, event nights, darts & pool teams, I remember a 60s night there.

I think with the closure of the Jolly Crispin it has brought it home, the loss the community will have. (You don't realise what you've got till it's gone) I am very pleased they are trying to do something before it's too late. I have seen in Long Sutton the pubs get to this state, lucky for Long Sutton under good management the "Granary" And "Palmas" are a great success. For the future, I do believe as like the cinema's, public houses will have their

come back, and hopefully under new management it will be busy again. However if this is sold and turned into a house, it has gone forever”.

Councillor Andy Tenant did not submit any feedback.

9.0 WARDS/COMMUNITIES AFFECTED

9.1 Long Sutton

Background papers: - None

Lead Contact Officer

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A A copy of the nomination form and plan of the nominated asset, including boundaries

Appendix B E-mail with the owners comments (see below).

APPENDIX B – OWNERS COMMENTS RECEIVED BY EMAIL (16th Sept 2016)

Dear Karen

Many thanks for your letter dated 6th September 2016 regarding the Asset of Community Value applied for against The Jolly Crispin Public House.

We are somewhat surprised to learn of the Committee's intention to nominate our property and feel it is only right that we reply:

It was always our intention to run The Jolly Crispin as our family business for many years; we purchased the property in September 2015 and invested thousands of pounds in refurbishments - full decor inside and outside, new £10k carpet, reupholstering of all of the chairs etc.

We were busy naturally for the first few months as people wanted to see us and what we had done, however weekdays were always quiet - takings maybe as little as £3.60 a day which is not viable to run a business.

A darts Team approached us and we welcomed them to use our premises as a way to draw new business in - it was often remarked by the opposing Team that had they not come in then we wouldn't have had any custom - Strange when the Community has such strong support for The Jolly Crispin!

We asked those that came into the pub (10-12 people on a Friday night) if they would support us if we put music events on, which we did alternating monthly with live music and Karaoke - this was initially supported, but more from people travelling from outside of the village and local areas - Kings Lynn, Holbeach etc, but within a few months dwindled to the point it again was not financially viable to continue, cost of band, extra beer order etc.

Our point here being:

1. If **all** of the signatures attached to your letter actually supported the pub and came in more than just once then we would have been a financially viable business.
2. Where do the 100 strong Signatories hold their bi-monthly meeting? As they state the only meeting point in the village is the Pub?
3. The monthly quiz did fill the pub but only a handful of those people would come in at any other time - usual attendance to quiz night circa 60 people of which 15 would come in once a week.
4. It is stated on several occasions that the Pub is the **only** social meeting point for the village, **however there is no mention of the Lutton Village hall opposite** which holds regular coffee mornings, bingo evenings and now the monthly quiz night as well as various other village events.
5. Our average takings Monday-Friday would be approx £80-£150
6. Where Stated that the Jolly Crispin should remain open as it has been around for circa 100 years - Yes but has changed hands numerous times AND has been repossessed due to its inability to maintain financial sustainability.

7. The village itself is surrounded by local pubs all within 5 miles - Long Sutton 6 licensed premises, Gedney Drove End 1, Gedney 1, Gedney Dyke 1.
8. Granted the community does put on two or three "annual" events which the pub has agreed to host but these events do not raise enough to cover the rest of the year we were open. There is no reason why these could not be held within the un-mentioned Lutton Village Hall

We never wanted the business to fail, but financially it just wasn't working. I (Rob) had mentioned to several 'locals' when asked that things were very hard but we were looking at every avenue to keep the Pub open - I went back to full time employment to earn enough to cover the bills.

Sally fell pregnant and running the business from Lunchtime to 11pm each night was just too much.- especially as many days/nights were sat without seeing a soul.

However this is where we are, the pub and residential accommodation are for sale - NOT with Belton Duffey as stated but with Guy Simmonds who specialise in selling Public Houses - we had no intention to sell the Property as anything other than a Pub - we have even tried to make it look more attractive to potential buyers by offering a lease on the premises with an option to buy at a later date.

Bearing in mind that the property has been on the market since May we have had no contact from anyone within the community offering to purchase or lease the business, we currently have one person from outside the community who has viewed and has put an offer to us, but since hearing about the potential ACV has withdrawn her offer - so the pub could have reopened with new owners in the next month or so if it was not for this ludicrous application.

Having taken advice and having been advised that such a restriction on our home could be deemed as detrimental to potential purchasers; we have decided that if this motion is agreed then unfortunately we have no choice but to remove the pub from the market and continue to live in the residential accommodation as we have been doing.

Kind Regards

Rob & Sally Stutely-Brown