

**Wards Affected:**

**BRADWELL**

**ITEM 4(a)**

**EXECUTIVE SCRUTINY COMMITTEE**

**5 DECEMBER 2016**

Report considered at Delegated Decision – 15 November 2016

**COMMUNITY RIGHT TO BID - THE NOMINATION OF SUFFOLK PUNCH**

Responsible Cabinet Member: Councillor Gifford – Cabinet Member for Place

Report Sponsor: Paul Sanders – Assistant Director, Community Facilities

Author and contact: Neil Hanley, Community Solutions Manager  
Tel: 01908 253632

**Executive Summary:**

The Suffolk Punch Public House, 1 Langcliffe Drive, Heelands MK13 7PL has been nominated by the Friends of The Suffolk Punch as an asset of Community Value under the Localism Act 2011, sometimes called The Community Right to Bid. When such nominations are received, The Council must decide whether to add the property to the list of such assets which it maintains.

**1. Recommendation(s)**

1.1 That the nomination to List The Suffolk Punch Public House as an Asset of Community Value be rejected.

**2. Background**

2.1 The delegated decision on 4 October 2016 was deferred, permitting the Nominator, the Friends of Suffolk Punch, (FOSP) a further opportunity to submit evidence that could be used to satisfy the community value criteria, outlined at 3.2, as their nomination was not sufficiently clear to reach a conclusive judgement.

2.2 The Suffolk Punch (Property) is in the Heelands area of Milton Keynes which is predominately residential. It was operated as a public house for many years and is currently owned by Milton Keynes Parks Trust (MKPT).

2.3 MKPT had leased the Property to a number of pub operators but as per MKPT's evidence the business became unviable and ceased operating as a public house in late 2014 since which time it has been boarded up.

2.4 Prior to its closure Bradwell Parish Council (BPC) made a successful application to have the Property listed ("First Nomination") as an Asset of Community Value (ACV) and it was listed as an ACV by Milton Keynes Council in February 2013.

2.5 The Council were subsequently notified by MKPT of a proposed 'relevant disposal' of the Property. During the statutory moratorium period which followed, SIEVEMK (a community group) made a bid to purchase the Property but this bid was rejected by MKPT who, as a charitable Trust, are obliged to obtain the best market value on sale of any assets to support the continuation of its charitable objectives. It is understood that the subsequent bid, from

Riverside (Clapham) Ltd (Riverside) was several times the value offered by SIEVEMK. No other bid to purchase the Property was received from any community group. The Property lies within the development plan area and the sale is, it is understood, a binding agreement, conditional upon planning permission being obtained by Riverside.

- 2.6 The Council received notification that a 'relevant disposal' of the property had taken place on 1 June 2016 and accordingly removed it from the list of ACVs on 26 July 2016.
- 2.7 The present nomination ("Second Nomination") to list the Property as an ACV was received on 5 August 2016 (**Annex C(i)**). FOSP, who have made the Second Nomination, describe themselves as a 'neighbourhood forum'.
- 2.8 A decision on whether or not to list should be made within 8 weeks of receipt of the application but as described at 2.1 the decision was deferred.
- 2.9 The 8 week period expired on 30 September 2016. The act and regulations are silent if the decision extends beyond this period. The owner MKPT may use this to challenge any decision to listing the property. An extract is attached from a detailed consideration of ACV's by Christopher Cant, the Barrister, (2016), dealing with this point (**Annex E**).
- 2.10 MKPT and Riverside object to the Property being re-listed as an ACV and have made representations via their respective Solicitors (**Annex D**).
- 2.11 The framework under which Milton Keynes Council manages the Community Right to Bid process was adopted by the Council on 26 February 2013.

### **3. Issues**

#### Requirements of Listing

- 3.1 The Community Right to Bid was introduced by the Act and the criteria that must be satisfied in order for land or property to be listed as an ACV are set out at section 88.
- 3.2 In the current circumstances, as the Property is not currently in use, the relevant provision of the Act is section 88(2) which provides that land is capable of being of community value if, in the Council's opinion, the following requirements are satisfied:
  - (a) 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
  - (b) 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.
- 3.3 The consequences of listing are onerous for a landowner and give rise to a claim for compensation. It is therefore important that a nomination to list a property as an ACV is properly supported by evidence to demonstrate how the statutory tests are satisfied.

- 3.4 Having now received further evidence from the nominators FOSP as to the future use of the Property, the statutory tests in sub-sections (b) and (a) above in turn as follows:

Realistic prospect of future use

- 3.5 The lack of any substantive evidence submitted on the 14 October 2016 by FOSP to support the “Second Nomination” impacts on the Council’s ability to assess whether the Property satisfies the second limb of the test for ACV status. None of the following information has been provided despite guidance from CAMRA: Campaign For Real Ale, see **Annex F**, which would have strengthened the ACV nomination.
- 3.6 The Council have given FOSP additional time to provide such information but have not been advised as to how any of this in practice may be achieved within the next 5 years having regard to the current circumstances affecting the Property.
- 3.7 Following the “First Nomination”, a bid was received which was at an unrealistic level when compared with other offers made for the Property and accordingly was not accepted. As noted, MKPT’s status as a charitable trust puts them under a duty to obtain the best value for their asset upon disposal regardless of an owner’s corporate structure.
- 3.8 The Community Right to Bid does not have the effect of compelling an owner to transfer their land or property to the community group that bids to purchase the same for less than market value. An owner cannot be required to sell their land at below market value even if it listed as an ACV. Any alternative use proposed should be viable in the circumstances. As is the case with viability assessments for planning applications, viability appraisals should demonstrate the commercial benefit for an owner to either sell their land or commence a particular use.
- 3.9 The “Second Nomination” contains no information in this regard and is not accompanied by any *new* evidence of the Property being put to a use furthering the social wellbeing or interests of the local community in the recent past. Given the lack of information it is therefore difficult to discern whether there is a realistic prospect of the Property being put to use as a “*Community Hall with Residents Club Bar attached*” together with a nursery, especially in light of its recent trading performance as a pub, and the fact that no evidence has been presented to the Council to demonstrate viability.
- 3.10 In response to the Second Nomination it has been argued by MKPT that:
- (a) various tenants have tried and failed to make a go of the pub;
  - (b) when the pub was on the market, no offers were received from a purchaser interested in running it as a pub;
  - (c) there are alternative pubs in the neighbourhood;
  - (d) the conditional contract has been entered into with Riverside;

- (e) if planning permission is granted pursuant to the application it will result in the demolition of the Property; and
- (f) no evidence has been provided by FOSP to suggest that they are prepared to make a realistic offer for the Property.

3.11 The Council's view on the basis of statute and relevant case law decisions is that there is no obligation on the nominating body to submit evidence that they (or another third party) can implement a use that would further the social wellbeing of the local community. It is possible that a different group or third party could come forward and be interested in running the Property as a community asset.

However this does not preclude the Council from expressly requesting further information to assist it in making a decision. No such information has been forthcoming despite the Council affording FOSP additional time to prepare and submit this evidence. Given the history of the Property, noting the circumstances surrounding the relevant disposal that caused the loss of ACV status obtained as a result of the First Nomination and the Representations received from the respective parties it would appear at this juncture that a viable non-ancillary community use, whether or not such use would be use as a pub, that would further the social wellbeing or social interests of the local community is unlikely to be forthcoming in the next five years.

#### Furthering social wellbeing at a time in the recent past

- 3.12 Given the complexities of this case, it was necessary for the Council to review the test on the first limb. To this end, the "Second Nomination" provides no evidence in support of the claim that the Property in the recent past furthered the social wellbeing or social interests of the local community. Whilst in some cases a pub may be capable of doing so, this cannot be assumed and will not be the position in all cases as noted by Judge Warren in the case of *Patel v London Borough of Hackney and another* (2013) UKFTT CR/2013/0005
- 3.13 There is no evidence presented in support of the "Second Nomination" demonstrating the extent of use of the Property by the community at the time when it was a pub or how it is alleged to have furthered social well-being of the community at that time.
- 3.14 After a further review of the Nomination Form, the Representations dated 4 October and the Representations dated 14 October and, with the exception of point 5) of the 14 October Representations which provides that '*... the site is that of a closed up public house in dis-repair with a large car park...*' and reference to use by church-goers at point 8) (**Annex C(iii)** highlighted) of the same, none of these documents contain any information regarding use of the Property by the community. There is a lack of any evidence of the past (or existing) community use /importance of the Property or use of the Property by members of the local community in support of these statements.
- 3.15 In their nomination form at **Annex C(i)** FOSP state a desire to rely on the First Nomination. The information provided with the "First Nomination" is at **Annex C(iv)** and is as follows:

- 3.16 Email from BPC dated 9 January 2013 – states that the Property “*over recent years*” has provided:
- (a) a focal point for meeting and socialising;
  - (b) a controlled and convivial atmosphere;
  - (c) good value food throughout the day both for local residents and business clients; and
  - (d) entertainment for the local community.
- 3.17 Given the date of this email these assertions (not substantiated by evidence) apply to the period preceding January 2013. This email does not provide evidence that the use of the Property in the recent past furthered the social wellbeing or interests of the local community.
- 3.18 The First Nomination was also accompanied by a Table setting out comments from ‘Key Stakeholders’, which are ordered in terms of the period to which they relate, to the question whether “The main use of the building furthers the social wellbeing or social interests of the local community at the present time AND it is realistic to think that this can continue into the near future (even if the type of social use or benefit might change)” The relevant responses are as follows:
- Long Past:
- 1. “*The Suffolk Punch has for many years provided a very satisfactory service and good reputation for providing good and reasonably priced food*”
  - 2. “*The pub has for 30 years provided a convivial location for residents, commercial bodies, societies and family events.*”
- These comments are disregarded as they relate to the ‘Long Past’. They add nothing to the Second Nomination in any event and are unsupported by evidence.
- Recent Past:
- 3. “A series of tenants over the last 10ish years have attempted to continue the success of the Suffolk Punch. Evidence would suggest they have been hampered by a policy of minimal investment by the leaseholders, Greene King.”
- Present Use:
- 4. “Evidence would suggest the current tenants are hampered by the leasehold restriction of the property owners, the Parks Trust.”
- 3.19 For the avoidance of doubt reference is made on the Second Nomination to the assertion at the First Nomination that car parking at the Property provided a local social focal point. The Council is not aware of any ACV nominations where it has been found that car parking furthers the social well-being of a community. The parking use would be ancillary to the pub use and would therefore not satisfy the criteria at section 88(2)(a) of the Act.

3.20 The comments on the Recent Past actually suggest a decline in the Property's success as an ACV supporting MKPT's assertion that the Property no longer furthers the social wellbeing or social interests of the community and has not done so in the 'recent past'. If for the last 10 years tenants have "attempted to continue the success" of the Property, they have not actually achieved success. Their attempts have failed. Further, these comments contradict the comments on use in the "Long Past" at point 2.

The comments on Present Use do not have a frame of reference however they infer that the use of the Property to further the social wellbeing of the local community is being stifled by MKPT. If so then it is also reasonable to infer that on this basis, the use at the time of the First Nomination was not furthering the social wellbeing or social interests of the local community for this reason.

3.21 Their 14 October Representations states as follows:

"8) In the past it was also a great place for those attending the Church to also attend the Suffolk Punch – poor management and a burnt out kitchen negated that trade in the final period of the site being open. The success of the Suffolk Punch before it was left to fail shows it's potential to be successful again with local residents making use of the site once more." (**Annex C(iii)** highlighted)

As at least two persons in evidence seeking to support the Second Nomination have implied, or stated expressly, that there was a decline in the operation of the Property as a successful pub. Trade prior to closing i.e before late November 2014 was "negated" by poor management and a burnt out kitchen". However, in any event, none of the information referred to provides evidence that the Property furthered the social wellbeing or interests of the local community in the recent past.

3.22 Accordingly, the Council concludes that no evidence has been submitted that the use of the Property in the recent past furthered the social wellbeing or interests of the local community. The requirements of section 88(2)(a) of the Act are therefore not satisfied.

3.23 Compensation

Pursuant to Regulation 14 of the ACV Regulations, a claim for compensation can be made by an 'owner' of listed land. Compensation under the ACV Regulations deals with the losses suffered by 'owners' stemming from the listing of their land as an ACV.

Guidance provides that the payment of any compensation over a cap of £20,000 will be met Central Government however that payment must be sanctioned by the Treasury.

The claim for compensation could be expected to fall somewhere in the range of £210,000 to £668,400.

### 3.24 Options

- (a) Do nothing.

This is not a viable option as Milton Keynes Council has a statutory duty to maintain the list of ACVs in its area.

- (b) To list The Suffolk Punch as an ACV.

The evidence submitted in support of listing the Property is weak and may not withstand robust examination. This option is not recommended.

- (c) To refuse to list the Suffolk Punch as an ACV.

On the basis of the information provided the Council consider the Property should not be listed as an ACV on the basis of the Second Nomination as it use in the recent past did not further the social wellbeing or interests of the local community. The requirements of section 88 (2)(a) of the Act are therefore not satisfied. *This is the preferred option.*

## 4. Implications

### 4.1 Policy

There are no policy implications resulting from this decision.

### 4.2 Resources and Risk

- (a) The Community Right to Bid process is currently managed within existing resources.
- (b) The owner of listed land can claim compensation for the effects of it being listed and, according to published guidance; HM Government will meet the cost of compensation over £20,000 per year for an unlimited number of assets. This Council meets the cost of compensation up to £20,000.
- (c) The claim for compensation could be expected to fall somewhere in the range of £210,000 to £668,400
- (d) In addition, an owner who experiences loss as a direct result of a property being listed may make a claim for compensation. Again, this factor may not be taken into account during the decision-making process.
- (e) Both a decision to list and a decision not to list a property can give rise to an application for Judicial Review, which carries financial and reputational risks. However, such risks may not be taken into account when making decisions under the CRtB legislation.
- (f) It should be noted that an owner is entitled to seek a review of a decision to list. Such procedure is prescribed by the Act and Regulations and would need to be followed by an aggrieved owner prior to their taking action by way of judicial review challenge.

N	Capital	Y	Revenue	N	Accommodation
N	IT	Y	Medium Term Plan	Y	Asset Management

#### 4.3 Carbon and Energy Management

Not applicable.

#### 4.4 Legal

- (a) The Community Right to Bid legislation is set out in the Localism Act 2011 and associated regulations.
- (b) The types of organisation which may nominate a property as an ACV are set out in s89(2)(b) of the Act. Further guidance on the nature of community groups is found in case law.
- (c) Whether or not the proposed future use is realistic is a matter of judgement for the listing authority.

#### 4.5 Other Implications

There are no other significant implications resulting from this decision.

N	Equalities/Diversity	Y	Sustainability	Y	Human Rights
N	E-Government	Y	Stakeholders	N	Crime and Disorder

Annex A Flow Charts for Decision Process for The Suffolk Punch Public House

Annex B Boundary plan

Annex C(i) Community Right to Bid Original 2016 Submission (with redacted list of members)

Annex C(ii) Nominator's second submission

Annex C(iii) Nominator's Third Submission (14<sup>th</sup> October 2016)

Annex C(iv) Original submission from Bradwell Parish Council (first listing 2013)

Annex Di-iv ALL Representations by Freeths on behalf of MKPT & by Shakespeare Martineau on behalf of Riverside

Annex F Guidance from CAMRA (*Campaign for Real Ale*)

Background Papers: Delegated Decision 26 February 2013: Community Right to Bid [Delegated Decision Community Right to Bid - Suffolk Punch Public House](#)

Evenden Estates v Brighton & Hove City Council & Another (2015 UKFTT CR/2015/0015)

Chadwick v Rossendale BC CR/2015/006

Patel v London Borough of Hackney and another (2013) UKFTT CR/2013/0005