

COMMUNITY RIGHT TO BID - SUFFOLK PUNCH

Responsible Cabinet Member: Councillor Marland (Leader)

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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.

The decision made by Councillor Gifford on 15 November 2016 has been subject to the Council's call in procedure and Executive Scrutiny Committee has returned it for reconsideration on the specific points set out in this report.

1. Recommendation(s)

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

2. Background

- 2.1 The history of the The Suffolk Punch is set out in the previous reports dated 4 October and 15 November 2016 respectively. Links to those reports are set out in the background papers section at the end of this report

3. Issues

- 3.1 The Community Right to Bid was introduced under the Localism Act 2011. In order to list land or buildings there must be a community nomination and the Council must be of the opinion that:

- An actual or current use of the building or other land (which is not 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 of the building or other land)

furthered the social wellbeing or social 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.
- 3.2 In their nomination, The Friends of Suffolk Punch rely on the previous submission by the Parish Council in 2013, namely that the public house has good potential for reopening and that the large car park and garden area are a useful amenity and may help to relieve local traffic congestion.
- 3.3 Council officers remain satisfied, despite representations from the Solicitors for Milton Keynes Park's Trust, that The Friends of Suffolk Punch meet the criteria to be treated as 'a community group with a local connection', as required by the legislation. The Friends group have provided the names and addresses of 25 people who have a local connection.
- 3.4 Case law indicates that the exact nature of a nominating community group was deliberately left undefined by the Localism Act as its purpose is to encourage community participation in such decision making. Evaluation of such a group by analysing its unincorporated status against other case law and statute is not appropriate as the purpose of the Localism Act is very different from legislation concerning, for example, company law or the law relating to taxation.
- 3.5 Officers have considered whether the former use of The Suffolk Punch was 'in the recent past'. Case law concerning this issue demonstrates that each case must be decided on its own particular facts and merits and that there is no set 'tariff' of years against which this can be measured. However, it is accepted that, The Suffolk Punch having ceased operation as a public house in late 2014, it has operated as such 'within the recent past'.
- 3.6 The final part of the test be applied by the decision making authority is whether "It is realistic to think there is a time in the next five years where 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." It is noted that the future use does not have to be the same as that previously.
- 3.7 There is no evidence of significant support across the local community for The Suffolk Punch to be reopened, for the premises to be repaired and used for an alternative purpose, or for the site as a whole to be put to an alternative community use.
- 3.8 There is no evidence of any funding being in place or being sought for a realistic bid to be made to purchase the premises for a community purpose.
- 3.9 It is highly relevant that the Suffolk Punch has significant value as a potential development site. The current owner is a charity which is bound by law to seek best consideration for the sale of an asset and has entered into a binding contract to sell to a developer for a sum which is considerably in excess of the bid made by SIEVEMK in 2013. No other bid has been made since that time

by a community organisation or from a developer wishing to reopen the public house.

- 3.10 The current owner is under no obligation to sell or to sell to any particular purchaser. A nominating group is afforded no preferential status. It is clear the current owner intends to sell the site for a sum far in excess of that achievable for a public house sold as a going concern, and significantly more than a community group or third sector organisation could bid. The current owner is in a position to prevent any further community use.
- 3.11 The fact that community groups are not afforded any advantage when a site is placed on the market is evidenced by statistics listed in "Community Rights - Communities and Local Government Committee 20 January 2015" which stated that since the legislation had come into force in September 2012 there had been more than 1800 assets listed as ACVs, of which 11 had resulted in a community buyout.

4. Previous Delegated Decision and Call In

- 4.1 The decision was first considered by Councillor Gifford, Cabinet Member for Place, on 4 October 2016 when the decision was deferred to allow the Friends of the Suffolk Punch to better make their case in support of their nomination.
- 4.2 The matter was further considered by Councillor Gifford on 15 November 2016 when the decision was made to refuse to list the property as an Asset of Community Value.
- 4.3 The decision to refuse listing was called in and a mediation meeting took place between the nominators and the decision maker on 28 November 2016, which was unsuccessful. The matter then came before Executive Scrutiny Committee on 5 December 2016.

5. Referral from Executive Scrutiny Committee

- 5.1 The Committee resolved to refer the decision back to the relevant Cabinet member for the following reasons:
 - "1. (a) That the Cabinet Member had taken the Delegated Decision based on a lack of evidence from the local community and on information that is of little relevance to the Localism Act 2011(Amended 2015).
 - (b) That the Cabinet Member has misunderstood the process of listing as an Asset of Community Value as indicated in her closing remarks outlined in the following bullet points of the Call In from Councillors R Bradburn and Exon:
 - (3) The Officer report was flawed as it had a section set out at section 3.23 of the report on Compensation with an amount mentioned - this is not a fact that should have been in the report as it should not form part of the decision making process. As it was there it cannot discount the possibility of an influence on the decision.

- (4) Despite over 30 members of the public (residents) attending and providing the very evidence that was required by the Officer report and the objectors to the listing (the solicitors for the Parks Trust and the Developers) such evidence was disregarded when making the decision.
 - (5) Not all residents were able to speak as the Decision maker said that the meeting was constrained by a following meeting which stopped further evidence being presented of a local business willing to invest in the site.
 - (7) The Decision maker in her concluding remarks also made an incorrect statement in that she stated that as this was the second Nomination of the site the test had to be set higher. This is incorrect in law as all Nominations must be dealt with under the Localism Act and the merits of the case not the number of times a Nomination is made”.
2. That the Leader of the Council be asked to consider whether, for the good reputation of the Council and indeed that of his Cabinet colleague to be upheld, that it may be more appropriate for either himself or another Member of the Cabinet to take any future decision.”

6. Consideration of Call In reasons

- 6.1 Reason 1a – it is for the nominating group to produce evidence which supports their nomination. The decision maker has been careful to consider only relevant information.

The nominating group has produced little coherent evidence of a settled view, or of significant support, for a particular future use of the property which might further the social wellbeing or social interests of the local community.

- 6.2 Reason 1b (3) – the potential for compensation or other consequences flowing from a decision to list, or not to list, the property forms no part of this decision. The decision maker has been consistently advised of this fact and Councillor Gifford confirmed at the delegated decision meeting on 28 November that she considered it irrelevant.
- 6.3 Reason 1b (4) - This element of the call in does not indicate on what basis it is claimed evidence was disregarded. A considerable number of speakers were able to make their points. A number of speakers gave good accounts of their past use of the premises, and this demonstrated that the ‘recent use’ test under the legislation may well, in fact, have been met. However, there was little or no convincing evidence given to indicate that it was realistic that the Suffolk Punch was likely to be reopened, or indeed that the site may be used for another purpose which might further the social interests, in the future.
- 6.4 Reason 1b (5) – The decision maker was of the view that a number of residents were simply repeating earlier points or making points of little relevance. The fact that there is now a “local business willing to invest in the site” was not mentioned by any of the elected members who gave full submissions at the delegated decision meeting, nor by any of the other speakers. This was not

submitted as evidence or mentioned by the nominating group at any stage before the call in procedure was commenced. The property has been on the market for four years. It is understood that this local business does not appear to have expressed any previous interest or shown that it has sufficient funds to invest.

- 6.5 Reason 1b (7) – the decision maker on 28 November stated that she does not recall making this exact statement. The Suffolk Punch was first listed as an ACV in February 2013 – almost four years ago – and the current Friends Group includes a number of individuals involved in the first nomination. Despite the passage of this lengthy period the community group appears to have no clearer a position now with regards to what it wishes to see the site used for in order to further the social interests of the local community. There is no evidence that they have addressed any proposed funding arrangements that would enable them to purchase the site or to make the significant investment required to enable the site to be used.
- 6.6 It has therefore been concluded that it is not realistic to think there will be community use of this site (whether as a public house or otherwise). It follows that the nomination has not met the required tests and should be rejected.

7. Options

- (a) Do nothing

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

- (b) To list The Suffolk Punch as an Asset of Community Value

The evidence submitted in support of listing the property is weak and does not satisfy all the requirements set out in the relevant legislation. This option is not recommended.

- (c) To refuse to list the Suffolk Punch as an Asset of Community Value

The statutory criteria for listing a property as an Asset of Community Value requires the Council to be of the opinion that it is realistic to think there is a time within the next five years where the use of the property would further the social wellbeing or social interests of the local community. Due to the lack of evidence demonstrating that the 'realistic' and 'future use' test is met, and the determination of the current owner to sell the site as development land, the nomination of The Suffolk Punch as an Assets of Community Value should be rejected. This is the preferred option.

8. Implications

8.1 Policy

There are no policy implications resulting from this decision.

8.2 Resources and Risk

The Community Right to Bid process is currently managed within existing resources.

A decision 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.

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.

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

8.3 Carbon and Energy Management

Not applicable.

8.4 Legal

The Community Right to Bid legislation is set out in the Localism Act 2011 and associated regulations.

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.

Whether or not the proposed future use is realistic is a matter of judgement for the listing authority.

The Council's Constitution provides that *"If, having considered the decision, the Executive Scrutiny Committee is still concerned about it, then it may refer it back to the decision-making person or body for reconsideration, setting out in writing the nature of its concerns, or refer the matter to full Council. If referred to the decision maker they shall then reconsider within a further ten working days, amending the decision or not, before adopting a final decision."*

8.5 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

Background Papers:

Delegated Decision 4 October 2016 Report and Decision Sheet

[Delegated Decision 4 October 2016 Report and Decision Sheet](#)

Delegated Decision 15 November 2016 Report and Decision Sheet

[Delegated Decision 15 November 2016 Report and Decision Sheet](#)

Executive Scrutiny Committee 5 December 2016 Report, Decision Sheet and additional papers circulated at the meeting

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