

COMMUNITY RIGHT TO BID: THE SUFFOLK PUNCH PUBLIC HOUSE, BRADWELL

Responsible Cabinet Member: Councillor E Gifford (Cabinet Member for Place)

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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 it maintains of such assets.

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 Suffolk Punch 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).
- 2.2 The MKPT leased the property to Greene King who ceased operating the premises as a public House in late 2014 since which time it has been boarded up.
- 2.3 Prior to its closure Bradwell Parish Council made a successful application to have the property listed as an Asset of Community Value and it became listed in February 2013.
- 2.4 During the statutory moratorium period which followed, SIEVEMK made a bid to purchase the Suffolk Punch but this bid was rejected by MKPT which, as a Trust, is obliged to obtain best market value on sale of any assets. It is understood that the subsequent bid, from Riverside (Clapham) Ltd was several times the value offered by SIEVEMK. No other bid to purchase the property was received from any community group. The site lies within the development plan area and the sale is, it is understood, a binding agreement, conditional upon planning permission being obtained by Riverside Ltd.

- 2.5 Milton Keynes 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 Asset of Community Value on 26 July 2016.
- 2.6 The present nomination for listing the property as an Asset of Community Value was received on 5 August 2016 (**Annex C**). The Friends of Suffolk Punch, who have made the nomination, describe themselves as a 'neighbourhood forum'.
- 2.7 MKPT object to the property being re-listed as an Asset of Community Value and have made representations via their Solicitors (**Annex D**).
- 2.8 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**

- 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 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.
- 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 are satisfied, despite representations from the Solicitors for MKPT, 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, officers have accepted that, The Suffolk Punch having ceased operation as a public house in late 2014, has operated as such 'within the recent past'.
- 3.6 The final part of the test is whether it is realistic to think that there is a time in the next five years where the use of the Suffolk Punch could further the social wellbeing or social interests of the community. It is noted that the future use does not have to be the same as that previously.
- 3.7 Officers have concluded that there is little evidence in support of this element. At a time when public houses are closing across the UK in record numbers The Friends of Suffolk of Suffolk Punch have provided no evidence in support of their contention that the public house could reopen as a viable business. They have not suggested or provided any evidence in support of any alternative use. No evidence has been submitted that there is interest from the business community, or that fund raising is being pursued by community members which would indicate that there is any commitment to pursue the venture.
- 3.8 Only one community bid has been received previously and that offer proved to be wholly unrealistic in terms of value.
- 3.9 The fact that the property includes a parking area within its curtilage which could be used by local residents and visitors is not, in officers' opinion, sufficient to meet the criteria of a use which would 'further the social wellbeing or social interests of the local community'.

4. Options

- (a) Do nothing.

This is not a viable option as Milton Keynes Council has a statutory duty to maintain the list of Asset 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 may not withstand robust examination. 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 ACV 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. No evidence has been provided to support this contention and officers are therefore of the opinion that the nomination to list the property as an ACV should not be accepted. ***This is the preferred option.***

5. Implications

5.1 Policy

There are no policy implications resulting from this decision.

5.2 Resources and Risk

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

5.2.2 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 Community Right to Bid legislation.

5.2.3 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

5.3 Carbon and Energy Management

Not applicable.

5.4 Legal

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

5.4.2 The types of organisation which may nominate a property as an Asset of Community Value are set out in s89(2)(b) of the Act. Further guidance on the nature of community groups is found in case law.

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

5.5 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 Community Right to Bid Submission (with redacted list of members)

Annex D Representations by Freeths on behalf of MKPT

Background Papers: Delegated Decision 26 February 2013: Community Right to Bid