FREETHS

Annex D

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Dear Sirs

THE SUFFOLK PUNCH, 1 LANGCLIFFE DRIVE, HEELANDS, MILTON KEYNES MK13 7PL - ACV NOMINATION

We act for Milton Keynes Parks Trust Limited ("**MKPT**"), the freehold owner of the Suffolk Punch, 1 Langcliffe Drive, Heelands, Milton Keynes MK13 7PL ("**the Property**"). We refer to the nomination of the Property ("**the Nomination**") as an Asset of Community Value ("**ACV**") by "the Friends of the Suffolk Punch" ("**the Nominator**"), by way of an apparently undated nomination form ("**the Nomination Form**").

We are instructed to make the following representations to Milton Keynes Council ("**the Council**") in connection with the Nomination, in particular in relation to (a) the invalidity of the Nomination in the first instance and (b) the various demerits of the Nomination in any event.

A. Invalid nomination – legal framework

1. S.89(1)(a) of the Act states that land may only be included in a local authority's list of ACVs in response to a *community nomination* (our emphasis).

2. Under section 89(2)(b) where a community nomination is made otherwise than by a parish or community council it may only be made by a person that is a *"voluntary or community body"* with a *"local connection"* (s.89(2)(b)(iii) of the Act).

3. Regulation 5 then defines *"a voluntary or community body"* as (inter alia) an unincorporated body with at least 21 members which does not distribute any surplus it makes to its members (Regulation 5(1)(c)).

4. Regulation 4 states that a body has a *"local connection"* if its activities are wholly or partly concerned with the relevant local authority's area or with a neighbouring local authority's area (Regulation 4(1)(a)).

5. Regulation 4(1)(b) imposes additional requirements on certain voluntary or community bodies, including unincorporated bodies and companies limited by guarantee, such that these bodies will only have a *"local connection"* if any surplus such bodies make is wholly or partly applied for the benefit of the relevant local authority's area or for that of a neighbouring local authority.

6. Regulation 4(1)(c) imposes a further requirement on unincorporated bodies, such that an unincorporated body will only have a *"local connection"* if it has at least 21 members who are registered in the relevant local authority's area or in a neighbouring local authority's area.

7. Regulation 6(d) of the Regulations provides that a community nomination *must* include *"evidence that the nominator is eligible to make a community nomination"*. That is to say that any nomination must include evidence that the body satisfies the relevant conditions set out above. The evidence requirement is mandatory since Parliament stipulated in section 89(2)(b)(iii) of the Act that a voluntary or community body require a local connection, and permitted the Secretary of State to stipulate what the conditions of a local connection might be. Plainly, therefore, Parliament contemplated that conditions must be attached for a voluntary or community body to have a local connection, and that the conditions must be met.

8. In summary (and before even considering the merits of a nomination), a local authority must be satisfied that the nomination is a community nomination. A nomination is a community nomination if and only if the nominator satisfies the relevant statutory conditions. In order that a local authority may be satisfied that a nominator satisfies the relevant conditions, there is a mandatory, not discretionary, statutory requirement that a nominator supplies evidence that the conditions are satisfied. Any nomination received from a nominator that does not satisfy the relevant conditions on the basis of the evidence provided cannot be a community nomination either because it is not a voluntary or community body, or because it has no local connection, and therefore cannot be valid.

<u>The identity of the Nominator</u>

9. The Nominator is identified within the Nomination Form as being "The Friends of the Suffolk Punch", a body further described (wrongly) as a "*neighbourhood forum*". The Nominator says that "*The Friends of the Suffolk Punch are residents of both Heelands and surrounding areas who have used the premises in the past and seek a Community venue again*". The Nominator goes on to explain its local connection, such that "*all the members of the gropup [sic] live within a mile of the Suffolk Punch and seek to maintain a Community Asset that if demolished will never be replaced*". It is MKPT's respectful submission that the Nominator is not eligible to make a community nomination for the following reasons.

<u>The Nominator is not an unincorporated body as envisaged by the Act</u>

10. The Nominator, presumably as some purported form of unincorporated association or body, must have complied with both regulation 6(d) and regulation 5(1)(c) of the Regulations, which make it clear that a voluntary or community body means an unincorporated body with at least 21 individual members, and evidence is required to have been lodged with the Nomination to

have shown the common bond bringing the 21 individual members of the nominating body together as an unincorporated body, and their consent to be bound by the rules or understanding formed by the common bond.

11. Whilst the term *"unincorporated body"* is not defined in the Act or in the Regulations, it is MKPT's case that the term as used in the Act has exactly the same meaning as *"unincorporated association"*, for the reasons which follow. Firstly, the terms "unincorporated body" and "unincorporated association" are synonymous in common parlance. The Oxford Dictionary of Law (5th Ed., 2002) defines the term "unincorporated body" as "An Association which has no legal personality distinct from those of its members (compare CORPORATION). Examples of unincorporated bodies are *partnerships and *clubs." The same dictionary then defines a "club" as, "An association regulated by rules that bind its members according to the law of contract".

12. Secondly, the terms *"unincorporated body"* and *"unincorporated association"* should be interpreted as synonymous in legal proceedings. It is a corner-stone of statutory interpretation that, where terms are not expressly defined in legislation, the starting point for interpreting their meaning is the terms' ordinary, natural meaning in context. Applying this established rule of statutory interpretation to the dictionary (and common-sense) definitions of the terms suggests that *"unincorporated body"* and *"unincorporated association"*, which are synonymous in common usage, also have the same meaning in law.

13. Thirdly (and as a logical result of the rule of statutory interpretation outlined above as applied to the common usages of the terms), the terms *"unincorporated body"* and *"unincorporated association"* are treated as interchangeable and synonymous in legal proceedings as a matter of fact. By way of example:

    13.1 In the Court of Appeal case of *Martell and Others –v– Consett Iron Co. LD [1955] Ch. 363* (enclosed) the terms *"unincorporated body"* and *"unincorporated association"* are used interchangeably both by the learned appeal Judges involved and by Counsel throughout the entire judgment.

    13.2 In the House of Lords case of *Re Macaulay's Estate [1943] Ch.435* (enclosed) the Honourable Lord Buckmaster treats the terms *"body"* and *"association"* as synonymous in the context of his discussion of the status of an unincorporated entity. See particularly Lord Buckmaster's comments at paragraphs 437 to 438, where he states *"That the Lodge to be maintained is a body or association of persons, and not the building occupied by such body or association I have no doubt. Further, the fact that the gift is made to the Lodge by the name prescribed by its rules, namely, the Folkestone Lodge of the Theosophical Society, and is coupled with an express exclusion from the benefit of the gift of the headquarters and other lodges of the *438 Society, makes it plain that it is the local body or association at Folkestone and no other body which is to benefit."*

14. The cases above are deliberately drawn from the highest courts of England and Wales) to illustrate the widespread treatment of the terms *"unincorporated body"* and *"unincorporated association"* as synonymous as a matter of accepted legal usage.

15. The term "*unincorporated association*" has been defined in caselaw as meaning "*two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will. The bond of union between members of an unincorporated association has to be contractual.*" (per Lord Justice Lawton in the Court of Appeal case of Conservative and Unionist Central Office –v– Burrell (Inspector of Taxes) [1982] 1 W.L.R. 522 - at 525) (enclosed).

16. So far as the Nomination is concerned, the Nominator appears to have failed to provide evidence that it comprises of 21 individual members who are registered to vote in Milton Keynes. This is a fundamental defect in the Nomination that goes to the core of the Council's ability to determine whether the Nomination can properly be said to constitute a community nomination. It is normal practice for a nominating body in these circumstances, where it is a voluntary or community body, to provide a list of the members (which must amount to 21 or more), with details of their addresses. A list of members comprising the Nominator does not appear to have been provided with the Nomination. Indeed, we specifically asked Mr Hanley of the Council to provide all supporting documents to the Nomination and these were duly supplied to us on 8 September 2016. A List of members of the Nominator was not amongst the documents sent to us and we therefore asked Mr Hanley on the same day whether there were any other documents that had been submitted by the Nominator, to which he replied "*I believe that is everything*".

17. The provision of a list of members is the only way that the Council can determine that the Nominator has a "local connection" and satisfies Regulation 4(1)(c). As set out in paragraph 8, it is a statutory requirement that the Nominator, as an alleged voluntary or community body, has a "local connection" and the provision of evidence thereto is mandatory. Absent a list of members comprising the Nominator, the Council cannot be sure that the Nominator has a "local connection" and consequently that the Nomination is a community nomination. Indeed, so far as the Council might be aware, the Nominator may simply comprise of Mr Bradburn alone.

18. Further, it is clear from the widely followed cases of the highest legal authority set out above that, at the very least, an unincorporated body/association must have (1) an identifiable membership and (2) a constitution and/or identifiable rules that bind and govern the relationship between its members. It is also clear from these decisions (and others) that these conditions are conjunctive. Both conditions must be made out for it to be possible to say that an unincorporated body/association exists.

19. Not only has the Nominator failed to provide a list of members, it has provided no evidence whatsoever of the type of constitution or identifiable rules under which the alleged members of the Nominator (if there are any) have become or may cease to be members. These identifiable rules are also necessary for them to qualify as eligible to make a community nomination under Regulation 5(c) and s.89(2)(b)(iii) of the Act.

20. Without the Nominator having any identifiable rules or a constitution, it is MKPT's position that no unincorporated body can possibly exist. MKPT therefore submits that if the Nominator does have at least 21 members (which is denied), there is a complete lack of any significant relationship between the individuals that comprise the alleged Nominator in this case.

Invalid nomination - summary

21. In light of the lack of requisite evidence before the Council, it is impossible for it to conclude that the Nominator is an unincorporated association or body at all, let alone whether it is the type of unincorporated association or body that may make a nomination that satisfies s.89(2)(b)(iii) of the Act. Without such evidence the Nomination must be refused and the Property added to the list of those that have been unsuccessfully nominated.

B. The Council has no reason to believe that the Property was of community value or that it is realistic to think that there can be community use of the Property within the next 5 years

22. Without prejudice to the invalidity of the Nomination in the first instance, we are obliged to draw the wholly inadequate nature of the Nomination itself to the attention of the Council.

23. Before examining the detail of the Nomination Form, we respectfully remind the Council that the test to establish whether a validly nominated property is in fact an asset of community value is spelled out in s.88 of the Act and the relevant provisions of the Regulations. The relevant statutory provisions do not identify any 'classes' or 'types' of property that automatically pass the test for community value and the test itself *must* be applied on a case-by-case basis to the facts of each and every individual nomination, without exception.

24. By extension (and in terms relevant to the current Nomination), it clearly cannot have been the intention of Parliament in drafting the relevant provisions of the Act and of the Regulations that all pubs should satisfy the test set out in s.88 by virtue of being pubs alone. The bar set by s.88 requires more than mere use of a property as a public house. Indeed in *Patel v London Borough of Hackney and another [2013] UKFTT CR/2013/0005 (GRC)* at paragraph 4 (enclosed) Judge Warren stated that *"for the appellant, Mr Turney, correctly pointed out that not all pubs would come within Section 88(2)(c)"* (it is clear that the Judge meant s.88(2)(a) or (b), given that there is no sub-section (c), and also from wider context in that case).

25. It follows that it is not sufficient, in attempting to satisfy the criteria for community value under s.88 of the Act, for a nominator simply to say of a pub that it is a pub. Pubs do not qualify by definition as assets of community value and identifying a property as a pub does not alleviate the nominator's responsibility to establish that the property satisfies s.88 of the Act. If the nominator cannot provide sufficient reasons (over and above the simple fact that the property is a pub) as to why a property satisfies the test under s.88 of the Act, then the nomination must be unsuccessful.

26. Turning to the test for community value itself, the relevant provisions of the Act and of the Regulations are as follows:

26.1. For the Property to be of community value, the Council must reasonably form the opinion that either:

26.1.1. an actual current non-ancillary use of the Property must further the social wellbeing or social interests of the local community and it is realistic to think that this can continue (s.88(1) of the Act); or

26.1.2. there must be a time in the recent past when an actual non-ancillary use of the Property furthered the social wellbeing or interests of the local community and it is realistic to think that within the next five years there could be a non-ancillary use of the Property that furthers the social wellbeing or interests of the local community (whether or not in the same way) again (s.88(2) of the Act).

26.2. In the absence of a statutory definition or guidance as to the meaning of *"ancillary"* within s88 of the Act, the term must be given its ordinary and natural meaning within the context of the facts of the matter under consideration. The shorter and little Oxford English Dictionaries define ancillary as meaning *"subservient"*, "*subordinate*", "*auxiliary*", "*providing essential or necessary support to the primary activities or operation of an organization or system*".

26.3. *"Social interests"* include cultural, recreational and sporting interests (s.88(6) of the Act). *"Social wellbeing"* is not defined by the Act, but it seems that it is the wellbeing of *society* itself that is important (in the sense of the maintenance and strengthening of bonds between people, the promotion of societal cohesion and unity, etc) rather than just the wellbeing of a number of individuals within a given society. The Act focuses on communities, not individuals.

26.4. A community nomination must include sufficient reasons for the Council to conclude that the Property is of community value (Regulation 6(c)).

27. In terms of the sufficiency of reasons provided - a local authority will clearly <u>not</u> have sufficient reason to believe that there is (or was) an actual, current, non-ancillary use of the Property that furthers the social wellbeing or social interests of the local community unless the nominator is able to provide specific examples of non-ancillary actual current uses of the asset that further the social wellbeing or social interests of the local community.

28. Evidence of such use is not a mandatory requirement, but well evidenced instances of community use clearly give a local authority more reason to believe that such use actually occurs, whereas the Council should draw adverse inferences from incorrect or unevidenced bare assertions. It follows that the more (relevant, specific) examples provided, and the more corroborating evidence that is provided to substantiate these examples, the more reason the local authority may have to believe that an asset furthers (or furthered) the social wellbeing or social interests of the local community.

29. In this case the reasons why the Nominator considers that the Property is of community value are set out in Section 2a) of the Nomination Form.

30. Crucially, the Nominator has sought to rely on a previous nomination of the Property as an ACV by Bradwell Parish Council, which subsequently led to the listing of the Property as an ACV, without making supplementary submissions of its own. Two issues arise from this: firstly, there is no evidence that Bradwell Parish Council has permitted the Nominator to use the previous nomination to support its claim that the Property meets the criteria in s.88 of the Act and, secondly, Bradwell Parish Council's nomination was made whilst the Property was still open as a pub. As the Council is aware, the pub was closed in November 2014 and it has remained boarded up since then. So far as the Council nevertheless permits the Nominator to rely on evidence of a previous nominator, which would be an usual step, then those submissions (such as they are) must be construed as evidence of community use in the "recent past".

No actual non-ancillary use of the Property furthering the social wellbeing or interests of the local community in the recent past

31. In this instance the Property has been shut as a pub since November 2014, over a year and a half before the Nomination was made. Because of the Property's closure s.88(1) of the Act is not engaged, and the Council must instead consider the community value criteria set out in s.88(2) of the Act.

32. As to the first part of s.88(2), MKPT accepts that the Council will need to assess whether there has been community use of the Property in the "recent past", which will include a time before the Property was shut.

33. However, the Nominator has not provided any evidence whatsoever to support its reasons as to why the Property furthered the social wellbeing or social interests of the local community in the "recent past". All the Nominator has done, by referring back to a previous nomination that it did not make, is allege that "*the pub is well suited to provide good food and a convivial location for residents, commercial bodies, societies and family events*". This is a statement of what might occur at the Property, rather than a statement as to what did actually occur at the Property in the "recent past". In any event the furtherance of individual well-being would not satisfy the community value criteria, which is directed at activities which further the well-being of local communities. It is societal cohesion which the community value criteria is concerned with, not the consumption of food and drink making individuals feels more satisfied.

34. The Nominator's allegation is effectively that the Property is an ACV because it was a pub. However, as we have already set out, and which is supported in the *Patel* case, just because the Property was a pub does not automatically mean that the Property (without more) satisfies s.88 of the Act. Cogent and relevant evidence ought to be provided so that the Council can make an informed decision as to whether the Property furthered the social wellbeing or social interests of the local community in the "recent past". Without evidence, the generalised assertion made by the Nominator is simply a bare assertion which the Council does not have good reason to believe and on the strength of which no reasonable decision maker could conclude that the Property is of community value.

35. Further, the Nominator makes unsubstantiated allegations in the Nomination Form that are not even remotely relevant to the Council's decision making process. They simply bear no relevance at all to the criteria set out in s.88 of the Act. The Nominator's various allegations are repeated below.

    The allegation that there is a sizeable car park, large garden, good catchment area and proximity to parks and open spaces

36. These allegations fail to engage with the criteria for ACV listing under s.88 of the Act as they do not identify any *"use"* of the Property at all. The Property's car park, garden and location are entirely irrelevant to the Property's community value as defined by s.88 of the Act (or rather lack thereof) and so are irrelevant to the Council's decision making process.

37. By way of further explanation, the provision of parking is ancillary to the main use of the Property for the purpose of selling alcoholic and non-alcoholic beverages to the public with or without food. As such the existence of parking, or a sizeable car park, that the local church may be able to use, could not and does not engage the community value criteria.

38. As regards the alleged large garden, the Nominator has provided no evidence whatsoever to establish the frequency and/or intensity of any previous use of the outside area by local people. The implication that the Property furthered the social wellbeing or social interests of the local community because it has a large garden is simply a bare assertion and should carry no weight with the Council, even were such use anything other than ancillary, or capable in any event of furthering the social wellbeing or social interests of the local community in the sense required by s.88(6).

39. Without prejudice to the above, the provision of an outside area for drinkers is ancillary (on any common sense reading of the word – see our comments above) to the main use of the Property as a public house. The use of the outside area is not an integral part of the main use of the Property and is clearly subordinate to the Property's main use (until it was closed). Without the outside area the pub would continue to function (were it to reopen), but without the pub the outside area would not exist in its current form.

40. This allegation also fails to engage the s.88 criteria in that the mere presence of an outside area is not sufficient to establish that the Property actually furthers the social wellbeing or social interests of the local community in the sense intended under the Act. Potential use of the outside area does not satisfy the definition of *"social interest"* under s.88(6) of the Act, being neither an actual current cultural, recreational, nor sporting interest.

41. The allegation that the Property is in a "good catchment area" similarly fails to engage the s.88 criteria. By its very nature, most community assets will be located within a community of some sort, but whether it is located in a "good catchment area" or a 'bad catchment' (whatever that is) makes no difference to whether the asset is of community value.

The allegations that over recent years the Property provided "*a focal point for meeting and socialising, a controlled and convivial atmosphere, good value food throughout the day for both local residents and business clients and entertainment for the local community*"

42. These allegations are supplemental to the allegations contained in Annex C of the previous nomination and are set out in an email from Harold Atkins of Bradwell Parish Council dated 9 January 2013.

43. The allegations are made without the provision of any evidence that there was a "*controlled and convivial atmosphere*" at the Property, or that it sold "*good value food*" or indeed that entertainment was provided to the local community. In reality, the allegations beg the question because they do not explain or evidence what activities occurred at the Property as part of its main use as a property in which alcoholic and non-alcoholic beverages were sold to the public, with or without food, which furthered the social interests and well-being of the local community. The allegations demonstrate nothing and are a self-serving statement that something might have occurred at the Property to engage the community value criteria, rather than an evidenced reason as to what did occur at the Property which satisfies the community value criteria.

Other local pubs which are of community value

44. Whilst the Property is not of community value in the sense contemplated in the Act, there are other nearby public houses which are demonstrably of community value. For example the Countryman in Bradwell Common (being the estate situated immediately to the south of Heelands) which has a beer garden, disco, a pool team and, according to its website (a print-out of which is enclosed), welcomes community groups. We note that Mr Bradburn of the alleged Nominator lives a very short walk away from this pub. Similarly, there are two pubs in Bradwell Village, the Victoria Inn and Prince Albert, which are situated in the area to the immediate west of Heelands, and also the Halley's Comet in Bradville, which is situated to the immediate north of Heelands.

45. It is MKPT's position that all these pubs are within walking distance of Heelands. Further, since the alleged Nominator purportedly comprises o f residents "*of both Heelands and surrounding areas*", it might well be the case that these residents, if they are actually members of the alleged Nominator, live in the same estates (Bradville, Bradwell Common and Bradwell Village) where community pubs already exist.

Insufficient evidence that the Property was of community value in the recent past - Summary

46. The Nominator's case for nominating the Property, once all false, bare and empty allegations are ignored, is in essence that this Property should be listed as an ACV because it was a pub, and not a particularly exceptional or unique pub at that.

47. However, the fact that a given property is a public house is not sufficient to satisfy the criteria for listing under s.88 of the Act. In order to be listed as an ACV, a local authority must be satisfied, on the basis of the relevant nomination form and evidence provided, that there are

sufficient reasons to conclude that the Property was of community value in the "recent past" as defined by s.88 of the Act.

48. The several allegations that comprise the Nominator's case for listing the Property are not sufficient for the Council to conclude that the Property was of community value as defined by s.88 of the Act, as:

48.1. the Nominator has singularly failed to cite a single specific *actual* instance of community use and instead describes entirely generic, non-specific and, in several cases, merely possible uses of the Property;

48.2. to the extent that these allegations highlight actual, specific instances of community use (and we submit that they do not), all point either to ancillary uses or to uses that fail to promote the social wellbeing or interests of the local community in the requisite sense; and

48.3. none of the allegations has been accompanied by any evidence and, in the absence of any such evidence, the Council has little reason to believe that any specific, actual community use (in the sense intended by the legislation) is made of the Property.

Is it realistic to think that there is a time in the next five years that there could be use satisfying the community value criteria?

49. The second part of the test in s.88(2) of the Act to be considered by the Council is whether it is realistic to think that there is a time in the next five years that there could be use satisfying the community value criteria.

50. As the Council is aware, MKPT entered into a conditional contract on 1 June 2016 to sell the freehold of the Property to Riverside (Clapham) Limited ("the Purchaser"). The sale of the Property is conditional on the Purchaser obtaining planning permission for, *inter alia*, the demolition of the Property and the erection of dwelling houses and a day nursery, and provision of car parking, including spaces for the local church. The Purchaser's application for planning permission has not yet been decided (see 16/01475/FUL).

51. Plainly, if the Purchaser is granted planning permission, it is more than realistic that it will implement the permission and build out the development. The Purchaser has a firm and settled intent to do so. On that basis, it is wholly unrealistic to think that there will be a time in the next five years that there could be use satisfying the community value criteria since, all things being equal, the Property will not exist in its current form and will be used for alternative purposes.

52. Further and in any event, we enclose a letter from MKPT's Chief Executive, David Foster, in which he reiterates MKPT's attitude towards the Property and how its duties as a charity in general affect what it can do with the Property. In particular, Mr Foster notes that:

52.1. MKPT is a self-financing charity which has the primary objective of caring for many of Milton Keynes parks and green spaces. In order to finance its vital work in nurturing and enhancing the local landscape, it owns and operates a property and investment portfolio.

52.2. The Property is such an investment property and MKPT is under a duty to use it to deliver the best investment return to enable it to carry out its charitable objectives. MKPT is not under a charitable or any duty to provide buildings, like the Property, for community use.

52.3. Accordingly, even if the Council decides not to grant planning permission to the Purchaser, MKPT will not sell the Property for below market value or hand it over for community use. Indeed, the trustees of MKPT are under a legal duty to make sure the charitable objectives are achieved, with possible financial consequences for trustees where charitable assets are disposed of at less than market value. If MKPT cannot sell the Property on commercial terms, then it will remain closed and boarded up.

53. The fact is that Greene King, a very substantial brewer and managed house pub operator, could not make a success of the Property as a pub. Between 2008 and 2011 Greene King marketed the pub to sub-let with Fleurets (a property agent specialising in the licensed sector), but no acceptable interest was forthcoming. Greene King confirmed that the pub operation was no longer viable and it entered into discussions with MKPT in 2011 to surrender its 60 year lease. Greene King's lease of the Property was surrendered on 19 December 2011. A new operator took a lease of the Property from MKPT on the same date, but similarly could not make a success of it, despite a concessionary rent in place, and it ended up being dissolved in November 2014, owing MKPT significant sums in rent and dilapidations.

54. The Property was marketed to let during 2014 through AG&G (also licensed leisure specialists), since the former tenant had ceased trading, but MKPT had no or no serious interest or offers.

55. Unfortunately the pub business at the Property is no longer financially viable and has not been for some considerable time. This is not as a consequence of the unsupported (and incorrect) allegations made in the submissions supporting the Nomination, namely that the business has been "*hampered by a policy of minimal investment by...Greene King*" or "*hampered by the leasehold restrictions of the property owners, The Parks Trust*", but a reflection on the dramatic decline in pub use across the UK. The unfortunate reality is that it was not sufficiently supported by the local community to make the pub business financially sustainable.

56. As a reflection of the viability of the pub business, the Property was marketed for sale during 2015 through Rapleys. MKPT received a bid for the Property from SIEVEMK, backed by Bradwell Parish Council, on 2 June 2015 comprising an unconditional bid for £100,000 and a conditional bid for £225,000, which would have involved SIEVEMK demolishing the pub building and erecting 6 detached houses (none of which was designated as affordable housing), a 2 storey office building and a meeting room with a bar. MKPT decided to accept

a conditional bid from the Purchaser for £960,000, which intends to demolish the pub building and development the site for alternative use (with affordable housing). There were no bids to buy the Property as a pub.

57. Moreover, there is no actual evidence from the Nominator that it wishes to acquire the Property and run it as a going concern. Whilst there may be support for the continued protection of the use of the Property, that support has to be seen in context. A similar situation arose in *Fenwick Limited and Mr R Hammond v Mid Suffolk District Council and Anor* [2016] UKFTT CR-2015-0024 (GRC), in which the Judge, Simon Bird QC, at paragraph 27 said "*the support is for the continued protection of the use rather than any clear support in the form of willingness to take on the Cross keys and to attempt to run it as a going concern*". We enclose a copy of the Judgment of the *Fenwick* case.

58. Taken together, the fact that the Property has been sold for alternative development, the absence of any commercial or any meaningful voluntary sector interest in running the Property as a pub, and the inability of experienced operators to make a financial success of the Property, leads MKPT to conclude that it is not realistic to think that pub use of the Property could be made within the next 5 years.

C. **Summary**

59. The Nomination has not been made by a person eligible to make a community nomination. Accordingly the Council must reject the Nomination on that footing alone.

60. Even if the Council were to accept that the Nomination is a community nomination, the Property has not been used in a way in the recent past which might satisfy the community value criteria.

61. Further, in the light of the sale of the Property, Mr Foster's letter and the inability of operators to make a financial success of the Property, it is entirely unrealistic to think that the Property might be of community value as a pub in the next 5 years, and no other use of community value is proposed for the Property.

Accordingly, the Council is respectfully invited to add the Property to its list of unsuccessful nominations. Should the Council decide otherwise, then we shall advise MKPT to consider challenging the decision and also to claim for all its losses, including diminution in value of the Property as a consequence of listing the Property as an ACV, which might be significant if the ACV listing materially impacts on the Purchaser's outstanding planning application.

Yours faithfully

Freeths LLP

Freeths LLP

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