

Wards Affected:

Campbell Park and Old Woughton

ITEM 6**DELEGATED DECISION****13 JANUARY 2015****COMMUNITY RIGHT TO BID – THE NOMINATION OF THE OLDE SWAN PUBLIC HOUSE, WOUGHTON ON THE GREEN**

Responsible Cabinet Member: Councillor E Gifford, Cabinet member for Community Services

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Executive Summary:

The Council is required (by the Localism Act) to maintain processes in place to give people the chance to bid to buy and take over the running of public or private assets that are of value to the local community. The Olde Swan Public House, Woughton-on-the-Green has been nominated by Old Woughton Parish Council as an asset of community value under Community Right to Bid. The Council is required to decide whether to approve such nominations and to maintain and manage lists of such assets in line with the statutory framework.

1. Recommendation(s):

- 1.1 That the Olde Swan Public House be published on the Milton Keynes Council's website as an 'asset of community value'.

2. IssuesContext

- 2.1 The Community Right to Bid (CRtB) is part of the Localism Act (2011) and came into force in September 2012. The Community Right to Bid aims to ensure important assets remain in public use and stay part of community life and the Council is required to maintain and manage lists such of assets in line with the statutory framework. This report seeks to:
 - 2.1.1 Invite the Council to decide whether to approve the nomination
- 2.2 The Council adopted an approach to managing the Community Right to Bid process in the borough of Milton Keynes on 26th February 2013.
- 2.3 If the nomination is approved, the Council will add *The Olde Swan Public House* to the 'assets of community value' list and respond to Old Woughton Parish Council within 8 weeks of receiving the application and publish details. Once listed the Council will make entries in the local land charges register maintained by the Council, and also at the Land Registry.

Ownership and Management

The owner of the site is McMullen and Sons Limited of the Hertford Brewery, 26 Old Cross Hertford, Hertfordshire. SG14 1RD

Nomination for listing for an asset of community value

- 2.4 A nomination was received from Old Woughton Parish Council on 17th November 2014.
- 2.5 Regarding whether or not the main use of the land and/or building furthers the social wellbeing or social interests of the local community at the present time and whether it is realistic to think that this can continue into the near future (even if the type of social use or benefit might change), Old Woughton Parish Council writes that:

“The Olde Swan is a successful community-focused local business and key community asset. It has a key role in the social well-being of the community in providing social interaction and engagement. Old Woughton Parish Council would like to nominate the site as an Asset of Community Value on the basis that:

1. An actual 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
2. 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.”

The full statement by Old Woughton Parish Council can be read in Annex C.

A copy of the nomination was sent by First Class post to the Registered Proprietor on 18th November 2014 with a request that they reply by noon on Tuesday 9th Dec 2014 indicating whether they have any objections to the listing.

A reply was received from the site’s owners, McMullen & Sons Ltd, saying that:

“The plan attached...provides a title plan that identifies the curtilage of the pub and the curtilage of the surrounding land including the pub garden and car park. While we do not intend to contest the listing of the public area of the pub this is contingent on the correct curtilage being identified.

The first floor of the pub is private residential accommodation not accessible to the public. We assume that the nomination does not seek to incorporate residence that is subject to private benefit only, and is outside the trading area accessible to the public, as this would set a grave precedent for ourselves and any property owner in the country. We should be free to lease private accommodation without restriction. This part of the building does not satisfy the express provisions of section 88 Localism Act 2011 and such a nomination is surely outside the intention of Parliament.

The car parking use of Ye Olde Swan car park is ancillary to the main use of the premises as a public house and would not therefore meet the criteria in section 88(1) of the Localism Act. Furthermore, there is no evidence to

indicate that “it is realistic to think that there is a time in the next five years when there could be non-ancillary use ...that would further the social wellbeing or social interest of the local community. This is a commonly accepted argument by District Authorities. For example please see (<http://www.rushcliffe.gov.uk/community/assetsofcommunityvalue/>)

As a result I have attached the land registry plan showing the pub garden hatched to indicate that this land is not contested as an asset of community value and showing the pub itself dash hatched to show that the ground floor is not contested as an asset of community value.”

The full letter from McMullen & Sons Ltd can be viewed in Appendix C.

Stakeholder Engagement and Representations

- 2.6 An engagement exercise was carried out with key stakeholders within the locality including ward members and parish councillors, as well as Council officers in Planning, Legal and Property services. Input from Robert Wilson, a Development Plan Manager at MKC, stated that “The public house remains a popular venue. It is identified as a local commercial use in the 2005 Local Plan.” And that of its future status “given the number of pub closures across the country this may be less certain.”

The full statement by Robert Wilson, MKC Development Plan Manager can be read in Annex C.

Mark Dolling, Head of Capital & Infrastructure, declared no objection to listing of the site.

Input from Ward members in the neighbouring ward (Monkston) was to the effect that listing of this site would not be consequential to their Ward.

No other input affecting the nomination was received.

Summary and Council's response

A site visit on the 8th Dec 2014 by the report author confirmed that the use of the building does reflect the wording in the nomination by Old Woughton Parish Council i.e. that “*Ye Olde Swan*” is a community-focused local business which has a key role in the social well-being of the community in providing social interaction and engagement. This current use of the building 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 the social wellbeing or social interests of the local community. The site boundaries also conformed to the plan laid out in the nomination.

The decision taker is required to have regard to the following factors in deciding whether the property should be listed as an asset of community value – namely, whether an actual current use that is not ancillary use furthers the social wellbeing or social interests of the local community and it is realistic to think this can continue; or there has been in the recent past and it is realistic to think this could resume within the next five years. In the view of Old Woughton Parish Council they would like to see this building remain in public use for community social benefit into the future.

- 2.8 If the property is listed as an asset of community value, then if the owner of The Olde Swan Public House wishes to sell the asset or grant a lease for 25 years or more, a six week or (if a community interest group expresses an interest within six weeks) a six month moratorium period will be triggered during which The Olde Swan Public House cannot be sold or so let other than to a community interest group.
- 2.9 This period will give Old Woughton Parish Council some time to develop a proposal and raise the required capital to bid for the property during the moratorium period.
- 2.10 The fact the property might already be up for sale would not affect the Right to Bid. In this scenario Milton Keynes Council would still follow the procedures regardless, as the moratorium does not apply unless and until the property is listed as an asset of community value. If the owner sells it or exchanges contracts before it is listed, the sale wouldn't be caught by the Localism Act 2011 but the next owner would be caught if they wanted to sell (or lease it for 25 years plus).
- 2.11 A landowner can ask the Council to review the inclusion of The Olde Swan Public House in the list and there will be a process for an appeal to an independent body.
- 2.12 The full process is summarised in the attached flow charts in Annex A.
- 2.13 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.

3 Implications

3.1 Resources and Risk

The Community Right to Bid legislation will be implemented within existing resources. The Council has received New Burdens Grant to offset any future claims up to £20K.

The fact that a property has been listed under the Localism Act 2011 as an asset of community value can be treated as a material factor by the planning authority. The existence of any planning application is not relevant to the decision making process as to whether *The Olde Swan Public House* should be listed as an asset of community value.

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

3.2 Carbon and Energy Management

None

3.3 Legal

Adoption of the approach should facilitate compliance with the relevant legislation. As mentioned above the Localism Act 2011 requires the Council to decide whether the

application to nominate The Olde Swan Public House as an asset of community value should be approved or not.

3.4 Other Implications

As set out within the report

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

Background Papers:

Annexes:

Annex A – Flow Charts for Decision Process for The Olde Swan Public House

Annex B – Boundary Plan of The Olde Swan Public House

Annex C – Community Right to Bid submission and consultation feedback