

# North Yorkshire Council

15 December 2023

## Assessment of Assets of Community Value Nomination NYCACV0025 The Ship Inn, Low Worsall Report to the Assistant Chief Executive for Localities

### 1.0 PURPOSE OF REPORT

- 1.1 To determine whether The Ship Inn, Low Worsall (NYCACV0025) should be placed on the Council's List of Assets of Community Value (ACVs).

### 2.0 SUMMARY

- 2.1 This nomination covers the Ship Inn, Low Worsall. The recommendation is that the site should not be listed as Asset of Community Value.

### 3.0 BACKGROUND

- 3.1 [The Localism Act 2011](#) requires the Council to consider all valid nominations for properties and/or land to be placed on the List of Assets of Community Value. This is also known as the 'community right to bid'. Land or property considered of community value can be nominated by a voluntary or community body that complies with [regulation 5](#).

When a listed asset comes up for sale a community interest group can trigger a delay (moratorium) in any sale process. The purpose is to create a "window of opportunity" to secure funding and bid for the property on the open market. The owner is not obliged to accept a bid from a community interest group and can sell to whomever they choose

The Assets of Community Value (England) Regulations 2012 provide a mechanism for the owner of land listed as an ACV to request an internal review and also appeal to the first-tier tribunal against the listing. Although first-tier tribunal decisions are not binding precedents any appeal decisions provide judicial guidance to the operation of the legislation. The guidance provided by these decisions is becoming increasingly useful to local authorities in the assessment of Assets of Community Value nominations

Private owners may claim compensation from the Council for loss and expenses incurred through their property being listed. More details are provided in the 2012 Regulations

This report ensures that the Council considers the nomination for the Ship Inn, Low Worsall as required by the Act.

## 4.0 CONSIDERATION OF THE NOMINATION

### 4.1 Description of the asset

This nomination is for The Ship Inn, Low Worsall, the only pub in High or Low Worsall in the Richmondshire Constituency of North Yorkshire. Stonegate Pub Company had secured the site to prevent loss of their assets and have been undertaking some works to improve the interior with their stated intention to continue to run it as a pub – initially with a target of opening by August bank holiday, but at the time of the nomination (25 October 2023) the Ship Inn had been closed since July 2023. It has since re-opened (notification received on 5 December 2023).

### 4.2 Nomination

The nominator, High and Low Worsall Parish Council, describe The Ship Inn, prior to its closure, as being a key part of the social life of the community for generations providing opportunities for people to meet and socialise over a drink and/or food. The Parish Council state that the asset, when open, is used for village society meetings and other community events such as the WI lunch, fund-raising activities and parties.

### 4.3 Comments received

In accordance with the local nomination guidelines the local ward councillor, Councillor Annabel Wilkinson (Morton on Swale and Appleton Wiske Division) was consulted regarding the assessment of the nominated asset but has not provided any further comments in relation to the nomination.

Gosschalks, the legal representative of the owner of The Ship Inn, has submitted comments on behalf of their client. They have provided information in relation to the recent use of the asset that challenges the nomination's statement that the asset meets the test that it furthers the social interests or social well-being of the local community. They report that the suggestion that the asset is the only place where people meet to socialise is not true. They explain that Worsall Village Hall is a new, 'designed-for-purpose' community resource, 0.2 miles from The Ship Inn and is made up of a large main hall, outdoor paved area, fully licensed bar and kitchen. The Ship Inn's primary function is the operation of a commercial public house, and that it does not run/offer the community activities, etc that are run and offered, by the Nominators and their partners, at the Village Hall. Gosschalks has also confirmed that the pub has been re-opened.

### 4.4 Assessment against Section 88 of the Localism Act 2011

When we assess whether a particular building or piece of land is of community value, we must determine whether it meets the definition of an asset of community value as set out in Section 88 of the Localism Act 2011.

A building or piece of land is deemed to be of community value if:

- a. The current main use of the building or land furthers the social interests or social wellbeing of the local community or a use in the recent past has done so, and it is realistic to think that there can continue to be a main use of the building or land which will further the social interests or social well-being of the local community, whether or not in the same way as before.

- b. The main use of the land or building in the recent past furthered the social interests of the local community and, it is realistic within five years the land or building can be brought back into a use that furthers the social interest or wellbeing of the local community, whether or not in the same way as before.

The interpretation of the definition of a community asset creates a very wide range of possible assets to be considered as suitable for nomination. It is proposed to use the following categories as part of the nomination process:

- Education, health and well-being and community safety to include, nurseries, schools, children's centres, health centres, day care centres or care homes, community centres, youth centres or public toilets.
- Sport, recreation, and culture to include, parks and public open spaces, sports and leisure centres, libraries, swimming pools and theatres
- Economic use providing an important local social benefit which would no longer be available if that use stopped - to include village shops and pubs.

#### 4.5 Evidence

There is little evidence that The Ship Inn furthers the social interest or wellbeing of the local community, whether in the same way as before, from the information that has been provided on the nomination form. The Parish Council report that the asset has been a key part of the social life of the community for generations providing opportunities for people to meet and socialise over a drink and/or food, and that it is used for village society meetings and parties, but there is very little detail as to who the groups are that use the asset, and the frequency of this use. The Parish Council go on to say that they feel that the asset should continue to be run as a pub, and that it is a valuable business, but do not provide any evidence of social interest or wellbeing.

Information provided by the owner of the asset suggests that the asset is run and used as a public house, and that it does not run/offer community activities. They report that such community activities are run and offered, by partners, at the Village Hall. Further research into the Village Hall does support this statement, including the one group (Women's Institute) that is included in the nomination form as a group who meet at The Ship Inn for their lunch (see link to website):

[Worsall Village Hall | Clubs and Societies](#)

#### 4.6 Conclusion

Having reviewed the evidence provided by High and Low Worsall Parish Council, North Yorkshire Council recommends that the Ship Inn, Low Worsall should not be listed as an Asset of Community Value as it does not meet the definition of an asset of community value as set out in Section 88 of the Localism Act 2011.

The nomination does not satisfy the legislative test that this asset has in the recent past furthered the social wellbeing and interests of the local community and that, in the next five years, there could be a non-ancillary use of the building that would further (whether or not in the same way as before) the social wellbeing or social interest of the local community.

## **5.0 CONSULTATION UNDERTAKEN AND RESPONSES**

- 5.1 Local Councillor – Cllr Annabel Wilkinson – Morton on Swale and Appleton Wiske Division has been consulted with regarding this nomination but has not provided any additional comments.

## **6.0 ALTERNATIVE OPTIONS CONSIDERED**

- 6.1 None. Not to consider the nomination of the Ship Inn, Low Worsall would not fulfil the Council's responsibilities required by the Localism Act 2011 and The Assets of Community Value (England) Regulations 2012.

## **7.0 IMPACT ON OTHER SERVICES/ORGANISATIONS**

- 7.1 If the asset is not listed there is no impact on other services or organisations.

## **8.0 FINANCIAL IMPLICATIONS**

- 8.1 If the decision is to list the property the owner can make a claim for compensation for which the Council is liable. If the asset is listed the fact that land and property is listed as an Asset of Community Value may be taken into account as a material consideration for any future planning application.

## **9.0 LEGAL IMPLICATIONS**

- 9.1 If the property/land is listed the council is required to apply to the Land Registry for entry of a restriction on the Land Register. This restriction will be in a form of wording in Schedule 4 to the Rules, as Form QQ. This is "No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011". An owner of previously unregistered listed land, who applies to the Land Registry for first registration (or a mortgagee who applies for first registration on behalf of the owner), is required at the same time to apply for a restriction against their own title. The local authority is also required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.
- 9.2 If the property/land is listed and the owner/leaseholder wishes to dispose of it, he must notify the council. Once this has taken place an interim moratorium period (6 weeks) will apply where disposal of the property may not take place (except if sold to a community interest group which can take place at any time). If, before the end of the interim moratorium period the council receives a written request from a community interest group to be treated as a potential bidder then a full moratorium period applies. Disposal may then not take place within 6 months from the date the Council receives notification from the owner (except if sold to a community interest group).
- 9.3 When a listed asset is disposed of, and a new owner applies to the Land Registry to register change of ownership of a listed asset, they will therefore need to provide the Land Registry with a certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act (the moratorium requirements).

## **10.0 EQUALITIES IMPLICATIONS**

10.1 The Ship Inn, Low Worsall, has in the recent past, been an accessible asset that is available for the community of Low and High Worsall.

## **11.0 CONCLUSIONS**

11.1 If unsuccessful all parties will be advised of the outcome of the decision, and the Council's reasoning for it. The nominating group will be advised that there is no provision within The Regulations (The Asset of Community Value (England) Regulations 2012) for them to seek a review of the Council's decision.

## **12.0 REASONS FOR RECOMMENDATIONS**

12.1 The evidence demonstrates that the nomination for the Ship Inn, Low Worsall, does not meet the definition of community value as detailed in the Localism Act 2011.

## **13.0 RECOMMENDATION(S)**

It is recommended that the Assistant Chief Executive for Localities:

- (i) Determines that the nomination for the Ship Inn, Low Worsall is not listed as an Asset of Community Value as it does not meet the definition of community value as detailed in the Localism Act 2011
- (ii) It should be placed on the North Yorkshire Council Assets of Community Value List of Unsuccessful Nominations

## **APPENDICES:**

Appendix A – Nomination Form for NYCACV0025 The Ship Inn, Low Worsall including a Site Plan.

Appendix B – Correspondence from Gosshawks acting on behalf of the owner The Ship Inn.

## **BACKGROUND DOCUMENTS:**

*Localism Act 2011*

*The Assets of Community Value Regulations (England) 2012*

Assistant Chief Executive for Localities  
County Hall  
Northallerton  
15 December 2023

Report Author – Lisa Wilson – Service Manager (Communities HAM)

Presenter of Report – Lisa Wilson – Service Manager (Communities HAM)

# Appendix A - Nomination Form for NYCACV0025 The Ship Inn, Low Worsall and site plan



## Community Right to Bid: Assets of Community Value

### Nomination Form

(Office use only) ACV Ref: \_\_\_\_\_

### Section 1: About your organisation

#### 1A. Contact Details

Please provide basic contact details for your organisation

<b>Name of the organisation</b>	High and Low Worsall Parish Council
<b>Organisation postal address</b>	c/o Mrs J Staples Cleveland View Stobarts Lane Low Worsall TS15 9PJ
<b>Organisation website</b>	<a href="http://www.parish-council.com/highandlowworsall">http://www.parish-council.com/highandlowworsall</a>
<b>Named contact for the organisation</b>	Mrs J Staples
<b>Position of named contact within the organisation</b>	Parish Council Clerk
<b>Telephone number for named contact</b>	01642 785960
<b>Email address for named contact</b>	clerk.worsallpc@gmail.com

## 1B. Organisation type

Please place an 'X' in the middle column against the appropriate organisation type

Organisation Type	X	Registration number of charity/company (if applicable)
<b>Parish Councils</b> This may be for an asset in its own area, or in the neighbouring Parish Council area	X	
<b>Neighbouring Parish Councils</b> If the Parish Council borders an un-parished area, then they may nominate an asset within the neighbouring District Council or Unitary Council.		
<b>Un-incorporated groups</b> Nominations can be accepted from any un-incorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure. <b>Please complete additional form in Appendix 1 if this applies to you.</b>		
<b>Neighbourhood Forums</b> There can only be one neighbourhood forum for an area and the way they are set up is clearly defined by the Council as a planning authority. The procedure for becoming a neighbourhood forum is set out in Section 61F of the Town and Country Planning Act 1990. <b>Please complete additional form in Appendix 1 if this applies to you.</b>		
<b>Community interest groups with a local connection</b> These must have one or more of the following structures: <ul style="list-style-type: none"><li>• A charity</li><li>• A community interest company</li><li>• A company limited by guarantee that is non-profit distributing</li><li>• An Industrial and Provident Society that is non-profit distributing/Community Benefit Society</li></ul> <b>Please complete additional form in Appendix 1 if this applies to you.</b>		

### 1C. Local connection

Additionally, your organisation is required to have a local connection. This means that its activities are wholly or partly concerned with the administrative area of North Yorkshire or a neighbouring local authority. Please provide details about your organisation's local connection.

Details regarding local connection
<p>High and Low Worsall Parish Council is wholly within Hambleton, North Yorkshire CC.</p>

Finally, please provide, if available, a copy of your organisation's rules/constitution. Please indicate which documents you intend to provide below by placing an 'X' against the relevant document type.

Type of document	X
Memorandum and Articles of Association (for a company)	
Trust Deed (for a trust)	
Constitution and/or rules (for other organisations)	
Other	

## Section 2: About the asset

### Section 2A: Basic details

Please provide basic details about the asset

Type of land/building (for example, pub, shop)	Public House
Name of the premises	The Ship Inn
Address of the premises	Low Worsall, Yarm TS15 9PH

In addition to the above information, please attach a clear plan which identifies the land/buildings you wish to nominate with a line drawn around the boundary of the area you wish to nominate. This could be a Title Plan from Land Registry, or any other map which gives us enough detail to identify the site.

### Section 2B: Ownership

Please provide details about the asset's [ownership](#), if it is known to you

Name of the owner	[REDACTED]
Address of the owner	[REDACTED]
Contact details for the owner	Stonegategroup.co.uk
Name of any other occupier	Not known
Name of any other person with an interest in the premises	
Address of any other person with an interest in the premises	
Contact details for any other person with an interest in the premises	

## Section 2C: The premises as an Asset of Community Value

Please explain why you feel the land/premises meets the definition of an Asset of Community Value. Provide as much information as possible. Please note, it is likely that these comments will be shared with the asset owner.

### ACV Definition

A building or other land in a local authority's area is considered land of community value if, in the opinion of the authority:

- (a) an actual current use of the building or other land – that is not an ancillary use – furthers the social wellbeing or social interests of the local community; and
- (b) it is realistic to think that there can continue to be a 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.

If there is no current use:

- (c) The definition is extended to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

How does the current main use of the building/land – or a use in the recent past – further the social interests or social well-being of the local community?
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<p>The building was used as a public house until July 2023. The Ship Inn is the only pub in High or Low Worsall and has been a key part of the social life of the community for generations. The opportunity to meet with local people and socialise over a drink and/or food has been lost since the closure. The pub was also used for village society meetings and other community events such as the WI lunch, fund-raising activities and even the retirement party for our longstanding postman.</p> <p>The Ship inn is currently vacant. Since the previous tenants left in July 2023, Stonegate Pub Company have secured the site to prevent loss of their <a href="#">assets</a>, and have been undertaking some works to improve the interior with their stated intention to continue to run it as a pub – initially with a target of opening by August bank holiday. It remains vacant (as of 26/10/23) and there is now a sign affixed to the building advertising for a landlord. However there has been local mention of a new tenant recently being appointed.</p>
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**Please explain how there can continue to be a main use of the building/land which will further the social interests or social wellbeing of the local community, whether or not this is in the same way as before.**

We feel that the building should and could continue to be run as a pub and would be a viable and valuable local business, particularly given the extensive expansion of local housing.

**If not currently used for the purposes listed above, is it realistic to think that within five years the building/land can be brought back into a use that furthers the social interests or wellbeing of the local community, whether or not in the same way as before?**

The building is not currently open but is fitted out as a pub, and it is realistic to think that it could be brought back into that use well within five years.

There is a significant amount of land within the site that could be further developed as a pub garden, play area (some equipment already on site) etc. to further the social wellbeing of the local community.

The Parish Council and local community are very keen to see the Ship Inn remain as a public house. We would seek to prepare a business and finance plan to run it as a community venture should the current owners decide to sell.

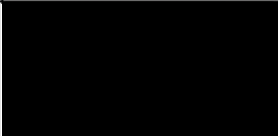
### Section 3: Checklist and Declaration

In addition to the form, please confirm any attachments if provided.

Document	X
Copy of <del>organisation's</del> constitution/rules/other	
A clear plan defining the land/premises being nominated	x

Finally, in order to confirm that the information contained within this nomination form is correct and complete and that the required documents are attached, an appropriate ~~authorised~~ officer must sign the below declaration.

We can accept electronic signatures.

Full name	Joanne Staples
Signature	

Assets of Community Value nominations are coordinated by area-based teams, when complete, please return this form and any accompanying materials to the appropriate e-mail address below:

Harrogate Area	<a href="mailto:AssetsofCommunityValue.Harrogate@northyorks.gov.uk">AssetsofCommunityValue.Harrogate@northyorks.gov.uk</a>
Craven Area	<a href="mailto:AssetsofcommunityValue.Craven@northyorks.gov.uk">AssetsofcommunityValue.Craven@northyorks.gov.uk</a>
Scarborough Area	<a href="mailto:LegalServices.sca@northyorks.gov.uk">LegalServices.sca@northyorks.gov.uk</a>
Ryedale Area	<a href="mailto:Localplan.rye@northyorks.gov.uk">Localplan.rye@northyorks.gov.uk</a>
Richmondshire Area	<a href="mailto:AssetsofCommunityValue.Richmondshire@northyorks.gov.uk">AssetsofCommunityValue.Richmondshire@northyorks.gov.uk</a>
Hambleton Area	<a href="mailto:Communities.ham@northyorks.gov.uk">Communities.ham@northyorks.gov.uk</a>
Selby Area	<a href="mailto:AssetsofCommunityValue.Selby@northyorks.gov.uk">AssetsofCommunityValue.Selby@northyorks.gov.uk</a>

Before completing this form, please check the guidance notes at the end of the document. If you require any assistance, please contact [AssetsofCommunityValue.NYC@northyorks.gov.uk](mailto:AssetsofCommunityValue.NYC@northyorks.gov.uk)

#### Privacy notice

Please retain a copy of this form for your records and should your circumstances or contact details change then please let the appropriate contact officer know.

This information will be held in accordance with NYC Privacy Notices.



# GOSSCHALKS

The Communities Team  
North Yorkshire Council

Please ask for: [REDACTED]  
Direct Tel: [REDACTED]  
Email: [REDACTED]  
Our ref: [REDACTED]  
Your ref: [REDACTED]  
Date: 01 December 2023

By email ONLY: [communities.ham@northyorks.gov.uk](mailto:communities.ham@northyorks.gov.uk)

Dear Sirs,

**Re: Ei Group Limited (formerly Ei Group PLC) ("Our Client")  
Ship Inn, Low Worsall, Yarm, TS15 9PH ("the Property")  
Nomination for listing as an asset of community value ("ACV") pursuant to the Localism Act 2011 ("the 2011 Act")**

We refer to your letter dated 31<sup>st</sup> October 2023, in which you confirmed to Our Client that the Property had been nominated for listing as an ACV.

Having reviewed the nomination submitted by High and Low Worsall Parish Council ("the Group/Nominator") we believe that it is invalid. We shall refer to this Nomination for the remainder of this letter as "the Nomination".

The Property is not a building or land of community value and is not eligible for listing as an ACV because:-

- a) The boundaries of the Property (as suggested by the red edging on the plan submitted with the Nomination), are not properly and accurately defined. Having taken instructions from Our Client, we attach, by way of assistance, a further copy of the plan submitted with the Nomination, showing the public house area edged blue. While it may be arguable that this is a strict procedural failure, under the Assets of Community Value (England) Regulations 2012 ("the 2012 Regulations"), Our Client has asked that we instead provide the attached plan to accurately illustrate the area which ought be the subject of the Nomination/consideration.
- b) It does not have a **current** non-ancillary use which furthers the social wellbeing or social interests of the local community.
- c) There has not been a time in the **recent past** when an actual use of the Property (that was not an ancillary use) furthered the social wellbeing or social interests of the local community.
- d) It is not realistic to think there is a time in the next five years when there could be a non-ancillary use of the Property that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

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We therefore invite you to reject the Nomination.

#### **Eligibility to nominate and validity of nomination**

1. The 2011 Act is clear that land may only be included in a local authority's list of ACV's as the result of a valid community nomination. Under regulation 6(a) of the 2012 Regulations'.
2. Land may only be included in a local authority's list of ACV's as the result of a community nomination made by a Parish Council or a voluntary or community body with a local connection (Section 89(1)(a) and (2)(b) of the 2011 Act).
3. **It is a mandatory requirement of regulation 6(d) of the 2012 Regulations that any community nomination must include "evidence that the nominator is eligible to make a community nomination".** This express requirement is included so that the local authority may assess whether or not any nomination made is in fact a valid community nomination. If a nominating group or body fails to provide appropriate evidence to show that they are eligible to make a community nomination then the nomination cannot be valid. In these circumstances such a nomination **must** be unsuccessful, and the nominated property must be added to the council's list of unsuccessful nominations (Section 90(5) of the 2011 Act).

We must assume, given the contents of the council's nomination form, and the council's notification of the Nomination to Our Client, that the council is totally satisfied that the Nomination is made by a valid nominating body and that such evidence has therefore been provided. We would further note that no resolution passed by the Nominator has been provided in evidence that the Nomination has been made in accordance with a democratic consideration by the Group.

#### **Section 88(1) of the 2011 Act – current actual use of the Property**

4. Section 88 (1) of the Act states that:-
  - (1) *For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—*
    - (a) *An actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and*
    - (b) *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.*

#### **S. 88(2)(a) of the 2011 Act - Use of the Property in the recent past**

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5. Section 88(2) of the 2011 Act states that:-

*For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—*

- (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.*
- (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.*

Section 88(2) does not apply to the Property as the Property is currently open.

### **The Nomination**

We have considered the comments made by the Group as the 'Reasons for nomination: why do you believe the asset is of community value' (as titled within the nomination form). With regards to the statements within the Nomination we have the following comments:-

- The Nomination commences by stating that the Property has been closed since July 2023. We are instructed that the Property is now the subject of an occupation agreement and that it is now, once again, open for trade as a public house. As is also correctly referred to in the Nomination, Our Client has undertaken a programme of capital expenditure on the Property in order to secure an occupier to operate the Property as a public house moving forward.

Notwithstanding the fact that the Property is once again occupied and trading, we would however note that the suggestion that the Property was the only place in which people met to socialise and drink/eat together is, put simply, untrue. The Worsall Village Hall is a new (as described on the Village Hall website), designed-for-purpose community resource, and which is 0.2 miles from the Property (on foot). The Worsall Village Hall boasts (without limitation) a large main hall, a large paved area, a fully licensed bar, and kitchen.

It is a fact to say that in the exercise of the Property's primary function, being the operation of a commercial public house, they do not run/offer the community activities, etc that are run and offered, by the Nominators and their partners, at the Village Hall. We would also note that, it is expressly confirmed (on the website for the Village Hall) that there are a number of 'user groups', and this list includes the WI (a group that it was suggested were using the Property). We enclose with this letter print outs and screen shots taken from the Village Hall website showing the list of 'user groups', the Village Hall features/facilities, and the list of functions/uses that the Village Hall advertises itself for. The description given for the Property's availability to 'engage in social activities' is simply a description of a public house which is open to the public. The Property has been serving anybody (irrespective of the area in which they reside) since it opened and throughout all periods during which it has been open for trading. This is in no way attributable to the

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Property's community value but rather simply because the Property is a commercial public house. A property is not an ACV simply by virtue of the business carried on thereat. If this was the intention of the legislature, then a distinct category or sub-category of properties would have been established for that very purpose.

The Nomination offers little/no actual content to demonstrate why the Property, in their opinion, is an ACV. The entire contents of the Nominator's response to the question (in the nomination form) *'how does the main use of the building/land – or a use in the recent past – further the social interests or social wellbeing of the local community'* consists of a confirmation that the Property was open as a public house. The one example of a community group using the Property is clearly misleading, as that very group are confirmed to actually be regular users of the Village Hall; and the only other 'examples' are oblique references to one-off events. It is well established under the caselaw established in reference to the 2011 Act and 2012 Regulations that for a use/uses to be relevant considerations they cannot be irregular or non-recurring events, such as those put forward by the Nominators in this instance.

- The Nomination goes on to state, in response to the question *'Please explain how there can continue to be a main use of the building/land which will further the social interests or social wellbeing of the local community whether or not in the same way as before'*, that they feel that the Property can be a viable and valuable business. The test under the 2011 Act and 2012 Regulations is not whether or not the Property (or any nominated property) would/can be 'viable' and/or 'valuable'. These are not the same, nor are they directly related, to the question of whether or not the Property provides such benefit/furtherance of social wellbeing or interests. It is a fact that, with regard to relevant considerations when making a determination under the 2011 Act, that the commercial viability and/or value are irrelevant.
- The final submissions from the Nominators, in response to the question as to how the Property could realistically be used in the next 5 years to further the social interests or social wellbeing of the local community whether or not in the same way as before, relates simply to reopening the site as a public house. As confirmed above, this is what Our Client has done. There is nothing is doing this that confirms that the Property is an ACV, as further referred to below.

Our Client should not have their property rights eroded (which is the effect of an ACV listing) by virtue of the fact that the Group feel that they ought to be able to decide what properties may, or may not, be used for. This is a perversion of the purpose of the ACV regime and is not in accordance with the intentions of the legislature.

Were it the legislature's intention to do so then both the 2011 Act and the 2012 Regulations would simply have designated all pubs ACVs. The legislation is not drafted in this manner. As a result, when nominating pubs for listing, like any other nominated property, the burden is on nominators to posit evidence of a non-ancillary use which furthers the social interests/social wellbeing of the local community. Simply being a pub is not enough to show that the section 88 test is met. This position has been reinforced by the decision in *Admiral Taverns Ltd. v Cheshire West and Chester Council and another* ([2018] UKUT 15 (AAC)) in which the Upper Tribunal confirmed that *"There*

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was no presumption that a pub came within the listing provisions of the 2011 Act...". Simply stating that the property is a pub and thus must be listed is not an accurate or equitable use of the 2011 Act, which was enacted to protect communities who were (or are) at risk of losing an asset without which community social wellbeing would be damaged. This is clearly not the case in this instance.

The Nomination fails to posit any evidence of a qualifying non-ancillary use of the Property. The requirements of section 88(2)(a) of the 2011 Act have therefore not been satisfied.

A desire to list the Property as an ACV is insufficient to satisfy the requirements of Section 88(1)(b) of the 2011 Act. It must be **realistic** to think there can continue to be a relevant non-ancillary community use of the Property in the next five years (*General Conference of the New Church v Bristol City Council [CR/2014/0013]*).

### **Property Boundaries/plan**

In addition to the above, and further to paragraph a) on the first page of this letter, we would restate that the only area which is used (and which shall be used, moving forward) as a part of the public house operation at the Property is that area edged blue on the attached plan (being the form of plan submitted with the Nomination). The area edged blue is the public house, car park, and a significant ancillary/garden area. It is Our Client's intention (as indicated by the reopening of the Property, and their investment in the building) that this area will remain a public house, notwithstanding that they absolutely disagree with the assertion that the area is an ACV. This area is slightly smaller than the area edged red on the plan submitted with the Nomination, but it is important to Our Client that matters are recorded, and that the Nomination is considered, accurately.

For the avoidance of any doubt, it is Our Client's position that none of the area which has been nominated for listing as an ACV is in fact an asset of community value but further that, in the event that the local authority determine that the public house standing upon the Property is to be listed as such, it is only the area edged blue on the attached plan that should be included in any listing.

### **Summary**

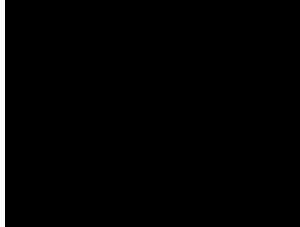
The Nomination fails to identify a single cogent reason for how or why the Property meets the requirements of section 88 of the 2011 Act.

We have shown that the Nomination provides no evidence of any non-ancillary use of the Property which currently meets the requirements of section 88(1)(a) of the 2011 Act. The Property, quite simply, is not an asset of community value.

When a property is listed as an ACV, this severely hampers the ability of the owner (in this case Our Client) to deal freely with the property and can cause financial loss/hardship to the owner, also opening up the potential for a claim for compensation pursuant to regulation 14 (2) of the 2012 Regulations. Any decision to list should therefore not be taken lightly.

The Council is entrusted with a quasi-judicial function under the 2011 Act and the 2012 Regulations and must decide both the validity of the Nomination and, if the Nomination is valid, whether or not to list the Property based on the evidence presented.

We look forward to hearing from you with your confirmation that the Nomination has been rejected and that the Property will now be entered onto the list of unsuccessful nominations.



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