

North Yorkshire Council

13 November 2023

Assessment of Assets of Community Value Nomination *NYCACV0022 Markington village shop and post office*

Report to the Assistant Chief Executive Local Engagement

1.0 PURPOSE OF REPORT

1.1 To determine whether Markington village shop and post office should be placed on the Council's List of Assets of Community Value (ACVs)

2.0 SUMMARY

2.1 The nomination is for Markington village shop and post office. The recommendation is that the Assistant Chief Executive Local Engagement:

- (i) Determines that the nomination for Markington village shop and post office is successful and meets 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 Successful Nominations

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](#)

3.2 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

3.3 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

3.4 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.

3.5 This report ensures that the Council considers the nomination for Markington village shop and post office as required by the Act.

4.0 NOMINATION CONSIDERATION

a) Description of asset

4.1 Markington village lies in the Harrogate District of North Yorkshire, situated just off the A61 between Ripon and Harrogate-five miles from Ripon, eight miles from Harrogate and two and a half miles from Fountains Abbey.

4.2 The village shop and Post Office is situated on the High Street of Markington, and was formerly a Methodist chapel, built in 1846 and used as such up until the 1890s. It is not known exactly when the building became used as the village store, however, undated photographs show it as a shop pre-dating the houses at Poplar Terrace, which leads us to believe they were taken at some point in the early 1900s, which points to over 100 years of serving the community as a shop.

4.3 The shop itself stocks a wide range of basic home supplies including fresh, frozen and tinned food goods, milk, cleaning products and DIY essentials. Along with these, newspapers, children's books, puzzle magazines, and greeting cards are also available. Seasonally, the shop offers flowers for planting and small outdoor toys. Recently the shop has also diversified into offering hot take away food and drinks, which attract a good following throughout the village, particularly tradesmen, both passing and those based in the village. As well as being a shop, the premises is also a registered Post Office, and offers all associated services.

b) Nomination

4.4 The valid nomination to list Markington village shop and post office as an Asset of Community Value was received on 19 September 2023. A copy is attached at **APPENDIX A** and in accordance with the Assets of Community Value (England) Regulations 2012 a decision is required by 13 November 2023.

4.5 Ownership information was difficult to establish as the property has not been registered. It was also confirmed that the known owner had recently died and the property was going through probate. Contact was therefore made with the responsible relatives "as owners".

c) Community Value Consideration

4.6 In terms of making a decision on this matter the nomination together with any additional information received within the agreed timescale has been used to assess if the property/land listed meets the definition of community value as detailed in the Localism Act 2011 (Section 88) and shown below:

"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 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 land which will further the social wellbeing or social interests of the local community, although the use does not have to be the same.”

4.7 Markington village shop and post office is the village shop and post office and there are examples where this is recognised as community use and assets have been listed on this basis by other local authorities, however, every nomination is assessed individually and it is for local authorities to determine whether each one meets the definition of community value as detailed in the Localism Act 2011. In assessing the community value of Markington village shop and post office all information received has been considered

(a) an actual current use of the building or land that is not an ancillary use furthers the social wellbeing or social interests of the local community

I. Actual current use (or in the recent past) that is not an ancillary use

4.8 The term “ancillary use” is not defined in the Act, and it is left to each local authority to determine. In the context of assessment, the frequency, regularity and whether uses are still in place have been identified as factors for consideration. It was thought that this condition meant that the community use had to be the primary use of the asset, but this was dispelled by Judge Warren in **Firoka (Oxford United Stadium) Limited v Oxford City Council** (9 May 2014) and the test is whether the use is significant, which does not require it to be the predominant use.

4.9 The nomination identified the following uses:

- Over 100 years of serving the community as a shop
- The shop stocks a wide range of basic home supplies including fresh, frozen and tinned food goods, milk, cleaning products and DIY essentials. Along with these, newspapers, children’s books, puzzle magazines, and greeting cards
- Seasonally, the shop offers flowers for planting and small outdoor toys. The shop has also diversified into offering hot take away food and drinks, which attract a good following throughout the village, particularly tradesmen, both passing and those based in the village
- The premises is also a registered Post Office and offers all associated services. This has been described by many in the village as ‘a lifeline’
- The village does have a bus service- which serves Markington and other nearby villages, as well as a demand responsive service on a Wednesday, and two dedicated school bus services. The bus stop is near to the village shop-allowing those using the bus services easy access to the shop and post office. However- the bus only runs on a Monday, Thursday and Saturday, departing at 10:59 and arriving back in the village at 13:40-meaning it is a fairly restrictive service, and not necessarily a viable option for those needing supplies or postal services during other times of the week. In contrast, the village shop is open 7 days a week from 7am to 6pm (though shutting earlier on a Thursday and Sunday-1pm)
- The village is also home to the Yorkshire Hussar Inn Caravan Park, who do not operate their own onsite shop. As such, the village shop is used by those staying onsite, as it is a quick and convenient way of topping up their supplies

- In a casual capacity, the shop has become an informal meeting ‘hub’ for many in the village
- It is a place where tickets for village events are sold, and information on many facets of community life can be found. The windows are always full of classifieds, with adverts for jobs, services, wellness classes, historical evenings and items for sale/in need, always in abundance

4.10 The nomination of Markington village shop and post office identifies the sole purpose as the village shop and post office, with references supporting this use. For the purposes of assessment, village shop and post office use is the non-ancillary use of the building and it is the actual current use. ***There is therefore sufficient information provided to demonstrate significant actual use that is non-ancillary and therefore this criteria is met.***

II. Furthering the social wellbeing/interests of the local community

4.11 There are no clear definitions provided in the legislation as to what constitutes ‘social wellbeing/interests’ except that social interests can include ‘cultural, recreational and sporting interests. Similarly, there is no definition or guidance as to what constitutes the ‘local community’. The judgement in **Pullan v Leeds City Council** (25 April 2016) was that, in relation to the Old Cock public house, the entire town of Otley was considered to be the local community.

4.12 The nomination states that Markington Village shop and post office has served the community as a shop for over 100 years. It stocks a wide range of basic home supplies, along with newspapers, children’s books, puzzle magazines, and greeting cards. Seasonally, the shop offers flowers for planting and small outdoor toys and recently is offering hot take away food and drinks.

4.13 The shop attracts a good following throughout the village, particularly tradesmen, both passing and those based in the village. As well as being a shop, the premises is also a registered Post Office, and offers all associated services. This has been described by many in the village as ‘a lifeline’.

4.14 Information provided states that Markington is a growing village with a population of approximately 655 people as of 2021 with recent estimates putting the figure at approximately 700. The age distribution of the population from 2021 show that around 139 people are below the driving age, whilst a third of the residents of Markington are of retirement age (204), with 74 people being in the 70-79 bracket, and 31 in the 80+ age group, (citypopulation.de). the point is made that this population greatly relies on the village shop and post office. “These many residents, who cannot get into Ripon or Harrogate easily, a post office to collect their pension and day to day supplies is vital. The next closest post office is in Burton Leonard, approximately 3 miles away. Unfortunately, Burton Leonard is not on a bus route from Markington”

4.15 The shop itself is in receipt of Rural Rate Relief, as the shop continues to be the only Post Office in the vicinity, with Markington being a ‘prescribed rural settlement’

4.16 The village has a bus service which serves Markington and other nearby villages, as well as a demand responsive service on a Wednesday, and two dedicated school bus services. The bus stop is near to the village shop-allowing those using the bus services easy access to the shop and post office. However the service only runs on a Monday, Thursday and Saturday, departing at 10:59 and arriving back in the village at 13:40-

meaning it is a fairly restrictive service, and not necessarily a viable option for those needing supplies or postal services during other times of the week. In contrast, the village shop is open 7 days a week from 7am to 6pm (though shutting earlier on a Thursday and Sunday-1pm). “The village is also home to the Yorkshire Hussar Inn Caravan Park, who do not operate their own onsite shop. As such, the village shop is frequently used by those staying onsite, as it is a quick and convenient way of topping up their supplies”.

- 4.17 The nomination states that the shop has become an informal meeting ‘hub’ for many in the village. “Every day, people stop to chat in small groups on the chairs provided outside the shop door, and it has certainly become central to the village network of social communication-particularly for those who do not wish to frequent the one last remaining pub in the village. It is a place where tickets for village events are sold, and information on many facets of community life can be found. The windows are always full of classifieds, with adverts for jobs, services, wellness classes, historical evenings and items for sale/in need, always in abundance”.
- 4.18 The nomination concludes that “In a village still blessed with a pub, caravan site, village hall, primary school (with many an abiding memory of the children in the village being going to the shop with pocket money for sweets), cricket club and riding school, it seems as though protecting this amenity, that not only serves but fits so nicely into a unique village such as Markington, is paramount”.
- 4.19 The uses detailed in the nomination form, include those that are directly related to a small village shop and post office. The shop has been serving the local community for over 100 years and is the only one in the village of Markington.
- 4.20 The nomination form provides evidence of supporting the social wellbeing and interests of the local community. The shop stocks a wide range of home supplies, together with children’s goods. Seasonally, it offers flowers for planting and small outdoor toys and recently is offering hot take away food and drinks. It therefore caters for all age groups for the village of Markington. It attracts a good following and as well as being a shop, the premises is also a registered Post Office, and offers all associated services. This has been described by many in the village as ‘a lifeline’. The shop itself receives Rural Rate Relief, as it is the only Post Office in the vicinity, with Markington being a ‘prescribed rural settlement’
- 4.21 The population profile of younger and older age groups means that there is greater reliance on the village shop and post office. “These many residents, who cannot get into Ripon or Harrogate easily, a post office to collect their pension and day to day supplies is vital. The next closest post office is in Burton Leonard, approximately 3 miles away. Unfortunately, Burton Leonard is not on a bus route from Markington”
- 4.22 There is a fairly restrictive bus service, that is not necessarily a viable option for those needing supplies or postal services during other times of the week. In contrast, the village shop is open 7 days a week from 7am to 6pm (though shutting earlier on a Thursday and Sunday-1pm). The Yorkshire Hussar Inn Caravan Park does not operate their own onsite shop and the village shop is frequently used by those staying onsite.
- 4.23 The shop has become an informal meeting ‘hub’ for many in the village with people stopping to chat in small groups on the chairs provided outside the shop door, and it has become central to the village network of social communication. It is also a place where

tickets for village events are sold, and information on many facets of community life can be found.

4.24 In conclusion the nomination provides the following evidence of furthering the social wellbeing and interests of the local community:

- The village shop and post office is an historical and invaluable social and practical amenity to the people of Markington and surrounding areas
- It is the only Post Office in the local vicinity and so provides a vital service to villagers-particularly to the older residents, who can maintain some independence.
- The shop is used frequently by many people in the village and local areas and offers a wide range of products
- It supports the local economy and provides jobs
- It also means that car journeys out to Ripon and Harrogate are cut back on, as 'small top-ups' are close on hand
- It is not only a place to stock up on essentials, it has most certainly also become a social hub-not a day goes by where there isn't a small group chatting and socialising outside the shop
- It is a place where a chat, a friendly face or social interaction can be sought as easily as a newspaper

4.25 The uses summarised in Paragraph 4.18- 4.24 are numerous, across all age groups and benefit the whole community. They are typical of a small community shop with the additional benefit of being a post office and demonstrate both social wellbeing and social interest benefits ***The uses detailed are therefore considered to further the social wellbeing or social interests of the local community and this criteria is therefore met.***

III. Local Community

4.26 In terms of local community there are references in the nomination form to the following:

- Markington village lies in the Harrogate District of North Yorkshire, situated just off the A61 between Ripon and Harrogate-five miles from Ripon, eight miles from Harrogate and two and a half miles from Fountains Abbey. It is not known exactly when the building became used as the village store, however, undated photographs show it as a shop pre-dating the houses at Poplar Terrace, which leads us to believe they were taken at some point in the early 1900s, which points to over 100 years of serving the community as a shop.
- The shop itself is in receipt of Rural Rate Relief, as the shop continues to be the only Post Office in the vicinity, with Markington being a 'prescribed rural settlement
- Markington is a growing village with a population of approximately 655 people as of 2021. These figures have grown with the three recent housing developments, and more recent estimates put the figure at approximately 700. This points to a population that greatly rely on the village shop and post office.

- “In a casual capacity, the shop has become an informal meeting ‘hub’ for many in the village”
- In short, the village shop and post office is an historical and invaluable social and practical amenity to the people of Markington and surrounding areas
- It is the only Post Office in the local vicinity and so provides a vital service to villagers

4.27 ***It is therefore reasonable to determine that the identification of the local community required by the legislation is Markington and surrounding areas and this criteria is therefore met,***

(b) It is realistic to think that there can continue to be a non-ancillary use of the building or land which will further the social wellbeing or social interests of the local community, although the use does not have to be the same.

4.28 The test does not require the likely future use of the relevant building to be determined but rather to determine whether future community use is one of a number of realistic options for the building (**Patel v London Borough of Hackney and Worthy Developments v Forest of Dean DC**).

4.29 The test is also not whether such future use is wholly unrealistic but whether it is realistic to think that there could be a relevant non-ancillary use in the next five years (Judge Lane at Para. 26 in **General Conference of the New Church v Bristol CC** supra. 12 February 2015). In addition, “what is realistic may admit a number of possibilities none of which needs to be the most likely outcome” (**Evenden Estates v Brighton and Hove City Council**)

4.30 It has been established that the threshold to satisfy the “realistic to think” test is low. The First Tier Tribunal in **King v Chiltern District Council** commented that “the test is not a demanding one. “Parliament has chosen to set the bar low”

4.31 This criteria requires the realistic assessment that there can continue to be non-ancillary use of the building or land which will further (whether or not in the same way) the social wellbeing or social interests of the local community. In the case of Markington Village shop and post office no other potential uses are identified. It is therefore the assessment of whether the current uses identified can realistically continue that is required

4.32 The nomination indicates that the property has been serving the community as a shop for over 100 years. There is also information stating that Markington is a growing village with a population of approximately 655 -700 that “greatly rely on the village shop and post office”.

4.33 The shop is the only Post Office in the local vicinity providing “a vital service to villagers-particularly to the older residents “and also receives Rural Rate Relief on this basis.

- 4.34 The nomination states that listing as an Asset of Community Value will; secure the benefits that are provided by the shop and post office “for years to come”.
- 4.35 The occupier (business owner) of the village shop and post office supports the listing nomination and has indicated that the existing uses will continue. In discussions with the owners there has not been any indication that there will be any change of use.
- 4.36 There were no current planning applications or planning history on the property and Planning Services had no objections/comments to make on the property being designated as an Asset of Community value.
- 4.37 The nomination provides evidence of existing use for over 100 years with recognition of community usage. It also provides evidence of tenant (business owner) support for the nomination with a commitment to continue. There is also no evidence from the owners that the existing use would not continue. ***It is therefore reasonable to determine that it is realistic to think that the current non ancillary use will continue and this criteria is therefore met.***

d) Conclusion

- 4.38 The aim of Part 5 Chapter 3 of the Localism Act and the Assets of Community Value Regulations is to encourage community- focused, local-led action to save and take over assets which are significant to them. The scheme is intended to give communities the opportunity to identify assets of community value and have them listed and, when they are put up for sale, have more time to raise finance and prepare a bid for them. These assets could include the Village shop, community centre or pub but assessment is based on the evidence submitted and it is for the local authority to determine each nomination.
- 4.39 Markington with Wallerthwaite Parish Council have nominated Markington Village shop and post office. The assessment is whether the details within the nomination, together with any additional information received, satisfy the two criteria as detailed in the Localism Act 2011(Section 88) see below:

Condition one - There is an actual current use of the building or land that is not an ancillary use furthers the social wellbeing or social interests of the local community

(See paragraphs 4.8-4.27)

- 4.40 The information provided demonstrates significant actual use of the Markington village shop and post office that is non-ancillary. The uses identified also further the social wellbeing or social interests of the local community that is defined as Markington and surrounding areas. ***This Condition is therefore met***

Condition Two - It is realistic to think that there can continue to be a non-ancillary use of the building or land which will further the social wellbeing or social interests of the local community, although the use does not have to be the same

(See paragraphs 4.28-4.37)

- 4.41 The information provided indicates there can continue to be a non-ancillary use of the building or land which will further the social wellbeing or social interests of the local community. ***This Condition is therefore met.***

4.42 The evidence demonstrates that the nomination meets the definition of community value as detailed in the Localism Act 2011. It is therefore recommended Markington village shop and post office is listed as an Asset of Community Value and placed on the North Yorkshire Council List of Successful Nominations.

4.43 The Council must keep the list under review and remove assets as soon as practicable considering any circumstances that may change the opinion that land/property listed is of community value.

5.0 CONSULTATION UNDERTAKEN AND RESPONSES

5.1 NYC Internal consultation with the following services was undertaken and there were no comments received:

- Environmental Protection
- Community Safety/CCTV
- Food, Licensing or Occupational Safety
- Land Charges

5.2 It was also confirmed that there were no current planning applications or planning history on the property. Planning Services had no objections/comments to make on the property being designated as an Asset of Community value.

6.0 ALTERNATIVE OPTIONS CONSIDERED

6.1 None. Not to consider the nomination for Markington village shop and post office 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 successful, the fact that land/property is listed as an Asset of community Value may be taken into account as a material consideration for any future planning application.

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

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 There are no Equalities implications

11.0 CLIMATE CHANGE IMPLICATIONS

- 11.1 There are no climate change implications

12.0 CONCLUSIONS

- 12.1 If successful, the owner will be informed of the decision review process and 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.

13.0 REASONS FOR RECOMMENDATIONS

- 13.1 The evidence demonstrates that the nomination for Markington village shop and post office meets the definition of community value as detailed in the Localism Act 2011.

21.0 RECOMMENDATION(S)

It is recommended that the Assistant Chief Executive Local Engagement:

- (iii) Determines that the nomination for Markington village shop and post office is successful and meets the definition of community value as detailed in the Localism Act 2011
- (iv) It should be placed on the North Yorkshire Council Assets of Community Value List of Successful Nominations

APPENDICES:

BACKGROUND DOCUMENTS:

Localism Act 2011

The Assets of Community Value Regulations (England) 2012

Community Right to Bid: Non-statutory advice note for local authorities

Assistant Chief Executive Local Engagement

County Hall

Northallerton

13 November 2023

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