

# North Yorkshire Council

23 May 2024

## Assessment of Assets of Community Value Nomination NYCACV0040

### Report of Assistant Chief Executive Local Engagement

- 1.1 To determine whether The Plough Inn, Boonhill Road, Fadmoor should be placed on the Council's List of Assets of Community Value (ACVs)

#### 2.0 SUMMARY

- 2.1 This nomination is made by the organisation known as Fadmoor Community Pub Ltd, a Community Benefit Society. The recommendation is that the site should not be listed as an Asset of Community Value due to not having a use in the recent past which furthers the social wellbeing and social interests of the local community.
- 2.2 The recommendation is that the premises should not be placed on the Council's list of Assets 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 Plough Inn, Fadmoor, as required by the Act.

#### 4.0 DETAILED PRESENTATION OF THE SUBSTANTIVE ISSUE

- 4.1 The Plough Inn, Fadmoor, operated as a pub until its closure in January 2011. It is located within the built-up area of the village of Fadmoor, accessible within a few minutes' walk of the immediate community.
- 4.2 The nomination has been made by Fadmoor Community Pub Ltd – a Community Benefits Society (CBS) established in 2019 whose aim is to “gain community ownership of The Plough Inn... and run it as a profitable community village pub business, offering a wide range of services to meet the needs identified by our community through wide-ranging consultations.”
- 4.3 According to the nomination materials, the pub dates back to 1782 and “was always well-known as a fantastic village pub and restaurant.” It was closed in January 2011 and, other than a spell between 2014 and 2016 when the premises was used by the owner as an ‘estate office’ under temporary legislation, has remained out of use. Suffice to say that it has not been used as a community facility since January 2011.
- 4.4 The owners have made planning applications to the North York Moors National Park planning authority, including in 2020 when they applied to change the use of the pub to form 2no. local occupancy letting units and 4no. holiday letting units. This was refused and later dismissed on appeal by the Planning Inspector.
- 4.5 Attempts were made by the community to purchase the premises in 2011 and again in 2013 but these were not successful. After they secured funding from government grants and a community share mechanism, the CBS made an offer of £375,000 in August 2022 which was accepted by the owners. Solicitors have been engaged and the purchasing party await a memorandum of sale.
- 4.6 The premises has been listed as an ACV twice in the past; first in 2013 and then again in 2018. This is therefore the third nomination and, if listed, would mean a continuous listing of a period of up to 15 years. It should be noted that each nomination is determined individually based on the evidence provided. The legislation is not intended to preserve the listing status of any previous nomination, successful or unsuccessful, and the determination must take into account the circumstances and facts at the time.

### **Assessment**

- 4.7 The Council must determine whether the land or building nominated meets the definition of an Asset of Community Value as set out in section 88 of the Localism Act. There is no current actual use of the nominated land/property as it is accepted that it has been closed since 2011. The assessment process must therefore to determine if the two conditions in Section 88(2) have been met. The assessment will consider these two conditions in turn. Firstly:

***(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***

- 4.8 In order to be listed the nomination must demonstrate that there is a time in the recent past when an actual use of the nominated asset furthered the social wellbeing or interests of the local community. There is no statutory definition or guidance regarding the term ‘recent past’ and it is deliberately loose regarding the specific five year timescale in the second condition.
- 4.9 The official guidance states that local authorities must decide on what can be considered ‘recent past’ and indicates that ‘recent’ might be viewed differently in different circumstances. It offers the example of land formerly being used by the public until it was taken over by the

MoD for live ammunition practice, versus a derelict building. “Ten or even twenty years might be considered recent for the former but not for the latter.”

- 4.10 Some authorities have set their own timescales including three- or five-year periods preceding nominations. It seems clear that there is no specific period beyond which it is definite that it is not included in the ‘recent past’ and again it is for each authority to determine. There is no statutory definition or guidance regarding the term ‘recent past’ and it is deliberately loose regarding the specific five year timescale in the second condition. North Yorkshire Council has not determined a specific timescale for this criteria and each nomination is assessed individually.

*Examples from case law relating to (a)*

- 4.11 When considering the closure of public houses, periods of six years (River Arms in Cheeseborne), five years (the Kings Head in Diss) and five and a half years (the Cricketers Rest in Norwich) have been considered to be outside the recent past. There are also some examples where the recent past has been in excess of six years; in **Hawthorn Leisure v Chiltern DC**, the Kings Head in Great Missenden had been a pub since the nineteenth century and the unchallenged evidence of the publicans from 2000 to 2007 established that during that period the pub qualified as an ACV. Judge Lane held that, given the long history of the Kings Head as a pub, the use during that period ending in 2007 occurred in the recent past. This period ended over seven years before the nomination.
- 4.12 In **Crostone v Amber Valley** Judge Lane stated that the assessment of recent past will depend on all the circumstances in a particular case and that “the expression is a relative concept”. He stated that, in that regard, the length of time the Black Swan had been a public house was relevant (the period was nearly two hundred years). The implication is that the longer the period of use furthering a community benefit the longer the period which will constitute the recent past.
- 4.13 In **Worthy Developments v Forest of Dean DC** the judge stated that when considering ‘recent past’ it could not have been intended to import the five year period from the future condition when Parliament had failed to set out a precise period for the condition.
- 4.14 It seems clear that there is no specific period beyond which it is definite that it is not included in the recent past and this will be dependent on the circumstances in each nomination.

*Recognised relevant factors relating to (a)*

- 4.15 There are a number of recognised relevant factors that could be taken into account when determining what constitutes the recent past and these are listed below. Assessments of these factors is appropriate for the Plough Inn nomination so that the facts can be established:
1. The length of the period of community use of the nominated asset in the past
  2. The type of asset involved
  3. The nature of the community use of the nominated assets
  4. The degree of connection between the asset and the community
  5. Whether the asset has been out of use for a period prior to the nomination

**4.16 1. The length of the period of community use of the nominated asset in the past**

The owner and nominating group agree that the Plough Inn last traded in January 2011 and has been closed for 13 years and 4 months. The length of the period of potential community use is therefore the period it was in use prior to January 2011.

Little evidence has been provided by the nominating party to indicate the level of community use up to 2011, with materials indicating only that it was in existence as a pub since 1782. However, the owners' representation does state that "despite investing considerably in The Plough Inn, it proved impossible to run this as an economically viable business and as a result, a decision was made to close it."

In conclusion, there is evidence to indicate that the premises was in operation as a pub immediately prior to closure and therefore had a non-ancillary use which might have benefited the social wellbeing of the community at that time. However, the Council cannot make a definitive and evidence-based determination as to how long the period of community was.

**4.17 2. The type of asset involved**

It may be considered that the recent past can be longer with certain assets (for instance, a school), but this is for each authority to determine based on the facts of each nomination. The Plough Inn is a public house and the consideration/determination of 'recent past' for this type of facility is considered in more detail in part 5.

**4.18 3. The nature of the community use of the nominated asset**

No specific evidence has been provided about the use of the premises pre-closure, however the nominating party have provided a list of community events which have occurred since its closure, as well as details of community surveys undertaken in 2012 and 2018 which indicate a desire to see the pub reopen. The objective of this is to demonstrate that the Fadmoor community requires a premises to provide social interaction, and that social interaction would occur if the pub was open. However, this does not provide definitive evidence of the use of the pub pre-2011.

**4.19 4. The degree of connection between the asset and the community**

As stated above, the premises would be used as a place for social interaction were it to have stayed open post-2011. This has been demonstrated by information provided relating to organised community events in the intervening period and surveys indicating a desire to see the pub reopened.

**4.20 5. Whether the asset has been out of use for a period prior to the nomination**

From the evidence provided, it is reasonable to ascertain that final closure was in January 2011 and therefore the Plough Inn has not been used for a period of 13 years and four months.

*Summary in consideration of (a)*

4.21 As stated previously there is no specific period beyond which it is definite that it is not included in the recent past however the implication is that the longer the period of use furthering a community benefit then the longer the period which will constitute recent past.

4.22 In conclusion the nomination for the Plough Inn provides information to determine the following:

- There has been use as a public house for potentially up to 229 years
- There is some evidence of community use identified in the nomination materials to be taken into account for assessment, however there is little information provided about use prior to the closure in 2011.
- The Plough Inn was last used as a public house in January 2011 and therefore has not been used for a period of 13 years and four months

4.23 When the previous decision was made to list the Plough Inn in May 2019 it had not been used for a period of 8 years and four months. This was the most significant period of time for assessment of 'recent past' of all Assets of Community Value nominations at North Yorkshire Council. It is important to note that there has been a further 5 years of closure since this date with no community use and there are few comparable examples nationally for successful determination with such periods of non-community use.

4.24 It is determined that, due to the above, relevant community use has not taken place within the recent past and this criteria is not met.

***(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***

4.25 The nominating party, who would be owners of the premises in the event once sale proceedings are concluded, have provided the Council with the a significant amount of evidence to demonstrate future non-ancillary use which would further the social wellbeing or social interests of the local community. This includes:

- A significant amount of community support, including:
  - Surveys undertaken in both 2012 and 2018 which indicated a depth of feeling from the local community that the pub should be re-opened
  - The establishment of: initially, a community group tasked with re-opening the pub and, later, a Community Benefits Society with the same goal
  - The organisation of numerous community events 'in sight of the pub' which would routinely attract several hundred attendees, the majority of whom would be local to Fadmoor and its environs
  - Support from relevant individuals and organisations, including the MP Kevin Hollinrake (whom has provided his support directly to the Council via email) and CAMRA
- Details relating to the securing of funding to enable the purchase, refurbishment and continuous operation of the pub, including:
  - A grant totalling £297,120 from the Community Ownership Fund, administered by the Department for Levelling Up, Housing and Communities
  - Share offers amounting to £259,650 from 171 community investors, all of whom are either based locally to Fadmoor or who otherwise have a local connection
  - £8500 from the Community Reach fund
- A detailed five-year business plan which has secured the Community Shares Standard mark and outlines:

- The renovation, opening and growth of the premises as a pub and one which can support other community-led uses, including a small-scale shop and a micro-brewery or bakery
- An expectation to achieve profits of ~£53,000 by Year 5
  - An identified customer base
  - A robust management structure
  - A detailed breakdown of costs to renovate the premises
- Details of the sale process presently being undertaken: the nominating party have agreed a sale price of £375,000 for the property and solicitors are presently engaged, awaiting Memorandum of Sale
- Evidence provided by the National Park Planning Authority, including the Appeal Decision from the Planning Inspector further to the refusal of a planning application in 2021. The Inspector concluded thusly:
  - That the pub could be viable, though not without difficulties
  - Recognition that the weight of community support indicated the pub could be viable
  - The fact that no evidence had been forthcoming which satisfactorily demonstrated that the pub is no longer 'suitable, viable or needed'

4.26 It is noted that the representation received on behalf of the owners of the pub doubts the robustness of the nominating party's business plan, and indeed their ability to successfully manage the pub in the event of a sale. However, officers do not consider the representation to be persuasive and, for the reasons listed above consider that there is greater evidence to suggest viability (and therefore a non-ancillary use which would further the social wellbeing or social interests of the local community) than a lack of viability.

*Summary in consideration of (b)*

4.27 On the basis of the evidence provided, it is considered that the premises could realistically have a use which furthers the social wellbeing and interests of the local community in the next five years.

## **5.0 CONSULTATION UNDERTAKEN AND RESPONSES**

- Local Councillor

Cllr Greg White was consulted on this nomination on 25 March 2024 and provided the following comments:

*Thank you for sending me this.*

*I am not sure if I should declare an interest, as I have modest business dealings with the owner - including at his other pub, which is just half a mile from The Plough and would be its closest competitor.*

*I also have a background in the pub business, having worked for a number of breweries and a pub company as an area manager.*

*I had understood, from press reports, that Fadmoor Community Pub Ltd has already been awarded a Government grant to purchase these premises. Are you able to confirm the actual status of this funding?*

*I am supportive of the CIC securing and reopening The Plough, although I believe it will be an uphill task to make it into a sustainable business.*

*I note that this is the second application, please could you advise if they can continue renewing them.*

- MP

Kevin Hollinrake MP was not consulted on the nomination but provided support via email on 10 May 2024: "I'm very supportive of this. The community has worked so hard to save a hugely important community asset."

- Owners

The owner of the site, Holf Leisure Ltd, provided a written representation via their legal representatives – on 12 April 2024. This was a detailed representation which objected to the listing on the grounds that the "much of the information and particularly the expectations set out in the application are wholly erroneous." The representation goes on to state that "there is insufficient demand for The Plough, even when envisaged to be community run, to be economically viable."

A full copy of the representation is available to view on the file but, in summary, the nature of the issues raised infer that it is not realistic that the premises could have a use which furthers the social wellbeing in the next five years.

## **7.0 ALTERNATIVE OPTIONS CONSIDERED**

7.1 N/A

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

8.1 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.

## **9.0 FINANCIAL IMPLICATIONS**

9.1 If the decision is to list the property the owner can make a claim for compensation for which the Council is liable.

## **10.0 LEGAL IMPLICATIONS**

10.1 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.

- 10.2 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).
- 10.3 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).

## **11.0 EQUALITIES IMPLICATIONS**

- N/A

## **12.0 CLIMATE CHANGE IMPLICATIONS**

- N/A

## **19.0 CONCLUSIONS**

- 19.1 As the Plough Inn, Fadmoor, has not had a non-ancillary use which furthers the social wellbeing or social interests of the local community for a period of 13 years and four months, it is considered that it does not meet the necessary tests in determining whether it meets the definition of an Asset of Community Value. It is considered that, whilst it is realistic to think that it could have an applicable use within the next five years, it has not had such a use in the 'recent past'.
- 19.2 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.

## **20.0 REASONS FOR RECOMMENDATIONS**

- 20.1 The evidence demonstrates that the nomination for the Plough Inn, Fadmoor does not meet the definition of community value as detailed in the Localism Act 2011.

## **21.0 RECOMMENDATION(S)**

It is recommended that the Assistant Chief Executive for Localities:

- |      |   |
|------|---|
| (i)  | Determines that the nomination for the Plough Inn, Fadmoor is not successful and 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   |

**BACKGROUND DOCUMENTS:**

*Nomination Form*  
*Representation from Rural & Sporting Ltd obo Holf Leisure*

Assistant Chief Executive for Localities  
County Hall  
Northallerton  
23 May 2024

Report Author – Matthew Lishman, Planning Officer  
Presenter of Report – Matthew Lishman, Planning Officer

***PLEASE ALSO NOTE THAT IF ANY REPORTS / APPENDICES INCLUDE SIGNATURES THESE MUST BE REMOVED / DELETED PRIOR TO SENDING REPORTS / APPENDICES TO DEMOCRATIC SERVICES. Appendices should include an Equality Impact Assessment and a Climate Impact Assessment where appropriate***