

Notice under Section 91 of the Localism Act 2011

Entry of the Hapton Inn into Burnley Borough Council's List of Assets of Community Value

1. Background

On 9th September 2019, Burnley Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list the Hapton Inn as an Asset of Community Value. The nomination was made by Hapton Parish Council. A map setting out the boundaries of the asset nominated to be listed ("The Asset") is provided as an appendix to this notice.

Under Section 87 of the Act the Council must maintain a list of assets of community value.

Section 88 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.

- (2) 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, and
 - (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.

Under Section 89 of the Act, the Council can only enter assets into the list of Assets of Community Value in response to nomination from the community.

2. The Decision-Making Process

2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 is delegated to a Panel consisting of the Council's Head of Housing and Development, its Property Services manager and its Head of Policy and Engagement.

2.2 The internal review process in relation to listing shall be undertaken by the Council's Head of Legal and Democratic Services, who shall not be involved in the initial decision.

2.3 The Panel has now fully considered the nomination in light of the Act and the Assets of Community Value (England) Regulations 2012 ("the Regulations"). Following this consideration, the Panel decided to enter the property into its list of Assets of Community Value.

This decision has been taken because:

(1)

- a) The Asset lies within the administrative boundaries of Burnley Borough Council
- b) The Parish Council is entitled under 89(2)(b)(i) of the Act to make a community nomination in respect of the Asset
- c) The nomination from the Parish Council includes the matters required under Regulation 6 of the Regulations
- (d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations
- (e) The letter of nomination from the Parish Council sets out the reasons for nominating the asset, explaining why the nominator believes the Asset meets the definition in the Act

and

(2) in the opinion of the Authority,

- (a) The current use of the Asset furthers the social well-being or cultural, recreational or sporting interests of the local community
- (b) The use of the land or building currently, or in the recent past, furthers the social well-being or cultural, recreational or sporting interests of the local community.
- (c) The use of the Asset will continue to further the social well-being or interests of the local community.
- (d) The use of the building or land is not deemed 'ancillary', i.e. of secondary purpose. This means that the use of the land or building to further social well-being or interests of the community is a principal use.

The detailed assessment upon which this decision is based is set out in 4 below.

3. What Happens Next

The Asset will now be placed on the list of Assets of Community Value which the Council is required to maintain under Section 87 of the Act.

In accordance with Section 91 of the Localism Act, the Council will send this notice to:

- (a) Enterprise Inns
- (b) Hapton Parish Council

The information will also be published on the Council's website. The Asset will remain on the Council's List of Assets of Community Value for a period of five years from the date of this notice unless removed with effect from some earlier time in accordance with the provisions of the regulations.

The Localism Act 2011 requires that the Council draw particular attention to the following:

- (a) the consequences for the land and its owner of the land's inclusion in the list; and
- (b) the right to ask for review.

The consequences for the land and its owner of the land's inclusion in the list

Inclusion of assets on the List of Assets of Community Value is a local land charge under the Local Land Charges Act 1975. The Council is required under Schedule 4 of the Regulations to apply to the Land Registry for a restriction to be added to the registered title of the land that "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".

Under Section 95 of the Act an owner must notify the Council if they wish to enter into a relevant disposal (as defined in Section 96 of the Act) of that asset. Owners should contact the Property Services Manager at the following address: Burnley Council, Burnley Town Hall, Burnley, BB11 9SA.

Some types of disposal of listed assets are exempt and these are set out in full in Annex A of the document Community Right to Bid: Non-statutory advice note for local authorities. Annex A also identifies circumstances where, although there is no requirement in the legislation that the owner has to explain to the local authority that the disposal is exempt, it would be helpful for them to do so.

A moratorium period is triggered by notification under Section 95 to allow a Community Interest Group to submit a written request to be treated as a potential bidder for the asset. The owner is advised to refer to Part 5 Chapter 3 of the Act and the Regulations in full and to seek legal advice if they wish to dispose of the asset. A disposal of listed land which contravenes the Regulations and Act will be ineffective.

The owner of the asset does not have to sell the asset to the Community Interest Group. There is also a 'protected period' (18 months from the time that the owner notified the local authority of their intention to dispose of the asset) and during this time there can be no further moratoriums on sale and the owner is free to dispose of the property as they see fit.

The right to ask for review

Asset owners have the opportunity to request a review of the decision to enter an asset on the List of Assets of Community Value. As stated at paragraph 2.2 above, the internal review

process in relation to listing will be undertaken by the Council's Head of People, Law and Regulation.

Landowners wishing to request a review of the decision should do so in writing to: the Head of Legal and Democratic Services, Burnley Council, Burnley Town Hall, Burnley, BB11 9SA Town Hall, or to cwaudby@burnley.gov.uk. **The written request must be made by 12th November 2019 setting out the grounds for review and whether an oral hearing is requested.** The review will normally take place within 8 weeks of the Council having received the written request for review.

Private owners may claim compensation for loss and expense incurred through the asset being listed including a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period. Regulation 14 of the Regulations contains more detail on this.

Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations provide further detailed information.

4. Detailed Assessment of the Nomination

Assets of Community Value Nomination – Assessment			
DATE OF SUBMISSION:	9th September 2019	DATE DECISION TO BE MADE BY:	10 th September 2019
NOMINATED ASSET:	Hapton Inn, Accrington Road, Hapton, Burnley BB11 5QL		
NOMINATION SUBMITTED BY:	Hapton Parish Council		

STEP A: This section considers the eligibility of the nominating body to make a nomination and of the asset to be an Asset of Community Value.

A1. Is the nominating organisation an eligible body to nominate?	
Evidence supplied by nominee:	The nominating organisation is an established Parish Council.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	Not required.
Criteria met?	YES

A2. Does the nominating body have a local connection to the asset nominated?	
Evidence supplied by nominee:	Parish Council established in 1894 consisting of 7 Parish Councillors meeting 10 times per annum.
Feedback from other parties and other information gained in relation to this criterion	None.
The Panel's consideration of the evidence provided	Not required.
Criteria met?	YES

A3. Does the nomination include the required information about the asset?	
<ul style="list-style-type: none"> • Description of the nominated land including its proposed boundaries • Names of current occupants of the land • Names and current or last-known addresses of all those holding a freehold or leasehold estate in the land 	
Evidence supplied by nominee:	Owner details provided by the nominee: Enterprise Inns Map showing extent of the asset provided.
Feedback from other parties and other information gained in relation to this criterion:	None.
The Panel's consideration of the evidence provided	A Land Registry search clarified the boundaries of the nominated asset and the ownership details.
Criteria met?	YES

A4. Is the nominated asset outside of one of the categories that cannot be assets of community value (as set out in Schedule 1 of the Assets of Community Value (England) Regulations 2012):	
<ul style="list-style-type: none"> • A residence together with land connected with that residence • Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960 • Operational land as defined in section 263 of the Town and Country Planning Act 1990. 	
Evidence supplied by nominee:	Historic pub.
Feedback from other parties and other information gained in	None.

relation to this criterion:	
The Panel's consideration of the evidence provided	From the evidence provided, that Panel is satisfied that the asset is not in any of the categories that cannot be assets of community value.
Criteria met?	YES

STEP B: This section considers the current or recent usage of the asset.

<p>B. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?</p> <ul style="list-style-type: none"> NOTE 1: A working definition of "recent past" is "within the past three years" NOTE 2: A working definition of "non-ancillary" is that the usage is not providing necessary support (e.g. cleaning) to the primary activities carried out in the asset, but is itself a primary, additional or complementary use. 	
Evidence supplied by nominee:	Currently operating as a pub.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	The Panel is satisfied that the current or recent usage which is the subject of the nomination is an actual and non-ancillary usage.
Criteria met?	YES

STEP C: This section considers whether the use furthers (or furthered, for uses in the recent past) the social interests or social wellbeing of the local community.

<p>C2. Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made?</p>	
Evidence supplied by nominee:	Following a very strong community call to save the Hapton Inn as a public house, Hapton Parish Council wish to nominate the Hapton Inn public house as an Asset of Community Value. We clearly believe that the facility needs to continue as a licensed premises to serve our local community and under no circumstances be granted planning permission to convert its use. It is of historic significance having operated for 130 years under the name Hapton Inn and brings employment and visitors to the area, without the Hapton Inn there would be nowhere else in the locality to serve families with dining facilities, a function room and a beer garden.
Feedback from other parties and other	<u>Supporting information from the Chair of the Friends of Hapton Inn group:</u>

<p>information gained in relation to this criterion:</p>	<p>We wish to protect this historic building and maintain the valuable community asset. The Hapton Inn is over 100 years old, it has seen 2 x world wars, many crisis such as the Hapton Valley mining disaster, many weddings, literally 100's of funerals and so many memorable community celebrations such as jubilees and even pit closures. It is not an over exaggeration to say this public house is the heart of the community, and whilst many pubs have closed due to lack of local support, this pub has maintained impressive local loyalty throughout even the most recent national downturn in town centre drinking trends. This tenacity to maintain itself as a public house is clearly defined by the community it serves, not only villagers and their family but also the many farms and local rural homes that use the Inn as a local meeting point and even emergency location with substantial parking for crisis events such as the most recent murder investigation.</p> <p>In the last 15 years we have seen the closure of almost all our local shops and amenities, in fact the village previously had 5 shops, a post office, 3 pubs and a WMC but most have closed, most people would surmise Hapton must be reducing in size, however in the same time frame we have seen significant housing developments in the village with the largest still under construction adding additional family homes by the day to our local community.</p>
<p>The Panel's consideration of the evidence provided</p>	<p>The panel considered the following as providing social value.</p> <ul style="list-style-type: none"> • The last remaining public house in the village with social space, particularly for families. • The car parking.
<p>Criteria met?</p>	<p>YES</p>

If the criteria are met, go to Step D. If not, place on the list of unsuccessful nominations. If not, place on the list of unsuccessful nominations.

STEP D: This section considers whether 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.

<p>D. Is it 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?</p>	
<p>Evidence supplied by nominee:</p>	<p>The property is currently a public house.</p>
<p>Feedback from other</p>	<p>None</p>

parties and other information gained in relation to this criterion:	
The Panel's consideration of the evidence provided	The Panel is aware that the property was sold at auction on 3 rd September. However, its use is currently as a public house so there is no reason not to suppose that it can continue to further social wellbeing or social interests of the local community.
Criteria met?	YES

DECISION:	THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE
REASON FOR DECISION	The nomination meets the criteria.
Decision Taken by	Paul Gatrell, Head of Housing and Development Andrew Leah, Property Services Manager Rob Dobson, Head of Policy and Engagement
Date	10/09/2019