

REPORT FROM: ASSISTANT DIRECTOR, PLANNING, BUILDING CONTROL
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TO: Colne & District Area Committee

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**Proposed Asset of Community Value
02/2023/ACV Langroyd Hall**

PURPOSE OF REPORT:

To consider whether Langroyd Hall meets the criteria for designation as an Asset of Community Value and to determine whether the property should be added to the list of Assets of Community Value for Pendle.

RECOMMENDATIONS

- (1) That the premises is not designated as an asset of community value as the application fails to show there has been a social interest derived from the property and that it is not realistic to think there is a time in the next five years that there could be a use that furthers the social well being or interests of the local community..

REASON FOR RECOMMENDATIONS

- (1) The application fails to demonstrate that the criteria contained in Section 88 of the Localism Act 2011 and .. of the Refuges will be satisfied.

Background

- 1 The Localism Act 2011 introduced legislation to allow qualifying properties to be listed as an Asset of Community Value ("ACV"). There are also regulations which govern how to apply

the provisions of the Act and how to interpret it. These are The Assets of Community Value (England) Regulations 2012 (“the Regulations”).

2 The Localism Act defines an ACV as:

Localism Act Section 88

- (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.
- 3 The Act and Regulations set out a number of criteria that a property must have in order for it to be designated as an ACV. These include, amongst others, the body applying must be a qualifying body, the qualifying body must comply with the requirements on distribution of surpluses and other financial criteria, the asset must be one that can be designated, the property must have furthered the social well being of the area and it must be in the opinion of the Council realistic to think that in the next five years the premises can have a community use that would further the wellbeing of the community.
- 4 The application has been made by a company limited by guarantee that is registered in Pendle. The application submits the following information on the building satisfying the criteria:

The way Langroyd hall has served the community in the past was as a licensed public house / Hotel, we feel that we can continue to provide this social service incorporated in a joint commercial and community venture with profits going back into supporting the community.

As stated above, as a licensed premises it has served a need of a minority and the majority as is evidenced by its historical trading and ultimate closure, we believe that within 5 years not only can we bring that social aspect back to the area we can increase its social value by providing much needed community services as will be proven by the production of a full feasibility study.

- 5 The owners of the property have submitted information objecting to the designation and have submitted a range of information on why in their view the asset should not be designated. The information includes the following opinions:
- The application fails to satisfy the requirements of the The Assets of Community Value (England) Regulations 2012 (the “Regulations”)
 - The property has not been used for a community use in the “recent past”.
 - The Owner has obtained planning permission and listed building consent to demolish part of the Property and change to residential use. Residential use cannot be listed as an ACV.
 - It is not realistic to think that the property can be used for a community purpose in the next 5 years.
 - The proposer has failed to provide sufficient evidence of their right to make a community nomination.
- 6 The applicant also raises matters that are not relevant to the question of whether the property satisfies the criteria for listing such as the impact on the owner’s ability to dispose of the property.
- 7 The following paragraphs look at the issues that have been raised in the context of whether the applicant and property would satisfy the legal requirements and criteria to register it as an ACV.
- 8 Schedule 1 to the Regulations lists land that cannot be listed. The land and building is currently not used and is empty. It was formerly used as a public house and restaurant. There are comments that it was a hotel but there is no evidence that it was used for that purpose. The application forms for redevelopment also confirm it was an A4 Public House.
- 9 Schedule 1 of the Regulations sets out land which cannot be of community value. Land that cannot be of community value must be a residence. Land can be listed if only part of the building is used for a residence but for that residential use the land would be eligible for listing.
- 10 Planning permission has been granted for a residential use. Schedule 2 indicates that a building or other land is not a residence if there are currently no residences but planning permission has been granted for residences and where construction has started but the development is not complete.
- 11 Subject to the land satisfying the social criteria for listing the building was mainly used for a public house and that is eligible for listing.
- 12 The objection refers to the nominating body satisfying Regulation 6 in that they have failed to demonstrate that they will distribute any surplus to the local area and that any surplus cannot be distributed to their members. The objection also raises issues of the purpose of the ACV process but again this is not relevant to whether or not to designate an asset. The application clearly states that any surplus will go back into the community and the objector refers to that in their representation.
- 13 Concerns have been raised about whether the nominators have a local connection and whether they have shown this in sufficient detail. The Regulations says the body has a local connection if:

- The body's activities are wholly or partly concerned with a LA's area
 - "If any surplus it makes is wholly or partly applied for the benefit of the local community or the benefit of a neighbouring authority's area.
- 14 The activities of the body have only just commenced as it is a recently incorporated body. The Regulations refer to the future tense indicating that if any profits are made they must be distributed locally. The nominating body have clearly stated that they will do this. With both their activities being in Pendle and the intention being to distribute any surplus in Pendle for the benefit of the area the application has been made by a body with a local connection.
- 15 The objection to the nomination is that there is insufficient evidence supplied to be able to be satisfied that the nominator is eligible. I do not agree. The applicant has shown it is a company limited by guarantee, that there is a local connection and that it would be a not for profit organisation that would distribute any surplus for the benefit of the area.
- 16 The basis for the request to list is that the premises has in the past served the local community as a public house/hotel. The owners indicate that a public house does not necessarily come under the definition of a community asset under section 88(2)(c) of the Act i.e. that there is a time in the recent past where the actual use of the building furthered the social well being or interests of the community.
- 17 Section 88 (6) of the Act defines what social interests includes:
- cultural interests;
 - recreational interests;
 - sporting interests;
- 18 The application form indicates that the premises has served the community in the past as it was a licensed public house. It then states that it has served the needs of the community as is evidenced by its historical trading.
- 19 During the pre-submission of the application requests were made for the application to expand on the reasons that it was considered the property met the social interests test. The applicant has submitted cases where the issue of whether the property meets the test has been considered. It is clear that there is no automatic assumption that can be made about whether or not a public house meets the test. The merits of the case need to be properly examined and a judgment made on the basis of the information presented.
- 20 The application falls short of providing information that would satisfy the social interest test. Indicating that it has been a pub and that it has served the needs of the community in the past is not sufficient or the designating body to conclude that the site had social interests. The application has fallen significantly short in providing evidence to support a decision to include the property as an ACV.
- 21 Section 88 (2) b. The requirement is to put forward a case that it is realistic to think that in the next five years the premises can have a community use that would further the wellbeing of the community. Here the application falls short. There are no definitive proposals and the former use is discounted in favour of another mixed use. The premises has closed due to the economic performance of the establishment and the application to list is too vague to be able to discern any realistic prospect of a new use that would further the well being if the area.

There is a lack of information in the application to lead to a reasonable conclusion that Section 88 (2) b would be satisfied.

- 22 The building has not been in use for circa 5 years. In order to be able to qualify as an ACV it must have been used for such a purpose in the recent past. There is no definition of what the recent past is in the legislation. A case has been supplied in evidence to the Council of the First Tier Tribunal (CR/2014/0005) in which the Judge set out that there was no time that had been employed in legislation to indicate what is meant by the recent past.
- 23 The premises was last used in 2017 and was open to the public then. That is a sufficiently short length of time to be considered to be in the recent past.
- 24 The Act, under section 88 (2)(b) requires that in order for a premises to become an ACV if in the opinion of the Local Authority it is realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the building or other land that would further the social well being of the local community. In this residential use is specifically excluded from being able to be designated as an ACV so such a use would need to be discounted from furthering the social well being of an area.
- 25 The applications to designate does not give any information that the applicants are likely to be able to bring a community use forward. The test is whether it is “realistic” to think that the building could be re-used in the next five years. There is no funding and no business plan in place. The site has planning permission for a residential development and the information is that the owner wishes to dispose to a third party to build out. No other concrete proposals are known to exist for the site.
- 26 The nominator indicates that they wish to bring the property back in a joint commercial and community venture with profits going back to the community. This would include much needed community services in collaboration with social and welfare providers. There is no detail behind the assertions and no indication of how the commercial aspects would work bearing in mind the commercial operation of the facility failed on a general commercial basis. That includes a lack of any evidence of how the purchase costs of the building and the refurbishment costs would be achieved. In the absence of any details it is unrealistic to consider that such a use could be established within five years.

IMPLICATIONS

Policy: None.

Financial: None.

Legal: None.

Risk Management: None.

Health and Safety: None.

Sustainability: None.

Community Safety: None.

Equality and Diversity: None.

APPENDICES

Application form.

LIST OF BACKGROUND PAPERS