

Date: Monday, 18 June 2018

Item No.

5

Contact Officer: Judith Plumley

Ferndown Assets - Nomination as Assets of Community Value

Purpose of Report:

To consider the nomination of a number of assets in Ferndown as potential Assets of Community Value

Recommendations:

It is recommended that

a) The nomination to list the following assets as Assets of Community Value be accepted:

- Barrington Centre
- Bluebird Social Club
- Ferndown British Legion Club
- Ferndown Leisure Centre
- Ferndown Library
- Ferndown Village Hall
- Longham United Reform Church
- Poor Common Junior and Toddler Play Areas
- Stapehill Village Hall

b) The nomination to list the following assets be rejected

- Angel Inn Public House
- Nightjar Public House
- Old Thatch Public House
- Pure Drop Public House
- Penny's Lodge Car Park
- Retail Units Ham Lane/Ringwood Road
- White Hart Public House
- White Heather Public House

c) The decisions be listed on the Council's Localism web page as required by the Localism Act, and the Land Registry, nominating authority freeholders and leaseholders be notified

2.0 BACKGROUND

2.1 Provisions within the Localism Act 2011 give local groups a right to nominate a building or land for listing as a "Community Asset" by the local authority if its

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use either in the past, presently or potentially in the future benefits the social well-being or social interest (which include cultural, sporting or recreational interests) of the community it serves.

2.2 Under the Localism Act 2011 the land or building:

- can be of any size
- can be publicly or privately owned
- can lie in more than one local authority area
- may or may not consist of registered land
- cannot be a residence and land connected with it
- cannot be a residential caravan site
- and cannot be operational land of statutory undertakers

3.0 Application to nominate

3.1 The Council initially received a nomination relating to these sites on 12th April 2018 from Ferndown Town Council but several of the nominations required clarification/amendments prior to being able to proceed.

3.2 Specifically the nominations relate to land currently owned and managed by a number of different Freeholders (see details in Appendix 1-17), a plan in each of the attached nomination documents shows the site of each asset.

3.3 Ferndown Town Council has the standing and eligibility to make the nominations.

S.89 (2) of the Localism Act 2011 states

For the purposes of this Chapter “community nomination”, in relation to a local authority, means a nomination which—

(a) nominates land in the local authority’s area for inclusion in the local authority’s list of assets of community value, and

(b) is made—

(i) by a parish council in respect of land in England in the parish council’s area,

(ii) by a community council in respect of land in Wales in the community council’s area, or

(iii) by a person that is a voluntary or community body with a local connection.

3.4 The nominations also provide information about the sites/land, including details of ownership, plans and potential reasons for listing and are therefore considered to be valid under the Localism Act 2011.

Material to support the nomination

3.5 The nominations provide information about why, in the eyes of the local community, these facilities should be considered for listing.

3.6 A summary of the reasons for nomination put forward by the Town Council in each case is as follows:

- **Angel Inn Public House**
 - Social setting and meeting place

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- Historic Building
- **Barrington Centre**
 - Only facility of its type in Ferndown
 - Used by a wide section of the community
 - Café is popular and well used
 - Meeting rooms are used by local community groups including the Town Council
 - Central location
- **Bluebird Social Club**
 - Bar, functions room and skittles alley
 - One of few community facilities in Longham
- **Ferndown British Legion Club**
 - Valued and much used local facility
 - Venue for snooker, skittles and short mat bowls
 - Rooms for hire
- **Ferndown Leisure Centre**
 - Only leisure centre and pool in the town
- **Ferndown Library**
 - Only library in the town
 - Lending of books etc
 - Facilities for computer use and public WiFi
 - Organises children's activities
- **Ferndown Village Hall**
 - Used by a range of groups for such as fitness, adult education, drama and music
 - Reduces social isolation
 - Promotes the arts
- **Longham United Reform Church**
 - Religious and social function
 - Few other meeting places in the area
 - Historic Building
- **Nightjar Public House**
 - Social setting and meeting place
- **Old Thatch Public House**
 - Social setting and meeting place
 - Historic Building
- **Penny's Lodge Car Park**
 - Easy access to community facilities in Penny's Walk for less able residents
- **Poor Common Junior and Toddler Play Areas**
 - Two of a limited number in Ferndown
 - Location in a built up area
 - Safe play and recreation in a fenced environment
- **Pure Drop Public House**
 - Social setting and meeting place
- **Retail Units Ham Lane/Ringwood Road**
 - Retail units in the local area/ enhance local economy
- **Stapehill Village Hall**
 - Only facility of its kind in an outlying area
 - Well used

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- Reduces travel to other areas
- Sense of local community
- **White Hart Public House**
 - Social setting and meeting place
- **White Heather Public House**
 - Social setting and meeting place

The Officer's consideration of the nominations

3.7 A building or other land in a local authority's area is considered 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. (Section 88(1) Localism Act 2011) Section 88(2) of the Act extends this definition 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.

3.8 Although some of the reasons for designation (in particular in relation to the public houses) are thin, these facilities by their very nature provide a community service. We have considered in the past whether a nominated public house must be unique or critical to community wellbeing and our advice is that a public house does not have to be the only one in the area for it to constitute a community asset. However, there is nothing in the applications received which suggests that any of the pubs nominated provide anything other than the generic community service of all pubs. There is no evidence provided which suggests why those particular pubs are furthering the social well-being or social interests of the local community beyond that of any pub.

3.9 It is clear, from the evidence provided, that the following assets have offered a community benefit in the past and continue to do so:

- Barrington Centre
- Bluebird Social Club
- Ferndown British Legion Club
- Ferndown Leisure Centre
- Ferndown Library (excluding the area used as offices which is included in the nomination plan)
- Ferndown Village Hall
- Longham United reform Church
- Poor Common Junior and Toddler Play Areas
- Stapehill Village Hall

3.10 We have received representations from the freeholders of the following premises and these are also attached in the appendices with each nomination:

- Ferndown Leisure Centre (Appendix 5b)
- Ferndown Library (Appendix 6b)

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- Penny's Lodge Car Park (Appendix 11b)
 - Nightjar Public House (Appendix 9b)
 - White Hart Public House (Appendix 16b)
- 3.11 It is reasonable to suppose that if the community were to purchase any one of the assets shown in 3.9 above, they could be run as a commercial business, not-for-profit business, social enterprise or facility subsidised by the Town Council some of which would reduce the need for commercial viability and therefore make it possible for continued community use to succeed. The subsidy required to run Ferndown Leisure Centre is significant but this is not a reason in itself to refuse designation.
- 3.12 Whether or not to list these assets as Assets of Community Value would seem to rest on how **realistic** it is that they could provide community value in the future.
- 3.13 Government Guidance states:
"If the nominated asset is properly nominated, is in the local authority's area, meets the definition, and is not excluded, the local authority must list it and inform all specified parties (including the parish council)."
- 3.14 On the evidence presented it is the Officer's belief that the above nominations meet the requirements of the Localism Act and there is sufficient evidence to suggest that the buildings have provided community benefit in the past and continue to do so.
- 3.15 As the nominations in 3.8 above meet the requirements in 3.13 the nominations should therefore be supported.
- 3.16 The Localism Act requires notice to be served on the owner and this is defined in the Act as the freehold owner of the land, unless there is a qualifying leasehold owner. Notice has therefore been served on the registered freehold owners of each asset.
- 3.17 Officers are of the opinion that seven of the nominations received do not meet the criteria in 3.13 above, these are:
- Angel Inn PH
 - Nightjar PH
 - Old Thatch PH
 - Pennys Lodge Car Park
 - Retail Units at Ham Lane/Ringwood Road
 - White Hart PH
 - White Thatch PH
- 3.18 All of the Public Houses nominated had insufficient information on which to base a decision. All, by their very nature, provide a community service but no supporting evidence or reasons have been given to show why those particular pubs are furthering the social well-being or social interests of the local

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community and therefore meet the definition in the Localism Act 2011, other than that they operated as a pub. .

3.19 **Penny's Lodge Car Park** is considered not to meet the criteria for the following reasons:

- The Applicant has included within its application site a part of the car park which is owned by DCC
- DCC's Car Park has been a separate unit from Penny's Walk Car Park since 1989.
- The Applicant's case for nomination is that the Penny's Lodge Car Park is well used by patrons of the Barrington Centre, the Library and the Day Centre but this use is ancillary to the community use of the facilities.
- DCC's Car Park is a private car park. Its current and actual use is to provide car parking to DCC employees whose centre of duty is at Ferndown Local Office. Entry to the DCC's Car Park is controlled via a barrier operated by employees' personal fobs. Only staff with allocated parking permits can access the barrier. The barrier is in operation weekdays from 7.30am to 6.30pm when the Local Offices are operational.
- A clear sign is displayed at the entrance to DCC's Car Park alerts the general public this section of parking spaces is a private owned car park by DCC for DCC permit holders only during the above times. At other times eg from 6.30pm to 7.30am and weekends when the barrier is lifted DCC's Car Park is available for other users. However, use by the general public to park within the barrier area during these restricted times can only be as an ancillary use to the main use as a privately owned car park for DCC employees. There is no community use in DCC Car Park that is not an ancillary use.
- The actual current use of DCC's Car Park is not furthering the social wellbeing or social interests of the local community as provided by Section 88(1) (a) of the Localism Act 2011.
- DCC's Car Park is a separate unit from Penny's Walk Car Park. A barrier entry system physically restricts patrons of the Barrington Centre, the Library and the Day Centre from using DCC's Car Park during the weekday when the Library, Barrington Centre and Day Centre are open. Any community use can only be at weekends and evenings which is an ancillary use to the main use as a private car park. An ancillary use is not a use that can be taken into account when an application for listing is being considered under Section 88(2)(a) of the Localism Act 2011.

3.20 The remainder of the Penny's Walk Car Park is a public car park, but in order for it to be listed, it is necessary to demonstrate that its use will also further the social wellbeing or social interests of the local community. The car park is not ancillary to any one premises. It is therefore necessary to consider this as a stand alone nomination (which is how it has been nominated) and to look at whether the actual non-ancillary use of that car park means that it would fall within the criteria for listing. It is considered that it does not qualify to be listed

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because it does not further the social wellbeing or social interests of the local community as provided by Section 88(1) (a) of the Localism Act 2011.

3.21 **Retail Units at Ham Lane/Ringwood Road** are considered not to meet the criteria. Although economic units such as shops can be listed as assets of community value, it has to be demonstrated that they play a vital role in local life. The most obvious example of this is the local village shop which provides the only retail opportunity in the area. Whilst having this particular retail use might be of some benefit to the locality, it is considered that these premises do not provide an asset which can be shown to further the social wellbeing or social interests of the local community as provided by Section 88(1) (a) of the Localism Act 2011.

3.22 **Representations have been received from landowners in relation to:**

- a) **Ferndown Leisure Centre** (Appendix 5b) the representation states that any community use is ancillary to the principal use of the premises for educational purposes. However, it is considered that the use of the Leisure Centre is more than a mere ancillary use. The premises are open for public use throughout the day although the school does have priority at certain times and in certain parts of the facility and therefore the community use is a significant use in its own right and more than a mere subsidiary or ancillary use. With regard to the question of academy status, if the leisure centre were to be transferred but is still available for community use, then the moratorium period would not be triggered.
- b) **Ferndown Library** – There has been a representation from the landowner (Appendix 6b) that the use as a library is an ancillary use to the use of the building as offices. However, it is considered that the use as a library is more than a mere ancillary use, since a substantial separate part of the building is used as a library and this is a distinct part of the building. The Council may decide to exclude the offices from the listing as a separate distinct part of the premises which does not have the same community value as the library.
- c) **Nightjar Public House** – There has been a representation from the landowner that there is an existing contractual arrangement for the sale of these premises. However the Localism Act provisions are clear that any listing will not affect any existing contractual arrangements and the provisions regarding the sale of the premises will therefore apply only to any subsequent sale of the property. There has also been a further representation querying the community value of the premises. However, as previously stated, the Council's view is that insufficient reasons have been provided to enable the Council to decide these premises meet the criteria set out in the Localism Act 2011.
- d) **The White Hart Public House** – there has been a representation from the landowner querying the nominator's status and the community value of the premises. However, as previously stated, the Council's view is that insufficient reasons have been provided to enable the Council to decide that these premises meet the criteria set out in the Localism Act 2011.

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Implications of a decision to designate the nominated assets as Assets of Community Value

- 3.23 If the sites in question were to go on the market as a going concern for the same use as they currently have, the requirements of the legislation to give any interested community group 6 months to raise the funds to buy the property/land do not apply.
- 3.24 Only if the property/land were to go on the market with a proposal for change of use and the local area was to be at risk of losing the community aspect of the site would the designation be applicable.
- 3.25 If this were the case, the community would then have up to 6 months to raise sufficient funds to purchase the property/land and take on the running of it themselves. However, the owner is not obliged to accept any offer from the community and could still sell for alternative use (subject to planning permission) to any other potential buyer.
- 3.26 These provisions do not restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do not confer a right of first refusal to community interest groups; the owner is free to sell to whomever they choose and at whatever price.
- 3.27 The provisions do not place any restriction on what an owner can do with their property/land, once registered as an asset of community value, so long as it remains in their ownership. It is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

LEGAL POSITION

- 4.1 The Localism Act 2011 requires the Council to maintain a list of assets of community value. These can be either land or buildings which are deemed to be of community value. Premises are of community value if, in the opinion of the Council,
- 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
 - 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..

Financial and Risk

- 4.2 The Act allows private owners to claim compensation for loss and expense incurred through the asset being listed. The Regulations specifically provide that this will include 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; or for legal expenses incurred in a successful appeal to the Tribunal.

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- 4.3 The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.
- 4.4 Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.
- 4.5 The Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.
- 4.6 There is consequently a risk that compensation may be sought by the owner of the property and that it could amount to more than £20k with the District Council then having to pay the difference.

5 CONCLUSION

- 5.1 The Council has received a nomination for a number of premises in Ferndown to be considered as Assets of Community Value.
- 5.2 Under the Localism Act, the Council has the power to list assets giving the community the right to bid in the future, if necessary, and is obliged to do so if the criteria are met.
- 5.3 Having considered the documentation provided by the Parish Council it is recommended that the sites listed in 3.8 above be designated as Assets of Community Value.
- 5.4 It is further suggested that those sites listed in 3.14 are not designated as Assets of Community Value.

Background Papers:

Community Right to Bid: Non-statutory advice note for local authorities – Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Regulations 2012.

Appendices:

Appendix 1 – Angel Inn Public House

Appendix 2 – Barrington Centre

Appendix 3 – Bluebird Social Club

Appendix 4 – Ferndown British Legion

Appendices 5a + 5b – Ferndown Leisure Centre

Appendices 6a + 6b – Ferndown Library

Appendix 7 – Ferndown Village Hall

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Appendix 8 – Longham United reform Church

Appendices 9a + 9b – Nightjar Public House

Appendix 10 – Old Thatch Public House

Appendices 11a + 11b – Penny’s Lodge Car Park

Appendix 12 – Poor Common Junior and Toddler Play Areas

Appendix 13 – Pure Drop Public House

Appendix 14 – Retail Units Ham Lane/Ringwood Road

Appendix 15 – Stapehill Village Hall

Appendix 16a + 16b – White Hart Public House

Appendix 17 – White Heather Public House