

ITEM NO

Corporate Team

16th February 2015

The Drovers Inn, Gussage All Saints – Nomination as Asset of Community Value

1. PURPOSE AND RECOMMENDATIONS

Purpose of Report: To consider the nomination of The Drovers Inn, Gussage All Saints as a potential Asset of Community Value.

Recommendations: It is **RECOMMENDED** that:

- a) the nomination to list the Drovers Inn as an Asset of Community Value be accepted
- b) the decision be listed on the Council's Localism webpage as required by the Act, and the Land Registry notified.

Lead Members: Cllr Barbara Manuel

Contact Officer: Judith Plumley

2. 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 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. Application to nominate

3.3 The Council received a nomination relating to this site on 13th January 2015 from the "Save the Drovers Action Group". The group is not formally constituted but meets the requirement of the Localism Act by supporting their nomination with signatures of more than 21 people eligible to vote in the local

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authority area (see attached list checked by The Elections Officer, Appendix 1).

- 3.1 Specifically the nomination relates to land and buildings currently owned by Marston's Estates Ltd. (plan at Appendix A in the attached nomination document (Appendix 2) shows the parcel of land marked red). The Building was run as a Public House until November 2014, when it closed suddenly.
- 3.2 The nomination is supported by more than 21 signatories and provides information about the premises, including details of ownership, a plan and potential reasons for listing and is therefore considered to be valid under the Act.

Material to support the nomination

- 3.3 The nomination provides a lot of information about why, in the eyes of the local community, this building should be considered for listing (Appendix 2).
- 3.4 A summary of the reasons for nomination put forward by the community group is as follows:
 - Pubs are quoted as an example of a typical community asset in the Government Guidance on the Localism Act.
 - Pubs provide a meeting place where social networks are strengthened and extended and people can mix with others from different backgrounds to their own.
 - Pubs inject an average of £80,000 into their local economy each year and it is estimated that each pub raises approximately £3,000pa for charity.
 - The Drovers Inn is the only pub in the village and provides a wider service to the villages of Bowerswain, Gussage St Michael, Long Crichel, More Crichel and Witchampton.
 - At least 400 adults live within one mile radius of the pub
 - The pub is a source of employment for local young adults
 - The pub is listed in numerous local walks and cycling guides and therefore helps with local tourism for walkers and cyclists.
 - The village has a caravan site which relies on the pub as a destination.
 - Several local groups (darts, shooting, walking, cycling and running) use the pub as a meeting point and for hospitality.
 - The pub provides a village venue for quizzes and music evenings and support for local performers.
 - The pub has been one of the stops on the Dorset British Heart Foundation bike ride (1070 cyclists in 2013)
 - There is no bus route serving the village to allow those who cannot drive, or do not wish to, access to similar facilities elsewhere.
 - The pub provides the only facilities for visitors to the church for weddings, funerals, christenings and festivals.

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- 3.4 The Groups states that although The Drovers Inn is the only pub in the village there is also a private members club which is also licenced. The Community Group assert that this facility is open only a few evenings per week with no lunchtime opening and is restricted by the requirement for membership; it is not a family destination open to the general public.

The Officer's consideration of the nomination

- 3.5 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. (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.
- 3.6 The supporting documentation suggests that the Inn ceased to be operational and available for the public to visit in November 2014. It cannot therefore meet the registration criteria for "actual current use" (3.5 (a) above).
- 3.7 That leaves consideration of the criteria for a use that has ceased but within 5 years might be brought back into use for the community. The detail supplied by the nominating group is probably sufficient to demonstrate the **possibility** of community use within 5 years of the application should the building go on the market, subject to the community being able to raise the funds.
- 3.8 It is clear from the evidence provided that the Inn has offered significant community benefit in the past, both locally in the surrounding villages and more widely. The Inn is well known locally and for many years was a popular destination being the centre of a number of local walks and bridleways as shown in "Pub Walks in Dorset".
- 3.9 In support of the community intention, the Council also has e-mail evidence that the Inn has been offered for sale to the community group at the current asking price (Confidential Appendix 3). The community group have stated that will not consider the purchase of the premises until the nomination of the community asset has been determined (Confidential Appendix 4). This shows that there is still a willingness within the community group to purchase the Inn at the appropriate price.
- 3.10 It is reasonable to suppose that if the community were to purchase the property, it could be run as a not-for-profit business or social enterprise which would reduce the need for commercial viability and therefore make it possible for the community use to succeed.
- 3.11 On the evidence presented it is therefore the officer's belief that the nomination meets the requirements of the Localism Act and there is sufficient evidence to suggest that a future community use within 5 years is possible. The nomination should therefore be supported.

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Other Issues for consideration

Ownership

- 3.12 The Council has received a redacted copy of an agreement for sale and purchase between Marston's and a private individual and a legal assessment of this document has been made by our Legal department.
- 3.13 The freehold proprietor of the property registered at the Land Registry is Marston's.
- 3.14 Any potential purchaser may have a beneficial interest, if there is an enforceable contract for the purchase of the property, but in accordance with the Land Registration Act 2002, he is not the legal freehold owner until his title is registered . Until then, he does not have a legal estate in the property – he only has an equitable interest, which may or may not be enforceable at law.
- 3.15 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 Marston's Estates as the registered freehold owner and the prospective purchaser has been made aware of the nomination by them and in subsequent correspondence by officers of the council.

Implications of a decision to designate the Drovers Inn as an Asset of Community Value

- 3.16 If the site in question were to go on the market as a going concern (i.e. as a public house), the requirements of the legislation to give any interested community group 6 months to raise the funds to buy the building do not apply. Only if the building were to go on the market with a proposal for change of use and the village was to be at risk of losing the community aspect of the site would the designation be applicable. If this were the case, the community would then have up to 6 months to raise sufficient funds to purchase the site and take on the running of the facilities 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.
- 3.17 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.
- 3.18 An application for change of use has already been submitted on this site by agents on behalf of the prospective purchaser and will be determined in early March.
- 3.19 If the building is designated as an Asset of Community Value and Marston's sell the property to a third party as an Inn, the provisions in the Localism Act for a moratorium on sale do not apply. The new owner would therefore take a risk on the likelihood of obtaining permission for change of use as they would even if the designation had not occurred.
- 3.20 The provisions do not place any restriction on what an owner can do with their property, once registered as an asset of community value, so long as it

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remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is registered may affect planning decisions - 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.

4 LEGAL POSITION

- 4.1 The assets of community value measures in Part 5 Chapter 3 of the Localism Act 2011 provide for a local council to maintain a list of “community assets”, which can be either land or buildings.

5.0 Financial and Risk

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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 Borough Council then having to pay the difference.

6 CONCLUSION

- 6.2 The Council has received a nomination for the Drovers Inn, Gussage All Saints, to be considered as an Asset of Community Value.
- 6.3 Under the Localism Act, the Council has the power to list assets giving the community the right to bid in the future, if necessary.
- 6.4 Having considered the documentation provided by the “Save the Drovers Action Group” and the likelihood of the premises being re-opened as a community facility within the next 5 years, it is recommended that the site be designated as an Asset of Community Value.

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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.