

## **REPORT OF THE STRATEGIC DIRECTOR PLACE**

### **TO: THE PROPERTY AND REGENERATION BRIEFING FOR DECISION ON: 14<sup>th</sup> December 2020**

**SUBJECT:** Application to list The Unicorn Public House, 539 Liverpool Road, Eccles as an Asset of Community Value pursuant to Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

#### **RECOMMENDATION:**

That The Unicorn Public House is not an Asset of Community Value and should be included on the list of land nominated by unsuccessful community nominations for a period of five years.

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#### **PURPOSE OF THE REPORT:**

In October 2020 the Council received a nomination from:-

The nomination is made by 'Save & Reopen! The Unicorn Pub' and was accepted as valid on 4<sup>th</sup> October 2020. The nomination forms one application:

- 20/76193/ACV – Community Group (Save & Reopen! The Unicorn Pub) – received on 4<sup>th</sup> October 2020

The purpose of this report is for the City Mayor to determine whether The Unicorn Public House is land of community value.

If the decision is made that The Unicorn Public House, 539 Liverpool Road, Eccles is not land of community value to instruct Salford City Council and the Shared Legal Service to:

- a) Provide written reasons for the decision to the applicant.
- b) Include The Unicorn Public House, 539 Liverpool Road, Eccles in the City Council's list of land nominated by unsuccessful community nominations for a period of five years from the date of entry on the register.

If the City Mayor decides that the site is land of community value, to instruct Salford City Council and the Shared Legal Service to:

- a) Include the listing of The Unicorn Public House, 539 Liverpool Road, Eccles in the City Council's List of Assets of Community Value.
- b) Enter a restriction on the title in accordance with the Land Registration Rules 2003 as amended by the Assets of Community Value (England) Regulations 2012.
- c) Include the listing of The Unicorn Public House, 539 Liverpool Road, Eccles in the Local Land Charges Register.

## **BACKGROUND DOCUMENTS:**

(Available for public inspection)

Localism Act 2011 (“the Act”)

Assets of Community Value (England) Regulations 2012

Community Right to Bid: Non-statutory advice note for Local Authorities

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**KEY DECISION:** No

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## **1. INTRODUCTION**

Part 5 Chapter 3 of the Localism Act, and the Assets of Community Value (England) Regulations, which together deliver the “Community Right to Bid”, aim to encourage communities to become more active in joining together to save and take over assets which are significant to them. The scheme gives communities the opportunity to identify assets of community value and have them listed on a List of Assets of Community Value that every council is required to maintain.

The council has a requirement to consider each application to have an asset listed against criteria set out in the legislation.

The criteria are essentially;

- a) The application comes from a Qualifying Group (as defined in the Act).
- b) That the asset to which the application refers has in the recent past a principle use which furthers the communities’ social wellbeing or social interests.
- c) The asset is realistically likely to further the communities’ social wellbeing or social interests in the future.

Further detail of the definitions and application of these criteria is set out below.

The impact of an asset being listed as an Asset of Community Value (ACV) is that, if it is put out for disposal whilst on the list, there are certain restrictions which may affect when and to whom the owner may dispose of it.

## **2. CONSIDERATION OF THIS APPLICATION**

### **2.1 Site details**

This application relates to The Unicorn Public House, 539 Liverpool Road, Eccles. The site extends to approximately 3197.4m<sup>2</sup> and is situated to the south of Liverpool Road on the Peel Green Road junction. Vehicular access to the site is currently taken from Liverpool Road. The site accommodates a public house and car parking area. The area is primarily characterised by residential properties with a peppering of commercial properties to the north and east. Eccles Police Station is situated to the north.

## Site owner/interested parties

### Owner:

The Wellington Pub Company

Millbank Tower,  
21-24 Millbank  
Westminster,  
London,  
SW1P 4QP

## **2.2 Community Nomination**

Application 20/76193/ACV is supported by a document entitled: 'Community Right to Bid Nomination Form' as well as a document providing signatures from 25 individuals. The application was submitted by an un-incorporated body within the meaning of Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012. Therefore, the application constitutes a valid community nomination. The applicants have also confirmed that the group does not distribute any surplus it makes to its members.

## **2.3 The Procedure and Comments on the Nomination**

The owner of the site is The Wellington Pub Company. A notification letter was sent on 22<sup>nd</sup> October 2020 to advise the owner of the submitted ACV application.

On 26<sup>th</sup> November 2020 a copy of a draft report was sent to the Shared Legal Service, Salford City Council finance team and Ward Councillors to ask for any comments they may have.

## **2.4 The Use and Future Use of the Property**

The Unicorn Public House ceased to trade in July 2019 and has not been open to the community since. Therefore, the nomination can not qualify as an ACV under s.88(1) of the Localism Act 2011. However, the Local Authority can go on to consider whether it qualifies under s.88(2).

*"Furthering Social Wellbeing or Social Interests";*

Section 88 (2)(a) of the Localism Act 2011 requires that the land in the opinion of the Authority, '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'. The Localism Act provides that 'social interests' include (in particular) each of the following: cultural interests; recreational interests and sporting interests. However, the list is not exhaustive and the terms should be considered broadly.

There is no statutory definition of "local community" nor any guidance as to how it is to be determined. In an appeal concerning allotments it was concluded that "there is nothing in the 2011 Act which suggests that a facility has to be equally valuable or equally accessible to all sectors of the local community." CAMRA consider the definition to be "a group of people living in the same place or having a particular characteristic" and have argued that it is enough that a pub has regulars, even if they do not live nearby. A judge considering a case in 2017

determined that it would be inappropriate to restrict "local community" only to residents as such a restriction on the interpretation of the term had not been clearly expressed by Parliament in the legislation.

When considering the matters of social wellbeing and social interest, the legislation does not refer specifically to groups or organised events/participation. Therefore, it is not necessary for there to be use of the property by specific/named community groups. Furthermore, the nomination in itself is a factor to be taken into account as it signals that the importance and function of the asset to the community. The document entitled 'Supporting Information for Nomination: Unicorn Public House' outlines that the property provided a place for '...community sports teams that would meet up...'. However, the supporting evidence does not list the names of these teams or frequency the groups used the property.

A pub providing a place for the "community" to meet and socialise has been held sufficient previously to consider that the first limb of the test has been met. The Landowner (Wellington Pub Company) has outlined that due to the pub's location, it mainly attracted transient clientele. The Wellington Pub Company have stated that 'as a result of this lack of regular custom ... the Unicorn became unviable.'. However, it is not unreasonable to assume that there was an element of regular trade/community use regardless of whether this brought about sufficient profit to sustain the use. Given that the mere ability/opportunity for people to interact and socialise with one another in the pub provides 'social wellbeing', this limb of the test is considered to be met.

#### *"Future Use";*

Section 88 (2)(b) of the Localism Act requires Local Authorities to consider whether 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. However, there is no requirement under this limb of the test to determine a likely future use of the relevant building/land, but rather what is needed is to determine whether future community use is one of a number of realistic options for it. Some cases have explained it as whether it is "fanciful" to think that the site could be used for a community purpose in the next 5 years.

The supporting information submitted with the nomination is heavily weighted to establishing that the pub could be a realistic prospect to provide a future use. However, whether the community use is a realistic option is uncertain; particularly where a planning application is likely to be recommended for approval. It has been held that such circumstances may give rise to a view that it is not realistic to think the land/building could be used again for community purposes. Furthermore, the ability for the community to find the necessary financial resource to buy the property/land (that would increase in value with planning permission), refurbish it, which would be required due to the damage done by squatters last year, and run the site as a community enterprise could be economically challenging.

Wellington Pub Company were invited to comment on the nomination as the landowner. In their opinion 'there is no realistic prospect of this building being of community benefit in the future. It is simply not viable to bring it back into use and there are already too many competing pubs in the area.' In view of this, the landowner has submitted a planning application (20/75811/FUL) seeking permission for the erection of 16 new dwellings and modification of existing accesses. The landowner has outlined that they do not intend to sell the site but would develop and manage the properties themselves.

The landowner's business model is to generate and increase sustainable income by developing their own sites for housing/apartments and renting/managing the homes once constructed. Currently Wellington have 45 houses/apartments that are privately rented and managed directly by them. In addition to this and the current planning application, they have 78 houses/apartments (over 12 schemes) going through the planning process at the moment.

Case law has established that the landowner's intentions for a site is an important factor when weighing whether future community uses are unrealistic. A football stadium was removed from the ACV list in Kettering because, although planning permission for the redevelopment of the stadium for residential purposes had not been granted, it was likely that the owner would not allow any "dealing with the site" (sale of it) which would prejudice the grant of planning permission. With this in mind, considering the landowner has outlined that they do not intend to dispose of the site (even after developing it for housing) and that the planning application is likely to be recommended for approval, future community use is considered unrealistic. Therefore, the nomination fails the second limb of the test.

## **2.5 Conclusion**

The nomination has to meet all three of the criteria set out in the Introduction to this report for the asset to be considered one of community value. As set out above, the application is not considered to meet criteria c). Therefore, the council does not accept that The Unicorn Public House is an Asset of Community Value.

## **3. IMPLICATIONS OF NOT LISTING**

If the Council accepts that the land is not of community value (as concluded above) then the authority must include The Unicorn Public House, 539 Liverpool Road, Eccles in the City Council's list of land nominated by unsuccessful community nominations. In addition, written reasons for the decision must be provided to the nominee.

If the Council disagrees with the recommendation and considers that the land should be listed as an asset of community value, reasons for that decision will need to be recorded. The owner would have a right to request a review of the decision.

## **4. CONSULTATION / REPRESENTATION**

A petition calling to 'save The Unicorn pub from demolition', signed by 177 people, has been submitted to support the nomination. Unfortunately, the petition does not specifically call for the asset to be listed as an ACV.

### **Councillor Comments:**

Ward Councillors and those of the neighbouring ward have been consulted on the application.

Councillor Mullen

There being sufficient public houses in the area (with food and without) and on the evidence of constituent's contacts, I would not be supporting the application.

I cannot see how a community run public house would add value to Barton. I have heard, but not confirmed that it would be a microbrewery?? While that may have interest, I am not convinced that it would be a sustainable business model. (I also foresee future negative issue on smells and deliveries.)

The local publicans tell me how hard it is to survive in today's climate. Traditional pubs thus are under threat. I would put effort into supporting those.

Councillor D Jolly

No response has been received to date

Councillor Barnes

No response has been received to date

Councillor Boshell

No response has been received to date

Councillor Lancaster

No response has been received to date

Councillor Morris

No response has been received to date

**SOURCE OF FUNDING:** N/A

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**LEGAL IMPLICATIONS** supplied by Robert Irvine, Solicitor, Shared Legal Service are discussed throughout the body of the report.

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**FINANCIAL IMPLICATIONS** supplied by Alex Archer of Salford City Council

No financial implications.

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**OTHER DIRECTORATES CONSULTED:** N/A

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**CONTACT OFFICER:** Jade Corcoran      **TEL. NO.** 0161 7794881

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**WARD(S) TO WHICH REPORT RELATE(S):** Barton

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