

Notice under Section 91 of the Localism Act 2011

22nd July 2013

Entry of The Richmond Arms, 7 Richmond Place, Beacon Hill, Bath BA1 5PZ into Bath & North East Somerset Council's List of Assets of Community Value

1. Background

On 28th May 2013, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list The Richmond Arms as an Asset of Community Value. The nomination was made by Save the Richmond Arms. 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 community nomination.

2. Decision-Making Process

The Council's Cabinet on October 10th 2012 resolved to agree that:

- 2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 be delegated to the Divisional Director, Policy and Partnerships (and, in the event of this Divisional Director having a conflict of interest, to a Divisional Director nominated by the Strategic Director - Resources), drawing on the decision-making guidance as set out in Appendix One (of the report)
- 2.2 The Divisional Director Policy and Partnerships be delegated decision-making with regard to updating this guidance, in consultation with the Council Leader, in response to experience of implementing the provisions, new regulations and emerging case law
- 2.3 The internal review process in relation to listing be undertaken by a Divisional Director not involved in the initial decision
- 2.4 The Divisional Director Property Services be delegated to make arrangements relating to the procedures following listing, including moratorium and compensation provisions, as set out in Appendix Two (of the report)

In accordance with this decision, the Divisional Director, Policy and Partnerships 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 Divisional Director Policy and Partnerships has 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 Bath & North East Somerset Council and Lansdown Ward
- b) Save the Richmond Arms is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset
- c) The nomination from Save the Richmond Arms 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

and

(2) in the opinion of the Authority,

- (a) The actual current use of the Asset that is not an ancillary use furthers the social wellbeing and interests of the local community;
- (b) Given that the Asset remains fit for purpose to further the social interest and social wellbeing of the local community, and considering also that there are examples of similar and comparable assets serving these interests, it is realistic to think that the current non-ancillary use of the Asset will continue to further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

The detailed assessment on which this decision is based, following the criteria adopted by the Council Cabinet on 10th October 2012, and fully considering information supplied by the nominee and other parties (including the owner), 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:

The owner of the property
Save the Richmond Arms

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 (at the following address: Divisional Director, Property Services, Northgate House, Upper Borough Walls, Bath BA1 1RG) if they wish to enter into a relevant disposal (as defined in Section 96 of the Act) of that asset. 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, within 8 weeks of listing. The internal review process in relation to listing will be undertaken by a Divisional Director not involved in the initial decision.

Landowners wishing to request a review of the decision should do so in writing to the above address or to assets@bathnes.gov.uk by 16th September 2013, setting out the grounds for review and whether they are requesting an oral hearing.

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 of The Richmond Arms, Bath, as an Asset of Community Value

Assets of Community Value Nomination – Assessment			
DATE OF SUBMISSION:	28/05/2013	DATE DECISION TO BE MADE BY:	22/07/2013
NOMINATED ASSET:	The Richmond Arms inn, 7 Richmond Place, Beacon Hill, Bath BA1 5PZ The boundary of the asset is set out in the boundary map attached as an Appendix		
NOMINATION SUBMITTED BY:	Save The Richmond Arms		

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. It does this through a series of YES/NO ANSWERS

A1. Is the nominating organisation an eligible body to nominate?	
Evidence supplied by nominee:	Save The Richmond Arms constitution and membership list. An officer of the Council has accessed the current electoral register for Bath & North East Somerset, and has confirmed that all 23 members of Save The Richmond Arms are listed on the register. Save The Richmond Arms is therefore a valid unincorporated body in accordance with Regulation 5(1)(c) of the Regulations and complies with section 89(2)(b)(iii) of the Act.
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and any comments:	YES - The Council is satisfied that the nominating body is an eligible body to nominate.

A2. Does the nominating body have a local connection to the asset nominated?	
Evidence supplied by	In accordance with Regulation 4 of the Assets of Community

nominee:	<p>Value (England) Regulations 2012: the nominating body's activities are wholly concerned with the Bath & North East Somerset area (specifically the nominated asset); and any surplus made by the nominating body is wholly applied for the benefit of the Bath & North East Somerset area (specifically the nominated asset).</p> <p>The submitted map shows that the Asset is sited wholly within the boundaries of Bath and North East Somerset.</p>
Feedback from other parties and other information gained in relation to this criterion	None
Score (YES/NO) and any comments:	YES- The Council is satisfied that the nominating organisation has a local connection to the nominated asset.

<p>A3. Does the nomination include the required information about the asset?</p> <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:	<p>A plan of the nominated land including proposed boundaries. The name of the current occupant of the nominated asset (current tenant). The name and address of the current owners of the nominated asset.</p>
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and any comments:	YES- the Council is satisfied that the nomination has included the required information about the asset.

<p>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):</p> <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:	Nomination and supporting evidence sufficiently demonstrates that the asset is outside of the categories of assets within Schedule 1 of the Regulations

Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and any comments	YES- the Council is satisfied that the nomination is outside of one of the categories that cannot be assets of community value

If YES to all of Part A, move on to Step B. If NO to one or more parts, please inform the nominator that the nomination is ineligible. Place nomination on list of unsuccessful nominations.

STEP B: This section considers the current or recent usage of the asset. It does this through a YES/NO answer and an identification as to whether the use is current or in the “recent past”

B1. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage? <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:	The nomination form states that the asset is currently used as a public house, and has been in continuous use as such since circa 1872.
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and any comments:	YES- the current usage which is the subject of the nomination is an actual and non-ancillary usage.

If the current or recent usage that is the subject of the nomination is actual and non-ancillary, go to Step C. If not, place on the list of unsuccessful nominations.

STEP C: This section considers whether the use furthers (for current uses) or furthered (for uses in the recent past) the social interests or social wellbeing of the local community. It does this through a series of questions scored on the basis of evidence.

C1. Who benefits from the use? <ul style="list-style-type: none"> Does it meet the social interests of the community as a whole and not simply the users/customers of the specific 	Evidence provided by nominee	The nomination form states that: <ul style="list-style-type: none"> The Richmond Arms is used by local business people, professionals, tradespeople, craftsmen/artists, retired people and young families. This cross-section of the community is represented in the nominating body; A survey of usage for one week showed the asset to be used by
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<p>service?</p> <ul style="list-style-type: none"> Who will lose if the usage ceases? 		<p>223 people;</p> <ul style="list-style-type: none"> new housing developments around the Lansdown area will bring an additional 1200 residents into the local catchment area, which will increase the social relevance of The Richmond Arms; The Richmond Arms is used by various local groups, including: the local branch of the Federation of Small Businesses; St Stephen's church choir; St Stephen's school PTA and other parent groups; The Richmond Arms is also used for: fortnightly pub quizzes, attracting teams from the local area and beyond; birthday and other parties; wedding receptions; the congregating point for weddings and funerals at St Stephen's church; There are also visitors from outside the Bath area, including overseas, and walkers are familiar visitors, given the pub's close proximity to the local countryside. <p>Should the usage cease, it would mean the loss of a meeting place for local people, especially older people: there are no other alternative meeting places locally. There would also be the loss of employment of the pub's full- and part-time staff, and an associated negative impact on local trade and retail suppliers, estimated to be between £80k – £100k per year.</p>
	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)</p>	<p>The two Ward Councillors for Lansdown have written in support of the application. One Councillor's letter emphasises the Council's commitment to maintaining social sustainability and building stronger communities. He states that the nominating body's plans for The Richmond Arms deserve to be taken very seriously, and commits himself to</p>

		<p>representing the nominating body at every opportunity in seeking to retain The Richmond Arms at the centre of life in Lansdown.</p> <p>The other Councillor's letter again affirms his support for the application, referring to the importance of The Richmond Arms to the community, and stating that there is potential for the pub to improve local facilities.</p>
	Enter score out of 25 and rationale	20 - Furthering social interests of most of the local community is clearly demonstrated: the application states that the only section of the community which is not prominent in its usage of The Richmond Arms are those in the 18 – 25 age group.
C2. Is any aspect of the usage actively discouraged by the Council's Policy and Budget Framework?	Evidence provided by nominee	<p>There is no evidence that the usage is actively discouraged by the Council's Policy and Budget framework and it is not contrary to existing planning policies.</p> <p>The application cites Policy CF1 of the B&NES Local Plan, which states that development involving the loss of a site used...for community purposes will be permitted only where... there are no alternative facilities available and no proposals to provide one.'</p>
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	<p>The report recommending refusal of a planning application from The Richmond Arms' owner to change the use of the property from a public house to a dwellinghouse states that insufficient evidence has been provided to demonstrate that The Richmond Arms is unviable as a business: the proposed change of use would represent the loss of a community facility, and that since the proposal is not for an alternative facility of equivalent or greater benefit to the local community, it is contrary to policy CF.7 of the Bath & North East Somerset Local Plan.</p>
	Enter score out of 25 and rationale	25 - No active discouragement by the Council's Policy and Budget Framework has been identified.
C3. Why is the	Evidence provided by nominee	<p>The nomination states that:</p> <ul style="list-style-type: none"> The Richmond Arms is the only

usage seen as having social value in the context of the community on whose behalf the nomination is being made?		<p>community facility in the area widely used by a variety of local people and organisations;</p> <ul style="list-style-type: none"> • The pub enables local residents to entertain friends and relatives close to home; • With future residential growth in the area of approximately 1200 people, the pub will have an important role in developing social value and sense of place for new residents.
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	The Council's Corporate Sustainability Manager has stated that there is evidence that this asset provides local services that would only otherwise be accessible by car, particularly for less physically able residents, and that the application is therefore in line with the Council's overall sustainability objectives.
	Enter score out of 25 and rationale	15 - The nomination emphasises the uniqueness of The Richmond Arms in the area, and its capacity to cater for the current and future social needs of the whole community. Further evidence would have strengthened their case.
	Evidence provided by nominee	The nomination form cites strong local feeling against the proposed change of use of The Richmond Arms, with an initial protest meeting of around 70 people, and over 300 formal objections to the application lodged with the Council. The support of the local MP and local Councillors is also stated.
C4. How strongly does the local community feel about the usage as furthering their social interests?	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	The local MP has met with Save The Richmond Arms, and has subsequently written to them, stating his support for the campaign to retain The Richmond Arms as a pub.
	Enter score out of 25 and rationale	15 - It is evident that the local community is strongly opposed to any attempt to change the current usage of The Richmond Arms. However, an even stronger case would have been made with more evidence of the local community's support for its current

		usage.
Total score:	75	

If STEP C meets a minimum scoring of 55%, go to Step D

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.

For assets such as this where the actual non-ancillary usage is a **current** one (see Step B above), 88(1) (b) of the Localism Act requires the Council to consider whether in the opinion of the local authority **it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further (whether or not in the same way) the social wellbeing or social interests of the local community.**

This will be considered through the following tests:

- If the asset is considered to remain fit for purpose (under D1 below), then this is considered to be sufficient grounds for thinking that it is realistic to think that continuing use of the asset will further the social wellbeing or social interests of the local community identified in Step C above.
- If the building is not considered to remain fit for purpose under D1, then an additional Test (under D2 below) will be applied to determine whether the asset could be made fit for purpose practically and within reasonable resource requirements and within timescales. The timescales to be applied for this to take place for assets with “recent usage” will be “within the next five years”.

D1. Has the building/land-take/space/legal requirement for this usage changed significantly since its initial use so that the asset is not fit for purpose?	
Evidence supplied by nominee:	The nomination states that the asset has been trading as a public house since c. 1872. It is equipped as a public house and still functions as a public house, and is therefore fit for purpose. In addition, it is noted that there are examples of similar and comparable assets of this type, either as public houses or serving community interests in other ways.
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and rationale	NO - the asset is considered to be fit for purpose, as its current usage has not changed since its initial use as a public house.

If No to D1, place on register of Assets of Community Value, and do not go to D2. If Yes to D1, go to D2.

D2. Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales?	
Evidence supplied by nominee:	Not applicable
Feedback from other parties and other information gained in relation to this criteria:	Not applicable
Score (YES/NO) and Rationale:	Not scored as NO answer to D1 above

If yes to D2, place on register of Assets of Community Value. If no to D2, place on list of unsuccessful nominations.

RECOMMENDATION:	THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE
REASON FOR DECISION	<p>(1)</p> <p>a) The Asset lies within the administrative boundaries of Bath & North East Somerset and Lansdown Ward.</p> <p>b) Save the Richmond Arms is entitled under 89(2)b(iii) of the Act to make a community nomination in respect of the Asset</p> <p>c) The nomination from Save The Richmond Arms includes the matters required under regulation 6 of the Regulations</p> <p>(d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations</p> <p>and</p> <p>(2) in the opinion of the authority,</p> <p>(a) The current and recent use of the Asset that is not an ancillary use furthers the social wellbeing and interests of the local community</p> <p>(b) Given that the Asset remains fit for purpose to further the social interest and social wellbeing of the local community, and considering that there are examples of similar and comparable assets serving these uses, it is realistic to think that the current non-ancillary use of the Asset will continue to further (whether or not in the same way as before) the social wellbeing or social interests of the local community.</p>

Decision Taken by

A handwritten signature in black ink that reads "D. Trethewey". The signature is written in a cursive style with a large, looped 'D' and a long, sweeping underline for the name.

David Trethewey
Divisional Director
Policy and Partnerships
Bath & North East Somerset Council

Date

22nd July 2013