



Author/Lead Officer of Report: Martin Hughes,
Community Services Manager, Communities

Tel: 0114 2734206

Report of: Jayne Ludlam

Report to: Jayne Dunn, Cabinet Member for Neighbourhoods
and Community Safety

Date of Decision: 3 April 2018

Subject: The Plough - Asset of Community Value
Nomination – Sandygate Road, Sheffield S10 5SE

Is this a Key Decision? If Yes, reason Key Decision:-

Yes No

- Expenditure and/or savings over £500,000

- Affects 2 or more Wards

Which Cabinet Member Portfolio does this relate to? Neighbourhoods and Community Safety

Which Scrutiny and Policy Development Committee does this relate to? Safer & Stronger Communities

Has an Equality Impact Assessment (EIA) been undertaken?

Yes No

If YES, what EIA reference number has it been given? *(Insert reference number)*

Does the report contain confidential or exempt information?

Yes No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

Purpose of Report:

This report is to provide the Cabinet Member with sufficient information to enable her to make a decision as to whether The Plough, Sandygate Road, Sheffield S10 5SE should be listed as an Asset of Community Value pursuant to Part 5, Chapter 3 of the Localism Act 2011.

Recommendations:

To accept the registration of The Plough as an Asset of Community Value.

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: <i>(Insert name of officer consulted)</i> Tim Hardie
	Legal: <i>(Insert name of officer consulted)</i> David Sellars
	Equalities: <i>(Insert name of officer consulted)</i> Michelle Hawley
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission: Jayne Ludlam
3	Cabinet Member consulted: Jayne Dunn, Cabinet Member for Neighbourhoods and Community Safety
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.
	Lead Officer Name: Martin Hughes
	Job Title: Community Services Manager
Date:	

1. SUMMARY

- 1.1 This report is to provide the cabinet member with sufficient information to enable her to make a decision as to whether The Plough, Sandygate Road, Sheffield S10 5SE should be listed as an Asset of Community Value pursuant to Part 5, Chapter 3 of the Localism Act 2011.

2. MAIN BODY OF REPORT

The Localism Act 2011 gave Local Authorities a statutory duty to receive and determine nominations for land and buildings in the local authority area to be classified as an Asset of Community Value.

An application has been received and assessed against the statutory criteria.

In order for an asset to be listed certain statutory criteria must be fulfilled.

The initial part of the assessment assesses whether the group nominating the asset and the asset itself meet the statutory criteria of eligibility. Once this has been established there needs to be consideration of the community value of the land or buildings.

The essence of the legislation is that land is of community value if in the opinion of the local authority an actual current use or recent past use, that is not an ancillary use, furthers the social well-being or social interests of the local community and its 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 well-being or social interests of the local community.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The legislation and the guidance issued by the Government do not provide a clear definition of what an asset of community value should be. The view taken by the City Council is that a property which is currently closed (as in this case) should have been a hub or focal point for a significant proportion of an identifiable community, in order to justify registration as an asset of community value. That usage should also have been more than ancillary to the principle use of the property.

The Plough was listed as an Asset of Community Value following an

earlier nomination in 2015. It was then removed from the Register of Assets of Community Value following a sale in September 2017 in accordance with the legislation.

This new nomination is based on recent past use because the Plough has been closed since April 2016. Accordingly the panel considered the requirements in Section 88(2) of the Localism Act 2011.

Broadly, the two elements of the test are:

- There is a time in the recent past when an actual use of the building furthered the social wellbeing or interests of the local community.
- It is realistic to think that there is a time in the next five years when there could be use of the building that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

It is clear that there is a local community for the purpose of this nomination.

Both elements of the test require there to be a local community. Sometimes it can be difficult to ascertain whether there is a local community, such as nominations for public houses in city centre locations. In this instance, as a 'local pub' and the information provided by the nominator detailing the previous community use of the property, the panel was able to determine that there was a local community for the purpose of this nomination.

The nomination has been made by the Plough Community Benefit Society, which is eligible to nominate as a voluntary or community body with a local connection in accordance with Section 89(2)(b)(iii) of the Act and Regulation 5(f) of the Asset of Community Value (England) Regulations 2012.

The Owner of the property has objected to the listing but concerned its objections (to the extent they directly related to the statutory test) to whether it was recent past use given the passage of time and whether it is realistic to think that a community use can come forward in the future. The nominator was given an opportunity to comment on the owner's objection and where relevant those representations are referred to below.

Recent Past Use

The Plough was open less than 2 years ago. The Owner's objection

referred to this 21 month closure, submitting that this this meant that the nomination could not satisfy the recent past use requirement.

The panel considered previous tribunal cases¹ which considered the recent past requirement, noting that the wording was deliberately open to interpretation compared to the five year requirement of the second limb of the test. The previous tribunal cases noted that it was reasonable to consider the history of the building in order to determine what could constitute recent past use. In this case a public house has been on this on this site since 1695, with the current building being built in 1929. Given the history and the guidance from the cases, the panel were very comfortable in concluding that the previous community use of the Plough was 'recent past use' satisfying the first limb of the test in Section 88(2).

The nomination has provided details to demonstrate that the Plough acted as a focal point or hub for the community.

The nominator provided several testimonials regarding the use of the pub and the impact of the closure and the panel noted it successfully obtained Asset of Community Value listing in 2015. It is noteworthy that the community holds the property in high regard, which is evident by the creation of the nominating group and their efforts to bid for the property when it was put on the market. Accordingly the panel were also comfortable to conclude that the previous use furthered the social well-being and interests of the local community.

Realistic to think test

The second limb of the Section 88(2) test requires that it is realistic to think that a future community use could come forward within the next 5 years. The panel considered the representations from both parties and then sought guidance on this part of the test from previous tribunal decisions given the current situation surrounding the future of the property.

The Owner's objection stated that future community use is not realistic especially given that that property was previously listed as an Asset of Community Value but no such community use had been secured. In response to this element of the owner's objection the nominator asserted that the new owner had made a 'significantly higher' bid for the property and the pub had been sold based on its development value and not on its value as a public house.

As part of the owner's objection it is asserted that there will be an application to develop the site for residential use. The panel noted the history of the site, with planning permission for a shop on the site being

¹ CR/2014/0007 & CR/20150019

refused previously.

The panel sought guidance from previous tribunal cases² whilst noting that they were not binding. The panel took the following from their consideration of the cases

- The owner's intentions to develop a site may mean that a community use in the next five years is not necessarily the most likely outcome but this cannot be determinative, otherwise it would make the Asset of Community Value scheme almost voluntary. Without planning permission for another use it was still 'realistic to think' that a community use could come forward as one of the possible realistic outcomes co-existing for the future of the property.
- Where the planning position of a nominated property is uncertain, it is reasonable to conclude that both the grant and refusal of planning permission are realistic outcomes.
 - One realistic outcome is the development of the site into residential use.
 - Another realistic outcome is that permission is refused and the owner may pursue alternatives, one of which may involve community use.

The panel noted that the nominating group appeared to be well organised in respect of pursuing a future community use and that a previous application for planning permission was refused on the site.

Considering the whole set of circumstances of the Plough and the guidance from the tribunal cases, the panel determined that the test in Section 88(2)(b) was met and it was realistic to think that, as a range of possible outcomes co-existing for the property, there is a time in the next five years when there could be non-ancillary use of the building that would further (whether or not in the same way as before) the social well-being or social interesting of the local community, notwithstanding the owner's intentions to pursue a residential development.

The Owner's objections also provided details such as other venues in the area that provide community facilities and support for the development of the site from other nearby interested parties. The panel considered that these representations were illustrative of the issues regarding redevelopment of former Assets of Community Value.

The Panel noted that a relisting of the property could lead to a

² CR/2014/0015 & CR/2013/0005

unsatisfactory outcome for all parties, contributing to a potential 'stalemate' situation. However, it is not for the panel to consider what outcome was most desirable for any one party but rather it is to consider whether in its opinion is the Section 88(2) test is met.

Confined to that test, the panel agreed to recommend that the Plough is relisted as an Asset of Community Value.

In conclusion, it appears that this property's recent past use furthered the social wellbeing and interests of the local community and 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 that would further (whether or not in the same way as before) the social well-being or social interesting of the local community therefore satisfying the statutory tests set out in section 88(2) of the Localism Act 2011 such that the property should be listed as an Asset of Community Value.

4.0 RECOMMENDATIONS

- 4.1 To accept the registration of The Plough, Sandygate Road, Sheffield S10 5SE as an Asset of Community Value..