

Business Planning and Transport Policy and Scrutiny Committee

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Report of:	Director of Policy, Performance and Communications
Cabinet Member Portfolio	Cabinet Member for Planning and Public Realm
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1.0 Introduction

This report provides an update on the experience of the Council to date on Assets of Community Value (ACVs) in Westminster since the previous report to the Environment and Customer Services Policy and Scrutiny Committee in September 2016.

2.0 Background

- 2.1 The Localism Act 2011 introduced a Community Right to Bid scheme which aims to ensure that buildings and amenities designated as assets of community value can be kept in community use and remain an integral part of community life. The scheme allows local parish or community councils, or community organisations, to identify and nominate assets within their locality that they believe to be of intrinsic value to the community and the social wellbeing of their locality, to request that they are provided with sufficient notice and opportunity to bid to purchase the asset should it be proposed for sale.

- 2.2 The scheme, which came into force in September 2012, has two main parts: nominating and listing assets and the moratorium. When a nomination is submitted to the Council, the decision on whether to list an ACV is carried out by officers under delegated authority. Section 88(2) of the 2011 Act provides that a building or land may be of community value if, in the opinion of the local authority, its use (which was not an ancillary use) has furthered the social well-being or social interests of the local community in the recent past and it is realistic to think that it will do so in the future.
- 2.3 If a land or building is successfully included in the list of ACVs, it will remain listed for five years unless a listing review leads to the de-listing of an asset prior to the expiry of that term. If the owner of a listed ACV wants to sell the asset, a six month moratorium period will be triggered during which the asset cannot be sold. This period gives community groups some time to develop a proposal and raise the required capital to bid for the property when it comes onto the open market at the end of the moratorium period.
- 2.4 A more detailed report on ACVs in Westminster, which was considered by the Environment and Customer Services Policy and Scrutiny Committee in September 2016, is attached for information (Appendix 3). This provides a comprehensive summary of the legislation and guidance surrounding Assets of Community Value, and a summary of the views and experience of the Council up to then in responding to and assessing nominations.

3.0 The experience of Westminster City Council

- 3.1 Since the introduction of the ACV scheme, Westminster has received 22 valid nominations, of which nine were successful in being designated (40%) and 13 were rejected.
Westminster currently has 9 listed Assets of Community Value:
- four public houses (44%),
 - three open spaces (33%),
 - one community hall,
 - one further education college.
- 3.2 Since the last report in September 2016, three nominated assets have been successfully listed as ACVs:
- St. John's Square Gardens
 - Pimlico Gardens
 - Essendine Wild Gardens
 - Westminster Kingsway College (which had previously been listed but was de-listed following a revision which found the nomination had not met the local connection requirement, and was therefore invalid).

During the same time, seven ACV nominations were received which were ultimately unsuccessful:

- The Timber Yard, Pimlico Road
- Chippenham Hotel
- Berwick Street Market
- My Café, Charlwood Street
- The Squirrel
- The Lord Wargrave
- The Larrik

More details on listed ACVs and unsuccessful ACV nominations can be found in Appendix 1 and Appendix 2 respectively, including reasons for refusal in the case of unsuccessful ACV nominations.

- 3.3 There have been six review applications, with two of these resulting in the de-listing of an ACV. The complete up-to-date list of ACVs and the list of all unsuccessful ACV nominations in Westminster are appended at the end of this document.

4.0 ACV applications after amendment of the General Permitted Development (Amendment) (No 2) Order 2017

- 4.1 Although one of the major motivations for the ACV scheme (and much of the publicity around it) was the aim of protecting local pubs that had an important role for the local community, it is not solely limited to pubs and nominations for land or buildings that can constitute an ACV as defined by section 88 of the 2011 Localism Act can come forward. In fact, over 50% of listed ACVs in Westminster are not public houses.
- 4.2 On 23 May 2017 the Town and Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2017 came into force. This removed permitted development rights for the demolition or change of use of pubs (although allowing pubs to change to pub with additional restaurant use) without a full planning application. This effectively extended the protections previously given to pubs designated as ACVs to all pubs.
- 4.3 The removal of permitted development rights in relation to A4 uses has considerably changed the landscape that had originally shaped the ACV scheme, in that it has provided greater protection against the demolition or change of use of A4 premises to other A-class uses through the planning system. Any such development will now have to be subject to planning permission and each application judged on its own merits.
- 4.4 Since the inception of the ACV scheme, seeking to list a local pub as an ACV was seen by local community groups as a means of opposing the loss of local pubs to other uses allowed by the GPDO, however the scope of

listing a pub as an ACV may have been partly surpassed by the greater level of protection resulting from the removal of permitted development rights for this use class, which has been achieved through a change in the GPDO.

- 4.5 Nonetheless, nominating an asset as an ACV can still be used by local groups to add an additional layer of protection on top of the application screening by the Local Planning Authority, and to allow sufficient time to place a bid in the event the community group intends to acquire the asset.
- 4.6 Since the start of 2017, Westminster has received five valid ACV nominations, of which only one was for a pub (ten valid nominations were received in 2016). It is yet to be seen if the recent change in the GPDO will translate in a reduced number of ACV nominations, and consequent saving in officers' time and legal costs incurred by the Council.

5.0 Compensation

- 5.1 Under the ACV legislation, private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this can include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal. 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.
- 5.2 The Council may be liable to pay compensation if the owner of land that has been listed as an asset of community value incurs any loss or expense that it is likely they would not have incurred had the land not been listed. That can include reasonable legal expenses in successfully appealing to the First-tier Tribunal against the listing. The qualifying statutory criteria for ACV designation are formulated in very general terms so as to accord a great deal of discretion to the local authority but this also means that there is a much greater chance that an owner will challenge a decision that is adverse to their interests.
- 5.3 The decision maker considering an ACV nomination has to be satisfied that there is sufficient evidence to list the property as an ACV. If a property is listed and subsequently de-listed following a review, the owner can seek compensation from the Council. Local authorities are liable for up to £20,000 per year in compensation payments, with the Government meeting any liabilities exceeding this amount. This could occur through a local authority paying out over £20,000 in one financial year either on one large claim or as a combined total on a number of smaller claims.

- 5.4 There has been one compensation claim in relation to the listing of an Asset of Community Value in Westminster. The claimant appealed to the Upper Tier Tribunal. Leave to appeal was granted and the appellants have lodged their grounds of appeal. We are currently waiting for a hearing date. There are concerns that if the appeal is allowed, this could “open the floodgates” and encourage other compensation claims to come forward.

6.0 Other issues to note

6.1 The Carlton Tavern

This public house dating back to the 1920s was unlawfully demolished by developers CTLX in April 2015. The Council issued the developers an enforcement notice ordering them to rebuild the pub “brick by brick” by the end of July 2018. The developer’s appeal against the enforcement action was dismissed, the Planning Inspector confirming the Council’s requirement that the pub must be rebuilt. The Council is liaising with the architects appointed by the owner to coordinate the rebuild. In the event the pub is not rebuilt by the prescribed deadline, we will be taking any legal action open to us.

The Carlton Tavern has also been a listed ACV since February 2016.

7.0 Ongoing work

- 7.1 The Council have been working on amending and clarifying its guidance online to ensure that all information on the ACV scheme is presented in a clear and detailed manner. The intention is to better guide potential nominating organisations through the process and help set their expectations on what the scheme is able to achieve in protecting local community assets. This work has been informed by the experience of administrating officers to date.

APPENDICES:

Appendix 1 – List of Assets of Community Value in Westminster

Appendix 2 – List of unsuccessfully nominated Assets of Community Value in Westminster

Appendix 3 – Previous report to the Environment and Customer Services P&S Committee (14 September 2016)

Appendix 1 – List of Assets of Community Value in Westminster

Successful Nominations			
Description of the land nominated as an asset of community value.	Address of land nominated	Details of the nominating council or body	Date added to list
The Clifton Hotel	96 Clifton Hotel, London, NW8 0JT	St. John's Wood Society	11.02.2015
The Star Public House	38 St. John's Wood Terrace, NW8 6LS	St. John's Wood Society	13.02.2015
The Swan and Edgar Public House	Linhope Street, London, NW1 6LH	Save the Linhope Street Local Group	06.05.2015
Queen's Park Hall/All Stars Boxing Gym	576 Harrow Road, London, W10 4NJ	Queen's Park Community Council	08.01.2016
The Carlton Tavern	The Carlton Vale, London, NW6 5EU	The Carlton Vale Phoenix Association Community Organisation	02.02.2016
St George's Square Gardens	SW1	Pimlico Toy Library	16.05.2016
Pimlico Gardens	SW1	Pimlico Toy Library	16.05.2016
Essendine Wild Garden	24 Essendine Mansions, Essendine Road, London W9	Essendine Residents Association	01.12.2016
Westminster Kingsway College	15 Peter Street, Soho, London W1F 0HS	Berwick Street Community Group	17.01.2017

Appendix 2 – List of unsuccessfully nominated Assets of Community Value in Westminster

Unsuccessful nominations				
Name of property	Property address	Nominating organisation	Reason why unsuccessful	Date
Westminster Fire Station	Greycoat Place, London, SW1 1SB	Friends of Westminster Fire Station	Failure to provide any information as to how the public could have a community use of the building in the future.	16/10/2015
Temple Gardens	Temple Gardens Roof Terrace, London, WC2R 2PH	The Westminster Society	The land occupied by the roof terrace is operational land, which is one of the classes of land exempt from being listed as an ACV.	13/11/2015
Balmoral Castle Public House	Churchill Gardens Estate, London, SW1V 3AJ	The Churchill Gardens Residents Association	The property has been vacant for at least 9 years.	20/11/2015
Brazen Head Public House	69 Lisson Street, London, NW1 5DA	Church Street Ward Community Forum	The nomination contains no explanation as to how an existing or previous use of the land furthers a community use.	29/01/2016
BT Telephone Exchange/Kensal Green TE	740-742 Harrow Road, London W10 4NB	Queen's Park Community Council (QPCC)	The application originally made by the QPCC was invalid and remains so. There is no need to further consider the application for listing under section 88 of the 2011 Act.	05/04/2016
Prince of Wales Public House	351 Harrow Road, London, W9 3RS	Westbourne Neighbourhood Forum	The property was originally listed on 27/11/2015. Following a review the listing was removed from the ACV list because it was decided that there was insufficient evidence to demonstrate that there had been actual use of the property in the recent past or that within the next 5 years the property would further the social wellbeing or social interests of the local community, particularly in relation to the upper floors of the property.	06/06/2016
The Timber Yard	61 and 63 Pimlico Road, London, SW1W 8NF	The Belgravia Society	The nomination did not demonstrate that there is a non-ancillary community use of the site. The use of the site as a timber yard forms the main use of the building. The architectural or heritage merit of the property is not relevant to an asset of community value nomination.	26/10/2016
Chippenham Hotel	207 Shirland Road, London, W9 2EX	Friends of the Chippenham Pub	The nomination contains no explanation as to how an existing or previous use of the land furthers a community use. Failure to provide any information as to how the public could have a community use of the building in the future.	23/12/2016
Berwick Street Market	Berwick Street, Soho, London	Berwick Street Traders Society	Berwick Street Market is exempt from listing on the basis that the use of the highway by the Market is ancillary to the principal use of the highway for passing or re-passing. Furthermore, the land is not of community value on the basis that it is operational land.	19/01/2017

My Café	93 Charlwood Street, London SW1V 4PB	Churchill Gardens Neighbourhood Forum	The nomination has not established that the current or recent use of the Property has furthered the social wellbeing or social interests of the local community	19/01/2017
The Squirrel	46 Chippenham Road, London, W9 2AF	Supporters of the Squirrel Pub	The nomination has not met the test set out in section 88(1) and 88(2) in demonstrating that that the asset is being used or has in the recent past been used to further the social well-being or the social interests of the local community (where such use is not an ancillary use).	08/03/2017
The Lord Wargrave	40-42 Brendon Street, London, W1H 5HE	Harrowby and District Residents Association	The nomination has not met the test set out in section 88(1) and 88(2) in demonstrating that that the asset is being used or has in the recent past been used to further the social well-being or the social interests of the local community (where such use is not an ancillary use).	15/03/2017
The Larrik	32 Crawford Place, London, W1H 5NN	Harrowby and District Residents Association	The nomination has not met the test set out in section 88(1) and 88(2) in demonstrating that that the asset is being used or has in the recent past been used to further the social well-being or the social interests of the local community (where such use is not an ancillary use).	15/03/2017