

BRECKLAND DISTRICT COUNCIL

Report of: Executive Director of Place

To: Portfolio Holder for Communities

Author: Stevie Spencer

Subject: Asset of Community Value Nomination: The Mermaid Inn, Church Street, Elsing, NR20 3EA

Purpose: To consider whether to list The Mermaid Inn, Church Street, Elsing, NR20 3EA as an asset of community value

Recommendation(s):

- (a) That the building be listed for the reasons detailed in paragraph 6; and
- (b) That the building be added to the Council's register of community assets.

1.0 BACKGROUND

- 1.1 Under the Localism Act 2011 the Government introduced a number of rights for communities. One of these rights is called the "Community Right to Bid" and enables parish councils and certain local voluntary and community bodies to nominate land and buildings, which they consider contribute to the social well-being of the community, to be added to the Council's List of Assets of Community Value.
- 1.2 Where the Council agrees to list an asset, the owner of the asset may require the Council to review the listing decision. The Council has agreed that any review will be undertaken by the Monitoring Officer. If the owner still remains dissatisfied they then have a right of appeal to the First Tier Tribunal.
- 1.3 Any listing lasts for 5 years. During that 5 year period the owner is prevented from selling the asset with vacant possession until the owner has gone through a process, set out in law, which prevents a sale (moratorium) for specified period(s). This moratorium is intended to give local community groups an opportunity to bid to purchase the property for the benefit of the local community. Where any sale with vacant possession does not comply with the process the sale may be invalid.
- 1.4 It should be noted that there is no legal obligation for the owner to accept any offer from a community group: the process simply gives community groups the right to bid.
- 1.5 The owner is also entitled to compensation where they have incurred loss or expense which would be likely not to have been incurred if the land had not been listed. This could include, for example, delay in entering into a binding agreement to sell the land wholly caused by the disposal being prohibited; reasonable legal expenses arising from a successful appeal to the First Tier Tribunal etc. The fact that compensation is potentially payable should not affect the listing decision.

2.0 CURRENT NOMINATION

- 2.1 The Council has now received a nomination from Elsing Parish Council to list as a Community Asset The Mermaid Inn, Church Street, Elsing, NR20 3EA . To be valid any nomination must comply with regulation 6 of the Assets of Community Value (England) Regulations 2012. As part of that requirement nominations may only be made by certain organisations. The nominator in this case is a Parish Council which is an approved type of organisation. The nomination otherwise complies with the legal requirements and has been validated.
- 2.2 A plan of the nominated asset which has been provided by the nominator is attached to this report as Appendix A.
- 2.3 The Council has eight weeks from the date of receiving the validated nomination form to decide whether to list the asset. This period expires on 20th January 2021.

3.0 THE LEGAL TESTS

- 3.1 The Council must now consider whether the asset meets the tests set out in section 88 of the Localism Act 2011 as follows:

A building or land is land of community value, and must be added to the list, if in the opinion of the Council

- *an actual current use of the building or land that is not an ancillary use furthers the social wellbeing or social interests of the local community; and*
- *it is realistic to think that there can continue to be non-ancillary use of the building or land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.*

- 3.2 If the above test is not met then the Council must consider the following:

A building or land is land of community value, and must be added to the list, if in the opinion of the Council

- *there is a time in the recent past when an actual use of the building or land that was not an ancillary use furthered the social wellbeing or 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 a non-ancillary use of the building or land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.*

- 3.3 It is important to note that, if the asset meets either of the above tests, the Council has no discretion, and must list the asset.
- 3.4 The first test is known as the “present and future test” and the second test is known as the “past and future test”. An asset cannot pass the “present and future test” if the asset is not currently being used.
- 3.5 From the information detailed below it is considered that the appropriate test is the past and future test because the Mermaid Inn has been closed since the government lockdown in March 2020.

4.0 DETERMINATION OF THE NOMINATION

4.1 The portfolio holder for Communities Councillor Robinson has been given delegated authority to determine whether an asset should be included on the Council's Community Asset Register, in consultation with the Executive Director of Place and the relevant ward councillors, Councillor Bambridge and Councillor Borrett are the relevant ward councillors.

5.0 **COMMENTS SUBMITTED**

5.1 **Comments submitted by the nominator** (which have been categorised for ease of reference)

History of the pub

- The Mermaid, Elsing, has traded as a pub for as long as anyone can remember, closing only when obliged to by the first lockdown.

Use of the pub

- Compared to other community assets (village hall, allotments, church) it has hosted the greatest variety of social gatherings, as can be seen from the following list: receptions for weddings, funerals and christenings, meetings of Young Farmers, Women's Institute, the pool team, the toadwatch team, bingo sessions, fundraising quizzes, annual dinners for the Elsing Shoot, Lyng Riding School, the Cricket Club, and a lively attendance during the Wassailing ceremony, visits by the Morris Dancers, and the collection of allotment rents. A wider range of social interaction cannot be imagined.
- Breckland itself recognised this with its grant for a garden shelter under the Pub is the Hub scheme (this is referred to further below in relation to comments on-line).
- Parish councillors are frequently asked when the pub is going to reopen, although the landlords also do their best to keep everyone informed via social media.
- Villagers are aware that two adjacent pubs – the Fox at Lyng and the Lodge at East Tuddenham – appeared to be thriving before the first lockdown, but also managed to reopen despite the restrictions.
- We understand that the present owners may want to withdraw from the demanding occupation of landlord, but believe that the fresh energy of a new owner or leaseholder can preserve this asset for the village.
- The parish council has advised that it has not yet made enquiries about who they consider will run the pub because (i) the pub is not officially up for sale although the landlords have advised they would be interested in selling; and (ii) in the present business climate it is not reasonable for the landlords or the Council to expect much success in finding a buyer (iii) the registration simply provides time for all concerned to wait for better times, commercially.

5.2 Comments submitted by the nominator have been passed to the owner for comment. This is not a legal requirement but is considered to be good practice so as to ensure that as much information as possible is available prior to a decision being made. The owner's comments have similarly been submitted to the nominator for comment.

5.3 **Comments submitted by the owner** (which have been categorised for ease of reference)

5.4 The owner of the building has commented as follows:

Use of the pub

- The description of our pub sounds like a lovely community asset but this was five or six years ago. All of the local shoots ceased 5 or 6 years ago. The pool team changed venues about 4 years ago, We were no longer included in the local Fete Duck Race from 2019. None of our Christmas functions were from any of the village groups. The other functions that still remain in the pub are a bingo evening, attended by two people from the village and the allotment evening. We do not see the Cricket Club or the Young farmers. The Quizzes

or the Council meetings are at the Village Hall. The Annual Morris Dancing, Clog dancing and flying folk, Last year attendees from the village 2, 3, and 1 respectively. The Elsing women's Institute have had one meal in the last 18 years, We are no longer invited to provide a bar for the Fete from 2019. Weddings, Christenings and wakes average out at one a year. We were privileged to have a small group of 6 or 7 people from the village attending and eating in the pub regularly twice or three times a week which we were grateful for and in all honesty kept us going last winter. There are 2 or 3 lunchtimes and evenings a week with zero clientele, villagers or otherwise. Two Functions a year attended by the village. Christmas Day for 2 hours and a Wassailing evening

- There was also a marked downturn in business re Brexit with our regular clientele worried about losing employment.
- our client demographic has always been directed towards early retired and these are the people that are not venturing out with the prevalence of covid
- There is no village interest in the pub as far as providing reliable income is concerned. There are half a dozen villagers that came in regularly but this is not enough to sustain the substantial outgoings.
- We welcome the interest for the pub to be turned into an ACV but everyone needs to be made aware current reality is totally different many of the functions described have actually long since ceased.
- We rely on the Bed and Breakfast next door and local campsites to provide us with our spring and summer turnover.

Viability of the pub

- We fully endorse anyone wishing to lease the pub but it has to be with the knowledge that there is little interest from the village and it is no longer viable business.
- Our intentions for the future are unclear because it was not our plan to deal with lockdowns
- Our kitchen and bar are 1 and 1.2 metres not safe wide and the extra staff required would just not be viable.
- This situation with Brexit and being in lockdown is devastating.
- The business is no longer a going concern. With pubs in all surrounding villages, Lyng, North Tuddenham, Mattishall, and two licenced premises in Swanton Morley, fighting for turnover, we relied on the licenced bed and breakfast next door for a big percentage of our summer turnover and this has recently changed hands and much of regular summer income stream has changed (it is not clear how)
- The building being in poor repair has also had a significant impact.
- The costs of keeping the business closed means we have a very short window in which to act. If the village wish to run the Mermaid as a community pub they will need to act with expediency as our current funding is limited and we have no income to subsidise the Mermaid for a long period of time. We are not entitled to the recent grants from the local council (the pub was not eligible as it had not reopened - officers are not presently sure what the criteria will be for the current lockdown)
- The pub is now losing money, we have made a huge deficit this year not just due to lack of interest in the village, but also Brexit and Covid. It has also been costly to keep closed since March as many of our supplier contracts have not run out until August September and apparently Covid is not a valid excuse to cancel. We were not entitled to the EU grant we applied for to reduce the energy costs by fitting PV roof panels because we do not have a viable business. It is true that the pubs in the locality have reopened after the lockdown but I we did our figures carefully and we would be losing even more money.
- needs forty to fifty thousand pounds to start from ground zero which is what the business would now require.
- We struggled to raise finance to see us through to the end of the covid situation. We have been turned down because there is no goodwill left in the business to sustain a mortgage situation.

Sale of the pub

- the pub has not been formally marketed for sale as, prior to Covid, it was always the intention to lease the pub
- Lots of interested parties have contacted us about leasing.
- Two of the viable interested parties did not have any financial backup to take on the business and were unwilling to sell their own properties to give them enough money to take on a leased business and both were advised against doing this by their legal and financial advisers.
- the banks do not consider leased licenced premises a good investment.
- Another interested party made an offer to rent the pub but it was less than you would rent a 3 bedroom house for and not a viable alternative and we did not consider it was a serious bid.
- the expressions of interest were not from community organisations.
- We are a small village of approximately 600 inhabitants from several small conurbations, a lot of them with young families, and the only community organisation's in the village are the community village hall which has its own fundraising to do and does not involve the pub, and the Parish Council.

5.5 **Comments submitted by consultees**

5.6 The ward representatives have commented as follows:

Councillor Gordon Bambridge -

"I would support a move by people in Elsing in nominating the Mermaid an Asset of Community Value.

It is so sad that this pub, with its reputation for good food and company, has been forced to close its doors in the current situation, but the community of Elsing is a close community who are well used to pulling together, and if it is possible for them to bid then they should have the opportunity to do so. "

5.7 **Website commentary**

5.8 The website contains a number of references to the pub, including the following:

5.9 The What Pub site, which does not appear to be dated, describes the pub as follows:

- This 17th century pub is located in a small village in the upper Wensum valley opposite the 14th century parish church. The interior consists of one large bar with log fire at one end and behind a semi-partition, a pool table at the other. In addition, there is a separate restaurant area/function room.
- This is a traditional village pub with a homely feel that is locally well supported.
- A good selection of ales are on offer and are all gravity dispensed. Woodfordes Wherry and one from Nethergate Brewery are the regular beers, supplemented by two others usually from local micro breweries.
- The menu includes a 'pie chart', Indian and Thai curries, and several vegetarian options. Local groups and societies meet here regularly, while ramblers from further afield arrive via the 12-mile Wensum Way, which passes the door. B&B accommodation is available close by.

5.10 The owners' Facebook page has a number of updates during Covid as follows:

- 15 March - Irish market due to take place on 21 March cancelled due to current virus situation
- 16 March - advice about how the pub is dealing with Covid and how they want customers to behave
- 17 March - will be open usual hours until told otherwise - business nearly as usual with a few adjustments. Encouraging people to come to the pub. Home delivery of beer available
- July - not opening tomorrow
- 19 July - will not be opening until mid September because pub has a very narrow kitchen and bar area and the owners do not want to put anyone's health at risk and also because they would have lost a percentage of their tables it would not be economic to open until they can service the full number of tables. Also some building work being done upstairs
- November - were hoping to open at the beginning of November but no longer possible. Will update in 3 or 4 weeks
- 28 November - have looked very carefully at tier 2 restrictions. Doing the sums and looking at the timings being so near to Jan and Feb which are quiet months they realised that it would just not be viable to open this close to Christmas.

5.11 Trip Advisor contains some excellent reviews of the pub which, up to November 2019, say that the food is excellent and the pub is busy.

5.12 Pub is the Hub, which according to its website is a not for profit organisation dedicated to improving community services and activities, details some works carried out to the pub in 2015 with financial support from Norfolk County Council. The website states that "A new decking area was made overlooking the beer-garden with a specially designed walkway made of non-slip material, to allow wheelchairs and mobility scooters access to the new covered pergola – tea room and throughout the pub. The [multi functional] tea room is a great success with visitors and walkers on the 'Wensum Way' making the pub a definite stopping off point, plus the addition of the other facilities and their all-inclusive welcoming policy making The Mermaid Inn a true hub of the community".

6.0 APPLYING THE TESTS

6.1 The pub was open prior to Covid, but has not opened since the initial lockdown, even when the law has allowed opening. With this in mind, and taking into account the comments made by the owners detailed at paragraphs 5.4 and 5.10, about current viability preventing the pub from re-opening, it is considered that the correct test is the past and future test.

The past and future test requires that a building or land is land of community value, and must be added to the list, if in the opinion of the Council:

- there is a time in **the recent past** when an actual use of the building or land that was **not an ancillary use furthered the social wellbeing or 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 a non-ancillary use of the building or land that would **further** (whether or not in the same way as before) the **social wellbeing or social interests of the local community**.

6.2 This report now deals with each of the elements of the test (shown in bold type) as follows:

6.2.1 Recent past

(a) There is no statutory definition or Government guidance as to what is meant by “time in the recent past” and it is left to local authorities to decide. Some authorities have treated the recent past as being within the last five years, probably because the same timeframe is referred to in the future condition, but the First Tier Tribunal has indicated that if Parliament had meant the period to be 5 years it would have said so. Tribunal decisions have indicated that “the expression is a relative concept” and what constitutes the recent past will depend on all the circumstances in a particular case. So for example if a public house has been used as a public house for 200 years then “recent past” might be a longer period than a public house which has only been open for 20 years.

(b) Factors to take into account when determining what constitutes the recent past include:

- how long the asset has been used by the community
- the type of asset – for example “the recent past” may be longer when considering a school
- the nature of the use of the asset
- the degree of connection between the asset and the community

(c) It is also worth noting that the past use does not have to be shown to have been ongoing for a substantial part of the recent past, though trivial or very temporary use will be disregarded.

How this test applies to the nomination: As the pub has been in existence since the 16th century, closure in March 2020 would be considered to be within the recent past.

Has this test been met: In the opinion of the report author the test has been met.

6.2.2 Not an ancillary use

(a) There is no statutory definition or Government guidance as to what “ancillary” and “non-ancillary” means, and so it is left to each local authority to decide. First Tier Tribunal decisions have indicated as follows:

- “ancillary” is an ordinary word to be understood in the context of the relevant legislation and in light of the facts of any particular case
- the requirements should not be read as part of the general planning law - material planning information will form an important part of the factual context, but planning concepts such as “planning unit” should not be imported - what constitutes a “planning unit” will not be determinative of issues under the ACV regime
- in a mixed use property, the test does not involve determining which use is the primary use. Rather it is necessary to look at the overall picture to ascertain whether the community use is a significant use in its own right in the context of the particular property and not subsidiary to another major use. All of the circumstances will need to be looked at including the history of the building and the nature of the connection with the local community
- the issue is “essentially fact-specific”. If use A is supportive or otherwise served the purpose of use B then use A is ancillary to use B.

How this test applies to the nomination: All of the evidence suggests that the pub use was the main use, and was not ancillary to any other use.

Has this test been met: In the opinion of the report author the test has been met.

6.2.3 Local community

(a) There is no statutory definition or guidance as to what is meant by “local community” and it will usually be a question of fact as to what the “local community” comprises in each case, for example:

- nominations of some public houses have been refused on the ground that the public house served a passing trade or students rather than permanent residents. However, following *4C Hotels (2) Limited v City of London*, “local community” should be interpreted in accordance with the Oxford English Dictionary as a “body of people viewed collectively”. This can mean a group of people living in the same locality, but that interpretation is not always appropriate. If reference to local community was to be restricted to residents in vicinity of the asset then such a restriction would have been included within the legislation
- it may, for example, be inappropriate to require a link to be established between regular users and local residents when there is only a small full-time residential population
- the approach to be adopted may change dependent on the type of asset nominated and the use that has been made of it eg a public house may have a smaller community than a major music venue

How this test applies to the nomination:

- There are approximately 280 people living in Elsing. The owner suggests that clientele come from several small conurbations comprising approximately 600 inhabitants
- The owner has indicated that local community usage is currently low.
- There are 2 further public houses (the Fox at Lyng (approximately 2 miles) and the Lodge at East Tuddenham (approximately 6.5 miles)) in very close proximity, and it would not be reasonable to expect that this pub could be sustained solely by people living in close proximity.
- Various websites indicate that this pub is used by walkers and by users of neighbouring bed and breakfast accommodation. The owners state that the bed and breakfast has changed hands but it is not clear how this has affected custom.
- Taking these matters into account it is considered that the local community in this instance means a wider community than just the village of Elsing.

Has this test been met: In the opinion of the report author the test has been met.

6.2.4 Social wellbeing and interests (includes level of support by local community)

(a) There is no assistance in the non-statutory guidance notes, but "social interests" is defined in the legislation as "*including (in particular) each of the following: (a) cultural interest (b) recreational interest and (c) sporting interests*". This does not mean that social interests are limited to these three matters, and it is for each local authority is to decide what interests it considers falls within the test.

(b) Many different and varied factors have been taken into account in determining whether this test is met, so there are no hard and fast rules, but the following issues and decisions by the First Tier Tribunal are helpful:

- this is a highly contextual question, depending upon all the circumstances of a particular case
- both phrases - social wellbeing and social interest - should be given their natural meaning in the English language

- there is no requirement for an asset to be unique
- the benefit must be for the community, and not individuals
- the level of support from the community is relevant
- it is not limited to non-profit making uses
- it may not encompass religious observances
- a nomination which is prompted by a desire to retain a building which is considered to enhance the character of the local area is not sufficient by itself to show a community benefit
- a venture which provides somewhere for village residents to meet and socialise, and acts as a place for people to interact with others from the local area to ensure a cohesive community will meet the test
- this does not mean that all public houses qualify for listing. Some, even if currently in use, will not qualify, eg high street pub is much less likely to be an ACV than a village pub; a pub mainly serving food may be treated as more akin to a restaurant
- annual events may be relevant eg annual village fetes

How this test applies to the nomination:

- The nominator has indicated that the pub has hosted a great variety of social gatherings in the village.
- The owner has indicated that the pub is no longer viable, and that local community usage is currently low. They indicate that the description given by the nominator is that of the pub 5-6 years ago
- The owner states that immediate local community use is low, but as it is felt that the community for the purposes of this nomination means the wider community, it appears from the websites that the pub was busy prior to Covid
- As the First Tier Tribunal has held that a venture which provides somewhere for village residents to meet and socialise, and acts as a place where people interact with others from the local area to ensure a cohesive community, will meet the test, and as the pub has been in existence since 16th Century, it is quite difficult to see how this village public house does not meet this test.

Has this test been met: In the opinion of the report author the test has been met.

6.2.5 Further/furthered (the social wellbeing or social interests)

(a) There is no statutory definition or Government guidance as to what is meant by “further” or “furthered”. The words are straightforward and unambiguous and it is not necessary to show that the use of the nominated asset is “better, different, bigger, unusual, rare or unique or that the use needed to be measured or tested against a similar use in some other establishment.”

(b) There is no requirement to consider this issue separately unless comments submitted by any party require an analysis of this issue.

6.2.6 Realistic to think - future test (includes proposed use(s), planning applications and permissions)

(a) There is no statutory definition or Government guidance on what is meant by “realistic” and the issue is fact-sensitive. Issues raised by local authorities and the First Tier Tribunal include the following:

- where there is a current ongoing community use it is likely that this test can be easily met

- it is enough that it is realistic to consider that any current use will continue, and there is no need to prove that it is more likely than not to happen
- there is no period specified by legislation during which the community use must continue into the future
- there is no requirement for the proposed use to be commercially viable or even to have a foreseeable long-term viability - in the Tribunal decisions there is acceptance that financial problems can be overcome if there is a strong sense of local community, especially if it has engaged with the particular property and has available to it credible advisers with experience of community projects
- there is no requirement for a full business plan, but the nomination should show that the prospect is more than "mere speculation"
- the poor financial viability of the existing business is not generally sufficient to resist listing
- the test does not require the likely future use of the relevant building to be determined, but rather to determine whether a proposed future community use is one of a number of realistic options for the asset
- the test is not whether a proposed future use is wholly unrealistic, but whether it is realistic to think that there could be such a relevant non-ancillary use (where applicable: in the next five years). What is "realistic" may admit a number of possibilities, none of which needs to be the most likely outcome". The possibility must not be a "fanciful" or unrealistic prospect
- an asset can qualify when there are a "number of realistic outcomes co-existing"
- the owner's intention is not determinative otherwise the regime would rely on the owner being amenable to listing, but the owner's stated intentions should be taken into account "as part of the whole set of circumstances"
- planning permission can affect the issue if the owner can effectively prevent future community use eg if it is expected that a planning application will be successful and that in the meantime there is no prospect of the site being sold or used for any other purpose
- committed assistance from individuals with relevant experience will assist the nomination
- planning applications, and the likelihood of such applications being granted, taking into account relevant planning policies, will be a factor
- planning permissions granted will be a relevant factor
- failure of a community group to try to acquire property during period of sale will be a factor, but not determinative
- if a property has previously been offered to the local community this will be a relevant factor, but will be fact sensitive to each case
- a planning permission which has been granted but which is not to be implemented immediately may suffice to prevent the asset qualifying.

How this test applies to the nomination:

- The existing community use is very recent, the pub having closed in March 2020 as a result of Covid lockdown.
- The owner has stated that the public house is not viable, but this alone is not sufficient to resist the legal test for listing and no financial details have been submitted by either party
- The websites indicate that the pub was busy until November 2019, at least for meals.
- the owner states that they have had meetings with interested parties with a view to leasing the pub but that the banks will not provide loans for pub leases
- the owner has had some interest from local persons, but has not offered the property for sale to establish whether there is viable local interest

- The nominator has stated that they believe that the fresh energy of a new owner or leaseholder could preserve this asset for the village, but has not indicated any willingness to pursue the project; it merely wishes to secure the listing of the asset with a view to trying to secure its future as a pub
- it is not considered that any information provided by either the nominator or the owner suggests that the future of the pub is unrealistic
- there is no indication that any planning applications have been submitted for change of use
- it is fully acknowledged that Covid may have had a significant effect on the current viability of the pub but this is, hopefully, not a long term problem and it is not unrealistic to consider that things will get back to normal at some point
- on balance, whilst the current situation makes the running of any pub a difficult proposition, it would appear that the pub was reasonably busy up to the end of 2019 and there is no reason to consider it fanciful or unrealistic that the pub use could continue in the future.

Has this test been met: In the opinion of the report author the test has been met.

7.0 CONCLUSION

7.1 Taking into account all of the above issues, it is considered that the property is an asset of community value that meets the past and future test.

7.2 It is therefore recommended that the asset be listed.

7.3 It should be recognised that the Council is legally obliged to list an asset where it considers that the legal tests have been met, even though it is accepted that Covid is likely to have an impact on the economic viability of public houses.

8.0 OPTIONS

8.1 To do nothing. This is not a viable option as the Council is required to determine the nomination in accordance with the Localism Act 2011.

8.2 To refuse the nomination. This is not considered appropriate as it is felt that the legal tests have been met.

9.0 REASONS FOR RECOMMENDATION(S)

9.1 Based on the information provided in the nomination it is considered that The Mermaid Inn, Church Street, Elsing, NR20 3EA meets the legal tests set out in Section 88 of the Localism Act 2011.

10.0 EXPECTED BENEFITS

10.1 Some buildings and amenities are important to local communities and their closure can cause lasting damage to those communities. Under the Localism Act 2011, voluntary and community organisations can nominate an asset to be included on a list of "Assets of Community Value". When a listed asset is sold, local community groups may then have a chance to make a bid for the asset and keep that asset available for the community.

11.0 IMPLICATIONS

11.1 Constitution & Legal

- 11.1.1 The consideration of nominations is an executive function in accordance with Section 9D of the Local Government Act 2000. The Council has 8 weeks to make a judgement about whether the asset meets the legal tests set out in section 88 of the Localism Act.
- 11.1.2 The current application must be considered against the legal tests explained in the report. In the opinion of the report author it is considered that the asset does meet the tests.
- 11.1.3 For the purposes of applying the tests it is considered that the past/future test is the correct test because the pub has been closed, following the initial lockdown, even during periods when it has been lawful to open the pub. There are no Tribunal decisions which relate to the correct test to use during Covid, and so there is no precedent to follow, however it is your officers' opinion that the recommendation would be the same even if the correct test were the present/future test. This is because both the present and past tests require that an actual use of the building or land that is/was not an ancillary use furthered the social wellbeing or interests of the local community. Whichever test is applied, this report concludes that this property is/was being used as a public house, which is/was not an ancillary use, and that use furthered the social wellbeing or interests of the local community.

11.2 Corporate Priorities

- 11.2.1 The application needs to be determined in the light of the legal test and the Council's corporate priorities are therefore not relevant.

11.3 Financial

- 11.3.1 The owner of the asset is entitled to compensation where they have incurred loss or expense which would be likely not to have been incurred if the land had not been listed. This could include, for example, delay in entering into a binding agreement to sell the land wholly caused by the disposal being prohibited, reasonable legal expenses arising from a successful appeal to the First Tier Tribunal etc. The fact that compensation is potentially payable should not affect the decision.

11.4 Stakeholders / Consultation / Timescales

- 11.4.1 The Council has previously agreed that the Portfolio Holder for Communities be given delegated authority to determine whether an asset should be included on the Council's List of Assets of Community Value, in consultation with the Executive Director of Place and the relevant Ward Councillors.
- 11.4.2 Any feedback has been detailed in the report.

12.0 WARDS/COMMUNITIES AFFECTED

- 12.1 Upper Wensum

13.0 ACRONYMS

- 13.1 None

Background papers:- Nomination, and any further comments submitted by the nominator, owner, Executive Director of Place, and ward representatives.

Lead Contact Officer

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A – plan