

## **East Herts Council Report**

### **Audit and Governance Committee**

**Date of meeting:** 14 September 2021

**Report by:** Councillor Geoffrey Williamson, Executive Member for Financial Sustainability

**Report title:** Assets of Community Value in East Herts

**Ward(s) affected:** All

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### **Summary**

- This paper provides an update to Members of the Audit and Governance Committee on the Community Asset Register in East Herts.

### **RECOMMENDATION FOR AUDIT AND GOVERNANCE COMMITTEE:**

- a)** To review the current register of Community Assets

#### **1.0 Proposal(s)**

- 1.1 That Committee Members review the current register of Community Assets

#### **2.0 Background**

##### Legislation and national picture

- 2.1 The Localism Act (2011) and associated regulations which came into force in 2012 create opportunities for local organisations

to bid for buildings and land defined as community assets when the owner wishes to sell them.

- 2.2 The Regulations Section 88(2) defines an asset / land of community value if:
- Its actual or current use (or there is a time in the recent past when its use) furthers the social wellbeing or social interests of the local community, and
  - It is realistic to think that there can continue to be (or it is realistic to think that there is a time in the next 5 years) non-ancillary use of the building or land that would further the social wellbeing or social interests of the local community.
- 2.3 Groups such as parish councils and constituted local voluntary and community organisations are able to nominate local land or buildings to be included in the list of community assets maintained by the relevant local authority. In two tier areas, this is the District/ Borough Council.
- 2.4 If an asset is placed on the register, the owner is obliged to notify the local authority when intending to dispose of it, which will trigger a moratorium period of six weeks. During this time, the community group can apply to be treated as potential bidders through an expression of interest.
- 2.5 The owner will be able to begin the sale process after an interim period of six weeks if no bidder has come forward. If a written intention to bid is received in that time, then a full six month moratorium period will take place which gives community groups time to prepare a bid.
- 2.6 The sale itself takes place under normal market conditions and whilst the community group will be given an opportunity to submit a bid the owner is not bound to accept it.

- 2.7 Certain buildings and land are excluded, including residential property and land, hotels, land owned by the church of England and land used by public utilities. A property will remain on the list for five years. It can be re-nominated after that point.
- 2.8 The Localism Act (2011) was brought in by the Conservative-Liberal Democrat Coalition government to increase community involvement and accountability in delivery of public services (Committee Members may recall the language of 'Big Society'). Legislation pertaining to Assets of Community Value (ACV) was designed to provide an additional safeguard for community facilities such as pubs, village halls, shops and local sports grounds.
- 2.9 After an initial period of publicity and interest, the provisions of the Localism Act have received little attention or support from national government in recent years. However, at local level, communities have been continuing to make use of the tool.
- 2.10 The Ministry of Housing, Communities and Local Government does not collect formal statistics on either the number of listed assets or the number bought by community groups. A report from February 2015 stated that just 11 assets had been bought by community groups in England since the Act was introduced. A Parliamentary Question in January 2017 stated that around 4,000 ACVs had been listed in England.
- 2.11 In 2018, the mySociety project produced a national database of ACVs, called *Keep It In The Community* (now hosted by the Plunkett Foundation). It is unclear whether this is kept up to date however as the web page shows 4039 assets listed which is the same as the figure quoted in 2017:  
<https://www.keepitinthecommunity.org/>

## The process in East Herts

2.12 In East Herts the current list of assets can be found here:

<https://www.eastherts.gov.uk/community-wellbeing/assets-community-value-overview/assets-community-value-register>

and all background information on how to nominate can be found here: <https://www.eastherts.gov.uk/community-wellbeing/assets-community-value-overview>

2.13 There are currently 32 assets registered. At the time of writing a further four are in the process of being registered including the Countryman Inn (Chipping), The Silver fox (Hertford Heath) and Zizis Village Stores (Hertford Heath) and Astonbury Woods (Aston). Nominations are submitted via the website. It is the responsibility of East Herts Council's Policy Officer (currently vacant) to check the submission and liaise with the nominating group over any issues or details. Thereafter the process, as agreed by Leadership Team in May 2019, is as follows:

- Owner and any relevant stakeholders (Eg. tenants or leaseholders) are contacted to let them know a nomination has been made and invite them to submit evidence as part of the decision making process
- Ward member is informed (please note since the Policy Officer post became vacant this may not have been happening consistently)
- A panel is convened composed of a representative from the Community Engagement Team, Planning Service and the Head of Communications, Strategy and Policy (who chairs the panel)
- A decision is made to list the asset based on whether evidence submitted by the nominating group meets the criteria set out in (2.2) above
- The decision is communicated to nominating group and owners/ stakeholders

- The owner is given 8 weeks in which they can ask for a review of the decision
- If no review is requested the asset is listed on the website and the Land Registry are updated accordingly so that the listing shows on any land searches
- If a review is requested a Council employee at manager level, who is not part of the panel, will review and decide whether to uphold the decision or not

2.14 Most ACV nominations are straightforward and left unchallenged. However the process of listing the following assets have proved complex but also provided some important learning:

2.15 **The Cock Inn, Stocking Pelham.** Stocking Pelham Parish Council nominated this pub to be registered in early 2018 and it was added to the register in April of that year. The pub had burnt down in 2008 but in 2013 the site was granted permission for 2 residential dwellings and a replacement pub (with the residential developments being enablers for the rebuild of the pub). The pub was only built to a shell and has never been brought back into use. The present owner has made two further planning applications to convert the building to residential, both of which were turned down and also dismissed by the Planning Inspector upon appeal. Stocking Pelham Parish Council felt that adding the pub to the asset register would help prevent further attempts at development.

2.16 The registration was challenged by the owner, reviewed and subsequently upheld. The owners then appealed to the First Tier Tribunal of the General Regulatory Chamber (the independent body that oversees decisions regarding ACV).

2.17 In the tribunal's decision of February 2019 (ref: , CR/2018/0007) Judge Christopher Hughes noted, *"Given the recent planning history and the emphatic decision of the most recent Planning*

*Inspector who examined the matter three months ago there is no realistic prospect of another lawful use within the next five years... The evidence before me is sufficient to lead me to conclude that future use as a public house is a realistic possibility. I am therefore satisfied that this appeal must fail."* As a consequence the Cock Inn remains on the asset register.

- 2.18 The pub is also listed for sale and despite attempts by the Stocking Pelham Community Action Group to purchase it no agreement with the owner has been reached.
- 2.19 **Rose and Crown Pub, Aston.** Aston Parish Council nominated this pub to be added to the register in June 2018. The owners had submitted a planning application to convert the pub and grounds into residential use (with a micro pub included) and it was felt by the local community that the registration would provide extra protections against this development. The council rejected the planning application and the owners subsequently appealed. A hearing was held on 19<sup>th</sup> June 2019 and the Inspector published their decision on 13<sup>th</sup> August, dismissing the appeal (Ref: APP/J1915/W/18/3204166).
- 2.20 The appeal was dismissed on the basis of policy CFLR8 within the District Plan and its requirement that the loss of a community use should be refused, unless an assessment had been undertaken which clearly showed that the facility is "no longer needed". The Inspector also made the point "*my decision on this main issue is not incumbent on the building being listed as an ACV, albeit the desire to have the building listed as an ACV does demonstrate the community's commitment to retaining this facility*".
- 2.21 Despite it being clear the ACV listing has little impact on the overall planning process the owners of the Rose and Crown requested a review of the Panel's Decision. The decision to list it

was upheld and the owners then appealed to the First Tier Tribunal.

- 2.22 In his ruling (ref: CR.2019.0009) , Tribunal Judge Simon Bird ruled that the requirements set out in the Localism Act were met in listing the Rose and Crown as an ACV and dismissed the appeal. He noted, *"The dismissal of the planning appeals... is likely to require the Appellant to re-consider its plans for their future and on the basis of the community interest and growth in the population of the local catchment identified by Inspector, it is realistic to conclude that this could involve use as a community pub in the next five years."*
- 2.23 The pub has now been granted permission for a residential dwelling in the grounds with a condition that pub remains a pub for 7 years and is actively marketed. The Village Investment Group have attempted to purchase the pub from the owner but thus far no agreement has been reached.
- 2.24 **Box Wood** (an area of working woodland near Stevenage). The Friends of Fairlands Farm nominated this area as an asset of community value in September 2020. The group and local stakeholders were concerned that freehold ownership had transferred to a development company who were selling off parcels of land for development (without planning permission) at auction. It was felt listing the asset would slow down the process by ensuring the owners entered the moratorium period before disposing of the site. This proved to be largely ineffective as ownership details were hard to obtain (especially as parts of the asset started to change ownership) and the developer and their agent's refused to engage with the council. The land still appears to be for sale on the agent's website.

## Conclusions:

- 2.25 It is reasonable to conclude that the use of ACV procedures has fallen short of the original intentions of the Localism Act 2011. To date, not one asset in East Herts has transferred to community ownership following a listing.
- 2.26 It is also unclear what penalties or consequences exist for any owners who refuse to engage with a moratorium and proceed to a sale without informing the Council. The case of Box Wood illustrates this difficulty (often complicated where there are multiple leaseholders and/ or tenants as well as freeholders).
- 2.27 Although East Herts has a relatively streamlined process for listing an asset, there can be unforeseen costs in the process. Most require nothing except for officer time and land registration fees. However where cases are referred to the First Tier Tribunal we require additional legal support and advice which ranges in cost from £1500 – £3000 per case.
- 2.28 There is a general assumption that getting an asset listed as an ACV will help prevent loss of the facility and/ or conversion to residential use. However, as the case of the Cock Inn and Rose and Crown have demonstrated, it is very marginal to planning determinations and serves only as a proxy indicator for community appetite to retain a facility.
- 2.29 That said, should the council ever consider use of Compulsory Purchase Orders (CPO) in relation to Assets of Community Value it may have some bearing, albeit very limited. The Government's "Guidance on Compulsory purchase process and The Crichel Down Rules" (Department for Communities and Local Government CPO Guidance February 2018) sets out the circumstances in which powers can be used and includes the following words under section 17:



- 2.30 *“Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area”*
- 2.31 Implementing a successful CPO requires very stringent tests to demonstrate it is in the public interest and is a means of last resort. The ACV listing will be marginal to these overall considerations but does indicate a level of community commitment to retaining an asset. Thus, listing an asset as an ACV may not itself deliver much on top of the existing planning process but may provide a platform for exploring additional avenues to protect community assets.
- 2.32 East Herts Council is not in a position to purchase community assets where they are in danger of being lost. However, where a community group has the necessary financial resources and appetite to purchase and run a local facility and the owner shows little willingness to bring it back into use, the Council may wish to review options with said group.

### **3.0 Reason(s)**

- 3.1 The Register of Community Assets has to be maintained by East Herts Council and be accessible to members of the public

### **4.0 Options**

- 4.1 There are no options as maintaining the Register is a requirement set out in the Localism Act

### **5.0 Risks**

- 5.1 None

## **6.0 Implications/Consultations**

6.1 The owners of all assets that are nominated are contacted to provide evidence to challenge the listing

### **Community Safety**

No

### **Data Protection**

All data published on the website with regards to ACV only includes details of the asset and not the owners

### **Equalities**

No

### **Environmental Sustainability**

No

### **Financial**

There are limited financial impacts to contesting appeals in the First Tier Tribunal. So far these have proved manageable within the policy budget.

### **Health and Safety**

No

### **Human Resources**

No

### **Human Rights**

No

### **Legal**

No

**Specific Wards**

No

**7.0 Background papers, appendices and other relevant material**

None

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