**Notice under Section 91 of the Localism Act 2011**

**4th February 2013**

**Entry of the Pack Horse Inn, South Stoke into Bath & North East Somerset Council’s List of Assets of Community Value**

1. **Background**

On 10th December 2012, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 (“the Act”) to list the Pack Horse Inn, South Stoke as an Asset of Community Value. The nomination was made by South Stoke Parish Council. 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.

1. **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 South Stoke Parish

b) South Stoke Parish Council is entitled under 89(2)b)(i) of the Act to make a community nomination in respect of the Asset

c) The nomination from South Stoke Parish Council 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

(e) The nomination form sets out the reasons for nominating the asset, explaining why the nominator believes the Asset meets the definition in the Act

and

 (2) in the opinion of the Authority,

(a)There was a time in the recent past, namely to May 2012, when an actual use of the Asset that was not an ancillary use furthered the social wellbeing or interests of the local community

(b) Given that the Asset remains fit for purpose to further the social interest or 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 there is a time in the next five years when there could be non-ancillary use of the Asset that would 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.

1. **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 land

South Stoke Parish Council

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 cirumstances 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 1st April 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](http://www.legislation.gov.uk/ukdsi/2012/9780111526293/contents) provide further detailed information.

1. **Detailed Assessment of the Nomination of the Pack Horse public house, South Stoke as an Asset of community Value**

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| **Assets of Community Value Nomination – Assessment** |
| DATE OF SUBMISSION: | **10/12/12** | DATE DECISION TO BE MADE BY: | **4/2/13** |
| NOMINATED ASSET: | The Pack Horse Inn, Old School Hill, South Stoke, Bath, Somerset, BA2 7DUThe boundary of the asset to include the gardens in which the public house is set, as set out in the boundary map attached as an Appendix |
| NOMINATION SUBMITTED BY: | **South Stoke Parish Council** |

**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**

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| **A1.** Is the nominating organisation an eligible body to nominate? |
| Evidence supplied by nominee: | South Stoke Parish Council Standing Orders |
| Feedback from other parties and other information gained in relation to this criterion: | The owner has communicated through his solicitors that he has “no issue with the nominee for registration”  |
| Score (YES/NO) and any comments: | **YES**- The Council is satisfied that the nominating body is an eligible body to nominate. |

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| **A2.** Does the nominating body have a local connection to the asset nominated? |
| Evidence supplied by nominee: | Map shows that the asset is sited within the boundaries of South Stoke Parish  |
| Feedback from other parties and other information gained in relation to this criterion | The owner has communicated through his solicitors that he has “no issue with the nominee for registration” |
| Score (YES/NO) and any comments: | **YES**- The Council is satisfied that the nominating organisation has a local connection to the nominated asset. |

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| **A3.** Does the nomination include the required information about the asset?* 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
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| Evidence supplied by nominee: | A plan of the nominated land including proposed boundariesA statement that there is no current occupierThe name and address of the owner |
| 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. |

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| **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):* 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.
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| 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: | The owner has confirmed through his solicitor his view that the premises are outside of the categories of assets within Schedule 1 of the regulations. |
| 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 Part 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”**

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| **B1.** Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?* 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.
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| Evidence supplied by nominee: | The nomination form states that the asset was used as a public house until May 2012 and this is confirmed through other enquiries made by the Council. This falls within the working definition of “recent past” adopted by the Council of three years. |
| Feedback from other parties and other information gained in relation to this criterion: | The owner has confirmed through his solicitors that “the recent past usage was actual and non-ancillary, namely that of a public house”. |
| Score (YES/NO) and any comments: | **YES**- the **recent** 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.**

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| **C1.** Who benefits from the use?* Does it meet the social interests of the community as a whole and not simply the users/customers of the specific service?
* Who will lose if the usage ceases?
 | Evidence provided by nominee | The nomination form refers to “significant numbers from the local community” using the pub as “normal customers and as part of a local community group”. Example of use include cultural and sporting events such as the Mummers, Morris Dancers and Boules Competition, weekly Police Surgery, Ladies Walking Club, Annual Produce Show Dinner, Annual Christmas Carol evening, New Year’s Eve Party, meetings of the South Stoke History Group, meeting place for organising committees of Village Fete, village parties, refreshments following meetings and events in adjacent village hall, and provision of meals to elderly members of South Stoke.The asset is also cited as a meeting place for congregations before / after weddings and funerals at South Stoke church and also frequent use by groups of walkers / ramblers as starting / finishing point and refreshments for walks is also cited.Specific evidence is provided that the WI were regular users comprising 6 to 8 visitors each time with a January meal of up to 18 people. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The owner through his solicitor states that the asset, when it operated as a public house, was “of benefit to a very small number of customers, and the only social benefit was for a minority of the villagers who frequented the premises”.The Ward Member for the area highlights the Pack Horse as an “important part of the social fabric of the village, and also important as a social focus for the many visitors to the village for recreational activities such as walking/rambling”. He cites Christmas activities and Morris dancing/mummers plays and notes that the venue for monthly PCSO meetings has been lost as a result of closure. |
| Enter score out of 25 and rationale | **15**- Furthering social interests of the local community is demonstrated but it is not cleara)The degree of use for all sections of the community such as young peopleb) What the exact impact of closure has been on the groups that used it and whether, for example, alternative premises have been found for their activities.  |
| **C2.** Is any aspect of the usage actively discouraged by the Council’s Policy and Budget Framework? | Evidence provided by nominee | The Parish Council have quoted the relevant national policy from the NPPF, the saved Local Plan policy (specifically CF.7 Loss of Public Houses) and also the Conservation Area Appraisal to support their nomination |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | 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. |
| 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 usage seen as having social value in the context of the community on whose behalf the nomination is being made? | Evidence provided by nominee | The nomination cites the South Stoke Conservation Area appraisal which refers to a"Vibrant community aided by centrally located parish church, community hall and The Pack Horse Inn".  |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The owner through his solicitor states “the only social benefit was for a minority of the villagers who frequented the premises.” The Ward Councillor states that that the asset is a “very important part of the social fabric of the village” |
| Enter score out of 25 and rationale | **20**- The nomination has clearly set out the role of the Pack Horse within the context of the village and its community by citing the Conservation Area Appraisal  |
| **C4.** How strongly does the local community feel about the usage as furthering their social interests? | Evidence provided by nominee | A 337 name paper petition and 1200-name e-petition are cited. Letters of support have been received from the Ward Councillor and separately from a member of the public- also emails of support from community members are included in the nomination. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The Ward Member states that he has received many representations on this matter |
| Enter score out of 25 and rationale | **20**-given the population of the village of around 400 it is considered on balance that the quantity of representations received on this matter represents a strong local concern for this usage. However there is currently no evidence provided through a systematic survey on this issue. The nomination itself states in relation to the e-petition that “it is difficult to clear about how far this represents local community opinion” |
| **Total score:** | **80**  |

**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 **recent** rather than a **current** one (see Step B above), 88(2) (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 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**.

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 there is a time in the next five years when there could be use of the asset that would 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”.

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| **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 remains equipped as a Public House at present and so is still fit for purpose. The “Pack Horse Business Plan” provided by the nominee accepts that the building would need significant investment before the premises would be “fit for use”.  |
| Feedback from other parties and other information gained in relation to this criterion: | The owner through his solicitor states that the asset is “no longer fit for purpose” and that the owners have been advised that the premises will require a spend of approximately £200,000 to bring the premises up to the required standard and that there is not sufficient latent demand to make this viable. In relation to wider viability, it is also stated that the requirements for additional food preparation and car parking to create a viable pub to attract a wider catchment is constrained by space considerations.The Council’s licensing team highlights that- although the internal arrangement of the Pack Horse does not lend itself to a modern day catering establishment - the main reasons for the previous prosecution and prohibition of the previous landlord were operational not structural- i.e perpetual poor hygiene practices, inadequate food safety management system and chronic lack of cleaning.  There were some structural and maintenance issues (ventilation and rodent access amongst them) but these are not seen as insurmountable.The owner through his solicitor identifies that “it is unrealistic to think that there will be a community use within the next five years”.  |
| Score (YES/NO) and rationale | **NO**- the asset is considered to be fit for purpose, for the following reasons:Careful consideration has been given to the owner’s view expressed through his solicitor that the asset is not fit for purpose as a public house due to licensing issues, the restrictions of the building and the site, the need for investment and the changing nature of the public house market which necessitates parking and food preparation space for a viable business model. It is considered that in assessing whether the building is currently “fit for purpose” this should be separated from the viability of a specific business model for public house operation or licensing issues. It is clear – and the nominee accepts –that the asset will require investment (e.g. in kitchens) before being “fit for use” as a public house. It is not considered therefore that commissioning a viability report, as proposed by the owner through his solicitor, would assist in determining the issue. It is clear that despite the agreed need for investment, the asset retains its capacity to further the social interests or social wellbeing of the local community, in that the structures and facilities that contributed to delivery of these uses remain - for example, a bar, rooms, cellars, gardens. Given the above and also the wide and evolving range of different business models available for assets of this type it is considered realistic therefore to think that in the next five years the asset could be used to “further the social wellbeing or social interests of the local community.” This is confirmed by examples of rural public houses which have been brought back into local community use. For example, the Hudswell Community Pub provides a venue for local events and celebrations, music and culture.  The land at the rear of the pub has been developed as community allotments; there is a village library in the pub and free internet access.  It is also planned to run a shop from the premises selling local produce and basic supplies. Another example of a community pub is the Fox and Hounds at Ennerdale, Cumbria.Whilst this may or may not ultimately provide a viable model for the Pack Horse, the fact that a similar and comparable asset has been brought back into local community use is additional evidence that it is at least realistic to think that the Pack Horse could continue to further the social wellbeing or social interests of the local community. This may be in a different way than at present, as there may need to be a change in the range of services provided (as with the Hudswell Community Pub) but it is realistic to think that this could happen in the next five years. |

**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.**

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| **D2.** Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales? |
| Evidence supplied by nominee: | The Packhorse Inn: A Business Plan has identified that “the main fabric of the building would appear to be in reasonable condition” but sets out a number of investments required in regard to roofing, rewiring and drainage. It sets out potential models of £100k , £150k and £200k being invested in maintenance and interior improvements and states the view that at the higher level the tenancy remains “viable”  |
| Feedback from other parties and other information gained in relation to this criteria: | In relation to advice from Fleurets, the owner through his solicitor has set out a range of challenges in creating a viable public house business at the Pack Horse, and sets out his belief that it “cannot be made fit for purpose practically and within reasonable resource requirements and timescales” |
| 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.**

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| **RECOMMENDATION:**  | **THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE** |
| **REASON FOR DECISION** | (1)a)The Asset lies within the administrative boundaries of Bath & North East Somerset and South Stoke Parishb) South Stoke Parish Council is entitled under 89(2)b)(i) of the Act to make a community nomination in respect of the Assetc) The nomination from South Stoke Parish Council 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 (e) The nomination form sets out the reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act and (2) in the opinion of the authority, (a)There was a time in the recent past, namely to May 2012, when an actual use of the Asset that was not an ancillary use furthered the social wellbeing or interests of the local community (b) Given that the Asset remains fit for purpose to further the social interest or 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 there is a time in the next five years when there could be non-ancillary use of Asset that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community. |
| **Decision Taken by** | David TretheweyDivisional DirectorPolicy and PartnershipsBath & North East Somerset Council |
| **Date** | 4th February 2013 |