

Notice under Section 91 of the Localism Act 2011

5th November 2019

Entry of Fairfield Arms Public House, 1 Fairfield Park Road Bath BA1 6JN into Bath & North East Somerset Council's List of Assets of Community Value (as an unsuccessful nomination)

1. Background

On **13th September 2019**, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list Fairfield Arms Public House as an Asset of Community Value. The nomination was made by Fairfield Arms Preservation Society. 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 successful and unsuccessful 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.

2. 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 Director for Partnerships and Corporate Services (and, in the event of this Director having a conflict of interest, to a Director nominated by the Corporate Director), drawing on the decision-making guidance as set out in Appendix One (of the report)

2.2 The Director for Partnerships and Corporate Services 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 Director not involved in the initial decision

2.4 The Director for 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 Director for Partnerships and Corporate Services 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 Director for Partnerships and Corporate Services has decided to enter the property into its list of Assets of Community Value as an unsuccessful nomination.

This decision has been taken because:

(1)

- a) The Asset lies within the administrative boundaries of Bath & North East Somerset and
- b) Fairfield Arms Preservation Society is entitled under 89(2)b(iii) of the Act to make a community nomination in respect of the Asset.
- c) The nomination from Fairfield Arms Preservation Society 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) It has been confirmed by Fairfield Arms Preservation Society that it was set up as an unincorporated body as a precaution should it be needed. The nominator has confirmed that the Fairfield Arms Preservation Society has not held any meetings.
- f) No evidence has been provided by Fairfield Arms Preservation Society that should the situation arise that it has any intention to put together a bid for the nominated property.

and

(2) in the opinion of the Local Authority,

- (a) The current and recent use of the asset has not been suggested by the Fairfield Arms Preservation Society that the use has been anything other than a public house.
- (b) No meaningful evidence has been provided that demonstrates how the local community feel about the usage of the Fairfield Arms Public House in the furthering of social interests.
- (c) The nomination is lacking in evidence for the Fairfield Arms Public House which demonstrates usage that is seen as having social value in the context of the community, on whose behalf the nomination is being made.

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.

3. What Happens Next

The Asset will now be placed on the list of Assets of Community Value (under unsuccessful nominations) 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 property – Red Oak Taverns Limited
The nominator - Fairfield Arms Preservation Society

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.

4. Detailed Assessment of the Nomination of Fairfield Arms Public House , as an Asset of Community Value

Assets of Community Value Nomination – Assessment			
DATE OF SUBMISSION:	13/09/2019	DATE DECISION TO BE MADE BY:	05/11/2019
NOMINATED ASSET:	Fairfield Arms Public House 1 Fairfield Park Road Bath BA1 6JN The boundary of the asset is set out in the boundary map attached as an Appendix		
NOMINATION SUBMITTED BY:	Fairfield Arms Preservation Society		

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

A1. Is the nominating organisation an eligible body to nominate?	
Evidence supplied by nominee:	Fairfield Arms Preservation Society is a valid body in accordance with Regulation 5(1)(c) of the Regulations and complies with section 89(2)(b)(iii) of the Act.
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and any comments:	<p>The Council is satisfied that the nominating body is an eligible body to nominate. It has stated that the organisation Fairfield Arms Preservation Society is an Unincorporated Body (that does not distribute any surplus to its members)</p> <p>Twenty-One members of the organisations members have signed to say they are members of the group the form states that by signing they are not obliged to take further action.</p> <p>The nominator has stated that the Fairfield Arms Preservation Society has been set up as a precaution should it be needed. The body has not held any meetings.</p>

A2. Does the nominating body have a local connection to the asset nominated?	
Evidence supplied by nominee:	<p>In accordance with Regulation 4 of the Assets of Community Value (England) Regulations 2012: the nominating body's activities are wholly concerned with the Bath & North East Somerset area (specifically the nominated asset)</p> <p>The nominator states they are a regular user of the Fairfield Arms Public House premises and its facilities.</p> <p>The twenty-one signatories have be verified against the Bath and North East Somerset Council Electoral Register as being residents within the Bath & North East Somerset area .</p> <p>The submitted map shows that the Asset is sited wholly within the boundaries of Bath and North East Somerset.</p>
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 nominating organisation has a local connection to the nominated asset.

A3. Does the nomination include the required information about the asset?	
<ul style="list-style-type: none"> • 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 	
Evidence supplied by nominee:	<p>A plan of the nominated land including proposed boundaries has been provided.</p> <p>The name and address of the current owners of the nominated asset have been provided. Redoak Taverns 8 Wimpole Street Marlybone London W1G 9SP</p>
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.

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):	
<ul style="list-style-type: none"> • 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. 	
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:	None
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 Step 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”

B1. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?

<ul style="list-style-type: none"> 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. 	
Evidence supplied by nominee:	None
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and any comments:	YES- the current 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.

<p>C1. Who benefits from the use?</p> <ul style="list-style-type: none"> 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	It's a social venue used by local residents and visitors to the area.
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	None
	Enter score out of 25 and rationale	<p>5</p> <p>The nomination lacks any supporting evidence that explains how if the pub were to close, how the community as a whole will lose anything other than the benefit of a public house.</p>
<p>C2. Is any aspect of the usage actively discouraged by the Council's Policy and</p>	Evidence provided by nominee	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.

<p>Budget Framework?</p>	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)</p>	<p>None</p>
	<p>Enter score out of 25 and rationale</p>	<p>25 - No active discouragement by the Council's Policy and Budget Framework has been identified.</p>
<p>C3. Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made?</p>	<p>Evidence provided by nominee</p>	<p>It is a venue where both locals and visitors to the area socialise and enjoy entertainments such as live music, quiz nights, the local book club and celebrate events such as birthdays and wedding anniversaries. There is a weekly cheese raffle.</p>
	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)</p>	<p>No evidence has been submitted from the community adding to support for the social value of the public house.</p> <p>The public house opening hours are currently listed as Sunday 12-11pm, Monday-Thursday 3-11pm, Friday 3-12pm and Saturday 12noon-12midnight.</p> <p>The public house does not have a website.</p> <p>The Facebook page shows limited activity and does not offer any supporting information on social value.</p> <p>There is no clear information that shows whether the public house is offering food.</p>
	<p>Enter score out of 25 and rationale</p>	<p>5</p> <p>The information that is provided from the nominee on social value are general activities that are associated with nothing more than the day to day business of a public house. The nomination is not backed up with any supporting evidence.</p> <p>The use of the public house for community occasions such as weddings and birthday parties indicates the pub is trying to make an an extended offering make broader community events possible. This usage is offering nothing more than</p>

		<p>what a public house would normally offer.</p> <p>Visitors from further afield does not fit in with the criteria for demonstrating benefits to local people from the area.</p>
<p>C4. How strongly does the local community feel about the usage as furthering their social interests?</p>	<p>Evidence provided by nominee</p>	<p>Since the pub was taken over by Redoak Taverns, the tenancy has changed hands several times during which some tenants have been better than others.</p> <p>The current tenant has invested some time and energy in boosting the pub's appeal and has been successful in so doing.</p> <p>One of the most eye-catching features of the building is that on entry the sign on the door says "This Pub Contains Nuts" which it does quite literally. The floor is festooned with peanut shells.</p>
	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)</p>	<p>None</p>
	<p>Enter score out of 25 and rationale</p>	<p>0</p> <p>The "pub contains nuts" detail is a feature of the pub and not a matter that is furthering social interest.</p> <p>The nominating body has explained that the public house has changed tenants on a number of occasions and a new landlord is expected to take over the public house on 5th November with an increased rent</p>
<p>Total score:</p>	<p>35</p>	

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 **current** one (see Step B above), 88(1) (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 can continue to be non-ancillary use of the building or other land that will further (whether or not in the same way) 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 continuing use of the asset will 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”.

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:	No
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and rationale	NO - the asset is being run as a public house and is considered to be fit for purpose

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.

D2. Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales?	
Evidence supplied by nominee:	Not applicable
Feedback from other parties and other information gained in relation to this criteria:	Not applicable
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.

RECOMMENDATION:	THAT THIS ASSET WILL NOT BE LISTED AS AN ASSETS OF COMMUNITY VALUE – THE ASSET PLACED ON THE UNSUCCESSFUL LIST OF NOMINATIONS
------------------------	--

<p>REASONS FOR DECISION</p>	<p>(1)</p> <ul style="list-style-type: none"> a) The Asset lies within the administrative boundaries of Bath & North East Somerset and b) Fairfield Arms Preservation Society is entitled under 89(2)b(iii) of the Act to make a community nomination in respect of the Asset. c) The nomination from Fairfield Arms Preservation Society 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) It has been confirmed by Fairfield Arms Preservation Society that it was set up as an unincorporated body as a precaution should it be needed. The nominator has confirmed that the Fairfield Arms Preservation Society has not held any meetings. f) No evidence has been provided by Fairfield Arms Preservation Society that should the situation arise that it has any intention to put together a bid for the nominated property. <p>and</p> <p>(2) in the opinion of the local authority,</p> <ul style="list-style-type: none"> (d) The current and recent use of the asset has not been suggested by the Fairfield Arms Preservation Society that the use has been anything other than a public house. (e) No meaningful evidence has been provided that demonstrates how the local community feel about the usage of the Fairfield Arms Public House in the furthering of social interests. (f) The nomination is lacking in evidence for the Fairfield Arms Public House which demonstrates usage that is seen as having social value in the context of the community, on whose behalf the nomination is being made.
<p>Decision Taken by</p>	<p style="text-align: center;"></p> <p>David Trethewey</p>

	Director Partnerships and Corporate Services Bath & North East Somerset Council
Date	5 th November 2019