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

**14th October 2014**

**Entry of The Yew Tree Inn, Pilgrims Way, Chew Stoke BS40 8TX into Bath & North East Somerset Council’s List of Assets of Community Value**

1. **Background**

On 19August 2014, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 (“the Act”) to list The Yew Tree Inn, Chew Stoke, as an Asset of Community Value. The nomination was made by the Yew Tree Asset of Community Value Group. 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 Director of Strategy and Performance (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 Director of Strategy and Performance 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 Director of Strategy and Performance 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 of Strategy and Performance 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 Chew Valley North Ward

b) The unincorporated body the Yew Tree Asset of Community Value Group is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset

c) The nomination from the Yew Tree Asset of Community Value Group 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

and

(2) in the opinion of the Authority,

(a)The recent use of the Asset that is not an ancillary use furthers the social wellbeing and interests of the local community;

(b) Given that the Asset remains fit for purpose to further the social interest and social wellbeing of the local community, and considering also that there are examples of similar and comparable assets serving these interests, it is realistic to think that the current non-ancillary use of the Asset will continue to 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 property

Yew Tree Asset of Community Value Group

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 circumstances 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 the date 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 9 December 2014, 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 Yew Tree Inn, Chew Stoke, as an Asset of Community Value**

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| **Assets of Community Value Nomination – Assessment** | | | |
| DATE OF SUBMISSION: | **19/08/2014** | DATE DECISION TO BE MADE BY: | **14/10/2014** |
| NOMINATED ASSET: | The Yew Tree Inn, Pilgrims Way, Chew Stoke BS40 8TX  The boundary of the asset is set out in the boundary map attached as an Appendix | | |
| NOMINATION SUBMITTED BY: | **Yew Tree Asset of Community Value Group** | | |

**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: | The constitution, draft minutes of inaugural meeting and membership list of the Yew Tree Asset of Community Value Group were supplied. An officer of the Council has accessed the current electoral register for Bath & North East Somerset, and has confirmed that 27 of the 28 members of Yew Tree Asset of Community Value Group are listed on the register (the minimum number required is 21): the 28th member was listed only as a first name, and was therefore not identifiable. The Yew Tree Asset of Community Value Group is therefore a valid unincorporated 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: | **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: | In accordance with Regulation 4 of the Assets of Community Value (England) Regulations 2012:   1. the nominating body’s activities are wholly concerned with the Bath & North East Somerset area 2. the nominating body is an unincorporated body which wholly applies any surplus made for the benefit of the Bath & North East Somerset area 3. has at least 21 local members   The submitted map shows that the Asset is sited wholly within the boundaries of Bath and North East Somerset. |
| 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. |

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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 | |
| Evidence supplied by nominee: | A plan of the nominated land including proposed boundaries.  The name of the current owner of the nominated asset, who is listed as one of the current occupants of the property. |
| 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. | |
| 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”**

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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. | |
| Evidence supplied by nominee: | The nomination form states that the asset was used as a public house from at least 1861 until March 2013, when it was sold to the present owner. |
| Feedback from other parties and other information gained in relation to this criterion: | Mr John Keane, the expert advising the owner of the Yew Tree Inn, stated that ‘The Yew Tree traded as a pub until about two years ago.’ |
| 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 states that:   * until March 2013, when it closed, The Yew Tree was used by a cross-section of the community: young people used it at weekends as an alternative to driving into Bristol, and older people used it during the week. * The Yew Tree had teams competing in skittles, darts and shove ha’penny, all of which increased usage by the community. * Prior to ceasing to trade following the sale in March 2013, the then manager was experimenting with activities such as quiz nights to attract more custom. * The Yew Tree was used as an informal meeting place by sports teams, including Blagdon Football Club, Chew magna FC, Chew Stoke Cricket Club, Chew Valley Ladies rugby Club and other organisations after using the nearby Chew Valley leisure centre. * It was also used as a meeting place for members of the church congregation attending weddings and funerals. * The Yew Tree has a good sized beer garden, including a children’s play area, and a large car park. * The closure of the pub has meant that many of the activities described above are no longer possible, and that former part-time employees of the pub have to travel elsewhere (outside the village) to work. * Additionally there is a corollary loss of income by local suppliers (estimated by the nominating body to be at least £100,000 per annum). |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | None |
| Enter score out of 25 and rationale | **15** - Furthering the social interests of the local community is described in the nomination in some detail, showing impacts of the period following recent closure.  However, the presence of another public house in the village potentially reduces the social impact of The Yew Tree’s closure. |
| **C2.** Is any aspect of the usage actively discouraged by the Council’s Policy and Budget Framework? | 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. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | None |
| 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 states that The Yew Tree Inn has a very different character from the other pub in the village, which is also used as an Indian restaurant. It was used by all sections of the community:   * By families with regular family events, and providing a large range of play equipment for children in its child friendly garden; * By young adults at its Friday night disco – there are no other activities especially for young adults in Chew Valley; * By younger and older residents as members of various sports clubs described above; * By all residents, for whom The Yew Tree was a meeting place for them, as well as those from further afield. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | In a written submission dated 21 August 2014, the owner’s agent states that ‘we object to the nomination on behalf of the owner; the reasons set out clearly in our planning submission.’  In a further email dated 13 October 2014, the owner’s agent states that ‘there is another public house in the village which is a perfectly good existing local community facility, which should be fully supported.’ |
| Enter score out of 25 and rationale | **10** - The nomination emphasises the use of The Yew Tree Inn by all sections of the local community.  A higher score may have resulted from further specific evidence of social value in Chew Stoke arising from of the asset.  In addition, the availability of another public house means that the facilities of a public house are still available to residents and visitors to the village. |
| **C4.** How strongly does the local community feel about the usage as furthering their social interests? | Evidence provided by nominee | A survey was undertaken of Chew Stoke residents over the age of 18 to gauge the level of support for nomination.  Of the 383 households in the village, responses were received from 271 residents. Of these, 261 expressed a preference for the Yew Tree inn to remain as a pub, while 10 expressed a preference for it to become a residential dwelling.  A selection of favourable comments from residents is included in the nomination.  A Master Brewer resident in the village has suggested establishing a micro-brewery in the Yew Tree Inn, which would be unique in the Chew Valley. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The Councillor for the ward (Chew Valley North) stated in her objection to the planning application by the present owner for change of use from public house to dwellinghouse that the village is capable of sustaining a second well run public house, and that there are several successful examples within Chew Valley of unprofitable and physically run down public houses being turned around into successful businesses.  In addition, on 16 September 2014 the Clerk of Chew Stoke Parish Council stated in a written submission that ‘Chew Stoke Parish Council support the Yew Tree Inn Asset of Community Value application.’ |
| Enter score out of 25 and rationale | **20** – The survey provides strong evidence that a large number of residents values the Yew Tree Inn both as a pub and as a centre of community activity in the village. |
| **Total score:** | **70** | |

**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 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 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 Yew Tree has operated as a pub in excess of 150 years, and has traded continuously as such until March 2013.  The nominee accepts that refurbishment of the building will be necessary, whatever the future use of the building. |
| Feedback from other parties and other information gained in relation to this criterion: | In a written submission from the owner’s agent made on 13 October 2014. Mr Keane states that the owner’s position would be that ‘due to the high level of essential expenditure that would be required to re-open The Yew Tree such a prospect is not realistic because the pub could not be made fit for purpose practically and within reasonable resource requirements and timescales as required by the criteria of section D2 below. That the pub is currently inoperable due to its dangerous state of repair has been accepted by the Valuation Office and accordingly its Rateable Value has been reduced to £1.00.’ |
| Score (YES/NO) and rationale | **No**. The nomination states that the asset has been trading as a public house since at least 1861. It functioned as a public house until March 2013, when it closed, following its sale to a private owner.  Careful consideration has been given to comments from John Keane, Fellow of The Association of Valuers of Licensed Property, contained in the written submission from the owner’s agent made on 13 October 2014.  We have also carefully reviewed the relevant sections contained in the Viability Assessment presented as part of the documentation submitted as part of the planning application. It sets out the nature of the remedial works required to bring the pub back into use, for example, a local building contractor identified that ‘in his opinion the pub was neither habitable nor a safe place in which to conduct a business.’  The nominating body accepts that the building has suffered from long term neglect, and that it will require investment before being ‘fit for purpose’ as a public house again. The Viability Assessment itself identifies that the repair issue becomes ‘more of a question of finance than of the need to carry out the work.’  However, 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 or financial model for public house operation.  It is clear from the evidence cited above that the asset retains its capacity to further the social interest or social wellbeing of the local community, in that the structures and facilities that contribute to the delivery of these uses, and characterise a public house, remain: for example, two separate bars, a draught beer cellar, a catering kitchen and a large beer garden. It may well be that there are a range of financial constraints in achieving this, but this is not considered the determining factor in whether the asset is an Asset of Community Value.  Given the above, and also the wide and evolving range of different business models available for assets of this type, it is considered realistic to think that the asset could be used to ‘further the social wellbeing or social interests of the local community.’ This may be in a different way than its most recent usage, 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: | Not applicable |
| Feedback from other parties and other information gained in relation to this criteria: | Not applicable |
| Score (YES/NO) and Rationale: | Not applicable |

**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 Chew Valley North Ward.  b) The Yew Tree Asset of Community Value group is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset  c) The nomination from the Yew Tree Asset of Community Value Group 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  and  (2) in the opinion of the authority,  (a) The recent use of the Asset that is not an ancillary use furthers the social wellbeing and interests of the local community  (b) Given that the Asset remains fit for purpose to further the social interest and 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 the current non-ancillary use of the Asset will continue to further (whether or not in the same way as before) the social wellbeing or social interests of the local community. |
| **Decision Taken by** | David Trethewey  Divisional Director  Strategy and Performance  Bath & North East Somerset Council |
| **Date** | 26th September 2014 |