

COTSWOLD DISTRICT COUNCIL  
NOTIFICATION OF DECISIONS  
DEPUTY HEAD OF PAID SERVICE  
20 July 2020

**DETERMINATION OF WHETHER THE HALFWAY HOUSE, KINETON, SHOULD BE ACCEPTED ONTO THE COTSWOLD DISTRICT LIST OF ASSETS OF COMMUNITY VALUE.**

Summary:

That the Deputy Head of Paid Service considers the details of the report and determines whether the property satisfies the Localism Act section 88 definition, and whether it should therefore be added to be listed as an Asset of Community Value.

Consultation:

The Cabinet Member for Health, Wellbeing and Public Safety

Considerations/Documents taken into Account:

- (i) The statutory criteria;
- (ii) The application and supporting information submitted by the nominator
- (iii) Any consultation responses
- (iv) Any legal advice

Decision:

**RESOLVED that the nominated land satisfies the relevant statutory test and is, therefore, land of community value within the meaning of the legislation. As a result, the land will be added to our list of Assets of Community Value.**

**Reasons for Decision:**

The property was nominated by the Kineton Community, an unincorporated body. This was supported by a list of more than 21 local people registered to vote locally, so the nomination was properly made. The extent of the nomination is clear.

The land does not fit one of the categories exempt from listing.

The nominator provided a clear statement that the property is currently used for a range of activities that provide social value. It is therefore determined that the site in its entirety provides current social value. The legislation and subsequent regulations do not require that it be realistic that the community use will endure, merely that it can continue beyond the decision date, thus the second part of section 88(1) is satisfied.

ENDS

Council name	<b>COTSWOLD DISTRICT COUNCIL</b>
Name and date of Committee	<b>DECISION DELEGATED TO DEPUTY HEAD OF PAID SERVICE 20 July 2020</b>
Report Number	n/a
Subject	<b>DETERMINATION OF THE ASSET OF COMMUNITY VALUE NOMINATION OF THE HALFWAY HOUSE, KINETON</b>
Wards affected	Bourton Vale
Accountable member	
Accountable officer	
Summary/Purpose	To determine whether the Halfway House, Kineton should be accepted on the Cotswold District List of Assets of Community Value
Annexes	<b>Annex 'A'</b> - Guidance Notes <b>Annex 'B'</b> – Halfway House, Kineton 1) Nomination Form 2i) Land registry plan, showing land is not registered 2ii) Annotated Land Registry Plan, showing the land subject to this determination 3) Decision criteria checklist
Recommendation/s	<i>a) That the decision-maker considers the details on the report and support evidence and determines whether the property meets the Section 88 definition of an Asset of Community Value</i>
Corporate priorities	Help residents, businesses and communities access the support they need to achieve their ambitions.
Key Decision	NO
Exempt	NO
Consultees/ Consultation	The Asset of Community Value process, set out in the Localism Act and subsequent regulation, requires that the land owner and any other party with a legal interest in the land, or a right to occupy are consulted.

## **1. BACKGROUND**

- 1.1.** An unincorporated group of local residents has nominated the Halfway House, Kineton as an Asset of Community Value. Cotswold District Council is charged with determining this nomination, in line with the provisions laid out in the Localism Act 2011 and subsequent Asset of Community Value Regulations 2012.

## **2. MAIN POINTS**

- 2.1.** Under 89(2a)(i) of the Localism Act 2011, an unincorporated body is able to submit a nomination for a property to be considered as an asset of community value, where the nomination is accompanied by a membership list of at least 21 local people who are registered to vote locally. In this instance, the submitted list has been verified against our electoral role. The nomination, included at Annex B, is properly made. The nominated property is clearly identified from its name, which is both the address and the trading name of the public house business. The property is not registered land (Annex B 2i), so that confirmation on the exact extent of the land nominated has been sought from and provided by the nominating body. The agreed plan of this site, attached at Annex B 2ii, has been shared with both the owner and the current occupier/licensee.
- 2.2.** The freehold owner and parties with a right to occupy the property were notified of the nomination, and given an opportunity make representations to inform this decision. No representation was received.
- 2.3.** The land nominated is a public house – currently trading in so far as it is able under the Covid 19 restriction, along with two ancillary buildings/extensions, a beer garden and car park. The public house provides a restaurant service as well as bar, and has on site guest accommodation. It should be noted that hotels are exempt from listing. Consequently, there is a body of legal cases looking at situations such as this, where a public house has rooms. Judicial opinion is that to exclude public houses from listing on the basis of some guest accommodation would clearly run counter to the intention of Parliament, and that to qualify the main purpose of the building would need to be as a hotel.
- 2.4.** The community nomination provides good evidence of community use a public house (see section x below), which serves as the principal community space within Kineton, and as the closest public house for Temple Guiting. This use effectively precludes consideration of the nominated property as a ‘hotel’ as explored in previous cases.
- 2.5.** The property is nominated on that basis that the current use provides community value, so needs to be considered against the provisions laid out in 88(1) of the Localism Act:
- [...] 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.

**2.6.** The description amply demonstrates that the property serves a purpose beyond simply a restaurant and drinking establishment, as it provides a venue for activity with clear community benefit.

‘The pub enables relationships to develop in what is an isolated area of the country and which might not otherwise exist. There is no other community social space in the village and without the pub community spirit would disappear and important supportive relationships would not have formed or been maintained. This has been particularly important during the current lockdown.

Residents of Kineton and Temple Guiting use the pub regularly for social gatherings both pre-arranged and ad hoc. There is a thriving musicians’ night where anyone can come along and sing or play an instrument. The village has also assigned the third Friday of the month for a scheduled village meetup at the pub. Regular sporting events are shown at the pub as well as theme nights. In 2018 it was the centre of the ‘There but not there’ campaign in memory of the fallen of the first world war, raising money for those currently in several forces’ charities.

The pub restaurant also regularly hosts special menu nights, quiz nights, sports nights and other events such as silent disco. Birthdays and local anniversaries are celebrated there. A number of local residents supplement their incomes by letting spare accommodation and the Half Way provides a useful additional facility for those owners.

During the Coronavirus pandemic lockdown, the pub has also been providing food for vulnerable people in the wider community as well as ‘drive-in’ ready prepared meals for local people.

The pub also provides a ‘first job’ for a number of young people in the village. Other members of the community have also helped out at the pub when it is busy.’

**2.6.1.** These uses relate directly to the principal use of the property, and therefore should not be considered ancillary. The Localism Act 2011 Section 88(6) defines “social interests” to include (in particular) each of the following –

- (a) cultural interests;
- (b) recreational interests;
- (c) sporting interests.

The uses listed above clearly serve these interests.

**2.6.2.** In terms of the continuation of a use that furthers community interest, as the above uses are current and ongoing, it is realistic to think that they will continue – the legislation does not specify these uses should endure for a given period, simply that they will continue following the listing.

**2.6.3.** As both provisions of 88(1) are satisfied, the nominated property should be determined as land of community value.

### **3. FINANCIAL IMPLICATIONS**

**3.1.1.** Any property listed could be subject to a claim for compensation from the owner of the property. This will be a separate decision exercised under delegated authority in line with the Cabinet’s decision.

- 3.1.2. Any decision taken with regard to compensation may also be subject to request for review.

#### **4. LEGAL IMPLICATIONS**

- 4.1.1. The owner of any property listed as an Asset of Community Value has the right to seek a review of the listing decision and this review will be referred to an officer of appropriate seniority for determination.
- 4.2. Following internal review, the owner may also seek to challenge the authority through referral to the First Tier Tribunal.

#### **5. RISK ASSESSMENT**

- 5.1. The determination of Asset of Community Value nominations is a statutory obligation upon the Council. As outlined above, it can have financial implications and can lead to legal challenge. While this risk cannot be wholly avoided, it can be mitigated to some degree through diligent process and reasoned decision making. The shared service structure across Publica allows officers to learn from a broader range of ACV nominations than each individual council experiences.

#### **6. EQUALITIES IMPACT**

- 6.1. The process laid out in the Localism Act and subsequent regulation does not mandate this.

#### **7. CLIMATE CHANGE IMPLICATIONS**

- 7.1. None specific to this process or nomination.

#### **8. ALTERNATIVE OPTIONS**

- 8.1. None. This determination is a statutory duty of the authority

#### **9. BACKGROUND PAPERS**

- 9.1. None

## Asset of Community Value Nomination –

<b>Nomination Eligibility</b>	<b>Assessment of Nomination</b>
<p>The voluntary or community body making the nomination is eligible to do so under Section 89 of the Localism Act 2011; and sections 4 and 5 of The Assets of Community Value (England) Regulations 2012 Statutory Instrument No. 2421:</p> <ul style="list-style-type: none"> <li>• Parish Council</li> <li>• Neighbouring Parish Council</li> <li>• Unincorporated group</li> <li>• Neighbourhood forum</li> <li>• Community interest group with a local connection (charity; community interest company; company limited by guarantee that is non profit distributing; an industrial and provident society that is non-profit distributing)</li> </ul> <p>A body other than a parish council has a local connection with land in a local authority’s area if:</p> <p>Regulation 4.(1)            (a) the body’s activities are wholly or partly concerned –            (i) with the local authority’s area, or            (ii) with a neighbouring authority’s area.</p>	<p>The nomination has been prepared and submitted by an unincorporated group. It is accompanied by a list of signatures, meeting the requisite number, all of which have been verified against the electoral role. In this respect the nomination is properly made</p>
<p><b>The nominated land/ building is clearly defined</b></p>	<p>The asset nominated is a public house, known as the Halfway House. The principal property and its location are readily determined. The property is not registered with the land registry, but the land registry map enabled an initial enquiry to be made to nominating group to advise specifically on what areas should be included. The property under consideration is the main building and adjacent subordinate structures (from mapping/satellite pictures is cannot clearly be ascertained whether these are extensions/annexes), the beer garden and car park. This is effectively the land being used for trading purposes. The same map has been shared with both the owner and occupier (licensee)</p>
<p><b>Categories of Assets Excluded from Listing</b></p>	
<p>There are some categories of assets that are excluded from listing (defined in The Assets of Community Value (England) Regulations 2012 Statutory Instrument No. 2421, Schedule I, Regulation 3. A summary of these:</p>	<p>There is nothing in the nomination form to suggest that all or any part of the nominated site falls into an excluded category.</p>

<ul style="list-style-type: none"> <li>• Residential property (including gardens, outbuildings and other associated land). There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker’s flat.</li> <li>• Land licensed for use as a residential caravan site (and some types of caravan site which do not need a licence.</li> <li>• Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990, in paragraph 4 of Schedule I to the Regulations. (Note: this is organisations such Civil Aviation Authority; Transport Provider; Utilities etc</li> </ul>	
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<p><b>Establishing the Main (Non-Ancillary) Use</b></p> <p><b>Localism Act Section 88(1) (a) and (b)</b></p> <p><b>Current use and future use tests</b></p>	
<p>The nominating organisation has provided evidence as to the main (non-ancillary) current/ recent use of the nominated asset.</p> <p>Definition of an Asset of Community Value as set out in Section 88 of the Localism Act 2011:</p> <p>In the opinion of the authority -</p> <ul style="list-style-type: none"> <li>• (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;</li> </ul> <p>Note: second condition (b) further on in assessment summary.....</p> <p>Note: the Localism Act 2011 Section 88(6) defines “social interests” to include (in particular) each of the following –</p> <ul style="list-style-type: none"> <li>(a) cultural interests;</li> <li>(b) recreational interests;</li> <li>(c) sporting interests.</li> </ul>	<p>The nominated property is has a long-standing use as a public house, with some guest accommodation over. It was actively trading up until the start of the Covid-19 trading restrictions, and the website indicates that it has been providing takeaway Sunday Roasts during the lockdown period. Its current use therefore is as a public house.</p> <p>While it serves food and provides guest accommodation, the nomination provides evidence that it is used and valued by local people – noting that there is no other communal social space in this small village, and that there is no pub in the neighbouring village of Temple Guiting.</p> <p>‘Residents of Kinton and Temple Guiting use the pub regularly for social gatherings both pre-arranged and ad hoc. There is a thriving musicians’ night where anyone can come along and sing or play an instrument. The village has also assigned the third Friday of the month for a scheduled village meetup at the pub. Regular sporting events are shown at the pub as well as theme nights. In 2018 it was the centre of the ‘There but not there’ campaign in memory of the fallen of the first world war, raising</p>

	<p>money for those currently in several forces' charities.</p> <p>The pub restaurant also regularly hosts special menu nights, quiz nights, sports nights and other events such as silent disco. Birthdays and local anniversaries are celebrated there. A number of local residents supplement their incomes by letting spare accommodation and the Half Way provides a useful additional facility for those owners.</p> <p>During the Coronavirus pandemic lockdown, the pub has also been providing food for vulnerable people in the wider community as well as 'drive-in' ready prepared meals for local people.</p> <p>The pub also provides a 'first job' for a number of young people in the village. Other members of the community have also helped out at the pub when it is busy.'</p>
<p>In the opinion of the authority –</p> <ul style="list-style-type: none"> <li>• (b) It is realistic to think that there can continue to be non-ancillary use of the building or land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.</li> </ul> <p>(Section 88(1) Localism Act 2011)</p>	<p>It is realistic to think these use will continue as soon as the pub is able to recommence 'conventional' trading. Neither the nomination nor any information from other parties has suggested that there is a reason why this use could not continue.</p>

<p><b>Establishing the Main (Non-Ancillary) Use continued</b></p> <p><b>Localism Act Section 88(2)(a) and (b)</b></p> <p><b>Recent use and future use tests</b></p>	
<p>Section 88(2) of the Localism Act 2011 extends this definition.</p> <p>“ A building or other land in a local authority’s area that is not land community value as a result of subsection (1) is land of community value if in the opinion of the local authority –</p> <p>(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</p> <p>(b) it is realistic to think that there is a time in the next five years when there could be non-</p>	<p>Not applicable – the current use provides social well-being.</p>



<p>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.”</p> <p>Related supporting assessment question in such circumstances: What is required to make the building/ land fit for purpose (resource requirements and timescales)?</p>	
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