

Management Team 2 December 2014

Assets of Community Value – Recent Nominations for Decision

Nominating Body	Asset	Community Value Claim	Recommendation
<p>Borough Green Parish Council</p>	<p>Henry Simmonds PH Owned by JEMP Investments</p> <p>We are aware that an Agreement for Lease has been entered into with Sainsbury's. The LR Search confirms that the Agreement was entered into on 27 August 2014</p> <p>We understand that the Agreement for Lease provides for the grant of a 15 year lease to Sainsbury's. If so, any disposal to Sainsbury's pursuant to the Agreement for Lease would not be caught by the moratorium provisions of the Localism Act 2011 as the definition of 'qualifying leasehold estate' in s96 of the Act does not include leases with less than 25 years to</p>	<p>Despite decades of lack of investment, the Pub is still viable and provides an important role in social cohesion, particularly important as Borough Green has lost 3 of its 5 pubs so far, this will be number 4. The loss of pubs echoes the surrounding villages, but will become particularly acute particularly as our status as a Rural Service Centre drives growth with new housing.</p>	<p>There are two tests to consider:</p> <p>(1) Does the actual current use of the building further the social well-being/social interests of the local community? <b>Recommendation</b> – Yes. The use of a building as a public house is considered to fall within the definition of 'social interests' in section 88 of the Localism Act 2011.</p> <p>(2) Is it realistic to think that there can continue to be a use of the building which will further the social well-being/social interests of the local community (whether or not in the same way)? <b>Recommendation:</b> An Agreement for Lease has been entered into with Sainsbury's plc. We are aware that Sainsbury's intend to change the use of the ground floor of the premises from a pub to a supermarket. Upon grant of the lease (there will no doubt be conditions which will need to be satisfied before this takes place), it is realistic to assume that the existing use of the building as a public</p>

	<p>run from the date of grant. In other words, the listing of the building as an Asset of Community Value would not prevent the grant to Sainsbury's of a 15 year lease free from the provisions of the Localism Act 2011.</p>		<p>house will cease.</p> <p>'Social interests' are defined in s88 of the Localism Act as including (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>These are likely to include community buildings, buildings or land of local historical value, public houses, sports grounds and local parks.</p> <p>The list is not definitive, so other interests may fall within the definition of 'Social Interests'. However, having regard to the definition in s88 of the Act, it is not considered that the use of the ground floor of the building as a supermarket would further the social interests of the local community.</p> <p>The term 'social well-being' is not defined in s88. It is difficult to see how the use of the building as a supermarket falls within this definition. Reject.</p>
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### *Notes of the Management Team Meeting...*

#### 3. ASSETS OF COMMUNITY VALUE

MT REVIEWED the recent nominations for assets of community value and AGREED the following:

- The nomination from Borough Green Parish Council (Henry Simmonds public house) be rejected as it was unrealistic to expect that any other community use could be applied to the site given the lease position and planning application/permission recently submitted.

### *Explanatory email from Mark Raymond....*

**From:** Mark Raymond [<mailto:Mark.Raymond@tmbc.gov.uk>]

**Sent:** 19 December 2014 09:43

**To:** Mike Taylor; LizSimpson; Adrian Stanfield; Anne Moloney; Julie Beilby; Kevin Toogood; Lindsay Pearson; Matthew Balfour; Steve Humphrey

**Cc:** 'SophieShrubsole'; 'TonySayer'; 'Janet Sergison'; 'Sue Murray'; Ann Kemp; Brian Luker; Elizabeth Holland; Howard Rogers; Jill Anderson; Martin Coffin; Nicolas Heslop; Rodney Chartres; Sasha Luck; Simon Jessel; Trevor Robins

**Subject:** AOCV - Henry Simmonds PH

Dear Councillor Taylor

Adrian has passed your e-mail to me to reply.

As I have explained previously, the word 'reject' in the report to the Management Team about this case relates to the overall rejection of this nomination based on the necessary tests which have been correctly applied in this case.

The two tests that the relevant Act and Regulations require be applied in this case is as follows:

Test 1: Does the **current use** of the Henry Simmonds PH further the social well-being/social interests of the local community?

Decision: **Yes**. Use of a building as a public house is considered to fall within the definition of 'social interests' set out in Section 88 of the 2011 Act.

Test 2: If the **current** use does further the social well-being/social interests of the local community, is it then realistic to think that there can **continue to be use of the building** which furthers the social well-being/social interests of the local community?

Decision: **No**. Given the fact that an agreement for a lease to use the premises as a supermarket has been entered into, it is **not realistic** to think that its current use as a

public house or any other another use of social value will be continued. Its future use as a supermarket is **not considered** to be a use which furthers the social well-being/social interests of the local community.

As the second of the two required tests was clearly not met, the nomination was correctly rejected.

The process for determining nominations of Assets of Community Value for this Authority was adopted by the Council's Cabinet in November 2012.

Regards  
Mark Raymond  
Chief Corporate Policy Officer  
Tonbridge and Malling Borough Council  
[mark.raymond@tmbc.gov.uk](mailto:mark.raymond@tmbc.gov.uk)

### **Comment**

"MT" in the above reports refers to the Management Team, comprising Julie Beilby, Adrian Stanfield, Steve Humphrey, Sharon Shelton and Robert Styles. Some of those names may be familiar to some as a result of reports of past irregularities.

The whole point of requesting the Henry Simmonds be nominated as an Asset of Community Value was to **prevent** it being used as a supermarket, but retained as a pub. And yet Mr Raymond's main reason for recommending refusal of the AoCV was because a supermarket would not have any value as a social amenity - surely that is the whole point of an AoCV, to keep the viable pub as a Community Asset into the future.