

Nomination form for Assets of Community Value

SECTION 1 – ABOUT YOU

Name of Lead Nominator	Mr Kenton Barnard
Address	120 Pinkneys Road, Pinkneys Green, Maidenhead
Postcode	SL6 5DN
Telephone number	07860 232198
Email address	kentonbarnard@gmail.com
Your relationship to the nominating organisation	Member Of "The Friends of the Boundary Arms"


SECTION 2 – ABOUT THE ORGANISATION MAKING THE NOMINATION

Please tick any that apply)

Unincorporated body <i>(see next section)</i>	X
Neighbourhood forum	
Parish Council	
Charity	
Community Interest Company	
Company limited by guarantee	
Industrial and provident society	


Number of members registered to vote locally (unincorporated bodies only) In the case of an unincorporated body, at least 21 of its members must be registered to vote locally.	
We are enclosing evidence that at least 21 locally registered voters support the registration of this pub as an asset of community value <i>(please tick box)</i>	X

SECTION 3 – MORE ABOUT YOUR ORGANISATION AND DEMONSTRATION OF LOCAL CONNECTION

<p>Please explain a bit more about the organisation <i>(such as how and why it was formed – perhaps that was purely to list this pub which is fine).</i></p> <p>Please also demonstrate that your organisation has a local connection <i>(i.e. that everybody concerned lives locally)</i></p>	<p>The “Friends of the Boundary Arms” was formed back in late November 2021 when the Boundary Arms pub was closed by the Owner. I set this up initially as a “WhatsApp” Group so that local members of the community and regulars at the pub could keep up to date with any developments regarding the pub’s closure. We currently have 52 members, all of whom live in the Maidenhead area.</p> <p>This enabled us to communicate back to the group feedback on our conversations with the main owner, Mr Hing, regarding whether he would be willing to work with the community to find a way of keeping the Pub open – either by renting, leasing or selling the pub to us. This group’s aim is very similar to what happened at the Craufurd Arms in Maidenhead and the Jolly Farmer in Cookham Dean which is to get the pub back open as it is an asset of community value to the residents of Maidenhead. I would also like to reference the successful listing of the Jolly Gardeners in Old Windsor in 2022 - see attached document below.</p> <div style="text-align: center;">  <p>Jolly Gardeners 26th July decision.d</p> </div> <p>Subsequent to the 23/01049/FULL planning application being submitted, “The Friends of the Boundary Arms” then set up a Facebook page in order to keep the Maidenhead community informed of developments. This group currently had 57 members (all from the Maidenhead area) which is growing daily as a result of publicity the recent article in the Maidenhead Advertiser (see 19th May publication – page 3) plus comms on the local “Nextdoor” Maidenhead social media site.</p>
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<p>If the Group is constituted, its surplus must be wholly or partly applied for the benefit of the Borough’s area or a neighbouring</p>	<p>The group is in the process of drafting Articles of Association to formally constitute the group with the sole aim of saving this pub from permanent demolition, thus leading to yet another pub lost forever in Maidenhead.</p>
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<p>authority's area. Please provide evidence of this if you can.</p>	
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<p>If the Group is constituted, please provide evidence here.</p>	<p>A draft constitution has been written. Please see attached draft document.</p> <div style="text-align: center;">  <p>The Friends of the Boundary Arms ACV</p> </div>
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SECTION 4: ABOUT THE ASSET YOU WANT TO LIST

<p>Name of asset</p>	<p>The Boundary Arms</p>
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<p>Address and postcode of the asset</p>	<p>112 Pinkneys Road, Maidenhead, SL6 5DN</p>
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<p>Description of what exactly should be listed <i>(try to be specific about the boundaries of the land you're nominating, the approximate size and position of any buildings on the land and remember to include anything in addition to the building itself which you believe should be listed such as the car park, beer garden or any integral residential quarters such as</i></p>	<p>Details can be found on the RBWM planning website. Please refer to planning application 23/01049/FULL</p>
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<p><i>accommodation above the pub)</i></p>	
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<p>Land registry title number</p>	<p>BK386966 – Not sure if this has changed. This was the Land registry title number when the pub was the Waggon & Horses and owned by Greene King. RBWM planning would be able to confirm.</p>
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<p>Link to any photos or building plans of the property <i>(if you're attaching these to the application please confirm that here)</i></p>	<p>Please see planning application 23/01049/FULL</p>
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<p>Any information you have about the freeholders, leaseholders and current occupants of the site <i>(if known)</i></p>	<p>The FULL planning application has been submitted on behalf of Mr Colin Hing, 132 Pinkneys Road, Maidenhead, SL6 5DN.</p>
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<p>Reasons for nomination: why do you believe the asset is of community value <i>(including all relevant information from</i></p>	<p>It is important to firstly provide some context as to why we want to submit this ACV before listing specific reasons and benefits as to why this pub should not be demolished.</p> <p>The current owner - Mr Hing (he has a "sleeping partner" Mr Dudley) purchased the pub from Greene King when it was affectionately known as the Waggon & Horses (and</p>
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CAMRA's "Why Councils should list pubs as assets of community value" document, in particular:

- Evidence that the pub can remain viable
- Evidence of interest in keeping the pub open
- Evidence that the asset furthers the social wellbeing or social interests of the local community, or has done so in the recent past)

Reasons for nomination continued

still is referred to that name by many locals today) back in 2016. Mr Hing is known as a part time property developer having undertaken several other projects in the Maidenhead area in recent years. It came as no surprise to locals that when Mr Hing acquired the pub, he was very open and clear to anyone who was prepared to listen to him that he did so with the medium/long term aim of submitting plans for "change of use" and closing the Pub to the detriment of the local community and for personal gain for himself. In fact, he even said that he wanted to build flats on the land or houses in the back of the pub garden. At least his plans fall short of those ridiculous claims. Hiding behind the issue of Brexit, Covid-19 and supposedly staff shortages (see Deriaz Camsie report as part of the planning documents) has enabled Mr Hing to probably close the pub earlier than he would have planned and leave it shut since November 2021 where he could argue that the pub is no longer economically viable even though he has made no attempt to reopen it since. In fact, with no investment and upkeep, the pub has looked "tired" due to no maintenance. I actually informed Mr Hing myself that he had a leak in the ceiling of the front bar of the pub after he turned all of the heating off during the really cold spell once his son who was living above the pub left. So, the main question and one which has confounded many locals, is why has the pub been closed since November 2021? When the pub initially shut, via the "Friends of the Boundary Arms" we approached Mr Hing as a community to see if he was willing to work with us and find a way of re-opening the pub. We proposed 3 main options – (i) to rent the pub from him (ii) for him to lease the pub to the community or (iii) for Mr Hing to sell the pub to the community once a price was negotiated and agreed.

Separately, the Bar Manger Stacey Humphrey approached Mr Hing with a Business plan proposing how she could take over and grow the pub either via Mr Hing renting or leasing it to her.

Sadly, the outcome of the two separate approaches to Mr Hing by "The Friends of the Boundary Arms" and by Stacey Humphrey were met with the same answer; he had no interest whatsoever to even engage in a detailed conversation with anyone to see how this asset for the community could be saved either by the community taking control or via some kind of commercial relationship with Mr Hing. The nearest the "Friends of the Boundary Arms" got was when Mr Hing asked how much we would be willing to buy the Pub for and when we asked him to let us know his initial thoughts as to price, he then remained silent.

Regarding evidence of these approaches to Mr Hing, I have kept all of the text messages which were sent to him and received back and I'm sure Stacey Humphrey can also supply her own evidence as well. I would be happy to share these with RBWM planning if so required.

So, as a community, without Mr Hing being willing to enter into any discussions with us, we have had to wait until now for him to submit his planning application so that we can formally submit our ACV and allow the community to object to his plans.

Lastly, it goes without saying that Maidenhead cannot afford to let another pub be lost forever. The two nearest pubs to the Boundary Arms (The Pinkneys Arms & the Golden Ball) are "gastro" pubs and they have always attracted a different clientele to the Boundary Arms and as such in the community's opinion, do not offer any competition to the pub. Moreover, the nearest "like for like" pub is the New Inn in Farm Road but sadly this pub is towards "end of life" and hardly any of the regulars from the Boundary Arms now drink in there even though their own pub is shut.

It is the belief of the community that if this pub was to be saved, with the right community ownership and management and enthusiasm and new ideas, the pub would grow over time and be a great asset and benefit to the local community of Maidenhead which is what has happened with both the Craufurd Arms and North Star which have both grown with community involvement.

Moreover, why deprive a community its local pub when it has returned a profit? If you look at the financials in the Deriaz Campsie report, the pub has made a profit in each of the last 4 years even with Covid-19 restrictions which began in March 2020, and following that people were still concerned with mixing socially thereafter when the pubs reopened which resulted in a smaller "footfall" of customers. This is no longer the case now in 2023. So, the evidence is there that there is no reason why this Pub if reopened wouldn't flourish and continue to make a bigger profit going forward which would be re-invested back into a community led pub to improve the asset for everyone to enjoy. I also believe these financials probably do not include the various Government schemes and grants that were made during the Covid-19 pandemic. Mr Hing told us that he was well looked after by the government and allegedly made "£60k" from it.

In summary, all the community wants to do is to save its "local" and try and get Mr Hing and his "sleeping partner" to recognise this as a community asset for all to enjoy and to be willing to discuss and negotiate with us a viable business plan that means the pub can be reopened instead of another two houses being built in its place for their own personal gain.

The Boundary Arms has two popular bars and a large beer garden/children's play area at the rear. It is a friendly family pub much loved by the locals. Regarding the specific benefits, before the pub was closed it provided the following services which furthered the social wellbeing and interests of the local community. These were:

- Foremost, this is a community pub, which has been so popular for so many years, for a place to meet, enhancing peoples mental and social wellbeing.
- Live music events were often hosted at the pub.
- There was a monthly open "Mic" night which enabled local musicians across Maidenhead to perform at the venue.
- The local choir group used to meet at the pub after rehearsals and always put on a charity performance at Christmas.
- The locality of the Pub was an attraction to many walkers and ramblers given the vicinity of the many walks on National Trust land by the "Thicket".
- The pub had a diverse clientele depending on the time of day. It was popular with retired people during the lunchtime/early afternoon, "white van" man workers early evenings and then various drinkers during the evening. Many families with children also used the pub on the weekends and early evenings in the summer.
- The pub used to have two Ladies darts team which were in the local Maidenhead league which have now had to relocate to North Maidenhead Cricket Club Sports Bar and the New Inn respectively.
- Again, the pub used to have a crib card team in the local league who have now relocated and play at the New Inn.
- There is a beer garden attached to the pub which was very popular and used and enjoyed by local people, especially young families as the garden is very secure and safe.
- This garden was invaluable during Covid-19 as the pub hired the local scout tent so that people could still drink outside as per the guidelines at the time.

- A children's play area for local families is also available at the pub.
- The pub used to host regular quiz nights which brought the community together, although this for some strange reason was discontinued by Mr Hing.
- The pub used to hold a weekly "meat" raffle every Sunday which was very popular with the locals.
- The Pub also ran the weekly Lottery "Bonus" ball event which proved very popular.
- Major sporting events such as International Football and Rugby matches were well supported by the community who often brought their own food with them to share amongst everyone. In fact, living so near to the pub, my wife and I often used to bring in freshly baked roast potatoes for the community to enjoy at such events.
- The Pub Manager used to run a coach to the Rebellion Brewery for their "open" nights which was very well supported as beer and food vouchers were provided free of charge.
- Free wifi is available for customers to use.
- There are good transport links available to/from the pub, with a bus stop less than a minutes' walk from the pub.
- There is ample parking across from the pub which is available for anyone in the community to use, including people using the pub.
- The pub was known for the quality of its "real ale" and was recognised for this by the local branch of CAMRA and the pub also appeared in the "Good Beer" guide on several occasions.
- Meeting spaces are available for local community groups and charities to use, and charity events were held to raise money for a cancer sufferer.

In conclusion, I hope the evidence provided in this ACV and the many objections that have been already uploaded to the RBWM planning application 23/01049/FULL will be reviewed and considered appropriately. Please, as our planning officers, let's not lose a great pub forever for the sake of two private houses which with their expected retail value would be unaffordable to any local 1st time buyers to afford in Maidenhead.

SECTION 5: CONFIRMATION

I confirm that all information provided is accurate and complete.

Name (please print clearly:	Kenton Barnard
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Signature:	
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Date:	26th May 2023.
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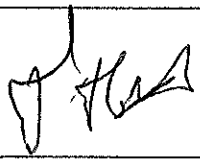

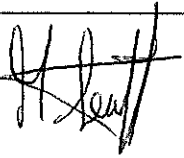

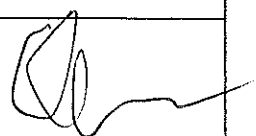
Assets of Community Value - Unincorporated Body Nomination Form


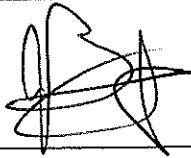




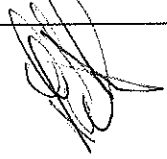




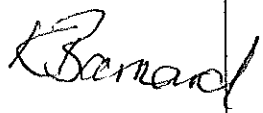

Nominations to list pubs as assets of community value can be accepted from any group of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority.

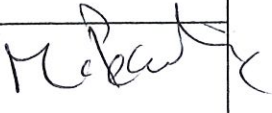
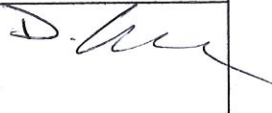
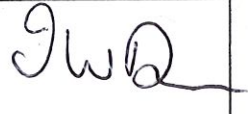
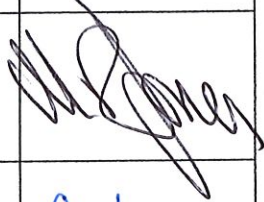



On behalf of the following members of the local community, please list this pub as an asset of community value:

NAME OF PUB: The Boundary Arms

ADDRESS OF PUB: 112 Pinkneys Road, Pinkneys Green, Maidenhead, SL6 5DN

No.	Name (please print clearly)	Your full address (including postcode) *each nominator should have a different address	Are you registered to vote within the local authority, or a neighbouring local authority?	Signature
1	ANDREW MATTHEWS	4 GARTHLANDS MAIDENHEAD SL6 7PJ	YES	
2	DAVID HARRISON	101 COURTHOUSE ROAD SL6 6HZ	YES	
3	AMANDA ADAMS	121 HALIFAX RD MAIDENHEAD SL6 5EU	YES	
4	GAIL CRUMPTON	Littlehome Marlow Road MAIDENHEAD SL6 6PR	YES	
5	JIM JACOBS	33 Golden Ball Lane Maidenhead SL6 6NW	YES	
6	Carol Cox	35 Lynham Gardens SL6 6SJ	Yes	
7	Mazzy Levitt	0108 CRANBROOK DRIVE SL6 6SB	YES	
8	Christina Gillis	6 Compton Drive SL6 5SS	YES	
9	ANDY PAPA	81 BEVERLEY Gdns	YES	

	Name (please print clearly)	Your full address (including postcode)	Are you registered to vote within the local authority, or a neighbouring local authority?	Signature
10	BOB BEAUCHAMP	6 WHITE ROCK MAIDENHEAD SL6 8UD	YES.	
11	Stephen Burroughs	15 EDITH RD MAIDENHEAD SL6 5NY	Yes	
12	CHARLES MINACE	181 COURTHURST RD SL6 6HX	Yes	
13	Bob D... ..	42 WHITEHEAD RD SL6 5BB	YES	
14	Robin Nabers	62 ALVYN Road Maidenhead SL6 5EL	Yes	
15	BRIAN BLACKMUN	17 WAVELL ROAD MAIDENHEAD SL6 5AB	YES	
16	GEOFFREY HILL	12, FONTWELL CROFT MAIDENHEAD SL6 5JX	YES	
17	KEN WILSON	215, CLARE RD MAIDENHEAD SL6 4DL	YES	
18	RICHARD VALLANCE	4 CRANBROOK DRIVE MAIDENHEAD SL6 6SB	YES	
19	Julian Sach	Monkcraft, Bridget Rd Maidenhead SL6 4EU	YES	
20	MARK NEWCOMBE	13 GARDNER RD. MAIDENHEAD SL6 7PR	YES	
21	Kim Barnard	120 Pinkneys Rd Maidenhead SL6 5DN	Yes	
22	KEVIN SWADEN	5 F CAVALEY GARDENS SL6 5JW	YES	

No.	Name (please print clearly)	Your full address (including postcode) *each nominator should have a different address	Are you registered to vote within the local authority, or a neighbouring local authority?	Signature
23	Mike Peachey	118 Pinkneys Rd Maidenhead SL6 5DN	Yes	
24	Deborah MAKÉ CLARKE	46 Clare Rd Maidenhead SL6 4DE	yes	
25	KEVIN SANDEY	9, LUTMAN LANE M'head Berks SL6 7HH	YES	Kevin R. Sandey
26	JOAN DUNCAN	30 EDINBURGH RD MAIDENHEAD	YES	
27	MARTIN JONES	15 PHIPPS CLOSE	YES	
28	Jo New	56. HIGHFIELD LANE	Yes	
29	Yvonne COX	ST PATRICKS COURT MAID	yes	
30	S.F Bond	No 3 ALMA HOUSE	Yes	S.F. Bond
31	R. Swann	30. PIPPERLAW M/HEAD SL6 3XU	YES	

"The Friends of the Boundary Arms" Constitution

IN DRAFT - Adopted on [date]

1. The Name:

The name of the group is "The Friends of the Boundary Arms" ("the Group").

2. Area of benefit:

The Boundary Arms Public House on 112 Pinkneys Road, Maidenhead, SL6 5DN and all residents in RBWM and elsewhere who would like to keep this pub as an "asset of community value".

3. Aims:

The Group's aims are:

- i) To provide facilities for the community for socialising, community activity and community cohesion, with specific reference to disadvantaged and isolated groups in order to improve the conditions of life for those persons making use of those facilities, and to promote the greater integration and cohesion of the communities in the area of benefit.
- ii) To encourage the Group's members to actively participate in the management of their Group and activities.
- iii) To promote such other purposes as may from time to time be determined

4. Powers:

In order to implement its objectives, the committee may exercise the following powers:

- i) To raise funds and to invite and receive contributions by way of donations, grants, fundraising and any other lawful methods to assist with the provision of resources or facilities for the Group and to help meet its running costs.
- ii) To buy or lease and to maintain any resources or materials necessary for the achievement of the aims of the group.
- iii) To sell, lease or dispose of all or part of the property of the Group
- iv) To employ such paid staff, agents or advisors (who shall not be members of the management committee) as may be required from time to time.
- v) To co-operate with other organisations in furtherance of the any of the objects or of similar purposes and exchange information and advice with them.
- vi) The responsibility to identify and develop such policies as are necessary for the running of the organisation, and procedures for implementing them
- vii) To determine the amount of subscription payable by members.
- vii) provide indemnity insurance cover for the members of the Management Committee (or any of them) out of the funds of the Club: Provided that any such insurance shall not extend to any claim arising from any act or omission which the members of the Management Committee (or any of them) knew to be a breach of duty or breach of trust or which was committed in reckless disregard of whether it was a breach of duty or breach of trust or not.

5. Membership:

- i) Membership of the group shall be open to any person who supports the groups aims.
- ii) Membership of the Group shall be open, irrespective of sex, sexual orientation, race, nationality, disability, or political, religious or other opinion.
- iii) Members will agree to abide by the rules of the Group regarding membership and behaviour.

- iv) Every member shall have one vote

Termination of Membership

The Committee shall decide if someone's membership is to be suspended or terminated on grounds of unacceptable behaviour or breach of membership rules.

6. Management Committee

The Management Committee shall:

- i) consist of not less than 3 members elected at the Annual General Meeting.
- ii) appoint a Chairman, Secretary and Treasurer and such officers, as they deem necessary.
- iii) meet at least 6 times a year.
- iv) have the power to co-opt, as additional members, such persons as, in the opinions, are able to render special service.
- v) safeguard the interests of members, by providing leadership and finance and by encouraging members to take a full and active part in the running of their Group.
- vi) Nominations for election to the Management Committee shall be submitted in writing, countersigned by the person nominated, not less than seven days before the AGM.
- vii) All votes at general meetings are on a simple majority basis though the Chair shall have a second or casting vote in the event of a tie.

Paid Staff

The Management Committee has responsibility for appointing and dismissing paid staff and fixing their rate of pay and terms and conditions.

No paid staff may be a member of the Management Committee (although staff may be in attendance, if invited.)

7.Accounts

- i) The Management Committee shall keep up-to-date, proper accounts of all Monies belonging to the Group, to be presented at all Management Committee meetings.
- ii) A bank account shall be opened in the name of the group. The Committee shall authorise the Treasurer and two other member of the Committee (not being co-opted members) to sign cheques on behalf of the group. All cheques must be signed by no less than two of the authorised signatories.

9. Annual General Meeting

- i) The main Committee must hold an Annual General Meeting within 12 months of the date of the adoption of this Constitution.
- ii) An A.G.M. must be held each year within 15 months of the previous one.
- iii) At least three weeks notice must be given of the AGM.

The purpose of the AGM shall be to:

- i) Receive the annual Management Committee report
- ii) Receive the audited or independently examined accounts for the preceding year,
- iii) Elect any new members of the committee and officers for the coming year
- iv) Appoint an independent examiner for the coming year
- v) Consider and vote on any proposals to alter this constitution.
- vi) To consider any other business of which due notice has been given.

10. Special General Meetings

The Chair or the Secretary may call a Special General Meeting at any time, if at least 2 voting members request such a meeting in writing stating the business to be considered. At least 21 days notice must be given stating the business to be discussed.

Special General Meetings may *only* consider the business for which they have been called, and this should be clearly noted on the notice of the meeting, which should be sent to all members, sections and affiliated groups, and to statutory authorities, which have any appointed representatives to the main committee of the Group.

11. Constitution

Notice of proposed amendments to the Constitution must be given in writing not less than 28 days before the meeting at which it is first to be considered.

The above Constitution shall only be altered by resolution passed by a two-thirds majority of the members in General meeting.

Notice of each such meeting must have been given in accordance with normal procedure, but not less than 14 days prior to the meeting in question and giving the wording of the proposed alteration.

No amendment to this Constitution, which would allow the Group to become profitable, is to be considered. This Group is set-up and is to continue as a not-for-profit organisation. Any surpluses made must be re-invested to benefit the members of this Group.

12. Dissolution

The procedure to wind up the Group, on the grounds of expense or otherwise if it is necessary or advisable to dissolve the Group, shall be by simple majority at a General meeting.

In the event of the Group being dissolved, a meeting of the Committee shall be called to realise the assets of the Group and discharge all debts and liabilities of the Group.

Any monies and property remaining after satisfaction of all debts shall not be paid or distributed amongst the Members of the Group, but shall be given or transferred to some other voluntary organisation having objects similar to those of the Group.

13. Not for profit Status

The group's activities and funds shall be solely directed towards the achievement of its aims and conducted on a not-for-profit basis.

Signatures:

Print name and date also:

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.....
.....

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Appendix 1

In the Matter of the Localism Act 2011 and The Jolly Gardeners, 92-94 St. Luke's Road, Old Windsor, Windsor, SL4 2QJ

1. This decision is taken in respect of the third nomination of the Jolly Gardeners to be registered as an asset of community value. In arriving at my decision, I have taken into account the documents listed as background papers at paragraph h of the Decision Record. It is noted that the public house is now open and being run as a public house. This means that the appropriate two statutory conditions to be satisfied are those contained in section 88(1) of the Localism Act 2011 and not those in section 88(2) of the Act which were applicable in respect of previous nominations submitted when the public house was closed. I also note that there is a second planning application before the Council dated 19th July 2022 (22/01957/Full) for a change of use of the property to residential and other alterations. That application has not yet been determined.

2. Section 88(1) provides that for a building or land in a local authority's area to be registerable as of community value, the authority must be of the opinion that:

- (a) an actual current use of the building or other land that is not 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 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.

3. Section 88(6) of the Localism Act 2011 provides that "social interests" includes (in particular) each of the following- (a) cultural interests, recreational interests, sporting interests".

4. I am mindful that there must be evidence showing that the two statutory conditions are satisfied and that it is acceptable for allowances to be made for the involvement in the nomination process by non-lawyers.

5. On this point in Admiral Taverns -v- Cheshire West and Chester Council CR/2016/0022 Judge Christopher Hughes stated at paragraph 10 that the "initial nomination form completed by the Parish Council contains very little information some of which may not have reflected the actual position on the date that it was submitted and some of which may have been irrelevant. This is unsurprising considering that this Parish Council is a small public body with minimal resources consisting of volunteers who are trying to represent the interests of their community. These volunteers are unlikely to have completed such a form before and will have little understanding of the legal framework. However, that form is merely the start of the nomination process by which a Council determines whether the criteria for listing as an ACV are met. Furthermore, as the Council properly observed, it was entitled to accept the nomination in good faith."

6. With regard to the third nomination, I am required to consider whether the community nomination valid. It is my view that it is because the nominator is a parish council and thus eligibility is not an issue.

7. I am also required to consider whether there is a current actual use of the public house which is non-ancillary and which furthers the social wellbeing or social interests of the local community (section 88(1)(a)).

8. There have been many appeal decisions relating to public houses on this point. For example, the case in paragraph 8 of Judge Christopher Hughes' decision in Admiral Taverns he states "The Appellant recognises that the test must be applied on a case-by-case basis to the facts of each nomination. It is clear from the information before me that the premises have been used by local people as part of their social lives, meeting others in a convivial atmosphere for food and drink and furthermore holding some social events, notably quiz nights. I am satisfied that while in the most recent period the business has not thrived as it might, it has been used for the social wellbeing of the community." This decision was affirmed on appeal to the Upper Tribunal [2018] UKUT 15 (AAC).

9. Having regard to the evidence provided by the nominator, it is my view that current actual use of the Jolly Gardeners is very similar to the use outlined in the Admiral Taverns case and as such it is non-ancillary and furthers the social wellbeing or social interests of the local community. Thus, I conclude the test set out in section 88(1)(a) is met.

10. In arriving at this conclusion, I have had regard to the contention submitted on behalf of the owner by Freeths in their letter of 13th May 2022 that regard should be had to the presence of other public houses within the local area but do not agree that this is necessary. It is noted that this argument was rejected in Pullan-v- Leeds CR/2015/0011 where one of the objections to listing argued by the owner was that all the public houses in Otby were listed. The same argument was also rejected in Evenden Estates -v- Brighton and Hove City Council CR/2014/0015.

11. Likewise, in arriving at the conclusion that the test set out in 88(1)(a) is met in this instance, I have taken into account the fact that the public house does not have to be unique or special or of great importance to the locality before it may be listed. I am mindful of the decision in Lounge India Restaurant -v- Central Bedfordshire BC CR/2016/0020 in which Judge Jacqueline Findlay stated that "in relation to the grounds of appeal at paragraph 9 above it is not necessary that the Wrestlers is of "great importance" to the locality or the second respondent nor is it not necessary to show that the Wrestlers in future would be able to contribute to the development of "vibrant and active communities"

12. Similarly, I have taken account of the unsuccessful argument advanced in previous listing applications that in order to further the social wellbeing of a local community the particular house must offer something over and above that offered elsewhere and note that the test of qualification does not require such comparisons to be made as held in 4C Hotels (2) Limited -v- City of Westminster CR/2017/0011.

13. Additionally, I am mindful of the decisions which confirm that meeting and socialising at public houses furthers social wellbeing such as Kicking Horse-v- Camden LBC CR/2015/0012 and Adams-v- Ashfield DC CR/2017/0010 where evidence in the latter case showing that the public house provided a meeting place for members of the local community encouraging social interaction through its pool team and live entertainment was sufficient to meet the statutory requirement.

14. I also take into account in arriving at my decision that the nominated pub does not need to be in robust health. In Evenden Estates -v- Brighton and Hove City Council CR/2014/0015 evidence was provided that even on a quasi-voluntary basis the pub did not run successfully. This did not prevent the pub satisfying the condition set out in section 88(2)(a).

15. I note that it is submitted by Freeths that not all public houses will qualify as an ACV and that there is not a presumption in listing (paragraphs 18 to 24 of their letter dated 13th May 2022). It is accepted that not all public houses will qualify and that the particular circumstances applying to each public house nominated will have to be considered. In my view however, this does not mean that it is

correct to argue that socialising in a public house should be disregarded on the grounds that this is part of being a public house. Whilst it is acknowledged that there are some public houses to which people only go to drink and not to socialise, each case needs to be looked at individually in order to decide whether the information provided is sufficient to satisfy the two statutory conditions.

16. On the nomination form submitted by the Parish Council the reasons given for the listing of the Jolly Gardeners are identified as follows: "the premises are currently in use as a community public house, serving a local commercial centre and surrounding development. It is served this purpose since its establishment in about 1850 and acts as a focus for community well-being and supporting a wide range of community interests...present and recent activities include European Cup Final football match screenings, sweepstakes, World Cup Rugby match screenings, Grand National racing, Regular live music, Halloween Fancy Dress Party, St. Georges/St. Patricks Days events, Community celebrations incl. Prince Harry's wedding, darts and football teams." I am satisfied that the activities listed in the nomination form clearly demonstrate that the premises have been used by local people for meeting others in a convivial atmosphere and thus that the use of the premises furthers the social wellbeing of the community.

17. I have noted at paragraph 4 of the letter of 13th May 2022, that the summary of activities listed by Freeths as taking place at the premises is incomplete. They also refer to unsubstantiated reasons being given by the nominator. It is accepted that general statements do not carry the same weight as detailed information, but it is my view that they cannot be disregarded and should be taken in good faith bearing in mind that the nomination process was anticipated to be utilised by non-lawyers. However, it is notable that the nominator's description of the Jolly Gardeners as a *community public house* is in itself a description that should be taken into account. This is particularly the case having noted that there is no evidence to the contrary put forward by the Owner to rebut the nominator's statements.

18. There is nothing which limits the material which may be taken into account to that provided by the nominator and that Council may take into account other material evidence within its possession which would include the material provided in support of the two earlier nominations.

19. Thus in addition to the statements set out in paragraph 4 of Freeths letter, I take into account the statement in the letter dated 14th May 2021 from the nominator that the pub is inclusive of all residents across the community; also in the email attached to the same letter the reference to the public house as a hub in the village, the reference to the public house as a community facility and hub of village life, also that the pub is welcoming including to all families, those that want to watch sports on Sky or have something to eat "or simply to meet friends and enjoy a drink." I also note the photograph of the outdoor tables and people outside the front of the public house and I note that the strap line on the website currently mentions Prosecco Fridays, darts and shows a picture of the beer garden. Additionally, paragraph 5.27 of the Planning Design and Access Statement prepared on behalf of the owner in support of the first planning application makes reference to live music and quiz nights being held at the public house. The same activities are referred to at 5.30 of the Design and Access

Statement dated 18th July 2022 submitted in support of the second planning application. Likewise, the same activities are also referred to in paragraph 7.01 of the viability report prepared on behalf of the owner in support of the first planning application and in the viability report dated 17th December 2021 in support of the second planning application.

20. It should be noted that the events listed in the nomination are not dissimilar to those listed in Roffe-v- West Berkshire Council CR/2019/0010 which the owner had challenged on the basis that there was no detail and that they were unsubstantiated, infrequent and that they did not represent

community use. In the Upper Tribunal Judge O'Connor stated at paragraph 23 that: "I further conclude that these events can, almost in their entirety, be described as events which are likely to have furthered the social wellbeing or interest of the local community. The fact that they were commercial events, on Mr Roffe's submission, does not detract from this conclusion. The events are likely to have brought at least parts of the local community together, which I find furthers the social wellbeing or interest of the local community. The frequency of the events described in the document produced by Mr Roffe cannot be said to have been so occasional so as to be irrelevant to my considerations." I thus take into account that there is no evidence in Freeth's letter regarding the activities identified by the nominator as taking place at the Jolly Gardeners and conclude that the specified activities taking place bring the community together and thus serve to further the social wellbeing of the local community.

21. It is accepted that the suggestion that the Jolly Gardeners is a historic building is not a material factor when arriving at my decision (para 15-17 of letter 13th May 2022). However, it is my view that the period for which the public house has been run will be a relevant part of the background and can lend credibility to the contention that the sustained current actual use of the public house is furthering the social wellbeing of the local community.

22. It is argued in Paragraphs 25 to 38 of Freeth's letter of 13th May 2022 that the events listed in the nomination should be regarded as an ancillary use of the public house. I am aware that this separation of events from the business of the public house is an argument which has been put forward before as in the Roffe case mentioned above and that it did not succeed. Such events are regarded as part of the business as is the socialising which takes place at the public house and not as an isolated separate activity. Whilst a more detailed statement of the use of the Jolly Gardeners could have been provided by the nominator, it is my view that this is not unusual given that the process is not intended to be completed by trained lawyers. The evidence in support of the nomination just needs to demonstrate that the premises are a place where local residents met to socialise, meetings took place and events were held for the local community. I consider that the events listed in paragraph B3 of the nomination form such as the screening of significant sports events, the holding of fancy dress parties, the celebration of a national event and the ongoing participation in team sports all demonstrate that community activities took place and that they were centred around the day to day use of the pub and thus were not ancillary.

23. For the reasons set out above, I conclude that the requirements of section 88(1)(a) are met in relation to the nomination and that the actual current use of the building is not ancillary use and that it furthers the social wellbeing or social interests of the local community.

24. The second part of the test in section 88(1) required to be satisfied is that the authority must be of the opinion that it is realistic to think that there can continue to be a use (whether the current use or a different use) which will further the social wellbeing or social interests of the local community (section 88(1)(b)). I am mindful that this requires a determination of the realistic possible uses of the public house going forward which furthers the social wellbeing or social interests of the local community and is not an ancillary use. If there is such a possibility, then that future use will suffice for registration. I am also aware that that possibility need not be the probable outcome and that it is enough that it is one of a number of possibilities.

25. The approach that the future use within section 88(1)(b) does not need to be the only possible future use was most recently confirmed by Mr Justice Lane in R (aoa TV Harrison CIC) -v- Leeds City Council [2022] EWHC 130 (Admin) where he stated at paragraph 41: "although the decisions of the First Tier Tribunal have no authority as precedents, as such, there can in my mind be no doubt that the construction of section 88(2)(b) adopted by Judge Warren, and thereafter consistently followed,

is the correct one. The legislation does not require a potential future use to be more likely than not to come into being, in order for it to be realistic. The fact that the most likely outcome of a number of scenarios is one which would not satisfy the statutory criteria (eg. a change of use from pub to residential) does not mean that any other potential future use is, without more, rendered unrealistic. It is only if the non-compliant scenario is so likely to occur as to render any compliant scenario unrealistic, that the non-compliant scenario will be determinative of the nomination."

26. There is no statutory guidance as to what is meant by "realistic" and so it is given its normal meaning as was the position in both the Carsberg case referred in paragraph 56 of Freeth's letter and in Basingstoke Town Limited -v- Basingstoke and Deane BC CR/2021/004 when Judge Jacqueline Findlay stated at paragraph 27: "I have borne in mind that the term "realistic" is not defined in the Act or in the Regulations. It is likely that Parliament chose this expression deliberately and it would not be appropriate to define the term further;" and then at paragraph 28: "I have borne in mind that the word "realistic" in the ACV regime bears its normal meaning and means "having or showing a sensible and practical idea of what can be achieved or expected."

27. I note in Freeth's letter they assert at paragraphs 48 to 53 that the owner's intentions should be taken into account and that their client intends to make repeated planning applications for residential use until successful because the Jolly Gardeners has completely failed as a public house (paragraph 49 of their letter). Indeed, it is noted that a second planning application for a change of use was submitted to the Council on 18th July 2022 (planning reference 22/01957/Full) and that application may or may not succeed. It is not disputed that an owner's intentions should be considered. However, I do not accept that the case of Patel -v- London Borough of Hackney CR/2013/005 referred to in paragraph 51 of the letter effectively gives the owner the power of veto over a listing decision as Freeths appear to suggest. Whilst it is acknowledged that if an owner has the ability to prevent a future community use, then this must be taken into account, but if it is merely the case that the owners wish that there should not be such use then that is not enough. I also note the resumption of the use of the Jolly Gardeners. It is reasonable to conclude that an owner of a public house will act in accordance with commercial common sense and achieve a financial return on the property for so long as there is no ability to change the use of the building and this appears to be the case with the Jolly Gardeners.

28. In terms of the planning position, the planning application for a change of use to residential- (Planning Ref:21/00825/Full) has been refused and I am advised by the planning case officer that an appeal against that refusal has not been received by the Council. I also note that a second planning application (Reference 22/01957/Full) for a change of use is now before the Council. It is noted that any planning appeal or future planning application for change of use to residential may or may not be successful. I also note that there is no evidence submitted by or on behalf of the owner that there will inevitably be a change of use to residential. Having regard to these facts, I must consider what future use will be made of the Jolly Gardeners if conversion to residential use is not permitted. Despite the impression given in the viability reports previously referred to that the pub is closed and will not reopen, it is currently being run as a public house and it is noteworthy that there is no explanation in Freeths letter why this cannot continue.

29. At paragraphs 61-69 of their letter of 13th May 2022, Freeths contend that the business of the Jolly Gardeners as a public house is not viable and they rely on the viability report of Mr Sinclair (referred to at paragraph 49 of the same letter) which is dated 11th March 2021. It is notable that the report does not cover the period from the resumption of the business. It is also noted that it was supplied in relation to the earlier nominations at a time when the pub was closed and the impression given was that it would not reopen, with the report intended as support for that assertion. It is further

noted that the second viability report dated 17th December 2021 which was submitted in support of the second planning application also makes no mention of the fact that the pub has reopened. Neither reports consider the possibility of the Jolly Gardeners operating as a community public house in which case the figures provided for a rent payment which would not apply. However, the fact that the pub has now in fact reopened, in my view, undermines the conclusion of both viability reports.

30. In light of the assertion made by Freeths at paragraph 69 of their letter, that in the course of the planning application the Council accepted that the business was not viable, I have reviewed the planning officer's decision report. At paragraph 2.1 of the decision report the officer, Harmeet Minhas, appears to have accepted that there are other public houses in the vicinity and so the loss of the Jolly Gardeners would not be detrimental. However, in my view there is nothing in the officer's report

which concedes that the business is not commercially viable. Likewise, Ms Minhas' email sent on 6th September 2021 merely states that there are grounds for justifying the loss of the community facility based on the information supplied which from the report appears to be a reference to alternative public houses in the area and not to viability. As previously stated, the presence of other public houses nearby to the nominated house is not material when deciding whether the first statutory condition is satisfied and thus, I do not agree that the Council accepted that the business was not commercially viable as has been suggested.

31. I am of the view that the possible realistic future uses of the Jolly Gardeners could include the following scenarios:

- (i) the owner may acquire the ability to change the use of the building and change it to residential use. However, I note that despite the submission of the second planning application by the owner there is no evidence which establishes that permission for a change of use must occur, so I consider that this is no more than a possibility.
- (ii) the owner puts the Jolly Gardeners on the open market for sale or letting and it is sold or let as a public house. Whilst the viability report submitted on behalf of the owner concludes that the public house is not financially viable, I treat it with some caution as the business has resumed since the preparation of that report. If a sale or letting were to occur, I have no reason to believe that the business would not continue to operate in the same way or similar so as to retain existing customers or encourage new customers to the premises and I conclude that as such this option is a realistic future possibility and one which would further the social wellbeing or social interests of the local community.
- (iii) the owner sells to a community interest group. If the owner is able to carry on the business commercially then that increases the chances that a community group could. However, I have noted that the nominator has not put forward evidence to demonstrate that it has the support of such a group and that they have the ability to undertake such a project and thus without further information it is difficult for me to conclude that this is option is a realistic possibility.
- (iv) the owner continues to run the business that has resumed at the Jolly Gardeners unless and until it is granted planning permission to convert the building to residential use. I consider that this is a realistic possibility given that the owner has now reopened the pub and has submitted a second planning application. As I have previously determined that the current actual business furthers the social wellbeing or social interests of the local community, the continuation of the business along the same lines will also do so. I am also mindful that a nominated pub does not need to be in robust health in order to satisfy the condition set out in section 88(2)(a) as was decided in Evenden Estates -v- Brighton and Hove City Council. In considering the possibility of the owner continuing to run the

resumed business unless and until it may be granted planning permission for a change of use, I note that the nominator has expressed a concern on the nomination form that it is not confident that the owner will continue to provide the wide range of local community activities or facilities which have previously been provided or based at the premises. I am aware that this could happen, but I also take into account that before implementing such changes, a prudent owner would reasonably be expected to take into account any financial risks to the overall viability of the business and so I consider that this is unlikely to happen. Thus, I conclude that this option would also further the social wellbeing or social interests of the local community and is one which is a realistic possibility.

32. In conclusion therefore I find that the actual use of the Jolly Gardeners is not an ancillary use and that it furthers the social wellbeing or social interests of the local community. I also conclude that it is realistic to think that there can continue to be non-ancillary use of the building which will further the social wellbeing or social interests of the local community and thus that the property should be added to the register of assets of community value.

Catherine Woodward

Legal Services

26th July 2022