

Notice under Section 91 of the Localism Act 2011

2nd August 2022

Entry of **The Fox and Badger Pub, Railway Lane, Wellow Bath BA2 8QG** into Bath & North East Somerset Council's List of Assets of Community Value

1. Background

On **1st June 2022**, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list **The Fox and Badger Public House in Wellow** as an Asset of Community Value.

Wellow Parish Council made the nomination. A map setting out the boundaries of the asset nominated to be listed ("The Asset") has been provided.

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.

2. Decision-Making Process

The Council's Cabinet on 10th October 2012 resolved to agree that:

2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 be delegated to the Director for Partnerships and Corporate Services (and, in the event of this Director having a conflict of interest, to a director nominated by the Corporate Director), drawing on the decision-making guidance as set out in Appendix One (of the report)

2.2 The Director for Partnerships and Corporate Services be delegated decision-making with regard to updating this guidance, in consultation with the Council Leader, in response to experience of implementing the provisions, new regulations and emerging case law.

2.3 The internal review process in relation to listing be undertaken by a director not involved in the initial decision.

2.4 The Director for Property Services be delegated to make arrangements relating to the procedures following listing, including moratorium and compensation provisions, as set out in Appendix Two (of the report).

This decision has been taken because:

(1)

a) The Asset lies within the administrative boundaries of **Bath & North East Somerset Council and Bathavon South Ward**

b) **Wellow Parish Council** is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset

c) The nomination from **Wellow Parish Council** 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 actual current 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.

3. 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 owners and the occupiers of the property

and

Wellow Parish Council

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: Director of Property Services, Lewis House, Manvers Street, Bath BA1 1JG) 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 listing. The internal review process in relation to listing will be undertaken by a 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 **21st September 2022**, 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 provide further detailed information.

4. Detailed Assessment of the Nomination of **The Fox and Badger Pub, Railway Lane, Wellow Bath BA2 8QG** as an Asset of Community Value

Assets of Community Value Nomination – Assessment

DATE OF SUBMISSION:

1st June 2022

DATE DECISION TO BE MADE BY:

2nd August 2022

NOMINATED ASSET:

The Fox and Badger Pub, Railway Lane, Wellow Bath BA2 8QG

The boundary of the asset is set out in the boundary map is included.

NOMINATION SUBMITTED BY:

Wellow Parish Council

STEP A: This section considers the eligibility of the nominating body to make a nomination and of the asset to be an Asset of Community Value. It does this through a series of YES/NO ANSWERS

A1. Is the nominating organisation an eligible body to nominate?

Evidence supplied by nominee:

Wellow Parish Council is a valid body in accordance with Regulation 5(1)(c) of the Regulations and complies with section 89(2)(b)(iii) of the Act.

Feedback from other parties and other information gained in relation to this criterion:

None

Score (YES/NO) and any comments:

YES - The Council is satisfied that the nominating body is an eligible body to nominate.

A2. Does the nominating body have a local connection to the asset nominated?

Evidence supplied by nominee:

Evidence of the Parish Meeting Minutes, Financial Regulations and Standing Orders have been provided.

Feedback from other parties and other information gained in relation to this criterion.

None

Score (YES/NO) and any comments:

YES- The Council is satisfied that the nominating organisation has a local connection to the nominated asset.

A3. Does the nomination include the required information about the asset?

- 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 and address of the current owners and occupants of the nominated asset have been provided.

Feedback from other parties and other information gained in relation to this criterion:

None

Score (YES/NO) and any comments:

YES- the Council is satisfied that the nomination has included the required information about the asset.

A4. Is the nominated asset outside of one of the categories that cannot be assets of community value (as set out in Schedule 1 of the Assets of Community Value (England) Regulations 2012):

- A residence together with land connected with that residence.
- Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960.
- Operational land as defined in section 263 of the Town and Country Planning Act 1990.

Evidence supplied by nominee:

Nomination and supporting evidence sufficiently demonstrates that the asset is outside of the categories of assets within Schedule 1 of the Regulations

Feedback from other parties and other information gained in relation to this criterion:

None

Score (YES/NO) and any comments.

YES- the Council is satisfied that the nomination is outside of one of the categories that cannot be assets of community value.

If YES to all of Part A, move on to Step B. If NO to one or more parts, please inform the nominator that the nomination is ineligible. Place nomination on list of unsuccessful nominations.

STEP B: This section considers the current or recent usage of the asset. It does this through a YES/NO answer and an identification as to whether the use is current or in the “recent past.”

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

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:

Registered owners – details provided of Fox & Badger, Railway Lane, Wellow, Bath BA2 8QG. (Landlord & Landlady took over 17th June 2013)

Feedback from other parties and other information gained in relation to this criterion:

None

Score (YES/NO) and any comments.

YES- the current usage which is the subject of the nomination is an actual and non-ancillary usage.

If the current or recent usage that is the subject of the nomination is actual and non-ancillary, go to Step C. If not, place on the list of unsuccessful nominations.

STEP C: This section considers whether the use furthers (for current uses) or furthered (for uses in the recent past) the social interests or social wellbeing of the local community. It does this through a series of questions scored on the basis of evidence.

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 supplied by nominee:

- **The asset provides a singular community venue for the Wellow Parishioners in which they are able to meet, socialise. Without this asset the community would no longer have a local and easily accessible venue available for meeting and socialising that is available 6 days / evenings per week.**
- **During the Pandemic lockdown periods, the temporary loss of use of this asset was keenly felt by the community and had a significant impact on the vitality of the village.**
- **When it was allowed during lockdown, the Fox and Badger provided support to the community during the pandemic, providing take away food services which were heavily utilised by on average 150 local residents every week**
- **The asset supports 8-10 local shoots which is a key attribute of village sporting and cultural heritage**
- **The asset provides a location where all residents are able to support local and national teams across a wide range of sports.**
- **Outside of lockdowns and the pandemic, the pub typically serves some 500 customers a week, approximately 60% of which are from the immediate community.**
- **The pub hosts the Wellow Village Charity pub Quiz which is run by volunteers raising approximately £5000 per year for charity**
- **The pub supports Wellow Village Day and key celebrations such as VE day, Queen's jubilee celebrations, annual Good Friday charity event as well as a place where parishioners can offer good cheer to each other on Christmas Day.**

Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)

The instagram account for the pub show events have been held for the Platinum Jubilee, BBQs, Quiz Nights, and Sporting Events.
<https://www.instagram.com/foxandbadgerwellow/>

The pub has a website which shows it serves food on three days of the week and is open for drinks on the other days except Monday when it is closed.
<https://www.thefoxandbadger.com/home-1>

Trip Advisor shows that a good standard of food is served in the pub including Sunday Lunch. Takeaways are provided on Fridays.
https://www.tripadvisor.co.uk/Restaurant_Reviewg186370-d5268941-Reviews-The_Fox_Badger-Bath_Somerset_England.html

Enter score out of 25 and rationale.

10/25

The application shows a number of functions that supports the local community, and these are tied into the business functions of the pub.

The statement that is made in the application that the pub is the only community venue in Wellow does not reflect the fact that the village also do have a well-used village hall where a number of community activities take place.

The pub does not open to trade on a Monday or fully on a Sunday, there is no mention of any opportunities of where the community could be offered the use of the facilities at these times.

C2. Is any aspect of the usage actively discouraged by the Council's Policy and Budget Framework?

Evidence supplied 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.

25/25 - 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 supplied by nominee:

As highlighted in C1, the Fox and Badger has extensive social value for the local community as a place to meet fellow villagers as a social hub for the village community.

There was a significant sense of loss of this social cohesion during lockdown, being unable to meet with fellow villagers and temporarily losing a cornerstone of the community.

The pub serves the community as a venue to support local events as highlighted in C1 above.

The pandemic has highlighted the huge value to communities of the importance of supporting these assets on their doorstep which benefits wider sustainability in our society.

The Fox and Badger became a key provider of local take away services at a time when many in the community were avoiding travelling and / or isolating.

Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)

None

Enter score out of 25 and rationale.

10/25

C4. How strongly does the local community feel about the usage as furthering their social interests?

Evidence provided by nominee.

It was decided that the best way for local community to express their views on how strongly they felt that the existence of the public house would be to conduct an online survey.

This would enable the contributors to show the extent or otherwise of their support. Wellow residents receive a weekly newsletter and the invitation to complete the survey was published for four weekly issues.

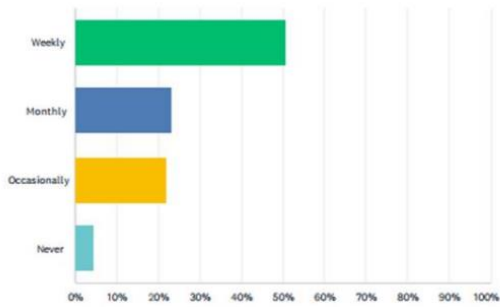
Five questions were included to establish the importance of the Fox and Badger and we had 91 respondents.

The detailed results are attached but the main findings were as follows:

- 73% visited monthly with over 50% weekly.**
- 93% rated the existence as 'very' important to them and 85% to the local community**
- 93% thought that its closure would seriously affect the local community**
- 93% supported the Parish Council's application with no objectors**

Q1 How often do you visit the Fox and Badger Pub?

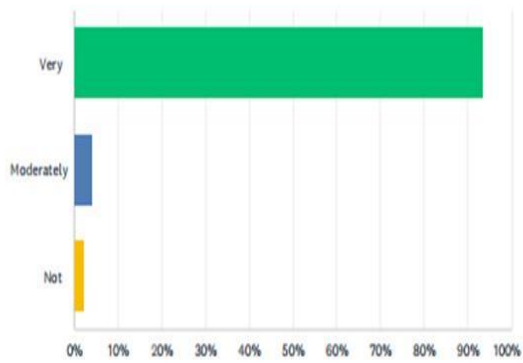
Answered: 91 Skipped: 1



ANSWER CHOICES	RESPONSES	
Weekly	50.55%	46
Monthly	23.08%	21
Occasionally	21.98%	20
Never	4.40%	4
TOTAL		91

Q2 How important is existence of the pub to the local community?

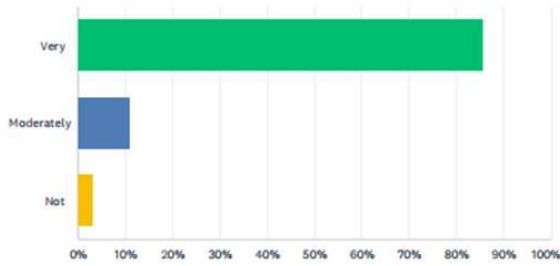
Answered: 92 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very	93.48%	86
Moderately	4.35%	4
Not	2.17%	2
TOTAL		92

Q3 How important is the existence of the Pub to you as a local establishment?

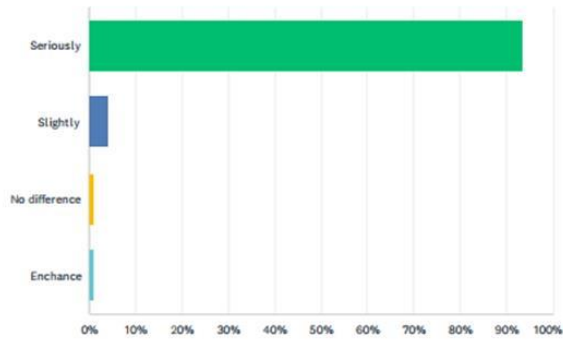
Answered: 91 Skipped: 1



ANSWER CHOICES	RESPONSES	
Very	85.71%	78
Moderately	10.99%	10
Not	3.30%	3
TOTAL		91

Q4 If the pub were to close - how would this affect the local community?

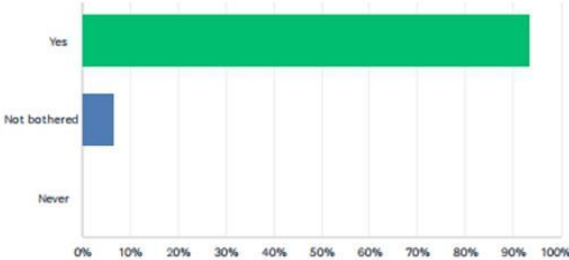
Answered: 92 Skipped: 0



ANSWER CHOICES	RESPONSES	
Seriously	93.48%	86
Slightly	4.35%	4
No difference	1.09%	1
Enchance	1.09%	1
TOTAL		92

Q5 Would you support the Parish Council in establishing the Fox and Badger as a community asset?

Answered: 92 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	93.48%	86
Not bothered	6.52%	6
Never	0.00%	0
TOTAL		92

Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)

Extract from the Minutes of the Meeting of Wellow Parish Council held remotely on Monday 8th November 2021

5.11.21 ASSETS OF COMMUNITY VALUE: this item was introduced to consider Fox and Badger Pub as an Asset of Community Value meaning that if the pub is put on the market for sale within 5 years, we would have 6 months to raise the finance to buy it. The Council agreed to support this proposal and will look into the process required.

Enter score out of 25 and rationale.

20/25

The evidence provided through the local survey that was conducted does show that there is staunch support in the community for a pub to remain in Wellow.

Wellow has a good history of taking on services in the Community. The village shop and transport scheme are both good examples of this.

Total score:

65/100

If STEP C meets a minimum scoring of 55%, go to Step D

STEP D: This section considers whether it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

For assets such as this where the actual non-ancillary usage is a current one (see Step B above), 88(1) (b) of the Localism Act requires the Council to consider whether in the opinion of the local authority it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further (whether or not in the same way) the social wellbeing or social interests of the local community.

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 building requirement has not changed significantly and is more than fit for purpose in supporting the Wellow Parish community as its last local Public House.

Feedback from other parties and other information gained in relation to this criterion:

None

Score (YES/NO) and rationale.

NO- the asset is considered to be fit for purpose.

If No to D1, place on register of Assets of Community Value, and do not go to D2. If yes to D1, go to D2.

D2. Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales?

Evidence supplied by nominee:

Not applicable

Feedback from other parties and other information gained in relation to this criteria.

Not applicable

Score (YES/NO) and Rationale:

Not scored as NO answer to D1 above

If yes to D2, place on register of Assets of Community Value. If no to D2, place on list of unsuccessful nominations.

RECOMMENDATION:

THAT THIS ASSET 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 Bathavon South Ward.

b) Wellow Parish Council is entitled under 89(2)b(iii) of the Act to make a community nomination in respect of the Asset

c) The nomination from Wellow Parish Council 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 current and 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



Cherry Bennett
Director of People & Policy
Bath & North East Somerset Council

Date

2nd August 2022

Asset Location Map

HM Land Registry
Current title plan

Title number **AV216223**
Ordnance Survey map reference **ST7458SW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Bath and North East
Somerset**

