

**COMMUNITY RIGHT TO BID
REVIEW DECISION NOTICE**
(Section 92 Localism Act 2011)

To:

Applicant for the Review Howarth Homes Ltd

Nominating Group Save the Camp

Other owners

A request was made for a review of the decision to include land in the List of Assets of Community value on 3rd September 2015 under section 92 of the Localism Act 2011 for the determination of whether the listed land should continue to be included in the Council's list of Assets of Community Value.

The Land in question is the land situated at and known as:

The Camp Public House, 149 Camp Road, St Albans

Land Registry Nos. HD433788

The Council hereby gives Notice in accordance with section 92 of the Localism Act 2011 that following a review the land in question will continue to be included in the list of Assets of Community Value

My **reason(s)** for the decision:

1 Review Decision

1.1 On 25 January 2016 I conducted a Review Hearing into the listing of The Camp Public House, Camp Road, St Albans as an Asset of Community Value. The public house was listed by St Albans City and District Council under a notice dated 9 July 2015. By a letter dated 3 September 2015 Lennons Solicitors acting for the owner of the land, Howarth Homes plc, requested a review of the Council's decision pursuant to Schedule 2 paragraph 1(1) of the Assets of

Community Value (England) Regulations 2012. Lennons Solicitors requested an oral hearing.

2 Background

- 2.1 At the Hearing I received oral and written representations from Mr Jonathan Wills, Counsel on behalf of Howarth Homes plc; from Debbi White, Property and Asset Manager, on behalf of St Albans City and District Council and from Mr Steve Bury on behalf of Save the Camp Group (who nominated the Public House for listing).
- 2.2 I also heard oral evidence from Mr McEntyre on behalf of Howarth Homes plc.
- 2.3 I have before me the Agenda for the Review Hearing dated 18 January 2016 comprising 276 pages. The Agenda included extracts from the Localism Act 2011 and the Asset of Community Value (England) Regulations 2012. The Agenda also contained a nomination form, constitution and plan submitted by the Save the Camp Group; The Camp Public House Decision Notice; a statement by Judith Adamson, the Council's Regulatory Solicitor dated 14 January 2016, and submissions and evidence on behalf of Howarth Homes plc; Debbi White who made the original decision to list The Camp Public House as an Asset of Community Value and from nominating group, Save the Camp. The Agenda also included copies of various First Tier Tribunal Decisions. I was provided with copies of correspondence between myself, Judith Adamson and Mr Coyle of Lennons Solicitors. I attach a copy of this correspondence at Appendix 1. Further, during the course of the Hearing a redacted copy of a document entitled "Assets of Community Value – Unincorporated Body Nomination Form" was produced and circulated to the parties. I attach a copy of this document at Appendix 2.
- 2.4 I was also provided with copies of First Tier Tribunal Decisions numbered:
CR/2014/0014 concerning an appeal by Martin Moat regarding The Dolphin Public House
CR/2013/0007 concerning an appeal by Simon Reed regarding The Pheasant Public House
CR/2013/0009 by Gullivers Bowls Club Limited regarding The Gullivers Bowls Club.
CR/2014/0008 concerning an appeal by TG Sawtell regarding the Mare and Foal Public House.
- 2.5 I was accompanied at the Hearing by Cllr Julian Daly, Council Leader and Portfolio Holder for Planning and Conservation. I am delegated by the Council, in consultation with Cllr Daly, to consider and determine requests for reviews of Council decisions to list land as an Asset of Community Value. Notes of the Hearing on 25 January 2016 are attached as Appendix 3 to my decision. The notes summarise submissions and evidence given at the Hearing. The Hearing was held in public.

2.6 The Camp Public House has been entered into the lists of Assets of Community Value maintained by the Council. The reasons given for the decision to list are as follows:

- 1 The asset was a public house serving a well-populated residential area. At the time of inspection the pub had ceased trading (believed to have closed on 14 May 2015).
- 2 The exterior of the property is well maintained and not run down.
- 3 Information provided by local residents suggest that for over 100 years the pub has been used for community activities such as “watching England games”; “birthday celebrations”, “family days”; “sporting occasions”, “music” and “pool and darts teams”. It is difficult to verify the extent of this use now that the pub has closed however there is a strong local feeling at the loss of the pub with a 600 plus named petition being submitted.
- 4 Although the pub has ceased trading there is as yet no planning permission for an alternative use (nor a significant planning history save for in connection with the use as a pub). This suggests there are a number of possible uses to which the building and land could be put, including that of a public house.
- 5 Taking into account recent First Tier Tribunal decisions, (Moat CR/2014/0014 and The Rose Hill Tavern CR/2014/0015 for example) it is not fanciful to imagine that the asset could within the next five years further community purposes again. To quote Judge Peter Lane in The Rose Hill Tavern case (CR/2014/0015): “It is also necessary to emphasise the fact that what is “realistic” may admit a number of possibilities, none of which needs to be the most likely outcome”.

The land was entered onto the list for 5 years from 6 July 2015. The Decision Notice and location plan are contained at pages 124-126 of the Agenda dated 18 January 2016.

2.7 Howarth Homes have submitted a planning application to St Albans District Council for a residential housing development on the site of The Camp public house. This planning application is currently being considered by the Council’s planning department and is yet to be determined.

2.8 In order for a building or other land to be entered on to the list of Assets of Community Value a local authority must be of the opinion that the building or land meets the criteria in Section 88 (1) or 88 (2) of the Localism Act 2011. Section 88 (1) is concerned with an actual current use of the building or other land that is not an ancillary use. On 6 May 2015 Mr Steven Bury who described himself on the nomination form as Secretary of “Save the Camp” submitted an application to St Albans City and District Council nominating the Camp Public House as an Asset of Community Value. The nomination stated that “Save the Camp” was a voluntary/community group with 69 members. The Council’s nomination form contained a section headed “Why do you feel the property is an Asset of Community Value? Please give as much information as possible.”

In his nomination form Mr Bury stated as follows: “The Camp public house has provided a social amenity to the local community in a large area of the city of St Albans for over 100 years. There are no other public houses locally, the Crown and the Rats Castle are both a long walk away and the Mile House (which was even further away) was closed and converted to housing. The Camp Section has ample parking and has an outside patio drinking area which The Crown and The Rats Castle do not provide. The pub is the social hub of the area and has a darts team, a pool team and runs regular events including quiz nights, karaoke and charity events. The Camp also has televised sporting events including football which are very popular and has a soccer themed public bar. As the pub has two bars this does not interfere with those who wish to drink quietly in the lounge. The pub also provides for the offices next door whose employees use the pub and are those who have signed the petition with postal addresses which are further afield. The Camp is well run, has been recently redecorated inside and out to a high standard and will be a great loss to the many loyal customers if it is closed as proposed on 15th May 2015.”

Accompanying the application Mr Bury submitted a plan of the premises, a copy of the “Save the Camp” Constitution and a membership list containing 48 members. A redacted version of this latter document was produced during the hearing. This document is entitled “Assets of Community Value – Unincorporated Body Nomination Form”. The form then contains the following statement:

“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 Camp

ADDRESS OF PUB: 149 Camp Road, St Albans AL1 5HR

No.	Name (please print clearly)	Your full address (including postcode)* <small>* each nominator should have a different address</small>	Are you registered to vote within the local authority, or a neighbouring local authority?	Signature

The names, addresses and signatures of the people signing the document have been redacted. However, in a statement dated 14 January 2016 (see pages 127-132 of the agenda) Judith Adamson, Regulatory Solicitor at St Albans Council describes this document as a membership list. At paragraph 14 of her statement Ms Adamson states “the membership list for “Save the Camp” shows 48 names and addresses with a signature against each individual’s entry. On 13 May 2015 I checked the electoral register for the district. I looked up all the addresses on the

list to make sure that at least 21 of the individuals were registered to vote in the District. I found that 21 of the 48 individuals could be found on the Electoral Register. Some of the other individual's names and addresses were not sufficiently clear to enable me to locate them on the register." A full version of this document containing the names and addresses concerned was not produced at the hearing because it was considered that this information was the personal data of the 48 individuals concerned. In my letter dated 20 January 2015 (see Appendix 1) to Mr Coyle of Lennons Solicitors I refused a request from Howarth Homes for full disclosure of this document. At the hearing Mr Wills, on behalf of the owner, challenged the status of this document and whether the people signing it had intended to become members of a voluntary or community body.

- 2.9 When Mr Bury submitted the nomination form The Camp public house was trading as a pub. However, when Ms White carried out her inspection of the property on 26 June 2015 the pub had ceased trading. Accordingly, when Ms White made her decision on 9 July 2015 to enter The Camp public house on the list of Assets of Community Value the pub had been closed for a few weeks. As Reviewing Officer I therefore need to consider whether the nomination meets the criteria in Section 88 (2) of the Localism Act 2011 and the requirements of the Assets of Community Value (England) Regulations 2012. Section 88 (2) is concerned with a building or other land in a local Authority's area that is not land of community value as a result of Section 88 (1). Section 88 (2) provides as follows "(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 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) the social wellbeing or social interests of the local community."
- 2.10 The relevant Regulations have been made by the Secretary of State and are known as the Assets of Community Value (England) Regulations 2012.
- 2.11 Section 89 (1) provides that land in a local authority's area which is of community value may be included by a local authority in its list of Assets of Community Value only;
- (a) in response to a community nomination or
 - (b) where permitted by regulations made by the appropriate authority.
- Section 89 (2) goes on to define the meaning of the term "community nomination". This subsection provides that a community nomination means a nomination which,
- (a) nominates land in the local authority's area for inclusion in the local authority's lists of Assets of Community Value and
 - b) is made

(i) by a parish council in respect of land in England in the parish council's area; or
(iii) by a person that is a voluntary or community body with a local connection.

- 2.12 The Assets of Community Value (England) Regulations 2012 provide definitions of a community body and also specify the requirements which a community body other than a Parish Council has to meet in order to have a local connection with land in a local authority's area. Regulation 5 lists various bodies which come within the definition of a voluntary or community body. This includes at Regulation 5 (2) (c) an unincorporated body – (i) whose members include at least 21 individuals, and (ii) which does not distribute a surplus it makes to its members. Regulation 4 provides that a body other than a Parish Council has a local connection with land in a Local Authority's area if
- 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.
- Regulation 4 goes on to provide at Regulation 4 (b) that in the case of a body within Regulation 5 (1) (c), (e) or (f), any surplus it makes is wholly or partly applied
- (i) for the benefit of the local authority's area or
(ii) for the benefit of a neighbouring authority's area; and
(c) in the case of a body within Regulation 5(1) (c) must have at least 21 local members. In Paragraph 4 (3) the term "*local member*" is defined as a member who is registered, at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Act.

Regulation 6 of the 2012 Regulations specifies that a community nomination must include the following matters:

- (a) a description of the nominated land including its proposed boundaries;
(b) a statement of all the information which the nominator has with regard to
- (i) the names of the current occupants of the land, and
(ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land.
- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and
(d) evidence that the nominator is eligible to make a community nomination.

3 The Evidence

The Council's Original Decision Maker's Evidence

- 3.1 Debbi White, the Council's Property and Asset Manager, gave evidence at the Hearing. She stated that she made the decision to list The Camp public house as an Asset of Community Value. Before making her decision Ms White says that she carried out an external inspection of the property on 26 June 2015 accompanied by her colleague Lyn Henny, Asset Manager Surveyor. Ms White

noticed that the public house was closed so she was not able to inspect the interior of the property. She did however observe a Sky satellite dish fixed to the exterior of the property which suggested to her that the premises had been used for the broadcasting of sporting events. Ms White stated that she took into account the nomination submitted by the Save the Camp Group (set out at page 117-122 of the agenda). She also took into account emails which she received from members of the public. These emails are contained at pages 189-203 of the agenda. Ms White said that she was satisfied that The Camp Public House should be listed as an Asset of Community Value. The reasons for her decision are recorded at page 125 of the agenda. She considered that the pub had been in operation for over 100 years and had been used for various community activities such as watching England games, family days, music and pool and darts teams. Ms White also referred to the fact that although the pub had ceased trading that at that time no planning application had been submitted for an alternative use. This suggested to her that there were a number of possible uses to which the building and land could be put including that of a public house. Mr Wills, on behalf of the owner, Howarth Homes plc questioned Ms White as to how she came to decide that the nomination submitted by Mr Bury met the requirements of Regulations 4, 5 and 6 of the 2012 Assets of Community Value (England) Regulations. Ms White stated that she had received advice from Ms Adamson that the application met the test for a community nomination. He suggested to Ms White whether the nomination met the requirements of Regulations 4, 5 and 6 was effectively made by Ms Adamson rather than herself. Ms White agreed that this was the case. She also stated that she took into account the strength of public opinion expressed in the emails which she had received.

- 3.2 I sought clarification from Ms White as to the information which she had taken into account in reaching her decision to list The Camp as an Asset of Community Value. Ms White stated that from her site visit on 26 June 2015 she formed the impression that the property was in a very good condition and that money had clearly been spent on it. Ms White said that she had taken advice from Ms Adamson that the nomination met the criteria. I asked Ms White why she considered it realistic to think that the property could re-open as a pub within 5 years. Ms White replied that she thought the most likely future use of the site would be for housing. However, given the condition of the property Ms White considered it was conceivable that another operator could consider it viable to run it as a pub. Ms White said that it would probably need to be a small, community run venture. Ms White said that the re-opening of the pub did not have to be the most likely outcome. I drew Ms White's attention to the fact that the owner had paid £1.47m to purchase the site from McMullen's and asked her why she considered it realistic that a community group could buy the site. Ms White agreed that it seemed unlikely, although it was a wealthy area and there was a possibility that a benefactor could come forward to purchase it. Ms White said that the most likely outcome now was that the site would be used for housing.

4 Evidence submitted on behalf of Howarth Homes plc

4.1 Mr Wills referred to the statement on behalf of Howarth Homes (set out at pages 145-154 of the agenda). The property was a former public house which had been acquired by McMullen & Sons Limited. They had built a public house at the property in 1915. It had traded as a public house for 100 years. Sales of beer at the pub had declined strongly since the late 1980s so that when the pub ceased trading, beer sales were about one quarter of the level at which they had been in the late 1980s. McMullen had made significant capital investment in the property between 2007 and 2013. However, the pub was loss-making by 2008 and losses only increased thereafter. McMullen decided that it was uneconomic to continue trading at the property. The property ceased trading as a pub around mid-May 2015. They exchanged contracts to sell the property to Howarth Homes in March 2015. Completion took place in June 2015. Howarth Homes paid £1.47m for the freehold. Howarth Homes provided a letter from McMullen & Sons Limited dated 16 June 2015 (see pages 158-160 of the Agenda) in support of their appeal. Attached to the letter was a graph showing the barrelage history between 1987 and 2015. McMullen stated that there had been a decline in beer sales from 926 barrels in 1987 to 255 barrels in 2014. They stated that although efforts had been made to try and grow sales and capital investment made in the public house trade had continued to drop. In 2015 the company had concluded that it was uneconomic to continue pumping money into the site with no return and they had made a decision to sell the freehold.

4.2 Mr Wills on behalf of the owner submitted that the property should be removed from the list of Assets of Community Value on the following grounds:

Ground (i)

That the purported nomination was not a community nomination contrary to Section 89 (1)(a) and (2)(b) of the Act. Mr Wills contended that the nomination was not made by a voluntary or community body with a local connection. He referred in his submission to case law and to Regulations 4, 5 and 6 of the 2012 Regulations. Mr Wills submitted that the nomination had not been made by a properly constituted unincorporated body. He stated that there was no evidence as to:

- (i) how the supposed constitution was adopted
- (ii) whether and how any persons had joined the unincorporated body
- (iii) whether the nominating group does or does not distribute any surplus it makes to its members
- (iv) whether Mr Bury was authorised to make the nomination on behalf of the group or whether in reality this was a nomination made solely by Mr Bury. Mr Wills said that this point was especially important given that the sole aim of the group, as stated in the constitution, was not to list the property as an ACV, but to save it as a pub. Mr Wills submitted that an ACV listing does not have the power to achieve this end.

Mr Wills stated that Regulation 4(1)(c) makes provision as to the requisite local connection of a nominated body. There must be at least 21 local members who are registered at an address in the local authority's area or in a neighbouring authority's area as a local government elector. The nomination form indicated that the purported nomination was made by a group calling itself "Save the Camp". Mr Wills stated that the owner had not been provided, despite a request, with the names of the individuals who had supported the nomination.

4.3 Mr Wills challenged whether the nomination submitted by Mr Bury met the requirements of Section 89 (2) (b) (iii) of the Localism Act 2011. The nomination had to be made by a voluntary or community body with a local connection. He submitted that there was no evidence as to whether the "Save the Camp" was a voluntary or community body within the meaning of Regulations 4 and 5. He said there was no evidence as to how the "Save the Camp" Constitution was adopted or indeed whether Mr Bury was authorised to make a nomination on behalf of the group. Although Ms Adamson had said in her statement that she had found 21 of the names listed as being on the electoral register, some of these names might be invalid, the owner, Howarth Homes, had not had an opportunity to inspect the list of names. Mr Wills said that Regulation 6(d) requires a community nomination to contain certain information. The absence of such evidence could not be cured later by further information being provided. Mr Wills submitted that the nomination was not a community nomination.

4.4 Ground (ii)

Under Section 88(2) of the Localism Act 2011 a building or other land in a local authority's area had to meet the criteria set out in the section. Mr Wills contended that the use of The Camp building as a pub did not meet the test because it did not further the social interests of the community. It was clear from the Judge's remarks in the Tribunal decision of the Patel v London Borough of Hackney and Another (2013)UKFTT that not all pubs would come within Section 88 (2) (a) or (b). It was necessary to consider the actual use of a particular pub. In this case Mr Wills said that Howarth Homes contended that The Camp public house did not meet the test in Section 88 (2)(a). He accepted that there was a rich diversity of other pubs in St Albans that did meet this test. Although situated close to its headquarters CAMRA had not nominated the pub for listing. The use put forward by the nominator was vague and unsubstantiated.

4.5 Ground (iii)

This related to whether it was realistic to think that the property would be used as a pub at any time within the next 5 years. The Tribunal decision of the Moat quoted in the Council's Statement of Reasons related to a public house which was currently in use as a pub and the owner had admitted that the site could not be used for housing. Mr Wills submitted that in order to meet the test there had to be evidence that exists that use as a pub was a very real possibility. A use that was conceivable or possible was not realistic. There was no suggestion that The Camp could be used for any other community facility other than a pub. Mr Wills queried whether use as a public house would be possible. McMullen's who had the advantages of owning the freehold of the pub and brewing their own beer

had been unable to make the pub viable. There had been a steep decline in beer sales. A community group would have to pay a seven figure sum to purchase the site and purchase drinks from an outside source.

- 4.6 Ms White asked Mr Wills what he considered would demonstrate that the use furthered a community interest. Ms White enquired whether sporting events and quizzes might meet the test. Mr Wills replied that he did not consider the use of the property as a pub furthered the requisite community interest. Ms White asked Mr Wills about Howarth Homes' intentions regarding the site in the event that they were unable to obtain planning permission. Mr Wills responded that he had no instruction on this but considered that use as a pub would be unrealistic. Ms White asked whether there was a threshold of beer sales to achieve profitability. Mr Wills responded that this depended on the operator. Mr Wills responded that McMullen's had been in the best position as a freeholder with no beer tie.
- 4.7 Mr Bury referred to examples of other local pubs which he said had been written off by the brewery which had gone on to thrive as free houses. He referred to The Plough at Tyttenhanger and the Crooked Billet at Colney Heath. Mr Wills pointed out that these pubs were outside the City Centre. Also, he said that to be a successful concern it would be necessary to acquire the freehold which would require a large lump sum. Mr Bury contended that there had been no opportunity to bid for the pub and if it could become a free house it would be more viable.
- 4.8 Cllr Daly drew Mr Wills' attention to the Tribunal decision of Hawthorne Leisure Acquisitions Limited v Northumberland County Council (2015) UKFTT CR/2014/0012. Cllr Daly noted that in this case the Judge had found the nomination to be valid and he asked Mr Wills in what way he considered that the current case differed. Mr Wills responded that the decision in the case of the Black Bull Inn was not binding. There was no requirement to adopt the same reasoning in the current appeal. Mr Wills considered that the Judge was wrong. Each case depended on its facts, for example whether the nominating body had a Constitution, what that Constitution stated and how it was adopted. Mr Wills accepted that there was no requirement for a formal Constitution. However, if one existed it must meet the test regarding local strength of feeling. Cllr Daly also referred to the First Tier Tribunal decision in the case of The Rose Hill Tavern (CR/2014/0015) in which the Judge had pointed out that what is realistic may admit a number of possibilities, none of which needs to be the most likely outcome. Mr Wills accepted this point but suggested that one should not infer that the Judge was saying that any one of the possibilities might be realistic. A degree of realism was required and in this case a dose of reality was needed regarding whether the property could be brought back as a pub or other community use. In response to a question from Cllr Daly, Mr Wills said that even if the nominating group met the criteria it was very clear that the property was not viable as a pub. It was not viable, he said, to sell the pub at a low cost in order that it could be run as a community use. A planning application had been submitted and the Council had accepted that the probable use of the land was for housing. Howarth Homes position was that it was not realistic to think that the property could be put to community use within the next 5 years. Cllr Daly was

concerned that Mr Wills' assertion that Howarth Homes did not intend to bring the property back into community use within 5 years was not specifically stated in the papers before the hearing.

- 4.9 Following my request Mr Wills called Mr McEntyre to give a statement on behalf of Howarth Homes as to their future intentions regarding the property over the next five years. Mr McEntyre stated that he represented a funding partner. He said that when Howarth Homes acquired the property it had not been listed as an Asset of Community Value. Mr McEntyre stated that if their current planning application for a residential redevelopment was refused by the Council the owner would hold on to the land pending a change in government policy or until the planning appeal process had been exhausted. He said that the owner was prepared to hold on to the land for five years and beyond. In answer to a question from Cllr Daly as to whether Howarth Homes considered other alternative uses of the property apart from community use, Mr McEntyre responded that it was not in the owner's interest to have any other use of the property. They would effectively hold the property empty. He said that Howarth Homes did not intend to open The Camp public house as a pub. The level of the acquisition price would prevent the property from being used for anything other than housing. Howarth Homes would wait until the position changed. Cllr Daly then asked whether in the event the owner was unable to develop the property it would look for alternative uses to offset the capital costs. Mr McEntyre reaffirmed that Howarth Homes would hold on to the land.
- 4.10 I sought clarification from Mr Wills as to the reasons why Howarth Homes contended that use of the property as a public house did not further the social well-being or interests of the local community. Mr Wills responded that the principle of using the property as a pub was not necessarily sufficient. It was a question of fact in each case. Whilst at some point in the distant past The Camp may have fulfilled the role of furthering that use it was the owner's view that the pub had gone downhill over a number of years and so could not now satisfy the test. As the pub was now closed it was not possible to see what the character of the place was like. In Mr Wills' submission the property did not meet the social interest test.
- 4.11 I referred Mr Wills to the uses described in the nomination form at page 118 of the agenda. I asked him why he considered that these uses did not meet the criteria in Section 88. Mr Wills agreed that a pub might satisfy the test despite having no formal teams or activities but in this case he contended that there was insufficient evidence, for example, of people meeting regularly at the pub to demonstrate the way in which the social interest was served. The public emails at pages 190-203 of the agenda were few and contained little detail. Mr Wills said that as a bare minimum he would have expected to see something from the 21 members who were signatories found on the electoral register. I referred to Mr Wills to the Constitution which accompanied the nomination found at page 121 of the agenda. I asked Mr Wills why he contended that the Constitution did not meet the criteria. He replied that there was no evidence as to when it was adopted or by whom and that it may have conceivably been produced by just one

person. Mr Bury then stated that he had presented the Constitution at the same time as the nomination.

5 Evidence on behalf of the nominating group

- 5.1 Mr Bury stated that a petition had been produced signed by 69 people. Only 9 of these people were not local and they worked within the local area and used the pub. All of those who sent emails bar one were in support of the pub and that person still wanted community use for the site. As well as the paper petition there was also an e-petition which now contained 710 signatures. Mr Bury stated that he had been amazed at the support and interest from the local community. A demonstration outside the pub held in January had attracted 50 people who did not want to lose this asset. Mr Bury said that it had been suggested that McMullen had been reluctant to sell the pub. However, Mr Bury understood that they had sold 15 pubs in the last 2 years of which 13 had been sold to developers. They now owned only 2 local pubs. He suggested that the barrelage history should have shown only the last 10 years not the period since 1987. Mr Bury contended that the barrelage argument was misleading. 2015 was shown as a half year but the pub had closed on 14 May so the period was 5 months and 2 weeks. He contended that McMullen's were selling 24.66 barrels a month. Mr Bury suggested that January to Easter was the worst trading period for any licensed trading premises. On the basis of statistics provided he said that there were likely to be 41 more barrels sold in 2015 than in 2014. Mr Bury said there were many people using the pub before it closed and people wanted to keep the asset. He considered it would be revitalised if it were to be re-opened. Mr Wills asked Mr Bury whether he had any qualifications as to whether McMullen's should have sold the property. Mr Bury conceded that he did not have any qualification in this areas and that he was a retired telecoms engineer. He contended that information was lacking regarding the use of the letting room and food sales. In answer to a question from Ms White Mr Bury stated that both the darts and pool teams played in leagues and the pub football team played in the season. Mr Bury stated that the teams were very active and well supported and took part in home and away fixtures.
- 5.2 Cllr Daly questioned Mr Bury regarding the challenge from Howarth Homes about the right of the group to nominate the pub as an Asset of Community Value and the process by which the Constitution had been prepared. Mr Bury stated that when it became apparent that the pub was to close he had agreed to be the single point of contact. He was assisted by a team of 6 people who collected the signatures. Cllr Daly asked whether the signatories were aware of the Constitution and whether it had been formally adopted. Mr Bury replied that there had been discussions in the pub about the criteria for lodging a request for an Asset of Community Value. He had addressed about 50 people who knew about the existence of the Constitution. Cllr Daly asked whether the 21 people whose names were used to verify the nomination were considered to be members of the group. Mr Bury confirmed this is how he viewed it. Mr Bury said

that they were signing to say that they wanted the Council to list the property as an Asset of Community Value. Ms Adamson then explained the process by which she had checked the signatories against the electoral register. Ms Adamson said that she had checked all 48 names and of those 21 were on the electoral register.

- 5.3 Mr Wills requested sight of a copy of the list even if it didn't contain the names and addresses. He submitted that this document was not a membership list but was a petition. I asked Ms Adamson to produce a copy of the document with the names and addresses and signatures redacted. It was then circulated to the parties (please see paragraph 2.7 above for a description of this document). Mr Wills then asked Mr Bury some further questions about the document. He asked how it was presented to those people that had signed it. Mr Bury replied that there were 6 people who went round obtaining signatures in the pub. Mr Wills asked how were the 6 people selected and were they users of the pub? Mr Bury replied that they were interested parties who had volunteered. Some of them did not sign the list. Mr Bury stated that those signing the document could see the title and preamble at the top of the form. If they requested further information this was provided. Mr Bury stated there was discussion and some people decided not to sign. Mr Wills asked Mr Bury who had prepared the Constitution. Mr Bury stated that he had prepared the document. Mr Wills asked whether there had been a meeting at which the Constitution had been approved. Mr Bury replied "not as such". Mr Wills noted that the Constitution (contained at page 121 of the agenda) provided that an Annual General Meeting will be held in June each year and that the AGM will elect a Chair, Secretary and Financial Secretary. Mr Wills asked whether the AGM had been held in June 2015. Mr Bury said that no meeting had been held. Mr Wills then asked whether people who had signed the petition had been shown a copy of the Constitution. Mr Bury replied that it was available and shown to a few people. There was also a copy in the pub. He could not guarantee that it was shown to all signatories. Mr Wills suggested to Mr Bury that people who signed the document would not know there was a group called "Save the Camp" as the document did not say that. Mr Bury responded that the organisation had to have a name and that the signatories knew that they were signing to request an Asset of Community Value to save the pub. Mr Wills then suggested to Mr Bury that the document was just a request to list the pub as an Asset of Community Value and that those signing it had not agreed to become members of "Save the Camp". Mr Bury replied that the community group is called "Save the Camp" and that people knew what they were signing up to.
- 5.4 I asked Mr Bury by way of clarification as to when the group first became aware that the pub was at risk of closure. Mr Bury replied that this was the beginning of May. I asked whether a meeting had been held to discuss the Assets of Community Value application. Mr Bury replied that it was discussed with people as they signed. I asked Mr Bury that whether the people who signed the document were aware that they were joining a body. Mr Bury asserted that they were aware that they were forming a group and could see that other had signed. I also asked whether the Constitution was shown to people. He said that copies

were available in the pub but it was not displayed. Also he stated that the volunteers seeking signatures had a copy of the Constitution with them. Mr Bury also referred to a meeting that had taken place outside of the public house on 9 January 2016.

- 5.5 I then asked Mr Bury about the use of the pub. I asked him when the activities described in the nomination had occurred. Mr Bury replied that they were running up until the time of the pub's closure. There were darts and pool teams which had intended to continue. Mr Bury stated that he had used the pub for about 10 years at lunchtimes. In answer to my question he said that a quiz night had been due to take place on the Saturday before the pub closed. He said that quiz nights were held fortnightly and karaoke held at least once a month. Mr Bury stated that football matches were shown on Sky TV. I also asked Mr Bury about the intentions of the "Save the Camp" group if an opportunity or acquiring the site became available. Mr Bury replied that he had not had an opportunity to canvass. He doubted that Howarth Homes could afford to leave the site idle for 5 years. Mr Bury suggested that should the pub become available at market value for use as a pub things could be done to acquire it such as crowd funding. Mr Bury suggested that others may be interested in buying the property for use as a pub. He gave examples of where this has happened such as The Red Lion at Preston and The White Horse at Kimpton. He said that these pubs had been bought from developers.

6 Final submissions

- 6.1 Ms White stated that at the time that she made her determination the nomination met the criteria for listing as an Asset of Community Value. Mr Bury had referred to other pubs being bought from developers and re-opened. In Ms White's view it was realistic to assume that this was an option regarding The Camp. Mr Bury stated that he had been surprised by the high level of support and interest. He considered that the local community deserved some say in the future of the pub.
- 6.2 Mr Wills submitted that the question to consider is whether a group called "Save the Camp" had come into existence and had met the statutory requirements. He stated that there was no committee, no Financial Secretary, no members and no funds; just signatures. Mr Bury had not been appointed as Secretary. He stated that the document which had been signed did not purport to create a group called "Save the Camp" but was to persuade the Council to list the pub as an ACV. The regulations required that only a community group could submit a nomination. The group did not come together by agreement and "Save the Camp" does not exist or even if it did, the only member is Mr Bury. The nomination could not therefore satisfy the terms of regulation 6. With regard to local connection criteria Mr Bury considered that the statement (by Judith Adamson) that 21 out of 48 signatories met the criteria was subjective. The names could have been checked wrongly or included nicknames. Mr Wills submitted that the owner was entitled to see the membership list and the reviewer must be satisfied that the regulations had been met. He also asserted that the nomination had not met the criteria in Section 88

(2) that there had been actual use of the building in the recent past that was not ancillary which furthered the social well-being or interest of the local community. With regard to the third ground of the owner's challenge the reality was that it would not be used for community purposes. It was a matter of conjecture whether the property could open as a pub. It was not realistically possible to base a conclusion on an assertion that this had happened elsewhere. With all their advantages McMullen's had been unable to make a go of the pub and the market had shown that the use as a pub was not viable.

7 My decision

7.1 I have considered all the evidence contained in the agenda, the additional documents produced at the hearing and the submissions and evidence given by Ms White, Mr Bury, Mr Wills and Mr McEntyre.

7.2 Section 88 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 set out the conditions which must be met for listing a property as an Asset of Community Value. Section 88 (1) is about an actual current use and Section 88 (2) concerns a use in the recent past. At the time that The Camp public house was entered into the St Albans Council list of community assets in July 2015 its use as a pub had ceased. In my view therefore this is a case where I have to decide whether the criteria specified in Section 88 (2) have been met namely,

(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 further the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next 5 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.

The term "recent past" is not defined in the Act or 2012 Regulations.

7.3 Mr Wills on behalf of the owners Howarth Homes put forward three grounds of challenge to the listing decision. He suggested that the decision to list was made by both Ms White and Ms Adamson. However, it appears to me on the evidence that the decision was taken by Ms White following advice from Ms Adamson as to whether the nomination was submitted by a voluntary and community body that meets the requirements of Regulations 4, 5 and 6.

7.4 I consider that the grounds of challenge raise three issues which I need to consider:

Issue A

Does the nomination submitted by Mr Bury on behalf of "Save the Camp" meet the requirements of Section 89 of the Localism Act 2011 and Regulations 4, 5 and 6 of the Assets of Community Value (England) Regulations 2012. The question here is whether the nomination was submitted by a person that is a voluntary or community body with a local connection. Is the "Save the Camp" group an unincorporated body whose members include 21 individuals with a local

connection to St Albans District? Are the body's activities wholly or partly concerned with the local authority's area? Will any surplus which the "Save the Camp" group make be wholly or partly applied for the benefit of the St Albans Council area or a neighbouring authority's area.

Issue B

Does The Camp public house meet the test set out in Section 88 (2)(a) of the Localism Act 2011. I have to consider whether there is a time in the recent past when an actual non-ancillary use of The Camp public house furthered the social well-being or interests of the local community.

Issue C

The Camp public house is currently closed. Its previous use ceased on or around 14 May 2015. Is it realistic to think that there is a time within the next 5 years when there could be non-ancillary use of The Camp public house that would further (whether or not in the same way as before) the social wellbeing or the social interests of the local community?

7.5 Issue A

Mr Wills' first ground of challenge is that the nomination made by Mr Bury on behalf of "Save the Camp" group was not a valid nomination. He contends that the nomination dated 6 May 2015 was not in fact made by a properly constituted unincorporated body. He maintains that there is insufficient evidence to demonstrate that the 21 people who signed the nomination form intended to become members of an unincorporated body. Instead he says that they believed that they were signing a petition in support of the listing of The Camp pub as an Asset of Community Value. Moreover, Mr Wills disputed whether there was reliable evidence that these 21 people whose names appeared on the electoral register were members of the group. He also maintained that there was insufficient evidence that the group had been properly constituted, pointing out that no formal appointment had been made to any of the management positions and that no AGM had been held. He challenged whether the people who had signed the membership list had approved or were aware of the Constitution.

7.6 On 7 May 2015 the Council received an ACV Nomination form completed by Mr Bury requesting the Council to list The Camp public house. The nomination form stated that the application was made by the "Save the Camp" group which was described on the form as a voluntary/community group. Accompanying the application was the document entitled "Assets of Community Value – Unincorporated Nomination Form". This document contained the following statement "On behalf of the following members of the local community please list this pub as an Asset of Community Value." The name and address of the pub was then stated. The document was signed by 48 individuals. A version of this document with the names, addresses and signatures redacted is attached at Appendix 2 to my decision. The box for the address includes the guidance "each nominator should have a different address". Oral and written evidence had been given to me by Ms Judith Adamson, the Council's Regulatory Solicitor. On checking the names and addresses she found that 21 of the 48 individuals named

in the list were found on the St Albans Council electoral register. Mr Bury gave evidence at the hearing that following the announcement of the pub's closure he convened meetings at the pub of pub customers. He said they discussed lodging requests for an ACV. He said that he had addressed about 50 people in the pub. Customers were requested to sign the nomination form. Mr Bury maintained that the people who signed the form were aware of the group's Constitution. Mr Bury and 6 volunteers obtained signatures to the nomination form. He said that those signing the document could see the title and preamble at the top of the form. He also said that the Constitution was available to those who signed but could not guarantee it was shown to all signatories. In answer to a question from Mr Wills that the document was just a request to list the pub as an asset of community value and that those signing it had not agreed to become members of "Save the Camp", Mr Bury replied that the community group was called "Save the Camp" and the people signing the document knew what they were signing up to. When I sought clarification on this point from Mr Bury he said that people signing the form were aware that they were forming a group and could see that other people had signed.

7.7 I note that there was a dispute as to the validity of a nomination in the First Tier Tribunal Decision, Hawthorne Leisure Acquisitions Limited v Northumberland County Council (CR/2014/0012). This decision is reproduced at pages 207-212 of the agenda. In this case the owners of The Black Bull Inn at Lowick challenged the validity of the nomination by a community group. It was argued in that case on behalf of the owner that the group was not an unincorporated body within the meaning of Regulation 5 (1)(c) of the Assets of Community Value (England) Regulations 2012. Judge Warren considered that a local action group, forming itself perhaps for the specific purpose of making a community nomination, is not expected to turn its mind immediately to the drawing up of a formal Constitution or set of rules or to even give itself a name before making a nomination. He said that the requirement for 21 local individuals is sufficient to indicate strength of feeling. Judge Warren was satisfied with the evidence from a Northumberland Council officer that the group met the local connection requirement because a member of staff had verified that 21 members of the group were in the register for local elections.

7.8 After carefully assessing the evidence in this case I consider that the nomination was made by a voluntary or community body with a local connection. I am satisfied that the signatories to the nomination form did intend to join the "Save the Camp" group and that of the 48 people who signed the form at least 21 people met the requirement in Regulation 4 (1)(c) that the body has at least 21 local members. I am also satisfied on the evidence before me that the members who signed the form were aware of the group's Constitution. The Constitution provides for the creation of a bank account to raise funds for campaigning and goes on to provide that if The Camp is re-opened as a public house or the "Save the Camp" group is dissolved any remaining funds will either be:-

1. Put into the community project that intends to run The Camp.

2. In the event that The Camp is not to be run by the community paid into a charity agreed by the members.

I am satisfied from this provision in the Constitution that the "Save the Camp" group meets the requirements of Regulation 4 (1)(a) and (b) of the 2012 Regulations. It seems to me that the group's activities are wholly or partly concerned with the St Albans Council area and that should any surplus arise it will be wholly or partly applied for the benefit of the Council's area. I am also satisfied from the terms of the Constitution that in the event a surplus is made it will not be distributed to the members of the group. Therefore, I consider that the requirements of Regulation 5 (1)(c)(ii) are met. I am also satisfied on the evidence that Mr Bury was authorised to make the nomination on behalf of the "Save the Camp" group. I therefore conclude that the nomination made by the "Save the Camp" group met the requirements of Section 89 and Regulations 4, 5, and 6.

7.9 **Issue B**

The Camp public house closed on or around 14 May 2015. It had been operating as a pub by McMullen & Sons Limited for 100 years. The evidence indicates that there was a separate public bar and lounge. Evidence was given by Mr Bury that the pub hosted a darts and pool team which were playing league matches right up until the closure of the public house. Mr Bury gave evidence that the teams were very active and well supported. The pub also hosted quiz and karaoke nights and live football matches were shown at the pub on Sky TV. It would seem from Mr Bury's evidence and from the 48 signatures to the nomination form that The Camp public house was valued by members of the local community. Further indication of the local community support is given in the emails at pages 190-203 of the agenda. Mr Bury also gave evidence that there was a demonstration outside the pub on 9 January from local residents protesting against its closure. Mr Wills, for the owner, maintained that use of The Camp did not meet the test in Section 88 (2)(a) because its use did not further the social wellbeing or interests of the local community. He suggested that the use put forward by the nominator was vague and unsubstantiated. However, I consider that there is clear evidence of use for social events such as watching football on TV, quiz nights, karaoke evenings and pool and darts matches which were taking place right up until the pub's closure in May 2015. Also in my view use of the pub by the local community as their local encourages friendship, conversation and social interaction. It therefore appears to me that The Camp public house was used in the recent past by the local community as a meeting place and for the purpose of enjoyment of music, social and sporting events. I therefore conclude that the nomination meets the requirements of Section 88 (2)(a) of the Localism Act 2011.

7.10 **Issue C**

Mr Wills, on behalf of the owner, contended that it was not realistic to think that the property would be used as a pub or for any other community facility within the next 5 years. He produced evidence from the former owner McMullen & Sons Limited

that there had been a decline in beer sales since 1987 and that despite capital investment trade had continued to drop. In 2015 Mc Mullen had reached the conclusion that it was uneconomic to operate as a pub and they decided to sell the freehold to the current owners Howarth Homes (see letter dated 16 June 2015 from Mr Newbury, Property Director and accompanying barrellage history at pages 158-160 of the agenda). Evidence was also given on behalf of the owner, Mr McEntyre, that the pub had been acquired for £1.47m with the intention of obtaining planning permission for a residential development. Howarth Homes had a funding partner who supported the project. Howarth Homes were awaiting the outcome of a planning application to the Council for a residential development on the site. Mr McEntyre said that Howarth Homes had no plans to re-open The Camp public house as a pub. If the current planning application was refused by the Council it was the owner's intention to keep the property vacant over the next 5 years pending a change in government policy or until the planning appeal process had been exhausted. Mr Wills, on behalf of Howarth Homes, submitted that in order to meet the test under Section 88 (2)(b) there had to be evidence that future use as a pub was a very real possibility. He maintained that a use that was simply conceivable or possible was not realistic and there was no suggestion that The Camp might be used for any other community facility. McMullen, the former owners, had been unable to make the pub viable and that any community group interested in running the pub would have to pay a seven figure sum to purchase the site and then purchase drinks from an outside source.

7.11 Mr Bury on behalf of the nominating group maintained that the pub could be revitalised if it was re-opened. No information had been provided as to the use of the letting room and food sales. If the pub were put up for sale on the local market money might be raised to acquire it through means such as crowdfunding, Mr Bury also suggested that others might be interested in buying the property for use as a pub. He referred to the example of The Red Lion at Preston and The White Horse at Kimpton which had been bought from developers. Ms White supported Mr Bury's view and suggested that it was a realistic option that the pub might be bought from the developer and re-opened. Mr Wills responded by saying that it was simply a matter of conjecture that the pub could re-open as a pub and it was not realistically possible to base such a conclusion on an assertion that had happened elsewhere. He pointed out that with all their advantages McMullen had been unable to make a go of the pub and the market had shown that its use as a pub was not viable.

7.12 The test in Section 88 (2)(b) of the Localism Act has been considered in recent First Tier Tribunal decisions. One recent decision was that involving The Rose Hill Tavern in Brighton CR/2014/0015. The Rose Hill Tavern had been operating as a public house for 144 years prior to its closure as a result of its sale by Enterprise Inns to Evenden in 2014. The Rose Hill Tavern Action Group had successfully applied to Brighton and Hove City Council for the property to be placed on the list of Assets of Community Value. Following a review the Council decided to maintain the Tavern on the list and Evenden appealed to the Tribunal. It had been suggested on behalf of Evenden that it was not realistic to think that there could be

a non-ancillary use of the Tavern that would further the social wellbeing or social interests of the local community within the next 5 years. Evidence of recent trading history showed that beer sales were 80% lower in 2013 than they had been in 2004. When the pub was put on the market all three offers that were received were based on the pub being converted to a residential use. On behalf of the Council it was stated that because Evenden's planning application for change of use had not been determined the future of The Rose Hill Tavern was uncertain. It could not be said that relevant community use within the next 5 years must be regarded as unrealistic.

- 7.13 Judge Peter Lane considered that the recent trading history of the pub, whilst material, was not determinative. Judge Lane considered that it was necessary to undertake a fact sensitive analysis. He said that what is "realistic" [when considering the requirements of Section 88(2)(b)] may admit a number of possibilities, none of which needs to be the most likely outcome. He also considered that the uncertain planning position was relevant in deciding whether the "realistic to think" test was satisfied. Judge Lane said that should planning permission be refused for conversion to residential use it was plainly not unrealistic to assume that Evenden would look to do something with The Rose Hill Tavern. He considered that putting it on the market, whether as a pub or for some other currently permitted use that would further social wellbeing/interests was far from being fanciful. On the facts of the case Judge Lane dismissed Evenden's appeal.
- 7.14 In the reasons for her decision Ms White also referred to the First Tier Tribunal decision regarding The Dolphin public house at CR/2014/0014. This case concerned an appeal by Mr Martin Moat, the owner of The Dolphin public house in Althorpe, North Lincolnshire. The Dolphin had operated as a pub from 1937 and had been empty for 2 years when purchased by Mr Moat. He re-opened The Dolphin as a pub in December 2011 but closed it at the end of 2013 following a loss of £21K. Mr Moat applied for planning permission to convert The Dolphin into a residence but this application was refused by the District Council. A Planning Inspector then dismissed Mr Moat's appeal against that refusal. The issue before Judge Peter Lane was whether the test in Section 88 (2)(b) was satisfied. On the facts of the case the Judge decided that it was realistic to conceive of a future for The Dolphin as a community-run, not for profit, enterprise. He accepted evidence on behalf of the Parish Council who had submitted a nomination that they were actively engaged in investigating community grants that would be available for establishing The Dolphin as a not for profit venture. They had undertaken a valuation of The Dolphin which was very considerably less than the price sought by Mr Moat. The Judge noted that the fact that Mr Moat regarded that the valuation price obtained by the Parish Council as too low was in no sense determinative given the fact that he had tried, and failed, to obtain planning permission for a change of use. The Judge considered it was realistic to think that Mr Moat may well decide to sell The Dolphin for a price which reflects its current lawful use. He said there was no legal requirement for the Parish Council, or anyone else, to present a fully worked-out business case in order for the asset to remain on the list. Each case turns on its own facts. The Judge was satisfied that

the work undertaken on behalf of the Parish Council demonstrated that there was a level of community intent which made it more than fanciful that The Dolphin could once more further the social wellbeing or social interests of the local community. The Judge concluded that the test in Section 88(2)(b) was satisfied and dismissed the appeal.

- 7.15 I have carefully considered the evidence and submissions before me on the issues as to whether it is realistic to think that there is a time in the next 5 years when there could be non-ancillary use of The Camp public House which would further the social wellbeing or social interests of the local community. The pub is currently closed and the owner Howarth Homes plc have applied to St Albans District Council to construct a residential development at the site. In his submissions to me Mr Wills stated that the Council had accepted that the probable use of the land was for housing. At the time of preparing this decision the outcome of this application is unknown. I give weight to the owner's planning application. I also give weight to the evidence from Mr McEntyre that the owner does not intend to re-open the property as a pub. They say they have ruled out any other use of the property. If the planning application was refused by the Council, Howarth Homes intend to keep the property empty and await the outcome of any planning appeal or a change in government policy. Mr Wills submitted that McMullen had been unable to make The Camp public house financially viable despite capital investment in the business. He distinguished the Moat case where it had been accepted that the site could not be used for housing. He submitted that the Moat case was very different in the case of The Camp. Given the purchase price he said that a community group would have to pay a seven figure sum to purchase the site. Mr Wills contended that the test in Section 88 (2)(b) had not been met. He pointed out that the "Save the Camp" group had provided no evidence that they had sufficient funds to buy the land let alone invest in it and sustain losses that it would inevitably ensue. He maintained that the group must produce such evidence if the prospect of a community pub is considered to be realistic.
- 7.16 Ms White informed me that whilst she considered that the most likely future use of the site would be for housing that as the property was in a good condition it was conceivable that another operator could consider it viable to run it as a pub. She pointed out that in order to meet the test the re-opening of the pub did not have to be the most likely outcome. Mr Bury, on behalf of the "Save the Camp" group, had suggested that the barrelage argument was misleading. He maintained that the purchase price of £1.47m was twice what the public house was worth. Mr Bury considered that the pub would be revitalised if it were to re-open and referred to a petition which had over 700 signatures and to the 50 people who had attended a demonstration outside the pub in January. He doubted whether Howarth Homes could leave the site idle for 5 years and suggested that if it was sold as a pub at market value for pub use then it might be acquired through crowdfunding. He acquired through crowdfunding. He also referred to two local examples where public houses had been purchased from developers.

- 7.17 Whilst I give due weight to the intentions of Howarth Homes to keep the pub vacant throughout the next 5 years should their planning application be unsuccessful, I do not consider that their intentions are determinative. At present the outcome of Howarth Homes' planning application is unknown. Mr Bury, on behalf of "Save the Camp" group, has suggested that the property might be purchased at a market price for pub use. When I asked him whether the "Save the Camp" group intended to acquire the site, should it become available, Mr Bury replied that he had not had the opportunity to canvass members of the group. I consider that notwithstanding their current intention should Howarth Homes not obtain planning permission for a residential use it is possible that the company may decide to sell or lease it for use as a public house, its current lawful use. St Albans is a prosperous area and it is possible that another operator might be able to run the property as a pub. Whilst I note the evidence of declining beer sales in recent years another operator may be able to operate the pub on a viable basis particularly as a community not for profit venture. I also take into account that the pub has operated on the site for 100 years. In my view, the appropriate test is whether the evidence suggests that it is more than fanciful that The Camp public house might in the next 5 years be used as a pub or for some other community use which furthers the social wellbeing or social interests of the local community. I consider that given the amount of local support for the re-opening of the pub and local experience of other pubs re-opening it is possible that the "Save the Camp" group or another community group, perhaps through crowdfunding, or another operator might purchase or lease the property from Howarth Homes and re-open it as a pub. The uncertain planning position is also a factor to take into account. I am satisfied that the test in Section 88(2)(b) is met.
- 7.18 For the reasons outlined above it is my decision that the property known as The Camp public house should continue to be included in the Authority's list of Assets of Community Value. Howarth Homes plc may appeal this listing review decision to the First Tribunal.

M Lovelady
Head of Legal, Democratic and Regulatory Services

17th February 2016

APPEAL OF DECISION: THE OWNER CAN APPEAL THE REVIEW DECISION TO THE FIRST-TIER TRIBUNAL

BY EMAIL

Mr A Coyle
andy.coyle@lennonssolicitors.co.uk

Dear Mr Coyle

Request for disclosure of Membership list for Save the Camp under Freedom of Information Act and Asset of Community Value regime

I write with regard to your request to me dated 15 January 2016 for a review of Ms Adamson's decision to withhold the membership list for Save the Camp under the Asset of Community Value regime. I also note that you have made your request under the Freedom of Information Act.

Under the Freedom of Information Act 2000, we are required to confirm what information we hold, and if we do hold the information, disclose the information, subject to exemptions or other provisions applying.

You requested:

"I refer to the email from Ms Adamson below, which was in response to our requests for disclosure of each and every document, in unredacted form, which:

- (a) formed part of the nomination in this matter; and
- (b) was considered by the Council incoming to its decision to register The Camp Public House as an Asset of Community Value.

We do not accept the Council's position as set out below in response to our requests. Our client is prejudiced by the Council's stance in this matter. We do not consider it fair or appropriate that the Owner should not allowed to know who has nominated its property. "Save the Camp" has no legal personality, save for that of its members. At present, we have no idea who those members are said to be, save for a "Mr Bury".

In the circumstances we wish to repeat our requests to you as the Reviewer, and ask that you review the Council's position on whether or not our client should be entitled to see a complete and unredacted copy of the nomination, plus any other documents considered by the Council in reaching its decision to list, in advance of the Hearing. We make this request because we believe our client as the Owner has a common law right to full disclosure in these circumstances. Without Prejudice that that right, we also repeat the request on behalf of Howarth Homes PLC under the Freedom of Information Act 2000".

My Response:

I note your reiterated request is for full disclosure of all documents referred to by the Council in reaching its decision, in un-redacted form. For clarification I have listed the documents withheld in part or in their entirety:

- the membership list in its entirety;
- the email addresses from the emails sent in by members of the public (their names are disclosed)
- the personal contact details (postal address, email address, mobile number) of Mr Stephen Bury, lead contact for the Save the Camp group, from the nomination form.

The Council is a data controller who must process personal data in accordance with the Data Protection Act (DPA). Ms Adamson considered whether the personal data supplied by third parties should be released.

Under the Freedom of Information Act I have considered if the request relates to personal data. I do not believe it is in dispute that the details withheld are personal data of third parties. In those circumstances I have considered whether the exemption in section 40(2) of the Act applies. This exemption means that personal data can be withheld if it is unfair to release it to a member of the public, taking into account the data protection principles and the conditions in Schedule 2. I have also considered the release to your client specifically under the Asset of Community Value regime.

Ms Adamson has already considered if sharing the data is fair and if such sharing can meet the condition of being in accordance with a 'legitimate interest'. I note that consideration set out in her email of 12 January. She has asked Mr Bury if he will consent to the membership list being shared with you and he has refused. It would seem that the expectation of those on the list was that it would only be shared with the Council. I consider it is reasonable for those signing a membership list to believe that their personal data would not be shared with the public generally or specific third parties. There is nothing on the Council website or the signed form that would suggest the information will be shared with third parties.

Your reiterated request expresses disagreement with the response given to date: it does not engage with the crucial points therein. In particular the point that disclosure of the personal data sought is not reasonably necessary for the furtherance of any legitimate interest is not addressed in your reiterated request.

You will now have received the Agenda for the Review Hearing on 25 January 2016 which includes a statement from Ms Adamson in which she explains in detail how the only legitimate interest in disclosure has already been served. You have not provided an explanation of why there is a legitimate interest in disclosure that is not served by the witness statement made on behalf of the Council.

You state that your client is prejudiced by the Council's current position but you have not identified the prejudice that you say your client suffers as a consequence of the refusal to disclose this personal data.

You state that your client is entitled to "know who has nominated its property". I consider your client knows that an unincorporated association called 'Save the Camp'

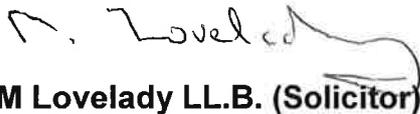
has nominated the property and Ms Adamson's statement provides you with sufficient evidence to address this point.

Finally, I consider that the Asset of Community Value review is not akin to litigation before tribunals or courts and therefore does not attract any automatic discovery and disclosure obligations.

The analysis set out in Ms Adamson's email correctly applied the DPA to the facts of this case. In the circumstances, I agree with her refusal to disclose the requested personal data.

Under the Freedom of Information Act, if you are dissatisfied with this response the Commissioner's Office recommends that you first refer the matter to the Council. You can do this by writing to foi@stalbans.gov.uk asking for an internal review of my decision. If you wish the Council to undertake an internal review, then you must write to the Council within 40 working days of the date of this letter. The Council will not consider any requests received after this date unless there are exceptional circumstances for the delay. You have a right to appeal to the Information Commissioner's Office at the following address: Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. You must do this no later than two months after the Local Authority's last response to you.

Yours sincerely



M Lovelady LL.B. (Solicitor)
Head of Legal, Democratic and Regulatory Services

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.

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

NAME OF PUB: The Camp

ADDRESS OF PUB: 14.9 Camp Road, St Albans AL1 5HR

No.	Name (please print clearly)	Your full address (including postcode)* <small>*each nominator should have a different address</small>	Are you registered to vote within the local authority, or a neighbouring local authority?	Signature

MINUTES OF THE REVIEW HEARING OF THE LISTINGS OF ASSETS OF COMMUNITY VALUE

held in the Council Chamber, District Council Offices, St Peter's Street St Albans, AL1 3JE (AL1 3LD if using SatNav) on Monday, 25 January 2016 at 9.30 am

Present:

Mike Lovelady, Head of Legal, Democratic and Regulatory Services (Chairman)
Councillor Daly (consultee)

In Attendance:

Councillor Clegg

Officers in Attendance:

Judith Adamson, Regulatory Solicitor
Debbi White, Property and Asset Manager
Jonathan Wills, Barrister instructed by Lennons Solicitors representing the Owner
Howarth Homes
Andrew Coyle, Solicitor to the Owner Howarth Homes
Nicholas McEntyre, representative of Owner Howarth Homes
Mr Steve Bury, Save the Camp
Mr Paul Ainsworth, Save the Camp

1. WELCOME AND INTRODUCTIONS

Mr Lovelady welcomed everyone to the meeting. He introduced himself and the parties and officers present then introduced themselves. Mr Lovelady advised that the decision regarding whether the property should remain on the Assets of Community Value listing would be taken by him in consultation with the Council Leader. Although the decision would normally be notified within seven days, in this case it would be made within 14 working days. A recording of the hearing was being made and could be made available to all parties on request. Mr Lovelady then explained the procedure as set out in the papers.

The Council representative, the Owner's representative and the Nominating Group and confirmed that they would be calling no witnesses.

Ms J Adamson explained that, in addition to the papers included within the agenda pack, she had tabled copies of decisions from the General Regulatory Chamber referred to in the decision maker's statement which were omitted from the agenda. She had also tabled copies of further emails between herself and Mr Coyle, the Owner's solicitor, regarding his request for sight of the Save the Camp membership list, which she had declined to disclose for reasons of data protection.

2. **EVIDENCE OF THE COUNCIL**

Ms Debbi White stated that following receipt of the nomination of The Camp Public House as an Asset of Community Value (ACV) she had inspected the site. The pub had already closed so she was only able to inspect externally. The exterior of the building appeared to be in a very good condition. In making her decision she had taken into account emails from previous users of the pub, the Sky satellite dish installed on the building in order to broadcast sporting events, and the general feeling from the nomination form and the petition. These had informed her view that for up to one hundred years people had enjoyed using the pub and she was therefore satisfied that it had been of value to the community.

With regard to whether it could continue to be listed as an ACV, at the time of her decision no application for change of use had been received by the Local Planning Authority. At the time of her decision she believed it could continue to operate as a pub. Prevailing case law indicated that there could be a number of potential uses, and she considered there was a realistic possibility that it could again be an ACV.

3. **QUESTIONS FROM THE OWNER TO THE COUNCIL**

Mr Wills asked for clarification of Ms White's role in making the decision to list The Camp as an ACV. Ms White confirmed that, following receipt of advice from the Solicitor Ms Adamson that the nomination was valid, it was she that had made the decision to list The Camp as an ACV in consultation with the Portfolio Holder. Mr Wills referred to the petition Ms White had referred to and asked what it was seeking to achieve. Ms White advised that the petition was to 'Save the Camp'. She could not remember exactly what the petition stated. She had taken into consideration the strength of public opinion which was against closure of the pub. Mr Wills asked what people who signed the petition were signing up to. The owners were in the dark as to what the strength of feeling was about. Ms White could not provide detail on what the petition was seeking. Mr Wills asserted that Ms White had referred to the petition in her evidence, but that the owner had been denied sight of the document. It was fair to ask what the petition was seeking. Ms Adamson suggested that there was some confusion, and that it was the membership list that the owner had requested sight of, and which she had refused as a data protection issue. Mr Wills replied that the owner had asked to see everything submitted as part of the nomination. They did not know what documents had been received but had asked to see all documents submitted with the nomination. Ms Adamson responded that it was evident from the email exchange what documents had been requested. There had been no discussion regarding the petition, which may or may not already be in the public domain. Ms Adamson had asked Mr Bury of the Nominating Group whether he was willing to release the membership list. He had indicated that he was not. The petition was a different issue. Mr Lovelady asked Mr Bury if he would be willing to make available a copy of the petition, including the names and addresses of those who had signed it. Mr Bury said that without the permission of the signatories he was unable to do this, but could provide a copy of the document header. This stated that those signing were invited to indicate that they wanted The Camp listed as an ACV. Mr Lovelady asked Ms White if she had seen a copy of the petition when she made her decision. Ms White said she may have done many months ago, but did not recall what it said.

Mr Wills asked whether Ms White was aware that a planning application had now been submitted. Ms White confirmed that she was aware but hadn't seen it. Mr Wills referred to The Moat decision, which Ms White's decision partly relied upon. He asked whether The Moat Public House had been closed at the time of the decision to list it as an ACV, since he understood it was still operating as a pub at the time the decision was made. Mr Wills stated that the Camp had already closed when the decision to list it as an ACV was taken. He asked whether Ms White had any input from the owner of the pub, and whether she had any information on its financial viability. Ms White replied that she had not.

4. **QUESTIONS FROM THE NOMINATING GROUP TO THE COUNCIL**

Mr Bury confirmed that he had no questions.

5. **QUESTIONS FROM THE CHAIR AND COUNCIL LEADER**

Councillor Daly asked Ms White to confirm whether the term 'individual representations' in her Statement referred to the emails from former users of the pub included in the agenda pack. Ms White confirmed that it did. Councillor Daly asked Ms White to confirm the degree to which the petition had formed part of her decision to list the property. Ms White responded that she had taken an overall view of the strength of feeling in the area, demonstrated by the 600 signatures on the petition. The overall picture was that the public didn't want to lose the pub. The emails explained the ways in which people had used the pub. Mr Lovelady asked Ms White to clarify what information she had taken into account in reaching her decision to list the Camp as an ACV. Ms White advised that this included the nomination from Mr Bury, Secretary of Save the Camp. It also included the impression she had gained during the site inspection on 26 June 2015. The property was in a very good condition, and was not run down and neglected as might have been expected of a pub that had closed. Money had clearly been spent on it. She had taken into account case law and the emails received. She had seen these after the nomination had been submitted, but before she made her decision. Mr Lovelady asked Ms White what weight she had given to the petition. She responded that taken in the round it gave a sense of the strength of feeling in the area regarding the pub. It was a barometer to show people felt strongly about it, and felt it furthered their community and social interests. She confirmed that, based on the nomination, emails and petition, she considered the nomination met the criteria for listing. She confirmed that she had taken advice from the Solicitor Ms Adamson that the nomination met the criteria.

Mr Lovelady turned to the issue of whether it was realistic to believe the building could be used as a pub in the future. He asked whether it was boarded up. Ms White responded that when she inspected the site hoardings had been erected and the pub was closed, however it was not boarded up.

Mr Lovelady commented that the property was no longer owned by McMullen and Sons Ltd. It was now owned by Howarth Homes PLC. They had submitted a planning application for redevelopment of the property. He asked Ms White whether she had seen the planning application. Ms White replied that she had not. Mr Lovelady asked Ms White why she considered it realistic to think that the property could reopen as a pub within five years. Ms White responded that she thought the most likely future use of the site would be for housing,

as referred to in paragraph 10.4 of her statement. However, as the property was in a good condition, it was a conceivable that another operator could consider it viable to run as a pub again. This would probably need to be a small, community-run venture. She pointed out that the reopening of the pub did not have to be the most likely outcome. Mr Lovelady referred to the fact that the present owner had paid £1.47 million to purchase the site from McMullens. He asked whether in view of this Ms White considered it realistic to think a community group could buy the site. Ms White agreed that it seemed unlikely, however it was a wealthy area, and there was the possibility that a benefactor could come forward to purchase it. However the most likely outcome now was that it would be used for housing.

6. EVIDENCE OF THE OWNER

Mr Jonathan Wills, a barrister instructed by Lennox, Solicitor to the Owner Howarth Homes PLC, presented their Statement of Case. The Owner's argument was set out in the agenda and he did not intend to go through it in detail. Howarth Homes considered that The Camp Public House should be removed from the list of ACVs on the following three grounds:

- (i) The nomination pursuant to which the listing was made was not a community nomination contrary to s89(1)(a) and (2)(b) of the Act in that it was not made by a voluntary or community body as defined by the legislation. Alternatively, the nomination did not contain evidence that the nominator was eligible to make a community nomination as required by regulation 6(d) of the 2012 Regulations.
- (ii) The former use of the property did not fall within s88 (2)(a). Mere use of the property as a public house was not sufficient.
- (iii) It was not realistic to think that the property would be used for purposes falling within s88 (2)(b) at any time in the next five years.

With regard to ground (i), Mr Wills referred to the statement of the nominating body. It was necessary to ensure that the terms of the legislation were satisfied. Statute uses the term 'person' to describe bodies entitled to make a nomination. S89(2)(b)(iii) requires that the 'person' entitled to make a nomination is a voluntary or community body with a local connection. Only if a collection of individuals came together to form a body could this be defined as a 'person'. There needed to be some agreement binding those people and an ability for them to join or leave at will. The nominating body was required to be a 'person' which has the same meaning as an unincorporated association.

Mr Wills drew attention to paragraph 22 of the Statement. This referred to the need for the reviewer to decide in relation to the status of the nominating body whether there was a 'community nomination'. He asserted that it is the status of the nominating body at the time of the nomination which is crucial. There was no evidence as to how the constitution of Save the Camp was adopted, whether it was produced by just one person and whether or not there was a meeting at which it was formally adopted. It was necessary to satisfy the tests. It was not known whether Mr Bury was authorised to make the nomination on behalf of the group, or whether the nomination was made solely by Mr Bury. Individuals cannot make nominations, only groups can. Mr Wills asserted that the stated purpose of Save the Camp was to save the property as a pub, not to get ACV listing. An ACV listing would have no impact on the use of the property. Mr Wills contended that the nomination of the pub as an ACV was not consistent with the sole aim of the group.

Regulation 4 makes provision as to the 'local connection' of a nominating body. The regulation requires that there must be at least 21 local members, defined as being members who are registered at an address in the local authority's area or in a neighbouring authority's area. Ms Adamson had stated in her witness statement that she had found 21 of those listed were on the electoral register. There was no indication of whether she had found more than 21 signatories on the register. Mr Wills asserted that some of the names would have been found to be invalid so wouldn't satisfy the legal tests. Other examples could be people with common surnames or people connected to the Council. The Owner was very concerned not to be able to see the names of those in the group as evidence of this requirement being met. Regulation 6 (d) requires a community nomination to contain certain information. The absence of such evidence could not be cured later by further information being provided. This was no longer a nomination but a listing. Howarth Homes contended that the original nomination was not a community nomination.

With regard to ground (ii), S 88 (2) states that a building or land in a local authority's area 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 land that would further the social wellbeing or social interests of the local community.

The Owner contended that the use of the building as a pub did not further the social interest of the community. There was a rich diversity of other pubs in St Albans that did meet this test. Although the pub was situated close to the headquarters of the Campaign for Real Ale (CAMRA) this body had not nominated it for listing. Howarth Homes contended that the pub was not in the same league as the vast majority of other pubs in the City. It contended that evidence needed to satisfy this test was vague and unsubstantiated.

Ground (iii) related to whether it was realistic to think that the property will be used as a pub at any time during the next five years. In the Moat case quoted in the Council's statement, the appeal had failed when it was admitted there was no way the site could be used for housing. He suggested that the test of whether it was reasonable to think that it could be used as a pub could be answered in only one way, and that was if it was still run as a pub. He considered that case was very different to the situation regarding The Camp. In his view, the test is the difference between whether is it conceivable, or possible but not realistic. To be realistic, there has to be evidence that it exists as a very real possibility. There was no suggestion that it could be any other community facility rather than a pub. For this to happen significant income would be needed. Mr Wills questioned whether this would be possible. He pointed out that McMullens had been committed to the pub for over 100 years. They had built it. There were no costs associated with a beer tie since McMullens brewed their own beer. McMullens knew the local area and had good knowledge of running pubs. Despite this, it had fallen into loss in previous years. This was not due to mismanagement. The bar chart showing barrelage history demonstrated the steep decline in beer sales. Given all this it would be very difficult for someone else to run the pub and turn a profit. A community group would have to pay a seven figure sum to purchase the site. They would also have to purchase drinks from an outside source.

In the absence of such evidence there would need to be some financial input, otherwise it would not be realistic to run the property as a pub. Mr Wills questioned whether on the basis

of only one possibility for future use, the test regarding future use had been met. He contended that the statement from McMullens regarding use of the pub were grounds on which the review should succeed.

7. QUESTIONS FROM THE COUNCIL TO THE OWNER

Ms White referred to Mr Wills' statement that he accepted the pub use existed in the recent past but did not accept that it furthered community interests. She asked what Mr Wills considered would constitute a demonstration of community interest. For example, sports events, quizzes etc. Mr Wills referred to the language of Statute. There were lots of different pub types. In all the circumstances, including the wealth of other pubs in St Albans, he did not consider use of property as a pub furthered the requisite community interest. When pressed as to his reasons he referred to the evidence put forward. He would not say whether he ever drank in The Camp, but stated that there were dozens of other pubs in St Albans he would prefer to drink in. Ms White pointed out that McMullens had spent a lot of money making the property attractive. Why would they have done this if they didn't feel The Camp was viable as a pub? Mr Wills responded that his client was Howarth Homes and they had put no money into making the property viable as a community venue.

Ms White asked what Howarth Homes would do with the site if they were not able to obtain planning permission. Mr Wills responded that he had no instructions on this, but considered use of it as a pub would be unrealistic. Ms White asked whether there was potential for a community asset use if planning permission for redevelopment was not granted, since this would affect the land value. Mr Wills repeated that he had no instructions, but he was aware that some developers keep land on a long term basis.

Ms White referred to the evidence supplied by McMullens regarding barrelage. She asked whether there is a threshold for profitability. Mr Wills responded that this would differ depending on the operator. In this instance there was no beer tie and contended that McMullen was therefore in a good position with a lower threshold, but had nevertheless been making losses for a number of years. Ms White suggested that depending on the barrelage the pub could still be profitable for a particular operator. Mr Wills reiterated his point that McMullens were in the best position as freeholder with no beer tie.

8. QUESTIONS FROM THE NOMINATING GROUP TO THE OWNER

Mr Bury accepted Mr Wills' points regarding the fact that McMullens owned the freehold of the pub and were free of beer ties, yet the pub still closed. However he referred to other pubs, some local, which had been written off by the brewery but which had gone on to thrive as free houses. Examples he gave were The Plough at Tyttenhanger and the Crooked Billet at Colney Heath. Mr Wills pointed out that those pubs were located outside the city centre and there were fewer other such establishments within the radius than there were relating to The Camp. Mr Bury pointed out that this meant it was necessary to drive to them. Mr Wills contended that to be a successful concern it would be necessary to acquire the freehold, which would require a large lump sum. He asserted that it was not realistic to think that this could be done, to enable the property to be used for community interests. There would also need to be a large amount of cash to run the venue. Mr Bury stated that there had been no opportunity to bid for the pub. He considered this to be relevant. He contended that if it could become a free house it would be more viable and could thrive. Mr Wills responded that it would be easier if the freehold was purchased.

9. QUESTIONS FROM THE COUNCIL LEADER AND CHAIRMAN TO THE OWNER

Councillor Daly referred to Mr Wills' comments regarding the status of the nomination. He drew attention to the case law referred to in the statement, and in particular that relating to the Black Bull Inn, Lowick. He considered this to be a very similar case. The Judge had concluded that he was inclined to support the officer's decision and that the nomination was valid. He asked Mr Wills in what way he considered this case differed, and whether this related to the eligibility of the nominating group? Mr Wills responded that the decision was not binding. There was no requirement to adopt the same reasoning in this case. He considered that the Judge was wrong. It depended on the facts – for example whether the nominating body had a Constitution, what that Constitution stated and how it was adopted. He accepted however that there was no requirement for a formal Constitution, however if one existed it must meet the requirements of the test i.e. to demonstrate that it met the test regarding local strength of feeling. He would have accepted the issue if CAMRA had been the nominating group. However in this case there is a Constitution. It was one set of facts against another.

Councillor Daly suggested there were other similarities between the Black Bull Inn case and this one. Turning to the future use of the site, there were also similar cases to draw upon. Councillor Daly suggested that if planning permission for redevelopment was not forthcoming Howarth Homes would need to consider other uses for the site. The papers referred to recent First Tier Tribunal Decisions such as the Rose Hill Tavern case, in which the Judge had pointed out that what is realistic may admit a number of possibilities, none of which needs to be the most likely outcome. Mr Wills accepted that point, but suggested that one should be careful not to infer that the Judge was saying that any one of the possibilities must be realistic. He contended that a degree of realism was required. The cases quoted may assist in applying the tests. However on viewing the facts a dose of reality was needed regarding whether the property could be brought back as a pub or other community use.

Councillor Daly asked whether Mr Wills was saying he expected the officers to meet the test set out in S 88 (2)(b) of the Act. Mr Wills responded that the position of the officers was different to that of Mr Lovelady as reviewer. He was statutorily obliged to consider the application and the decision and decide whether the property should be listed as an ACV. He would be required to give reasons for his decision. Mr Wills gave reasons why he considered the decision to list the property should be reversed. Even if the nomination met the criteria, the nominating group had no idea regarding the financial viability of the pub. The property was in a good condition; however it was in his view very clear that it was not viable as a pub. As regard to potential other uses, it was a question of what was realistic. It was not viable to sell at a low cost in order that it could be run as a community use. A planning application had been submitted. The Council accepted that the probable use of the land was housing. There was no evidence of realism with the contention that the property could have a community use. Howarth Homes had stated said that it was not realistic to think that the property would be put to community use within the next five years. These were factual circumstances.

Councillor Daly said he had two strands of concern. One related to the viability argument in relation to the planning application. He did not find the barrelage argument convincing. Over the past years there had been a shift in pub sales from beer to food. The other concern related to Mr Will's assertion that Howarth Homes had stated it did not intend to bring the property back into community use within five years. He did not recall seeing that stated within the papers. Mr Wills referred to ground (iii) within the Owner's statement. This stated that it was unrealistic to think that the property could be used for community use. Howarth Homes had no intention of putting it to community use. Councillor Daly suggested this was not stated specifically in the papers.

Mr Lovelady suggested that although Mr Wills had made it clear that his client considered it not realistic to put the property to community use, there was no express statement within the papers that they would not make the land available for community use within the next five years. Mr Lovelady asked whether Mr Wills would like to call anyone from Howarth Homes to provide specific instruction on this issue. He wished to know what, in the event that planning permission for redevelopment was refused, Howarth Homes intended to do with the property over the next five years. For example, would they be prepared to entertain subletting to a third party for community use? Or would they be likely to retain the site as land bank. Mr Wills said he was instructed that the owner was likely to hold onto the land.

Mr McEntyre representing Howarth Homes was invited to give a brief statement. He advised that he represented a funding partner. He stated that the owner was in the position of having acquired the property without it being listed as an ACV at the time. He stated that the owner would hold onto the land pending a change in Government policy, or until the planning and appeal process had been exhausted. The owner was prepared to hold onto the land for five years and beyond. The ACV listing had been made after the purchase had gone through. The owner could not be responsible for how it was sold to them.

Councillor Daly pointed out that the interpretation was regarding use not acquisition of the building for community purposes. Howarth Homes had ruled out community use – what other alternative ways of using the building had they considered? Mr McEntyre responded that it was not in the owner's interest to have any other use of the property so they would effectively hold an empty property. As a commercial organisation, they would look to do with the property what was originally intended. Howarth Homes had made it very clear that they would not reopen it as a pub. The level of the acquisition price would prevent it from being anything but housing. A different planning use class would not be sustainable. They would therefore wait until the position changed.

Councillor Daly assumed that if the owner was unable to develop it would look for alternative uses to offset the capital costs. Was Howarth Homes ruling this out in this instance? Mr McEntyre repeated that the property had been acquired without the ACV in place. He made reference to a funding partner. Ms White asked who the funding partner was. Mr McEntyre responded that it was another privately owned company with no bank pressures. Ms White suggested that if the site was 'mothballed' the land value could fall. Would the funding partner still be willing to hold onto the land in that event? Mr McEntyre responded that it would, more so even than Howarth Homes.

Mr Bury expressed surprise regarding what had just been said and suggested the timeline as given by Howarth Homes was not correct. The ACV nomination had been lodged on 11 May, before the pub had closed on 14 May. It had been purchased on 5 June. Mr McEntyre responded that contracts had been exchanged and in the interim period the ACV listing had been made before completion, i.e. not before legal commitment to purchase. Ms White confirmed that contracts had been exchanged in March 2015, as set out in the papers. Mr Bury commented that he found it strange that the owner would be willing to leave £1.5 million sitting idle for five years.

Mr Lovelady drew attention to the nomination form which stated that the pub had provided a social amenity to the local community in a large area for over 100 years. He went on to read an extract explaining that the pub was the social hub of the area and describing the sort of social events that took place there (darts, quizzes, charity events etc.). In the owner's statement they asserted that the purpose of the pub as a social and community use function had not been substantiated. Mr Lovelady stated that in the case law detailed in the papers it

appeared that just operating as a pub was considered to further social use. Were the owners saying that merely being a pub doesn't further social uses? Mr Wills responded that the Tribunal was clear that the principle of just being a pub was not necessarily sufficient. It was always a question of fact. At some point in the distant past The Camp may have fulfilled that role, however it was the owner's view that it had gone downhill over a number of years and so couldn't now satisfy that test. This was a question of fact and a matter for Mr Lovelady as reviewer to decide. The pub had now closed so it was not possible to see what the character of the place was like. He considered that the conclusion to draw was that it did not meet the social interest, whereas other pubs did.

Mr Lovelady pointed out that the nomination form referred to all social uses. He asked for clarification of Mr Wills' point. Was he saying the statement was untrue? What aspects was he saying did not satisfy the test? Mr Wills suggested that when such uses are listed there is normally some supporting materials, such as fixtures for the pool team, to provide evidence to demonstrate that they took place. Merely listing these activities was not sufficient. There was not enough material to conclude that the tests were satisfied. It would have been easy to provide such evidence e.g. details of sports teams and quiz evenings. There was no statement of these having taken place regularly.

Mr Lovelady stated that the pub was operating until last year. Was Mr Wills saying that operating the pub in itself did not meet the criteria of the test?. If so, why did it not meet it? Some other cases quoted did not meet the criteria. Was he saying there were other reasons why the criteria was not met, e.g. there were regular fights or drug dealing i.e. that the pub fostered crime, which would demonstrate that it was not met? Mr Wills responded that there were different ends of the spectrum. In the worse cases there was active criminality. However that would not have to be the case for there to be an absence of satisfaction of the test. Where on the scale would The Camp fall? Mr Wills agreed that a pub may satisfy the test despite having no formal teams or activities etc., but he contended that there was insufficient evidence, for example, of people meeting there regularly – i.e. the context and way in which the social interest was served. Mr Lovelady asked what weight Mr Wills had given to the contents of the emails, which referred to social uses. Mr Wills said he had given them little weight since they were presumably written by a group of people whose *raison d'être* was to achieve their goal as they liked the pub. But whether the emails met the test or not was a different thing. There were few emails and little detail. As a bare minimum he would have expected to see something from the 21 members who were the signatories on the list found on the register.

Mr Lovelady referred to the Constitution which described the organisation Save the Camp. He asked Mr Wills what there was about it that said the application did not meet the criteria. Mr Wills agreed that the constitution was attached to the application, but there was very little other information available. It did not say when it was adopted, or by whom. It was conceivably produced by just one person. There was no information to indicate whether it had the status the regulations require. Mr Lovelady asked Ms White whether the constitution was with the nomination form when she received it. Ms White did not recall, but could check. Mr Bury stated that he had presented the constitution at the same time as the nomination, together with the petition containing 69 names. A plan was also included with the nomination. There were different plans included with the pack, and there was discussion about which was the version of the plan was submitted with the nomination form. Ms Adamson explained where the site boundary was since the plans were not in colour. She advised that the original plan submitted was not acceptable as it did not meet specific requirements. A further plan was then submitted and accepted. The petition that was received with the nomination had 48 names on it, from which she was able to confirm 21 were on the electoral register. In response to a

question from Councillor Daly Mr Coyle advised that reference to colouring on one of the plans had no relevance to the proceedings.

10. **EVIDENCE OF THE NOMINATING GROUP**

Mr Bury referred to the fact that there were now 69 names on the petition. He gave a breakdown of the postcodes in which each of the signatories live. Only 9 were not local, and they worked within the local area and used the pub. All those who sent emails bar one were in support of the pub. The one not in support still wanted a community use for the site. Since the planning application had been lodged he was aware of at least 36 objections being submitted, and the consultation period had not yet ended. As well as the paper petition referred to earlier there was an e-petition, which now contained 710 signatures. He had been amazed at the support and serious interest from the local community. A demonstration held outside the pub in January in inclement weather had attracted 50 people who did not want to lose this asset. He suggested the underlying theme of the owner's evidence was that McMullen was reluctant to sell the pub. However, Mr Bury understood that they had sold 15 pubs in the last 2 years, 13 of which had been sold to developers. They now owned only two locally. He believed this to be an underlying trend. With regard to the barrelage history, he considered this should have shown only the last 10 years, not the period since 1987. If the reason for the sale was the unviability of the pub, this would have happened before 2015. He considered the barrelage argument to be misleading. The year 2015 was shown as half a year, but the pub closed on 14 May, so the period was 5 months and 2 weeks. They were therefore selling 24.66 barrels a month. He suggested that January to Easter is the worse trading period for any licensed premises. On the basis of the statistics given they were likely to sell 41 more barrels than in 2014. He considered that if £1.47 million was paid, this was twice what the pub was worth. There were many people using the pub before it closed and people wanted to keep the asset. He considered it would be revitalised if reopened.

11. **QUESTIONS FROM THE OWNER TO THE NOMINATING GROUP**

Mr Wills asked Mr Bury whether he was qualified to say when McMullens should have sold. Mr Bury responded that information was lacking regarding use of the letting room and food sales etc. The only information was on beer sales. Mr Wills asked for more information about the e-petition. Mr Bury advised that this was an online petition run by 38 Degrees. It was still running. The site was a conduit for informing interested parties.

12. **QUESTIONS FROM THE COUNCIL TO THE NOMINATING GROUP**

Ms White referred to the various community activities referred to on the nomination form. She asked Mr Bury to provide a flavour of these and some more detail. Mr Bury responded that both the darts and pool teams played in leagues, and the pub football team played in season. There were a number of people involved. The teams were very active and well supported, and included home and away fixtures.

13. **QUESTIONS TO THE NOMINATING GROUP FROM THE COUNCIL LEADER AND THE CHAIRMAN**

Councillor Daly referred to the challenge from Howarth Homes regarding the right of the group to nominate the pub as an ACV, and the process by which the constitution was put together. Mr Bury advised that when it was apparent that the pub was to close, he had agreed to be the single point of contact. He didn't get all the signatures on his own, there was a team of about six people who collected them. Nobody had since challenged this. At some point there would be the opportunity to have an election, but that point had not yet been reached. Councillor

Daly asked whether it was the case that the signatories were aware of the constitution but that it had not been formally adopted. Mr Bury replied that there were discussions in the pub regarding the criteria for lodging a request for an ACV. He addressed about 50 people. They knew about the existence of the constitution. Cllr Daly asked whether this included the names of the 21 people used to verify the nomination was valid, ie were they considered members of the group? Mr Bury confirmed that this was how he viewed it. On the original petition there were 48 names on one sheet and more on another 4 sheets. They were signing to say that they wanted the Council to list the property as an ACV. Ms Adamson added that the form was headed up 'Assets of Community Value – Unincorporated Body Nomination Form. NominationsOn behalf of the following members of the local community, please list this pub as an asset of community value'. There were various names. She viewed this as constituting a membership list. She had made a contemporaneous note that she had checked the 48 names against the electoral register between 8.45am and 9.38am on 13 May 2015. She marked a tick if she had found the name, amended it if there name was different and against any not found or where the signature was illegible she put a cross. Twenty one names were found to match the criteria, as required by the regulations. She confirmed that she checked all 48 and of those 21 were on the register. There may have been more but she couldn't read their writing. Some others did not include an address.

Mr Wills advised that Howarth Homes was relying on an argument the list had been framed as a petition rather than a list of members of a group. He referred to the Kensington and Chelsea case where the review had succeeded. He had asked for a copy of the list, which he considered he was entitled to see, even if it was without names and addresses. He made a submission that the document was not a membership list but a petition. He would need to see it in order to make a decision rather than relying on factual evidence of the decision maker. Mr Lovelady asked Ms Adamson whether it was not a membership list but simply a petition. Ms Adamson responded that she considered it to be a membership list since it was submitted as one. She had been asked for guidance indicating the criteria to be met. The list accompanied the nomination form, and her view was that it was a membership list. She again read out the wording at the top of the form. There were five columns: No., Name, Full address including postcode, Are you registered to vote within the local authority or a neighbouring local authority? Signature. Mr Lovelady asked whether the document could be copied without disclosing the names and addresses so that everyone could see it. Ms Adamson agreed to do this. Mr Wills said he would be grateful to have knowledge of this, and would want to ask questions such as how it was signed and when etc.

The hearing adjourned at 11.40 am to permit Ms Adamson to make the copies. It resumed at 11.55 am.

Ms Adamson circulated the document to the parties. Mr Lovelady asked her to explain the document. She advised that the document contained a preamble and title of the list submitted as a list of membership. She confirmed that the full document contained signatures, names and addresses and that these had been checked as set out in her statement.

14. **SUPPLEMENTARY QUESTIONS FROM THE OWNER TO THE NOMINATING GROUP**

Mr Wills referred to the document just circulated. He asked how it was presented to those that had signed. Mr Bury responded that there were 6 people going round generating signatures in the pub. They knew they had only a short time. The nomination was lodged before 11 May 2015. It was accepted by the Council on 11 May. Mr Wills asked how the 6 people were selected and whether they were users of the pub. Mr Bury replied that they were interested parties who volunteered. Some of them did not sign the list. He confirmed that those signing

could see the title and preamble at the top of the form. If they wanted further explanation they were given it. There was discussion and some people didn't want to sign.

Mr Wills turned to the constitution included in the papers and asked who produced the document. Mr Bury confirmed that he wrote it up when he was starting to get the petition together. Mr Wills asked whether there had been a meeting when the constitution was approved. Mr Bury said not as such. He had not been elected as Chairman but felt he needed a title. Mr Will read out a paragraph from the constitution and asked whether an AGM had been held. Mr Bury responded that there had not. Mr Wills noted that the Constitution referred to an AGM being held in June each year. He asked whether an AGM was held in June 2015 to elect a Chair, Secretary and Financial Secretary? Mr Bury said no. Mr Wills asked whether, when people were asked to sign the petition, those signing were shown a copy of the Constitution. Mr Bury stated that it was available and shown to a few people. There was a copy in the pub. He couldn't guarantee that it was shown to all. Mr Wills asserted that they wouldn't know there was a group called 'Save the Camp' as the document did not say that. Mr Bury responded that the organisation had to have a name, and that the signatories knew they were signing to request an ACV to try to save the pub. Mr Wills suggested that it was just a request to list the pub as an ACV – those signing didn't agree to become members. Mr Bury responded that the community group is called 'Save the Camp' and that they knew what they were signing up to.

15. **SUPPLEMENTARY QUESTIONS FROM THE CHAIR OR LEADER TO THE NOMINATING GROUP**

Mr Lovelady referred to the constitution and asked when the group first become aware that the pub was at risk of closure. Mr Bury advised that this was at the beginning of May. They therefore had only 14 days to get the signatures. Mr Lovelady referred to the 5 or 6 people assisting re the Constitution. He asked whether meetings were held to discuss the ACV application. Mr Bury replied that it was discussed with people as they signed. Mr Lovelady referred to the suggestion from Mr Wills that people were not aware they were signing to join the 'Save the Camp' group. Mr Bury replied that they knew they wanted to save the pub. They were told one way of helping was to get the ACV listing. Mr Lovelady said were they not aware they were joining a body? Mr Bury asserted they were aware they were forming a group. They could see others that had signed. They realised Mr Bury was the point of contact. Some did contact him. Maintaining contact had become harder since the pub shut. Mr Lovelady asked whether the constitution was shown to other people. Mr Bury said it was in the pub but not displayed. Copies were available. It was his intention to have a meeting at some point. Those seeking signatures would have a copy of the constitution with them. Mr Lovelady asked Mr Bury to confirm that, apart from the demonstration on 9 January, no formal meeting of the group had taken place. Mr Bury replied that there was a good turnout at the demonstration on 9 January, at which he had addressed all those present and provided an update. There was also an update email put on the 38 Degrees e-petition site, as this was an opportunity to contact the 710 people supporting the petition.

Mr Lovelady turned to the football and darts teams. The evidence of the Owner suggested that it had not been substantiated that the nomination met the criteria i.e. that these were not recent uses. He asked when were these activities operating. Mr Bury replied that they were running up to the time of the pub closure. There were different league periods for darts and pool. They were all running and they intended to continue. They finished when the pub finished. Mr Lovelady asked whether he was a regular at the pub. Mr Bury advised that he worked in St Albans for about 10 years and used the pub at lunchtimes, including in 2015. Mr Lovelady said the nomination form referred to the fact that the pub was the social hub of the area (etc). He asked for examples of when a quiz or karaoke night was held. Mr Bury said

there was one due to take place the Saturday before the pub closed. It had been cancelled as people were getting despondent. Quiz nights were held fortnightly, karaoke at least once a month. There was Sky TV for televising football matches. One of the good things about the pub was that it was possible to make noise in the public bar and still have a tranquil area in the lounge.

Mr Lovelady referred to the challenge by Mr Wills that Mr Bury did not have the necessary authority to submit the application for ACV listing on behalf of Save the Camp. Mr Bury replied that he was coordinating the feelings of the users of the pub. They were aware he was submitting the application and that he would be in contact.

Mr Lovelady referred to the future use of the site. As Mr Bury was aware a planning application had now been submitted by Howarth Homes for redevelopment for residential use. Evidence provided by Mr McEntyre had indicated that Howarth Homes had no intention of reopening the site as a pub, or reopening it for some other community facility. Mr Lovelady asked what was the intention of Save the Camp if the opportunity for acquiring the site did become available. Mr Bury responded that he had had no opportunity to canvass. He doubted Howarth Homes could afford to leave the site idle for five years, given there was more than one investor involved. In the event it was sold as a pub, at market value for use as a pub, there were things that could be done to acquire it, eg crowd funding. Others may be interested in buying it, again at market value for use as a pub, in order for it to reopen. Mr Bury gave some examples where this had happened: The Red Lion at Preston and the White Horse at Kimpton. These had been bought from developers so it was not an impossible task.

16. **FINAL ADDRESS**

All parties were invited to make final statements.

Ms White stated that at the time she had made her determination to list the pub as an ACV the nomination met the criteria. Mr Bury had provided more ballast in his evidence at the hearing, when he referred to other pubs bought from developers and reopened. It was therefore in her view realistic to assume that this was an option regarding The Camp. She considered her decision to list it as reasonable.

Mr Bury stated that when he started the nomination process he was not sure how it would proceed, but had been surprised and pleased by the high level of support and interest. Many people had emailed him with goodwill messages. He was amazed at the response regarding the demonstration on 9 January. At least the local community deserve some say in the future of the pub and what happens to it. He thanked everyone for their time.

Mr Wills referred to the fact that Mr Bury said 'When I started off...' He suggested the question was whether a group called 'Save the Camp' had come into existence? Did it satisfy the requirements and did it make the nomination valid? There was no committee, no financial secretary, no members and no funds – just signatures. Mr Bury had not been appointed Chairman. With regard to the list of signatures, they were not all members of Save the Camp and there was no evidence that they had seen the constitution. The document did not purport to create a group called 'Save the Camp' but to persuade the Council to list the pub as an ACV. They did not sign up to create a group, and the regulations required that only a community group could submit a nomination. The nomination was not made by a person with a particular status. The group did not come together by agreement. Mr Wills suggested that 'Save the Camp' does not exist, or if it does, the only member is Mr Bury. Therefore the nomination could not satisfy in terms of Regulation 6, and the listing the pub as an ACV was unreasonable. In the light of the evidence at the hearing, the question was whether the

nomination was made by a community group. He suggested that the answer was no. With regard to the local connection, he considered the statement that 21 out of 48 signatories met the criteria to be subjective. The names could have been checked wrongly, or included nicknames. It was possible therefore that Save the Camp was not a correctly constituted body. The owner was entitled to see the membership list, and the reviewer must be satisfied as to whether the regulations had been met in this regard. With regard to the second ground on which the Owner considered the pub should be removed from the ACV listing, Mr Wills asserted that criteria regarding the recent use of the property had not been met. With regard to the third ground – future use of the property – the reality was that it would not be used for community purposes. It was theoretical but a matter of conjecture whether it could reopen as a pub. It was not realistically possible to base a conclusion on an apparent assertion that this had happened elsewhere. If with all their advantages McMullens could not make a go of the pub this was unlikely. The market showed this to be unviable.

Mr Lovelady thanked everyone for their submissions. He advised that he would produce a written answer and send it to all parties.

The Meeting ended at 12.25 pm.

(SIGNED)

CHAIRMAN

The Camp Ph, 149 Camp Road, St. Albans, AL1 5HR



Site Plan shows area bounded by: 516448.2893,206803.2893 516589.7107,206944.7107 (at a scale of 1:1250) The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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