

**Community Right To Bid Determination Form**  
**Localism Act 2011**  
**The Assets of Community Value (England) Regulations 2012**  
**Determination by Head of Service (Planning & Transport)**

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| Nomination Reference:<br>BL/2015/ENQ/06606          |  |
| Date of Nomination:<br>20 <sup>th</sup> August 2015 |  |
| Site Address:                                       | Sir Charles Napier, Limbrick Blackburn |
| Land/Property Description                           | Public house                           |

Asset Owners:

| <b>Name &amp; Address of Asset Owner</b>                    | <b>Connection to the asset</b> |
|---|--------------------------------|
| Daniel Thwaites PLC<br>Star Brewery<br>Blackburn<br>BB1 5BN | Owner                          |

Nominating Organisation:

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|--|---|
| <b>Name of Organisation:</b><br>Sir Charles Napier CIC<br>(Community Interest Company) | <b>Proof of eligibility to make a community nomination:</b>   |
| <b>Type of Organisation:</b><br>Community Interest Company                             | Articles of Association; List of Members;<br>Membership application form; Registered<br>Company Number 09713269 |

Reasons why the asset should be identified to qualify as an asset of community value:

Below is an extract from the nominator's submission.

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| <p>Built in 1908 as the YMCA, the Napier, as it is now known, is not thought of as a traditional town centre pub despite its location; it serves the function of a 'local' for its' regulars; this is because after the demise of the Vulcan Hotel on Nab Lane 22 years ago, the Napier has served a tight knit community of fans of rock music, many of whom are students. Many regulars travel to the Napier from surrounding towns such as Darwen, Accrington, Whalley and Clitheroe yet still consider the Napier their local. Recently the Napier has started to attract the area's Polish immigrants, many of whom already feel part of the Napier community. There are no other venues in Blackburn that cater to rock music fans, patrons will have no choice but to travel over 10 miles out of town for a similar venue. For many years, local bands have practiced in the cellar, in return for playing gigs in the pub for free this has fostered a love of live music in the regulars, many of whom are musicians themselves. Event promoters, some of whom are students at the nearby Blackburn College, come to the Napier to put on gigs, DJ nights and themed nights in the upstairs bar, most of which are very well attended.</p> <p>When the Napier served food, under previous landlord Steve Winstanley, employees from businesses along Richmond Terrace would eat there at lunchtime, preferring the honest, home cooked food and friendly local atmosphere at the Napier to the alternatives in the town centre.</p> <p>Pub games and sports have been popular teams and nights have formed to play darts &amp; dominos, pool, poker, video games, chess and board games. A successful pub quiz was run there for many years, and comedy, karaoke and open mic nights have been popular in the downstairs bar. The Napier fielded a pub league football team in the</p> |
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90s.

The upstairs bar at the Napier has been used by many groups over the years; local biker's groups, Friends of the Earth, a local Role Playing Game group, pay per view sports event screenings, pole dancing and burlesque classes, craft and textiles workshops and fairs, kids' parties and events, a film club, a cycling club, music tutoring and a model railway society. Upstairs is regularly hired out privately for charity events and family occasions such as birthdays, christenings, weddings, etc.

The Napier forms part of the important pre and post-social

area for events at King George's Hall.

Cask ales are an important feature of the Napier, and the pub has a long relationship with the local CAMRA branch. In addition to all this, the Napier is of course an important part of Blackburn's dwindling town centre night time economy.

The community feel there are potential for new uses of the pub, among which are: drop in health checks, IT literacy and job seeking help, music and video production, photography workshops, language classes, under 18

'dry' events

and art exhibitions.

*(continues over)*

Whilst we accept that, in recent times, the pub has struggled to achieve the above aims, we believe that the correct, community led, management and considered planning would restore the Napier to the community hub been, and should be for years to come. Please see supporting documents regarding viability: "Notes on Viability", "CAMRA Public House Viability Test" and "LGiU Public Houses report".

Further speaking for viability, Blackpool and Burnley have similar rock pub/venues that are successful: respectively The Tache and Sanctuary Rock Bar, which is now celebrating its tenth year.

Until very recently, plans for the Sir Charles Napier (Blackburn) CIC are to lease the property; we met with representatives from Thwaites regarding this but they have now called off negotiations.

We were at a late stage of planning the business, based on these negotiations. We attach our draft business plan complete with appendices for your reference. Please be aware these documents are sensitive to our business and may only be used for the purpose of consideration of this application.

### Response to the Consultation:

Support for the nomination have been received from the following Councillors:

Councillor Dave Smith (Chair of the Planning & Highways Committee);

Councillor Phil Riley (Executive Member for Growth & Prosperity);

Councillor Stephanie Brookfield (Assistant Executive Member for Growth & Prosperity);

Councillor James Shorrock.

On the 2<sup>nd</sup> September 2015, a letter of support was received from CAMRA (Campaign for Real Ale): Below is an extract:

Mr David Proctor,  
Head of Service (Planning & Transport),  
Blackburn with Darwen Borough Council,  
Town Hall, Blackburn, BB1 7DY.

Dear Mr. Proctor, Re: SIR CHARLES NAPIER Public House,  
Lintonick, Blackburn, BB1 8AA

The East Lancashire Branch of the Campaign for Real Ale Ltd fully supports the nomination request by the Sir Charles Napier (Blackburn) CIC applying for the listing of this pub as an Asset of Community Value.

We contend that this pub has had little refurbishment in recent years and the lack of use of the large front entrance and restricted opening hours has led to a need for revitalisation. We believe that under a revitalised tenancy the pub could be improved and attract a greater range of customers. It is adjacent to a conservation area and could add to the vibrancy of the redevelopment of Blackburn. It is a fine Edwardian building and is used by a large number of diverse groups adding to the culture of the town. It is perhaps the only pub in the town centre where a group can book a meeting in a separate room (complete with bar) — we do not know of any other. Following the closure of so many of the pubs in the town centre, we feel that the group applying for the listing is well organized and intent on keeping the pub trading. The pub already benefits from a wide range of diverse cultural groups and the groups has a range of plans to increase usage of the facilities. It is vital for the community that it is retained as a pub. We would urge you to grant ACV status to the Sir Charles Napier.

Pub Preservation Office  
for CAMRA - The Campaign for Real Ale Ltd.

A letter of objection has been received dated 10<sup>th</sup> September 2015, from Freeths LLP acting on behalf of their clients Daniel Thwaites PLC. Below is an extract from the letter:

We act for Daniel Thwaites plc, the freehold owner of the Sir Charles Napier, Limbrick, Blackburn BB1 8AA ("the Property").

We refer to your letter of 21 August 2015, informing our client of a second nomination ("the Second Nomination") of the Property as an Asset of Community Value ("ACV").

Our client objects to the Second Nomination, on the following grounds:

**Failure to determine first nomination – the Property should have been added to the Council's published list of unsuccessful community nominations pursuant to section 93 of the Localism Act 2011 ('the Act')**

1. The first nomination dated 25 June 2015 ("the Previous Nomination") was made by a community group called "Friends of the Napier" ("Friends"), asserted to be an "Unincorporated Body of 21 named members" eligible to make a community nomination pursuant to section 89(1) of the Act. Although our firm made various representations in response to the Previous Nomination, none of those representations were considered or dealt with by the Council.
2. Under the Localism Act 2011 ("the Act"), where a local authority receives a community nomination, it must consider the nomination (s. 90(2)) and must accept the nomination if the land nominated is in the authority's area and is of community value (s. 90(3)). Thus the

wording of the Act imposes clear obligations on the Council to actively consider and accept community nominations that meet the relevant criteria.

3. In accordance with Regulation 7 of the Assets of Community Value (England) Regulations 2012 ("the Regulations"), the Council "must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination" (underlining added for emphasis).
4. We note that the Previous Nomination was received by the Council on 25 June 2015. The Council was therefore required to make a decision by 16 July 2015. However, the Previous Nomination was neither accepted nor rejected by the Council within the prescribed period of eight weeks, in breach of Regulation 7. A nomination which has not been determined within the mandatory timescales set by Parliament can only be an unsuccessful nomination.
5. The Council must '*consider the community nominations it receives – it does not have the discretion just to forget about them*' (Hansard, HC Public Bill Committee, 12<sup>th</sup> Sitting, 511 and 512 (February 10, 2015)). Therefore it is our client's primary contention that the Previous Nomination should be placed in the Council's unsuccessful list of community nominations in consequence.
6. The Previous Nomination was unsuccessful by definition and the Property should have been added to the Council's list of unsuccessful nominations accordingly, having due regard to the intention behind the requirement to keep a list of unsuccessful nominations, which is '*to ensure transparency and avoid multiple nominations of assets that do not meet the definition*' of an ACV (*Community Right to Bid: Non-statutory advice note for local authorities*, Department for Communities and Local Government (October 2012)).
7. On that basis, the Second Nomination cannot be eligible for inclusion in the Council's list of ACVs. To include the Property on both lists would be an abuse of process and contrary to the legislature's intention.

**The nomination is not a community nomination contrary to section 89(1)(a) and 2(b) of the Act**

8. Land may only be included in a local authority's list of Assets of Community Value in response to a community nomination made by a parish council or a voluntary or community body with a local connection (s.89(1)(a) and (2)(b) of the Act) (our emphasis).
9. It is a mandatory requirement of regulation 6(d) of the Asset of Community Value (England) Regulations 2012 ("the Regulations") that a community nomination must include "*evidence that the nominator is eligible to make a community nomination*". This is so that the Council may assess whether or not any nomination made is indeed a community nomination. If it is not, and there is no evidence provided to show that the nominator is eligible to make a community nomination, then the nomination must be an unsuccessful nomination and the Property added to the Council's list of unsuccessful nominations.
10. Without such evidence the Council cannot be sure whether or not the nomination which has been made was a community nomination in accordance with the Act at all, and the

nomination must be refused and the Property added to the list of those that have been unsuccessfully nominated.

11. Regulation 5 of the Regulations relates to voluntary or community bodies, which may be a community interest company (Regulation 5(g)) as is the case here.
12. In this case we note that the Nomination Form has been completed by "Sir Charles Napier (Blackburn) CIC" ("the **Company**"), asserted to be a Community Interest Company registered on 31 July 2015. By way of purported proof of eligibility to make a community nomination, the Company has provided a copy of its Articles of Association; a list of its members; and its Membership Application Form.
13. The list of members shows that the Company has 44 alleged members ("the **Members**"). We note the following:
  - (1) The Company's Application to register a company (Form IN01) sets out four subscribers of the Company whom are as follows: (i) Lisa Marie Morton, (ii) Daniel James Coletta, (iii) Hilary Carr, and (iv) Charles Alexander Martindale ("the **Subscribers**").
  - (2) However the list of members provided to the Council suggests that the Company has 44 members (including the Subscribers named above), and the Articles of Association of the Company ("the **Articles**") set out a process for becoming and ceasing to be a member of the Company. In particular the relevant provisions of Article 27 are as follows:
    - Article 27.1: *"The subscribers to the Memorandum are the first members of the Company"*
    - Article 27.2: *"Such other persons as are admitted to membership in accordance with the Articles shall be members of the Company".*
    - Article 27.3: *"No person shall be admitted a member of the Company unless he or she is approved by the Directors".*
    - Article 27.4: *"Every person who wishes to become a member shall deliver to the Company an application for membership in such form (and containing such information) as the Directors require and executed by him or her".*
    - Article 27.5: *"The Company shall have the right to charge a membership fee and an annual subscription for membership. Any membership fees or annual subscriptions shall be set by the Directors from time to time".*
    - Article 27.6: *"The criteria for membership that shall be applied by the Directors is as follows: any natural person, unincorporated body, firm, partnership or corporate body, that has an interest in supporting the objects of the Company".*
  - (3) There is no evidence submitted to the Council that the Members have subscribed to the Memorandum and Articles. There is no evidence of any of the alleged Members either

agreeing to become members of the Company and/ or delivering an application for membership to the Company, as required by Article 27.4. There is no evidence of the Directors holding a meeting to approve the purported membership of the alleged Members, as required by Article 27.3. Further there is no evidence of whether the Company has charged a membership fee and/ or an annual subscription of membership to the Members.

- (4) Whilst the Articles clearly set out a process for becoming a member, the Council can have no certainty as to compliance with the consensual process of membership being followed, and therefore who is and who is not a member from those alleged to be members on the list provided.
14. Therefore the alleged evidence lodged to show that the nominator is eligible to make a community nomination is insufficient, because the Council can have no certainty as to the current membership of the nominator. Accordingly the Second Nomination should be rejected on this basis.
15. Further, and as previously set out above, land may only be included in a local authority's list of Assets of Community Value in response to a community nomination made by a parish council or a voluntary or community body with a local connection. For a community interest company, such as the nominator, to have a local connection its activities must be wholly or partly concerned with the local authority's area or with a neighbouring authority's area (regulation 4 of the Regulations). The activities of the nominator are described in article 2 as being those "*which benefit the community and in particular to acquire, manage and preserve the Sir Charles Napier Public House in Blackburn.*".
16. However:
- (a) The "*community*" referred to in the nominator's articles is not identified in its objects. This is because there is no community that the purely prospective activities of the nominator are connected with.
- (b) The Property is merely a Property from which the business of a public house was formerly carried on, as its non-ancillary use. It now has no actual primary use and it would be unreasonable, since the Property remains within the ownership of our client and it has no intention of letting or selling the same to the nominator, on any terms, or indeed anyone else to use it as a public house or any other use which would be a non-ancillary use furthering the social well being and interests of the local community (because that would damage the value of the Property), to consider that the company's objects as described, i.e. to acquire, manage and preserve what is now only a property, can as a matter of fact have any real local connection.
17. The Second Nomination (including the Articles of the Company attached to this nomination) fails to give any indication whatsoever that the Company has any genuine "*local connection*" with land in the local authority's area as required by s. 89(2)(b)(iii) of the Act. It is clear from the Act that a local authority may only include land in its list of ACVs in response to a community nomination, made by a voluntary or community body whose
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activities are wholly or partly concerned with the local authority's area or with a neighbouring authority's area (regulation 4(1)(a) of the Regulations).

18. However the bare descriptions of the Company's activities are wholly insufficient to properly establish that the Company has any genuine local connection with land in the relevant local authority's area. In the absence of any evidence or explanation as to how the Company's activities may be concerned with the local authority's area in whole or in part, any nomination by the Company fails to constitute a community nomination for the purposes of the Act and the nomination must therefore be rejected.

The nomination is abusive

19. Further, we also note that the Second Nomination is again of a pre-emptory nature, making no reference of the Company's intention or ability to bid for the Property should Daniel Thwaites plc make what would, under the Act, constitute a relevant disposal.
  20. The purpose of Part 5, Chapter 3 of the Act is to provide *"an achievable time frame for community interest groups to organise themselves and to raise finance"*, should they wish to bid for land of community value at a time when the owner wishes to enter into a relevant disposal (*Hansard, HC Public Bill Committee, 12<sup>th</sup> Sitting, cols 533 and 534 (February 15, 2011)*).
  21. In the Nomination Form, the Company stated: *"Until very recently, plans for the Sir Charles Napier (Blackburn) CIC are to lease the property; we met with representatives from Thwaites regarding this but they have now called off negotiations. We were at a late stage of planning the business, based on these negotiations. We attach our draft business plan complete with appendices for your reference"*. However the draft business plan has not been provided to either us or our client, despite asking for it, and we and our client have therefore been deprived of the opportunity of taking into account, in these representations, any matters that were contained in the draft business plan. In this context, our client submits that the draft business plan was wholly inappropriate for any use of the Property by the nominator, and insofar as the nominator might seek to argue that use of the Property in accordance with the business plan might further the social well being and interests of the local community, it was in fact an unrealistic plan in these respects and the Council must form its opinion in this context.
  22. Unfortunately therefore it is clear from the absence in the Second Nomination of any realistic intent to bid to acquire the Property or any intent to raise finance for a purpose connected with the Company's alleged community interest, that the Company has no particular interest in purchasing the Property for community use and instead is seeking to list the Property as an ACV for an unseemly ulterior purpose other than that contemplated by Parliament.
  23. Accordingly, accepting such a nomination would be an improper use of the Council's powers of discretion, which are *"designed to ensure that we do not have vexatious, silly or inappropriate nominations included on the register"* (*Hansard, HC Public Bill Committee, 12<sup>th</sup> Sitting, cols 505 and 506 (February 10, 2011)*), and would render any decision made by the Council to list the Property as an ACV open to Judicial Review.
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Invalid nomination - summary

25. In the light of the above it appears to us that:
- (a) The Property should have been added to the Council's list of unsuccessful nominations, since the Council was obliged to consider and determine the Previous Nomination within 8 weeks of it being made, however it has failed to do so and accordingly the first nomination can only be determined to have been an unsuccessful nomination. The Act was designed to prevent repeat nominations being made and, accordingly, a Property cannot exist in both the unsuccessful and successful list: since it should exist in the successful list, it cannot now be listed as an ACV and entered into the successful list. Such a decision would be plainly wrong and devoid of logic given the Council's obligations contained under the Act.
  - (b) The Council can make no proper assessment of whether or not the Company is a body capable of making a community nomination because there is insufficient evidence of the membership being formed in accordance with the Company's Articles, there being no evidence that the Company has complied with the requirements of Article 27 which sets out the process for an individual becoming a member. For this reason the nomination must fail.
  - (c) If the Council determines to list the Property as an ACV without having first assessed whether or not the Company is a body capable of making a community nomination, then that would prima facie be an irrational and unreasonable decision made after following a procedure devoid of regard for the requirements of statute.
  - (d) Even if, which is denied, the Company is eligible to make a community nomination, and a community nomination has been made, the Company has no genuine local connection, no realistic plan for a non-ancillary use of the Property which would further the social well-being and interests of the local community, and no prospect of acquiring the Property because (a) our client would not sell it to it and (b) the Company has no realistic business plan which would enable it to raise finance to acquire the Property.
  - (e) In any event the Second Nomination is an abuse, because there are common persons hiding behind the cloaks of corporate and incorporate bodies, engaged in making repeat nominations which have no real community interest, contrary to the purpose of the legislation.

Accordingly the Second Nomination must be rejected and the Property added to the Council's list of unsuccessful nominations.

Insufficient Evidence that the Property is of any Community Value

26. Without prejudice to all the above, for the Property to be land of community value, either:



- a. an actual current non-ancillary use of the Property must further the social wellbeing or social interests of the local community and it is realistic to think that this can continue (s.88(1) of the Act); or
  - b. there must be a time in the recent past when an actual non-ancillary use of the Property furthered the social wellbeing or interests of the local community and it is realistic to think that there is a time in the next five years that there could be such use (s.88(2) of the Act).
27. Social interests include cultural, recreational and sporting interests (s.88(6) of the Act).
28. A community nomination must include sufficient reasons for the Council to conclude that the Property is of community value (Reg. 6(c) of the Asset of Community Value (England) Regulations 2012). The Council must only proceed to consider the Second Nomination on the matters placed before it, within the Second Nomination.
29. In this regard the reasons why the nominator considers that the Property is of community value are set out in the Nomination Form and include that:
- a. it served the function of a "local" for its regulars.
  - b. It has served a tight knit community of fans of rock music.
  - c. There are no other venues in Blackburn that cater to rock music fans.
  - d. Local bands have practiced in the cellar, in return for playing gigs in the pub for free.
  - e. Promoters come to the Property to put on gigs, DJ nights and themed nights in the upstairs bar.
  - f. Local employees used to eat there at lunchtime.
  - g. Pub games and sports have been popular there.
  - h. The upstairs bar has been used by many groups over the years, and is hired out for charity events and family occasions, and that the Property has been used in connection with events at King George's Hall.
  - i. The pub has a long relationship with the local CAMRA branch.
  - j. The pub is an important part of Blackburn's night time economy.
  - k. The community feel that there are potential new uses for the pub, such as drop in health checks, IT literacy and job seeking help etc.
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The allegation that the Property "serves the function of a 'local' for its regulars"

30. The Company has provided no evidence whatsoever to show the nature of the users of the public house, especially its alleged "regulars". There are bare assertions made however it would have been easy to present letters of support from particular individuals and groups who formerly used the Property. The Council should draw adverse inferences from the absence of any actual evidence presented.

The allegation that the Property "has served a tight knit community of fans of rock music"

31. The Company has failed to provide any actual evidence that the Napier has served a community of rock music fans, let alone a "tight nit community". We note the assertion that "many regulars travel to the Napier from surrounding towns such as Darwen, Accrington, Whalley and Clitheroe"; however, again no evidence has been provided, no regulars identified. The Council should draw adverse inferences from the absence of any actual evidence presented.

The allegations that "there are no other venues in Blackburn that cater to rock music fans, patrons will have no choice but to travel over 10 miles out of town for a similar venue"

32. These allegations are demonstrably untrue. King George's Hall, which hosts within it Blakey's Cafe Bar, is located in the centre of the city, only 320 metres away from the Property (see the enclosed Google maps web-printout), and is Blackburn's premier live entertainment venue, hosting concerts (such as the Bon Jovi experience on 17 October 2015), and free live rock music on Friday nights (see the enclosed King Georges Hall web-printout). Other nearby venues such as Molloys and the Times also host regular live rock music events. The local community has ample provision of rock music venues within the locality: the nominator is making demonstrably untrue allegations.

The allegation that "local bands have practiced in the cellar, in return for playing gigs in the pub for free"

33. There is no actual evidence of local bands or promoters using the Property. Not one single example is presented by the Company of events or gigs that are allegedly held at the Property. It is not enough for a person to make a nomination, saying things, without any supporting information. The Council should draw adverse inferences from the absence of any actual evidence presented.
34. We also noted the assertion that the local bands practising in the basement "fostered a love of live music in the regulars, many of whom are musicians themselves". However, this again is completely unsupported and as a bare assertion cannot be construed as furthering the social wellbeing or social interests of the local community (s.88(1)(a) of the Act). Adopting the Company's analysis, any place where live music is played is capable of becoming an asset of community value. It plainly cannot be the case that a failed pub should be regarded as an asset of community value simply because it held events or gigs which some from the local community may have attended, and plays live music: these are matters which are ancillary to the public house use of the Property, and indeed every other public house in the country.

35. Despite the fact that the Company has not provided any evidence to support its assertion that local bands have played gigs in the Property, the Napier is not the only place in Blackburn that plays live music. Molloy's plays occasional live music (such as the Battle of the Bands competition, previously advertised on its web page, and an open mic night every Thursday, currently advertised on its Facebook page at <https://www.facebook.com/molloyblackburn>) as does the Times, Blakey's Café Bar and the Jubilee.

The allegation that Promoters come to the Property "to put on gigs, DJ nights and themed nights in the upstairs bar"

36. There is no actual evidence of alternative use of the upper bar presented: not a single letter of support or intent to use the upper bar is provided by any group. Not one single example/explanation has been presented of any gigs, DJ nights, and themed nights that have taken place in the upstairs bar at the Property. Absent any evidence, the mere reference to such events purportedly held at the Property is no more than a bare assertion and the Council must therefore draw adverse inferences from it, particularly in the light of previous demonstrably false allegations such as the Property being the only venue that has held live rock music in Blackburn.

The allegation that local employees used to eat at the Napier at lunchtime

37. There is no actual evidence of this, and even if there were eating lunch in a public house does not further the social well being and interests of the local community. That such an allegation has been put in a nomination as a makeweight is suggestive of the obvious demerits of the nomination.

The allegation that "pub games and sports have been popular- teams and nights have formed to play darts & dominos, pool, poker, video games, chess and board games"

38. There is no actual evidence of pub games and sports being played at the Property, or karaoke, open mic and comedy nights occurring. Not one single example is presented. The Council should draw adverse inferences from the absence of any actual evidence presented.
39. We also enclose a web-printout from "yell.com" showing some of the other pubs and bars in Blackburn, some which are very close to Napier such as the Hare & Hounds and The Hole I'Th Wall, both of which have been listed as assets of community value. We attach the relevant ACV reports. The Community Right To Bid Determination Form for Hare & Hounds states that "...the premises have regularly been the base for football teams, snooker teams and regular weekly quiz nights and music events". The Community Right To Bid Determination Form for Hole I'Th Wall states that "the pub has served as a regular meeting place for local residents... The Hol I'th Wall premises are currently utilised by darts and dominoes teams, card players, and a local football team. The pub is host to a very popular weekly quiz night and successful annual charity events..."
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40. CAMRA's What Pub guide states that Hare & Hounds is the meeting place for local sports teams including women's netball and hockey. It also plays live music on Friday's and Saturdays. We enclose a web-print out from CAMRA's What Pub guide.

41. In terms of distance, The Hole I'Th Wall is 0.6 miles from the Napier and Hare & Hounds is 1.3 miles from the Napier, and therefore there are clearly suitable genuine alternative community venues to the Napier, following its closure.

The allegation that the upstairs bar has been used by many groups and is hired out for charity events and family occasions, and that the Property has been used in connection with events at King George's Hall

42. There is no evidence to show that such events have been held or that the Property has had any use in connection with events at King Georges Hall. Yet again, the Council should draw adverse inferences from the absence of any supporting evidence.

The pub has a long relationship with the local CAMRA branch

43. There is no evidence to show that the Property has anything to do with the local CAMRA branch and, even if it did, this would not illustrate community value but rather it would show the private interests of a national campaigning group.

The pub is an important part of Blackburn's night time economy

44. The Napier is not a part of Blackburn's future night time economy (see below). It is a failed public house which is, to the extent that it ever was, no longer of community value, and never, realistically, will be.

The community feel that there are potential new uses for the pub, such as drop in health checks, IT literacy and job seeking help etc

45. The Company has provided no evidence whatsoever to show the needs/ requirements of the local community to use the Property for drop-in health checks, IT literacy and job-seeking assistance. There are bare assertions made however it would have been easy to present letters of support from the community. The Council should draw adverse inferences from the absence of any actual evidence presented.

Use of the Property as a public house – no longer realistic

46. First and foremost, the Property was run as a public house business: that was its actual non-ancillary use. Mere use of the Property as a public house business, perhaps with an ancillary use which might be of community value, either past, current or prospective, is not, of itself, sufficient to meet the community value test. If this were not the case, then the legislature would not have given local authorities discretion to consider whether or not public houses were, or may be, of community value.

47. The unfortunate reality is that the Property has catastrophically failed as a public house being used by the local community. The table below shows the number of barrels or litres of

alcoholic beverages purchased by the Property per annum from the brewery, for sale from the Property.

| Year                 | 05-06 | 06-07 | 07-08 | 08-09 | 09-10 | 10-11 | 11-12 | 12-13 | 13-14 | 14-15 |
|----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Beer/Cider (barrels) | 237   | 187   | 192   | 173   | 139   | 128   | 94    | 81    | 64    | 43    |

are able to cater to the past clientele of the Property, as well as genuine community assets such as King Georges Hall.

53. This being the case, it is even more unrealistic to think that the Property might in the next five years be of community value, and there is no evidence before the Council that it might be. To say that it might be is fanciful. To be clear, prior to closure the discounts on drinks within the pub were lowered as those frequenting it had mentioned that the price of beverages was an issue, however the new lower pricing made no difference to the volumes of products sold from the Property. The public house has no future as such: such prospective use is merely fanciful and has no bearing in reality.

#### Summary

54. In summary, there is no evidence furnished by the nominator to support an assertion that the Property, or any part of it, is or might realistically within the next 5 years, be of community value. Moreover the Property has demonstrably and terminally failed as a public house in the light of structural changes affecting the public house sector. Whilst the Property has failed as such, there are other genuine and obvious assets of community value within close proximity to the Property, which patently serve the community and further social well being and social interests of it, whereas the Property does not, and it is unrealistic to think (in the absence of any contrary evidence) that it might. The Council must draw adverse inferences from the inability of the nominator, and the lack of any of representations, to the effect that there might feasibly be a non-ancillary use of the Property in the future which would further the social well-being and interests of the local community.

#### Conclusion

In conclusion, our client objects to the Property being listed as an ACV because the Previous Nomination was unsuccessful and the Property should have been added to the Council's list of unsuccessful nominations. Further the Second Nomination is not a valid community nomination, having not been made in accordance with the Act, and being as it is completely devoid of any reliable "evidence that the nominator is eligible to make a community nomination" (as required by regulation 6(d) of the Regulations).

Further and in the alternative, the Second Nomination makes a number of demonstrably bare and unsupported statements which are presented as reasons to list the Property as an ACV. The Council must draw adverse inferences from the lack of supporting evidence provided in support of these statements. Further still, the Second Nomination fails to disclose any credible evidence that the Property might realistically further the social wellbeing or social interests of the community, whereas there are clearly a number of other properties, including other nearby public houses, which substantially further the social wellbeing and social interests of the community and will continue to do so.

Failure to assess the relevance and credibility of a nomination in light of the evidence provided, or the lack thereof as in this case, defeats the central purpose of the Act, which seeks to allow communities the opportunity to protect land that furthers the social wellbeing or social interests of the local community. If local authorities fail to ensure that successful nominations are based on

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actual and credible evidence, then there is a significant risk that ACV nominations will be reduced to a mechanism for opportunistic infringement of property rights, as in this case.

It is therefore Daniel Thwaites plc's contention that no reasonable authority, addressing its mind to the correct matters to be considered and limiting itself to the absence of evidence provided, could possibly conclude that the Property is an ACV.

Should the Council conclude otherwise, then we shall advise our client to not only consider challenging such a decision by way of a review and, if necessary, appeal to the First Tier or Upper Tribunal, but to also claim for all its losses, including diminution in value of the Property as a consequence of listing the Property as an ACV.

Our client sincerely hopes that this will not be necessary, and that the Council will respect its private property rights, and reject this abusive and unrealistic nomination.

Following a meeting with the Head of Service (Planning & Transport) on the 2<sup>nd</sup> October, and with the agreement from the nominating CIC, it was agreed that the submitted Business Plan should be sent to Freeths LLP acting on behalf of Thwaites. As such, the Business Plan will be considered by the Council as part of the determination. The submitted Business Plan was sent to Freeths on the 5<sup>th</sup> October 2015. A formal response

from Freeths regarding the Business Plan was received on the 9<sup>th</sup> October 2015. The following is an extract from the Freeth's letter dated 9<sup>th</sup> October 2015:

As you know we act for Daniel Thwaites plc, the freehold owner of the Sir Charles Napier. For the sake of consistency, we will continue to use the same defined terms used within our letter of 10 September 2015, save where otherwise stated.

We write further to the late disclosure of the Company's "Draft Business Plan 2015" ("the Business Plan"), and we have the following points to make to you:

1. Firstly, it is unacceptable to be informed that the Business Plan will not form part of the nomination, because the Company was not willing to disclose it beyond the Council, then to submit comments on the same, only to later be informed that the Company is willing to disclose the Business Plan and that the Council is willing to take the contents of the Business Plan into account. This has left our client with little opportunity to consider the contents of the Business Plan and comment upon the same. To the extent that it may be necessary to do so, our client reserves the right to rely on the prejudice it has suffered in consequence.
2. The contents of the Business Plan are, in our client's view, revealing in a number of respects. You will recall that our objections to the Second Nomination relied in part upon the unreliable membership of the Company. Specifically, the Company's list of members submitted with the Second Nomination identified 44 members, but provided no evidence of the current membership having following the requisite process for becoming members. We now note the assertion contained within paragraph 2.1 of the Business Plan that "The

Company has more than 70 members". Clearly the discrepancy in the number of members asserted to exist is a material one, with the consequence that:

- a. The purported membership of the Company, as set out to the Council to date, cannot be trusted.
  - b. The content of the Business Plan cannot be trusted. This is a point that we will further expand upon now.
3. We also note the Company's mission "To reopen the Napier for the people of Blackburn, especially the alternative community, providing a place to meet, eat, drink and enjoy rock music." The Council is respectfully referred back to paragraph 16(b) of our client's submissions, as set out in its letter of 10 September 2015. The Property is shut because it did not have sufficient support from anyone over the course of many years to continue trading. The primary use of the Property was as a public house. The Business Plan is premised on the assumption that the Property will be let to the Company, not that the Company will bid for and acquire it. In this respect we refer to:
    - a. Paragraph 3 of the Business Plan, which states that our client has "indicated [it] may be willing to lease the pub to the Company on a 5 year protected tenancy". In fact our client has informed representatives purporting to act for the membership of the Company that it has no intention whatsoever of letting the Property to it.
    - b. Paragraph 7.1 of the Business Plan, which sets out "Initial Costs" including "£5,000 for payment of a bond on the lease". The Initial Costs and investment referred to at paragraph 7.4 of the Business Plan are all premised on the assumption of a letting which will never proceed.
    - c. Although paragraph 7.5 refers to Potential Funding Sources at Appendix C, there is no Appendix C and, even if it does exist, contemplates a letting which will never happen and is not in keeping with the purpose of the Act, which is to allow bidders time to seek to acquire the freehold in a listed property.
  4. Finally, in addition to the complete absence of any sensible financial plan to bid for and acquire the Property, and its demonstrably fictional and purely aspirational content, the Business Plan corroborates the view of our client that there are operating public houses which more than adequately cater for those who enjoy live music, in the form of Molloy's, the Postal Order, the Alexandra, and the Blackburn Times, all of which serve that audience. The failure of the Property and its lack of supported use as an ancillary music venue has to be observed in the context of the survival of these other public houses, and in that light and bearing in mind that our client has no intent to sell or let the Property to any other person for use as a public house, it is our client's respectful submission that it would be wrong for the Council to consider that either the Property has in the past furthered the social well being and interests of the local community, or that it is realistic to think that it might do so in the future.

In the light of the contents of this letter, and those of our letter of 10 September 2015, our client invites the Council to add the Property to the list of unsuccessful nominations.

The Sir Charles Napier CIC in their response received on the 2<sup>nd</sup> October 2015, state the following:

## 2. PROOF OF MEMBERSHIP

5(1)(g) of the Regulations (see <http://www.legislation.gov.uk/ukxi/2012/2421/regulation/5/made>), state that any Community Interest Company qualifies as a “a voluntary or community body”, regardless of its membership. The “21 named persons” clause only applies to non-incorporated bodies (see 5(1)(c)).

*That said, in the original bundle of documents we included the CIC Membership Form (document 11 in the bundle), which all members listed have completed. This is an online form, responses to which go directly into a spreadsheet with a date stamp. It is our view that sharing of this document is not required and as such, sharing it would constitute a breach of the Data Protection Act 1998.*

## 3. EVIDENCE OF COMMUNITY USE

*We believe that even a cursory internet search would yield sufficient evidence to prove the assertions made with relation to the Sir Charles Napier's community function, and that representations that have already been made to the Head of Service from local organisations and elected members add further weight to this.*

*However, we are now in the process of collecting anecdotes, marketing materials, photos and videos documenting the Napier's past community use. Of course, most of this material will remain the intellectual property of its creator, and we would again seek an assertion that such materials would only be used to consider this application and would not be made available to the general public as part of the process.*

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### Assessment:

The Nomination has been considered by the Head of Service (Planning & Transport).

Firstly, Freeths LLP acting on behalf of Daniel Thwaites PLC “the owner”, contend that the previous nomination for this property was not determined within the statutory period of 8 weeks, and therefore should have been recorded as an “unsuccessful nomination” on the Council’s register in accordance with the Regulation 7 of the Assets of Community Value (England) Regulations 2012. Paragraph 4 of their submission response states:

4. We note that the Previous Nomination was received by the Council on 25 June 2015. The Council was therefore required to make a decision by 16 July 2015. However, the Previous Nomination was neither accepted nor rejected by the Council within the prescribed period of eight weeks, in breach of Regulation 7. A nomination which has not been determined within the mandatory timescales set by Parliament can only be an unsuccessful nomination.

The Council has considered the above and whilst it is acknowledged that the previous nomination submitted by “The Friends of the Napier” was received on the 25<sup>th</sup> June 2015 (ref: BL/2015/ENQ/06498), the 8 week statutory period for the Local Authority to determine the nomination was the 20<sup>th</sup> August 2015, and not the 16<sup>th</sup> July 2015 as Freeths LLP refer to. In addition, the nominating group formally withdrew the nomination in writing on the 20<sup>th</sup> August 2015, and as such the Council could no longer determine the nomination. A nomination that has not been determined by the Council as a ‘Listing Authority’ in accordance its policy/procedure cannot be recorded on either the “List of Successful

Nominations” nor the List of Unsuccessful Nominations”. The Council therefore does not accept the purported distinction that has been drawn between the “Previous Nomination” and the “Second Nomination”, nor the alleged failure to consider the “Previous Nomination”. There is therefore no impediment on the Council in considering with the latest nomination submitted by Sir Charles Napier (Blackburn) CIC on the 20<sup>th</sup> August 2015.

The Council (as Listing Authority) may under section 89 (1) of the Localism Act 2011 (“the Act”) include land/property in its area on its list of community value in response to a “community nomination”. Under section 89(2) of the Act a “Community Nomination” includes a nomination which nominates land in the local authority’s area for inclusion in the local authority’s list of assets of community value and “*by a person that is a voluntary or community body with a local connection*”. Regulation 5(1) of The Assets of Community Value (England) (Regulations) 2012 (“the Regulations”) a “voluntary or community body” includes a community interest company (CIC). Under Regulation 4, a body has a “local connection” with land in a local authority’s area if the body’s activities are wholly or partly concerned with the local authority’s area.

The nomination has been submitted by Sir Charles Napier (Blackburn) CIC (Company Number: 09713269), incorporated on 31 July 2015. The company’s activities are mainly concerned with the Council’s area, and in particular the social activities in relation to the Sir Charles Napier Public House, Limbrick, Blackburn BB1 8AA. This can be evidenced from the documentation submitted with the nomination and the ‘Objects clause’ in the Articles of Association.

Under Regulation 6(d) a community nomination must include evidence that the nominator is eligible to make a community nomination. The Company has provided a copy of its Articles of Association, a list of members and its Membership Application Form. It is evident from the information that the nominator is a CIC is a “voluntary or community body” as prescribed in the Act and the Regulations which has a “local connection”. In particular, the company seems to have been formed specifically for the social activities in connection with the Sir Charles Napier Public House and its current membership of 44 people (apart from one) are from the local area. The Articles contains details of its membership process and procedure. There is no specific requirement in the Act or the Regulation requiring the nominator to provide such detail that each and every member has subscribed to Memorandum and Articles, nor details or Director’s meetings.

In the circumstances, the Council, acting reasonable has considered the information submitted and is satisfied that the nomination submitted is a “community nomination” made by a voluntary or community body with a local connection.

The Council must consider whether the Sir Charles Napier Public House meets the definition of an Assets of Community Value as set out in Section 88 of the Localism Act 2011 i.e in this case that it is currently is use that furthers the social well-being and interests of the local community, or a use in the recent past has done so, and also that it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further the social well-being or social interests of the local community (whether or not in the same way).



*Whether the current use furthers the social well-being and interests of the local community?*

The Sir Charles Napier CIC has indicated in their submission that the Sir Charles Napier Public House only recently closed its doors in June 2015. Previously it was used as a public house primarily to fans of rock music forming a strong community basis for regulars from a wide area. The public house was until 2009, well frequented by its patrons, but then a steady decline until its closure saw the use of public house reduce. This can be attributed to many reasons e.g. recession, change in the culture within the town centre etc, and also lack of investment by the owners in the property. This can be seen from other public houses in the borough where owners have declined to invest in improving the fortunes of the business. However, under the right management and supporting investment, the fortunes of public houses can be transformed which supports the social well-being of a community.

The Sir Charles Napier public house is located within Blackburn Town Centre and is easily accessible, therefore it does not have a specific community as it would have being located within a local suburb for example. The community for this town centre location is the borough's population. The Council agrees with the CIC in that there are no other venues in the locality which caters for the rock music fans as a regular meeting hub. Freeths argue that close by is King Georges Hall, however this is a concert hall which is more aimed at the larger concerts rather than the smaller events attributed to venues such as the Sir Charles Napier. It is acknowledged there are similar venues within walking distance to the Sir Charles Napier, e.g. Molloys and The Times public houses, but this should not be a reason to discount the argument put forward by the CIC. Indeed, only Molloys offers a facility that is on a par with the Sir Charles Napier, and the CIC are working closely with Molloys to aim at providing a complimentary venue to sustain both businesses. The Times public house is more of an "all-day drinkers" pub that attract a different clientele, and where live music is very limited.

Freeths argue that the Council should draw adverse inferences from the absence of actual evidence which supports the CIC's supporting statement as to why the current use furthers the social well-being of the local community. The Localism Act and The Assets of Community Value (England) Regulations 2012 do not require that community organisations present the level of detail requested by Freeths, particularly in terms of evidence. The evidence if available would be helpful, but the submission documents are taken on their face value, and with the level of support which can be seen from the marketing/publicity events as outlined in the Business Plan, it can be seen to the reader that the venue was frequently used by its patrons and was a "well-known" venue on the town centre "public house culture" circuit.

It can be seen that the Sir Charles Napier CIC had until its recent closure an important community function with the town, and its location in the town centre provides a venue for its customers to use. This is more important now with the redevelopment of the Blackburn College Campus, the Council's Growth Agenda which includes revitalising the Town Centre Evening Economy. Indeed, the Council since 2014, now operate Friday Night Live, aimed at the public houses in the area around King Georges Hall supporting live music etc, which have proved to be a success, and venues such as the Sir Charles Napier will help to contribute towards this. The Council does not agree with Freeths LLP's assertion that the Sir Charles Napier is not part of Blackburn's future night time economy as it is a

*“failed public house”, which no longer has community value, “and never, realistically, will be”. The Council is very keen to address the night time economy and venues such as the Sir Charles Napier offer a specific niche towards the “rock music” fans, which should not be ignored but supported. The public house’s fortunes declined for a number of reasons, but it can be seen from the evidence submitted by the CIC that these fortunes could be turned around if there was an opportunity to do so.*

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

Freeths LLP on behalf of Thwaites (the owner) has stated that they consider the pub is not viable and *“catastrophically failed as a public house”, and any future use “is merely fanciful and has no bearing in reality”*

The Council have considered the submission documents from the CIC including the Business Plan, and accept the public house was in steady decline over recent years. However, the Council consider that with the right management in place to run a successful public house with support and investment from the owners, the fortunes of the business can be turned around, which has been proven successfully elsewhere in the borough. The CIC have indicated in their business plan, that if the owners are not willing to lease the property to them, they will seek to pursue purchasing the property, if they have the opportunity to do so by the owners. This was indicated in the appendices to the business plan “potential funding sources”, but was not shared with third parties including the owners as part of this submission, due to confidentiality issues. Furthermore, the level of support generated by the ACV nomination from Members of the Council, CAMRA, and through the marketing and promotion (as indicated in Section 6 of the Business Plan) satisfies the Council as to whether the public house will further the social well-being of the community in the near future. This level of support and aspirations of the CIC can only be encouraged, to support the social well-being of the local community.

The CIC consider in their submission the public house could have non-ancillary uses to help further the social well-being of the community namely, drop in health checks, courses, workshops, exhibitions, music schools, etc. These are fine aspirations within the business plan, which should be encouraged, to support the future sustainability of the public house’s business, not dismissed as “merely fanciful”.

In summary, the Council considers that for the reasons stated, the nomination is a “community nomination”, the current use furthers the social well-being of the community, and it is realistic to consider that the use of the building as proposed will further the social well-being of the community for the foreseeable future in accordance with the Regulations.

**Decision:**

I can confirm that,

Nominated Asset: Sir Charles Napier, Limbrick, Blackburn BB1 8AA

**Should** be an Asset of Community Value and included on the City Council's Local Assets of Community Value Register and placed on the Local Land Charge Register.

A handwritten signature in black ink, appearing to read 'David Proctor'.

David Proctor  
Head of Service (Planning & Transport)

Date:

Background Papers: Nomination application, letter from the owners.

Contact Officer: Gavin Prescott, Planning Manager

Telephone: (01254) 585694

Date: 14<sup>th</sup> October 2015