

## **REPORT TO COLIN READ**

### **Application to nominate The King Rufus Eling Hill Totton Southampton SO40 9HE as an Asset of Community Value**

#### **1. INTRODUCTION**

- 1.1 This report relates to an application made to the Council by The King Rufus Supporters to nominate The King Rufus public house, Eling Hill Totton Southampton SO40 9HE (“the Property”) as an asset of community value (“the Application”). The report reviews the Application, the criteria against which a decision has to be made, the result of consultations and makes recommendations.

A copy of the Application is annexed to this report. The Property was previous placed on the ACV list in 2015 and has only just been become due to be removed from the ACV list on 20 July 2020 on expiry of the 5 year listing period.

#### **2. BACKGROUND**

- 2.1 The Application to nominate the Property as an asset of community value (‘ACV’) is made pursuant to the Community Right to Bid, arising out of the Localism Act 2011 (“the Act”). Under the Act, the Council must make a decision on the Application before 15 September 2020 which is 8 weeks from expiry of the 5 year listing. If the Council accepts that the Application meets the criteria set down in the Act, the Property must be added to the Council’s published list of ACV, registered as a local land charge and registered against the freehold title to the Property.
- 2.2 If the Property is listed as an ACV, the owners must notify the Council if they wish to dispose of the Property. The Council would notify community interest groups of the proposal. If such a group expresses an interest in the Property, a moratorium period of 6 months on the sale is imposed to allow the community interest group to prepare a bid and raise finance.
- 2.3 However, if there is a sale of the land on which a business is carried on, together with a sale of that business as a going concern ie still operating as a pub, then that disposal is exempt and is not affected by the moratorium requirements (section 95(5)(f) of the Act). This was the case in October 2015, when the Property was sold shortly after it was entered on the ACV list. In those circumstances, the owner would not have to advise the Council of the sale.

#### **3. THE APPLICATION**

- 3.1 The Application was made by The King Rufus Eling Supporters (“the Supporters”) and was received by the Council on 9 June 2020. The Council is the proper decision-making authority to determine the Application and delegations have been granted to the Executive Head of Operations to make a decision on the matter. The Application is valid under the criteria laid down by the Act and the Property is not within one of the exceptions laid down in the Act.

- 3.2 The Supporters are an unincorporated body comprising more than 21 local individuals who are on the Electoral Register for the District. A copy of the body's constitution is attached to the Application. The Supporters are not profit making and any surplus is wholly applied to activities in support of the aims of the association. The Supporters are entitled to make an application to list the Property as an ACV.
- 3.3 The Property is currently owned freehold by Raymond Grenville Goold and Philippa Helen Goold. The Application makes no reference to a separate occupant or tenant of the Property. The Property is presently used as a public house subject to the owner's comments in 4.1.
- 3.4 The Application contends that the current and main use of the Property furthers the social well-being or cultural, recreational or sporting interests of the local community and that it is likely to continue to do so in the future.
- 3.5 The Supporters provided details about the use of the Property by the local community in the statement accompanying the Application. The Supporters say the Property is used as a public house and is important to the social well-being of the local community. The Supporters assert that the circumstances surrounding the Application for the previous successful ACV listing have not changed although those circumstances are not fully re-listed in the current Application. They submit that:
- The Property should continue to be a focal point for the community as it has done for over 150 years.
  - Since the closure of the other public house in the village, the King Rufus remains the only public house available. (It does not specify which pub closure this refers to. The 2015 application alluded to 'The Village Bells' pub closing).
- 3.6 The Supporters believe there is a need to preserve the Property as an ACV.

#### **4. THE OWNERS' COMMENTS**

- 4.1 In their email in reply to notice of the Application, dated 5 August 2020 (attached), the owners of the King Rufus, Raymond Goold and Philippa Goold say that "*since the introduction of lockdown*" the pub is closed and boarded with a 'For Sale' sign. There was a potential seller at that time who intended to reopen the pub after completion. He stated that "*Our main objection would be if this matter influenced negatively with our potential purchaser*".
- 4.2 The owners have Paris Smith solicitors acting for them in the sale and they act for both owners in the sale.
- 4.3 The nominating unincorporated body merely has to demonstrate a local connection (which the Regulations define as having members registered to vote in the District or a neighbouring District) – i.e. the members of the unincorporated group do not have to be local to the pub in the sense of being physically proximate to it. In any event, the listed nominees for the most part have addresses either in Eling, Eling Hill, Jacob Gutter Lane or Totton.

#### **5. LEGAL POWER AND DELEGATIONS**

- 5.1 The Council must consider the nomination and decide whether to list the Property as an ACV.

- 5.2 The Council has put in place delegated powers for the Executive Head or Chief Planning Officer to make the decision in consultation with relevant heads of service and portfolio holder(s).
- 5.3 The legal criteria to make the decision are laid down in the Act and supporting regulations. The Council must decide whether the Property is of community value.
- 5.4 The Property is of community value if, in the opinion of the local authority an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and 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. "Social interests" include cultural interests, recreational interests and sporting interests.
- 5.5 In the event of the Council deciding to list the Property as an ACV, the owner can appeal against that decision, firstly to the Chief Executive and ultimately to the court (the First Tier Tribunal). The owner is able to claim compensation for those losses and expenses which were unlikely to have been incurred in relation to the Property had it not been listed. This can include delays in entering into a binding agreement to sell the land which is caused by relevant disposals being prohibited by the regulations.

## 6. CONSULTATIONS

- 6.1 A number of consultations have been made as summarized below.
- 6.2 The owners were informed of the Application and invited to provide comments, which have been summarised in section 4 above.
- 6.3 Totton & Eling Town Council were informed of the Application and were invited to provide comments. They have confirmed that they have no objections to the nomination.
- 6.4 The Chief Planning Officer and Executive Head of Resources respectively, were informed of the Application but have not provided any comments.
- 6.5 Portfolio holder for Community Affairs, Cllr Diane Andrews was informed of the Application and she commented that "*I have no comments on this other than to say that if it was on the list for the previous five years has anything changed to come to a different decision?*". Portfolio holder for Leisure, Cllr Mark Steele, was concerned that "*we are giving support to a quango of "right" - rather than a group of "active supporters"*" but was not more specific.
- 6.6 Ward Cllr David Harrison said "*I am strongly supportive of this remaining as an asset of community value*". Cllr Caroline Rackham said that she is "*fully supportive of the renewal of the Community Value status of the King Rufus. The King Rufus is a very different character of pub to The Anchor nearby and so has provided a very particular community need for a small community meeting space, rather than the busier and often noisier Anchor. This means that the King Rufus acts as an excellent venue for small scale community events such as quiz nights and group meals. It is also a great space for encouraging conversation so has often pulled the community together and it would be very detrimental for the area were it to change use. I would be happy to add my name to the list of signatories on the petition if needed as an Eling resident*".

6.7 Service Manager for Estates & Valuations, Andrew Smith, was notified of the Application and had no further comments to make.

## **7. CONCLUSION**

7.1 It therefore seems there are no direct objections to the nomination - the owners simply don't want it to adversely affect the sale as a going concern. I have received confirmation from Paris Smith solicitors that they act for both owners in the sale and they have not indicated any further views of the owners, favourable or otherwise, than that mentioned already.

7.2 Against that, the Property has been used as a public house for many years and the comment from Cllr Rackham shows that it offers a different ambience to the nearby Anchor pub. Therefore, pending the sale it is not unrealistic to think that in the next 5 years it could be run as a public house in such a way as to further the social well-being and social interests of the local community. The business has a website and it has a number of testimonials on the website "Trip Advisor" but these are obviously out of date presumably mainly due to the Covid and the current closure.

7.3 It seems reasonable to conclude that, whilst the Covid restrictions may have led to closure in the short term – as many pubs have been in the same period – use by the community can continue in the near future. Indeed, there is no evidence submitted by any locals to contradict the current evidence to hand that it is an asset of community value in the sense of being supported by the local community.

7.4 It seems reasonable to assume the present owner is seeking to sell the Property as a going concern, i.e. with a long term future as a pub or pub/restaurant.

7.5 Whilst the evidence given in the nominator's application is not as comprehensive as that provided in the previous application in 2015, the current application given by the nominating body set out in section 3.5 indicates the Property does fulfil the criteria for listing summarized in paragraph 5.4 above.

7.6 On balance the Application appears to meet the legal criteria set out in the Localism Act 2011 for the Council to accept the nomination, for the reasons explained above

## **8. RECOMMENDATION**

8.1 It is recommended that you as an Executive Director of the Council decide this Application pursuant to delegated powers as follows:

- (1) In the opinion of the local authority, the actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and 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. It does therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

For Further Information Contact:

Richard Davies  
Solicitor  
Tel: 023 8028 5298  
E-mail: richard.davies@nfdc.gov.uk

Background Papers:

Application by The King Rufus  
Eling Supporters  
Email from owners Mr and Mrs  
Goold dated 5<sup>th</sup> August 2020