

DECISION NOTICE

THE LOCALISM ACT 2011 Section 88

Decision on the nomination of Hythe Pier and associated buildings as an asset of community value.

I, Colin Read, Executive Head of The District Council of New Forest, pursuant to delegated powers, have considered an application made by Hythe and Dibden Parish Council to nominate Hythe Pier and associated buildings, Prospect Place Hythe SO45 6AU as an asset of community value. Having considered the application I have decided that the application should not be accepted for the following reasons:

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

Signed COLIN READ

Colin Read

Executive Head

Dated: 22/3/2017

REPORT TO COLIN READ

Application to nominate Hythe Pier and associated buildings as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by Hythe and Dibden Parish Council to nominate Hythe Pier and associated buildings, Prospect Place, Hythe, Southampton SO45 6AU (“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.

2.0 BACKGROUND

- 2.1 The Application to nominate the Property as an asset of community value 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 by 23 March 2017. If the Council accepts that the nomination meets the criteria set down in the Act, the Property must be added to the Council’s published list of assets of community value, registered as a local land charge and registered against the freehold title to the Property.
- 2.2 If the Property is listed as an asset of community value, 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 The Property is currently used as a pier, pier approach, ticket office, and maintenance/storage shed for the Pier Train to enable the provision of a ferry service between Hythe and Southampton. Hythe Pier has been used to access Hythe ferry to travel between Hythe and Southampton for many years. Steamers were operating between Hythe and Southampton by 1887 when Mr James Percy succeeded the lessee of the pier tolls and there began a long association of the Percy family with the pier and ferry service which continued for more than a century. White Horse Ferries bought the ferry business including Hythe Pier on 31 March 1994. The current registered proprietor of land including Hythe Pier is Hythe Ferry Limited which acquired the freehold land on 18 November 2015.
- 2.4 The Applicant advises the community became aware of financial difficulties being experienced by Hythe Ferry Ltd in August 2016 and indeed the future of the ferry service is in doubt after staff were issued with a letter in October 2016 warning them of possible redundancies. Hythe Ferry Ltd is holding talks with other operators and the owner recently advised such talks are ongoing.

3.0 THE APPLICATION

- 3.1 The Application was made by Hythe and Dibden Parish Council and was received by the Council on 26 January 2017. The Council is the proper decision making authority to determine the Application and delegations have been granted to an Executive Head 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 and a determination on the Application is required. The legal test for determining the Application is set out in paragraph 5.4 below.

- 3.2 Hythe and Dibden Parish Council is entitled to make an application to list the Property as an asset of community value.
- 3.3 The Property is currently owned freehold by Hythe Ferry Limited. The Property is registered under title number HP486565.
- 3.4 The Application contends that the main use of the Property in its current use furthers the social well-being or cultural, recreational or sporting interests of the local community. The Application seeks to provide details as to how Hythe and Dibden Parish Council anticipate that the Property would continue to further the social well-being or cultural, recreational or sporting interests of the local community.
- 3.5 The applicant provided details about the use of the Property by the community in the Application. At B2 the applicant says "The pier, ticket office, pier approach and associated buildings enable the provision of a ferry service to Southampton. Without this collection of assets there will not be a ferry service that is considered essential to enable the community access to Southampton, its onward travel interchanges and the employment opportunities available in the city and via other public transport access to other areas. The ferry also provides an important link for tourists to visit the New Forest with the New Forest Tour Bus Green route stopping at the Pier interchange". The applicant goes on to state "The community wish to continue the use of the pier as a pier for a ferry to land at". In summary at B5 the applicant says the community became aware of the financial difficulties being experienced by Hythe Ferry Ltd. A local action group was formed to support a community initiative to secure the future of the ferry and train service and the protection, renovation and maintenance of the Pier.

4.0 THE OWNERS COMMENTS

- 4.1 The Owner of the Property has been asked to comment on the Application.
- 4.2 The Owner objects. It is in negotiation with another operator to take over operation of Hythe ferry service which would include the sale of the Property. If the Property were listed that would introduce delay or even deter the proposed Purchaser from proceeding.
- 4.3 If the deal is not done with the proposed Purchaser, the future of Hythe ferry is questionable.

5.0 LEGAL POWER AND DELEGATIONS

- 5.1 The Council must consider the nomination and decide whether to list the Property as an asset of community value.
- 5.2 The Council has put in place delegated powers for an Executive Head to make the decision.
- 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 land 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 (section 88(1) of the Act). "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 asset of community value, 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 loss and expense in relation to the Property which would be likely not to be incurred if the Property had 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.

6.0 CONSULTATIONS

- 6.1 A number of consultations have been made as summarized below.
- 6.2 The Owner was informed of the Application and submitted objections to it as described in section 4 above.
- 6.3 Hythe and Dibden Parish Council submitted the Application and accordingly of course supports the Application.
- 6.4 The Executive Head for Governance and Regulation has no comments on the proposal.
- 6.5 The Executive Head for Economy, Housing and Planning made the following points:
- the main use of the Pier is to enable a ferry service to operate from Hythe to Southampton at all states of the tide. So you can walk or ride along it if you are catching or have disembarked from a ferry.
 - a separate but related issue is the extent to which the Pier is used for the general wellbeing of the local population eg walking, fishing.
 - the Pier would be of very little community value if there was no ferry. The key issue is the operation of the ferry not the Pier itself, although without it the current ferry service could not continue to operate.
 - the ferry is known to be under threat of closure due to financial issues at the present time.
- 6.6 Cllr Jill Cleary was informed of the Application as portfolio holder for Housing and Communities and she commented that she would leave it to the local Councillors to make any comments.
- 6.7 Cllr Binns was informed of the Application as portfolio holder for Health and Leisure and he supports the Application.
- 6.8 Local ward members Cllr Poole and Cllr Andrews were informed of the Application and both support the Application.

7.0 ASSESSMENT

- 7.1 The assessment as to whether the Council should accept the Application to list the Property as an asset of community value is made under Section 88(1) of the Act. The

first element of this test, s88(1)(a), is whether 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.

7.2 Taking into account all the comments made and the information provided in the Application, it does not seem that there is an actual use of the Property which furthers the social wellbeing or social interests of the local community which would satisfy the test set out in S88(1)(a). Hythe and Dibden Parish Council have not provided any evidence to support their application but have provided unsubstantiated statements as referred to at B2 and B5 of the Application.

7.3 The second element of the test as to whether the Council should accept the Application to list the Property as an asset of community value is set out in S88 (1)(b) of the Act. This requires the Council to decide 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

7.4 Taking into account the comments made, the first element of the test set out in s 88(1)(a) has not been satisfied, it is not therefore necessary to consider the second element of the test set out in s 88(1)(b).

8.0 RECOMMENDATION

8.1 It is recommended that you as an Executive Head 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 does not further the social wellbeing or social interests of the local community, and it does not believe 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 not therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

For Further Information Contact:

Background Papers:

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Application by Hythe and Dibden
Parish Council