

REPORT TO JOHN MASCALL

Application to nominate The Red Lion 32 High Street Milford on Sea Lymington SO41 0QD as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by The Customers of The Red Lion to nominate The Red Lion public house, 32 High Street Milford on Sea Lymington Hampshire SO41 0QD (“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 Red Lion public house, 32 High Street Milford on Sea Lymington Hampshire SO41 0QD 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 before 22 October 2015. 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.

3.0 THE APPLICATION

- 3.1 The Application was made by The Customers of the Red Lion (“the Supporters”) and was received by the Council on 27 August 2015. The Council is the proper decision making authority to determine the Application and delegations have been granted to the Executive Director 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 as required by the regulations. The Supporters do not appear to be a formally constituted group. Details of the members of the Supporters at the time of the application are attached to the application. The Supporters are entitled to make an application to list the Property as an asset of community value.
- 3.3 The Property is currently owned freehold by Questmap Limited and is occupied by tenants Stuart Grieves and Jayne Grieves. The Property is presently used as a public house.

- 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 they seek protection of “their local” against further development or change of use by the current or future owner. In particular the Supporters assert:
- The Property is a traditional, mainly wet-led public house which is used by all ages throughout the week.
 - The pub has a number of facilities such as a dartboard, pool table and gaming machine.
 - The pub is open to all and is not restricted or unwelcoming to any particular group. It is homely and suitable for quiet conversation or reading.
 - Customers include disabled persons (including a regular blind customer), single drinkers, occasional tourists and families. Milford on Sea beach is only 700 metres away.
 - The pub hosts local wakes, birthday parties and special events. Three on suite rooms are available for guests. A piano is available and occasional live music is staged.
 - The pub is the only one in the village actively supporting small local breweries and is regularly listed in CAMRA’s Good Beer Guide. It is also Cask Marque accredited.
 - There is a small car park and large garden at the rear of the premises.
 - The pub is family run and customers are served by the resident landlord or trained, trusted and friendly staff. Traditional, home cooked, food is served at reasonable prices.
 - The pub has historical connections, being a former Georgian coaching inn, later extended into adjoining properties.
- 3.6 The Supporters also raise a number of other issues to support their contention that the Property is an asset of community value:
- That studies (unspecified) have shown that pubs promote social well-being in their local community
 - 31 pubs close every week even though many are trading satisfactorily for property development or other trading units. These figures are unsourced.
 - All pubs are different and have their own loyal clientele. The Red Lion is the only pub in Milford on Sea where quiet conversation can be guaranteed in a homely and friendly atmosphere.
 - This Property “fell into the hands of a development company earlier this year and is therefore considered particularly vulnerable”. However no evidence as to the activities of the Owner has been produced and the Council has no evidence that the Property is likely to be redeveloped in the near future.
- 3.7 A review of the web site for The Red Lion refers to the pub “catering for all ages”, “a large, welcoming beer garden at the rear with a children’s play area and a games area including darts, pool, table football and a TV situated in the old stable”, regular live music events “with fantastic local bands”, additional references to Milford on Sea and its annual Musical and Arts Festival, Carnival and Milford Food Week, and references to Lymington. There are photographs of the beer garden and children’s play area on the web site.
- 3.8 There are various references to the Red Lion in the local “Enjoy Milford on Sea” web site, including to regular quiz nights, music nights and food.

4.0 THE OWNERS OBJECTION

- 4.1 The Owner of The Red Lion has been asked to comment on the nomination and comments were received on 5th October. A copy of the letter from the Owner's agent, Neame Sutton is attached. The Owner objected to the nomination.
- 4.2 The Owners assert that the first floor of the building contains a self-contained residential unit that has never formed part of the main public house use on the ground floor, and that whilst there is a large garden to the rear of the building this is not in active use as part of the public house. The Owners consider that neither the first floor dwelling nor the garden is eligible for nomination because residences cannot be land of community value under the Regulations.
- 4.3 However the Regulations are clear that land which comprises a residence forming part of a building can be listed if that building is otherwise capable of being listed (Paragraph 1(5) of Schedule 1 to the Assets of Community Value (England) Regulations 2012). This regulation is not referenced by the Owner. It may also be noted that there are (according to the Red Lion web site) 3 "B&B" guestrooms forming part of the residential area on the first floor. Also the comments in the letter about the garden are at odds with the statements in the nomination as cross checked on the Red Lion's own web page, which indicate the rear car park and the garden are available to customers of the Red Lion.
- 4.4 The owner's agent refers to the fact there are other local public houses in the vicinity which are "of no less value to the community than the application site". The Owner makes the point that the Red Lion is "not therefore of particular or unique importance such as to warrant nomination".
- 4.5 However in contrast, a recent article in "Sweet & Maxwell's Encyclopaedia of Local Government Law Bulletin (August 2015) says that the decisions of the court (First Tier Tribunal) confirm the definition of community assets includes pubs.
- 4.6 A press release for the Department for Communities and Local Government (March 2015) notes that at that time more than 600 pubs had been registered as assets of community value and notes that pubs play a crucial role at the heart of communities.
- 4.7 On the web site of The Campaign For Real Ale (CAMRA) it is noted that over 800 pubs have been listed as assets of community value. CAMRA is presently promoting a scheme of "licensee support packs" and suggests that licensees can use the ACV status to promote the pub to customers and so increase trade.
- 4.8 It seems reasonable to conclude that a pub can further the social well-being or social interests of the local community notwithstanding the proximity of other pubs in the area.
- 4.9 Finally, the Owners assert that the "sole reason for this application is as a result of our clients freehold interest in the land. However the applicant provides no evidence to indicate the existing public house is in any way at risk and has clearly not fully explored the nature and extent of our clients' business interests, which include the operation of similar establishments elsewhere".
- 4.10 The nomination does indeed express concern about the "risk" of the Red Lion being redeveloped or there being a change of use by the current or future owner. However there is no reason to believe the nomination is malicious or false and indeed the nomination appears supportive of the current operation of the pub. There is no

requirement for nominees to provide evidence the nominated property is in imminent risk of redevelopment.

- 4.11 The Owners will doubtless also be aware that the sale of the property as part of the sale of the pub business as a going concern does not engage the moratorium provisions of the Localism Act.

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 Director to make the decision in consultation with the Head of Legal and Democratic Services, 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 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. "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 provided comments as mentioned in section 4 above.
- 6.3 The tenants of The Red Lion were contacted but have made no comment on the application.
- 6.4 Milford on Sea Parish Council was informed of the Application and provided the following comment: "Milford-on-Sea Parish Council support the application by the customers of the Red Lion Public House at 32 High Street, Milford-on-Sea, to list the business as an Asset of Community Value. The Parish Council recognises the contribution public houses such as the Red Lion make to the vibrancy and vitality of village life and are keen for this to be preserved for future generations of residents and visitors."
- 6.5 The Head of Planning and Transportation commented that he knew of no reason why the property shouldn't be listed.

- 6.6 The Head of Leisure and Employment commented that there would appear to be no reason not to add the nomination to the list.
- 6.7 The Head of Legal & Democratic Services had no comments on the proposal.
- 6.8 Cllr Jill Cleary was informed of the Application as portfolio holder for Housing and Communities and she commented that as this was not her ward she would let the local members comment.
- 6.9 Cllr James Binns, Portfolio Holder for Health & Leisure commented that he would leave the matter up to the ward Councillors.
- 6.10 Cllrs Mel Kendal and Sophie Beeton did not provide any comments on the nomination.

7.0 CONCLUSION

- 7.1 The reasons given by the nominating body set out in section 3 all indicate the Property does fulfil the criteria for listing summarized in paragraph 5.4 above.
- 7.2 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

8.0 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:

Background Papers:

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Application by The Customers of
The Red Lion
Letter of objection from Owners
agent