

## **DECISION NOTICE**

### **THE LOCALISM ACT 2011 Section 88**

#### **Decision on the nomination of an asset of community value.**

**East Boldre Post Office and Stores, Main Road, East Boldre, Brockenhurst SO42 7WD**

I, Manjit Sandhu, Executive Head of Operations of the District Council of New Forest, pursuant to delegated powers, have considered an application made by East Boldre Community Stores Ltd to nominate East Boldre Post and Stores as an asset of community value. Having considered the application I have decided that the application should be accepted for the following reasons:

In the opinion of the local authority, the actual current use of the Property 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 therefore meets the criteria set out in the Localism Act 2011 to be eligible for listing.

Signed: MANJIT SANDHU

Manjit Sandhu  
Executive Head of Operations

Dated: 1 November 2021

## REPORT TO MANJIT SANDHU

### Application to nominate East Boldre Post Office and Stores as an asset of community value

#### 1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by East Boldre Community Stores Ltd (“EBCS”) to nominate East Boldre Post Office and stores, Main Road, East Boldre, Brockenhurst SO42 7WD (“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 (‘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 1 November 2021 which is 8 weeks from receipt of the nomination. 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 post office, then that disposal is exempt and is not affected by the moratorium requirements (section 95(5)(f) of the Act). In those circumstances, the owner would not have to advise the Council of the sale.

#### 3.0 THE APPLICATION

- 3.1 The Application was made by East Boldre Community Stores Ltd (‘EBCS’) and was received by the Council on 6 September 2021. 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 EBCS is a society registered as a society for the benefit of the community under the Co-operative and Community Benefit Societies Act 2014 (registered by the Financial Conduct Authority on 8 October 2020). A copy of the body’s registration seal and rules are attached to the Application. EBCS will be non-profit making and any surplus is reinvested in the business or distributed to community causes as determined by the membership. Given its status and its ‘local connection’ (ie the body’s activities are wholly or partly concerned with the local authority’s area – regulation 4(1)(a) of the Assets of Community Value (England) Regulations 2012; and that any surplus it make

is wholly or partly applied for the benefit of the local authority's area – regulation 4(1)(b); EBCS is therefore entitled to nominate the Property for ACV status.

- 3.3 The Property is currently owned freehold by Mr Ian Evans ('the Owner') who also runs the Post Office. The Application makes no reference to a separate occupant or tenant of the Property. The Property is presently used as a Post Office and retail shop. EBCS intend to lease the whole ground floor from the Owner. The rear of the lower ground floor is currently part of the separate residence (which comprises lower ground floor and whole of the 1<sup>st</sup> floor, part of which is above the Property), and is divided from the Property by a separating wall subject to the Owner's comments on 8 October 2021 in his email (attached), where he said that "...an open used internal door separates it".
- 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 with EBCS's planned developments.
- 3.5 EBCS has included a detailed Business Plan in the Application which provides details of key objectives (section 1.1) about the planned use of the Property by the local community and details the planned building and business changes EBCS intends to implement once it takes over the running of the Post Office and stores. EBCS sets out plans on financial viability and the community business model (para 1.1.2) and how it aims to work with the community to advance those plans.
- 3.6 At section 2, EBCS highlights its vision for 'Social Outcomes' as a result of EBCS's business model including: the building of 'community resilience' during difficulties which were brought into focus by the Covid pandemic (para 2.1); local connections (para 2.2) that set out its intention to target provision of paid local employment and to collaborate with local suppliers and other community businesses to develop a New Forest based contact network; social inclusion which will result as a consequence of development of a community shop (para 2.3); galvanising community cohesion (para 2.4) and reduction of social isolation (para 2.5).
- 3.6 At section 3, EBCS reviews the current business model operated by the Owner and its deteriorating profitability, together with the Owner's attempts to sell as a going concern, culminating in the Owner's attempt to sell solely as residential property. This, EBCS say, would have led to the village losing its last remaining shop and Post Office.
- 3.7 Amongst other subjects, EBCS sets out the 'Community Need' of the village shop and post office, both current and future at section 4 and addresses potential for demand at paragraph 4.2. Section 6 sets out its plans for Organisation and Structure of the shop operation (shop organisation at para 6.2) and the Post Office (para 6.3).
- 3.8 The rest of the plan is set out: Section 7 - Details of the 'Target Market'; Section 8 - EBCS's research into the market, including visits to and advice from other local shops; Section 9 - 'Marketing Strategy'; Section 10 - 'Skills Development'; Section 11 – 'Operations and Logistics' (details of the proposed physical layout of the developed premises); Section 12 - 'Environmental Initiatives'; Section 13 - 'Financial Forecasts'; Section 14 - 'Metrics and Targets'; Section 15 – 'SWOT Analysis of Community Shop Business Proposal'; Section 16 - Business Risk Register'; Section 17 - 'Partner Organisations'; Section 18 - 'References'; and Section 19 - Appendices

#### **4.0 THE OWNER'S COMMENTS**

- 4.1 In his email dated 6 October 2021 (attached), in reply to notice of the Application, the Owner provided extensive comments. On the issue of community use, he said that

*"Having owned the business for over 20 years I can say that for the first few years my older customers taking their time in the shop would occasionally and totally unplanned see other customers known to them and chat together for a few minutes. However, those many older traditional customers have either left the village or passed away. What I see now are customers who want a quick service and to be in and out as quickly as possible".*

- 4.2 In respect of his attempts to attract a more varied use of the Property he said that *"Approximately five years ago at considerable personal cost I carried out a total refurbishment of the business. Prior to doing this I verbally surveyed nearly every customer asking what additional services they would like to see in the shop. Taking note of feedback I made many changes, but the main change was to incorporate a cafe within the shop, this had been mentioned numerous times. The space allocated reduced my sales area but confident of its success I purchased tables, chairs, cutlery, tableware and a significant amount on a state of the art coffee machine. The take-up of the cafe by the village was appalling and average tea/coffee sales were less than 10 sales a week! After eighteen months I gave up the idea and closed the cafe. Had this idea worked then yes the shop my have well been proved to increase social interaction by it was made undoubtably clear that this was not required or need in the village".*
- 4.3 Addressing financial viability of the Property as a going concern, he said that *"Your decision should also consider the financial capability of the shop. Having carefully reviewed my accounts (available at Companies House) over the last nine years the business has made a loss for seven of these years. The annual purchases of the business are in decline year on year inspite of numerous changes I have made to try and make the business profitable. Major influences on this type of business are increasing demand for supermarket home deliveries, competition between supermarkets leading to their prices being cheaper than a cash and carry. The recent pandemic has lead people to use home delivery and now they continue to do so. (My purchases over the last six months are 50% down on 2019 comparison). Further the increasing number of homes being purchased as second homes is devastating for this business".*
- 4.4 He goes on to describe his attempts to sell the Property and also his efforts to facilitate EBCS's objectives of taking over the running of the business of the Post Office and stores:  
*"Further I have tried to sell the business, with four different agents, as a going concern between 2014 and 2019 with no success whatsoever. However, during 2019 the village formed a save the shop group with the intention of renovating the village hall and it accommodating the shop and post office. I agreed to continue running the business until planning permissions were granted or refused. During this time (nearly 3 years) I was assured that once permission was granted by NPA permission to return my home and business to it former full residential status. This was a fact confirmed by both the save the shop committee and the head of NPA. However, to my disappointment when permission was granted for the rebuild it was discovered that other New Forest bodies would need to give permission. The main body being the Verderers and it is only recently clear that they would never give permission to operate a business on New Forest land...I have already verbally agreed with the committee that I will again continue to run the business giving six months and perhaps longer for them to raise funds to purchase at a price to be agreed. Further I believe the application should fail in its inability to comply with section 88 of the Act".* The section 88 referred to by the Owner, is the section in the Act concerning whether land is

considered to be of community value or not, although he does not specify at that point in his email why the Property does not comply.

- 4.5 The Owner concludes his email of 6 October 2021 by saying that:  
*“As I come now more familiar with this Act I realise the grave consequences on me personally on its future salability [sic]. Further...the one thing that the committee wants is the time to raise money and buy...[the]...property. But as I have already stated I am happy to give them ample time exceeding what the Act could impose. An ACV property listing [h]as severe and far-reaching consequences for myself in terms of unrestricted ability to dispose of my home as I see fit. The imposition over time could render the property to be more illiquid causing future potential sales to fail”.*

## **5.0 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 (ie it is not a subservient, subordinate or incidental 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.

## **6.0 CONSULTATIONS**

- 6.1 A number of consultations have been made as summarised below.
- 6.2 The Owner was informed of the Application and invited to provide comments, which have been summarised in section 4 above.
- 6.3 The East Boldre Parish Council were informed of the Application and were invited to provide comments. It confirmed that *“In our view the Shop/Post office is a vital community asset. It is relied on by many vulnerable people and of the limited mobility, overall, it provides a vital service to our community and significantly enhances the social well-being of our residents. It also performs a vital social duty in that the elderly or vulnerable people have an eye kept on their wellbeing. In addition, it provides people that are lonely with somewhere they can have contact with people. It is also an amenity to the wider village”.* It went on to say that the Property gave environment benefits as the nearest shop is ¾ mile away and, with only *“extremely restricted bus services”* the Post Office provided essential services eg electric meter card credit; it

also allowed withdrawal services which were important given withdrawal of bank services. It considered that *“During the height of the Covid pandemic the shop was a vital hub for the community for provisions as well all the important services of the Post Office”* The Parish Council also agreed with the points made in the Application and considered the benchmark modelling and *“extensive business case”* as a *“highly detailed and professionally informed plan”* which was *“achievable”*

- 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 Planning, Regeneration & Infrastructure, Cllr Diane Andrews was informed of the Application and she had no comments to add. Portfolio holder for Partnering & Wellbeing, Cllr Mark Steele, said that he *“...cannot see a down side [of the Application]”* but was concerned in case it failed *“...either financially or through dissolving membership”*.
- 6.8 Ward Members, Cllr Holding & Cllr Harris were informed of the Application. Cllr Holding gave no response. Cllr Harris replied *“I very much support this initiative. I have been working to help support the team in many ways”*.
- 6.9 Service Manager for Estates & Valuations, Andrew Smith, was notified of the Application and had no comment to make.
- 6.10 Executive Head for Governance & Housing, Grainne O'Rourke, was notified of the Application and had no comment to make.

## **7.0 CONCLUSION**

- 7.1 It therefore seems there are no direct objections to the nomination. The Owner, from his own experience, apparently does not feel that the community is truly invested in the use of the Post Office and stores as a focal meeting point eg his disappointment in the lack of commercial interest in the new cafe. He also has concerns about the commercial viability for the Property as a going concern in light of the decreasing revenue during his tenure as Postmaster.
- 7.2 However, he has clearly been working with EBCS to try and facilitate the changeover to EBCS's operation of the Property as a Post Office and shop which it hopes to implement by March 2022.
- 7.3 From the comments received during the consultation period referred to in section 6, it is clear that there is a current community use of the Property as Post Office and shop and that there is some benefit to the community. Indeed, whilst revenue might inevitably have been adversely affected during the Covid period (and before that in the Owner's submission), there is also some evidence that its existence became essential for the community due to lack of, or distance to, alternative sources (eg Post office services, cash withdrawals, shopping essentials).
- 7.4 The detail and comprehensive business plan that is part of the Application goes some way in illustrating the efforts behind EBCS's proposal to operate a community owned shop. Therefore, it seems *‘realistic to think that there can continue to be non-ancillary use of the Property which furthers (whether or not in the same way) the social wellbeing or social interests of the local community’* (as per s88(1)(b) of the Act).
- 7.3 Also, it has been found in Tribunal decisions that foreseeable *‘long-term viability’* is not necessary, *“Nor...is commercial viability the test. Community use need not be and often is not commercially profitable.”* (Gullivers Bowls Club Ltd v Rother D.C [2014]).

7.4 Taking all elements mentioned above, the current application given by the nominating body set out in section 3 indicates the Property does fulfil the criteria for listing summarized in paragraph 5.4 above.

7.5 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

## **8.0 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:**

Richard Davies  
Solicitor  
Tel: 023 80285298  
E-mail: richard.davies@nfdc.gov.uk

### **Background Papers:**

Application by EBCS Ltd dated 5<sup>th</sup>  
September 2021

Two emails from Owner dated 6<sup>th</sup> and 8<sup>th</sup>  
October 2021