

DECISION NOTICE
THE LOCALISM ACT 2011 Section 88

**Decision on the nomination of The Augustus John 116 Station Road
Fordingbridge Hampshire SP6 1DG as an asset of community value.**

I, Colin Read, Executive Head of Service of The District Council of New Forest, pursuant to delegated powers, have considered an application made by the Campaign for Real Ale – Southern Hampshire Branch to nominate The Augustus John 116 Station Road Fordingbridge Hampshire SP6 1DG 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 COLIN READ

Colin Read
Executive Head of Service

Dated: 06/01/16

REPORT TO COLIN READ

Application to nominate The Augustus John 116 Station Road Fordingbridge Hampshire SP6 1DG as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by the Campaign for Real Ale – Southern Hampshire Branch to nominate The Augustus John public house, 116 Station Road Fordingbridge Hampshire SP6 1DG (“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 Augustus John public house 116 Station Road Fordingbridge Hampshire SP6 1DG 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 8 January 2016. 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. Note however that if the Owner wishes to sell the pub business as going concern, the moratorium on sale provisions of the right to bid are not engaged.

3.0 THE APPLICATION

- 3.1 The Application was made by The Campaign for Real Ale – Southern Hampshire Branch and was received by the Council on 13 November 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 appendix to this report explains the legal background to a nomination by a branch of a national organisation. It is accepted that CAMRA – Southern Hampshire Branch is entitled to rely on CAMRA’s national status as a company limited by guarantee which does not distribute any surplus it makes to its members and also then entitled to rely on its own (i.e. the branch’s) activities to satisfy the requirement that the nominating body’s activities must be wholly or partly concerned with the New Forest or with the area of a neighbouring authority and that any surplus it makes must be applied at least in part for the benefit of the New Forest area or the area of a neighbouring authority.

- 3.3 The Property is currently owned freehold by NewRiver Trustee 7 Limited and NewRiver Trustee 8 Limited. 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 applicant provided details about the use of the Property by the local community in the statement accompanying the Application. The applicant says the Property is used as a public house and is important to the social well-being of the local community. In particular the applicant asserts:
- The Augustus John is actively involved in integrating with the local community in many ways;
 - Car boot, vintage, craft sales and farmers markets are held every Saturday
 - Visiting Groups include classic car and motorcycle owners
 - There are parking facilities for walkers and cyclists
 - A designated wall within the pub is available for monthly displays by local artists
 - Food is prepared using locally sourced ingredients including take-away facilities for fish and chips and burgers.
 - There is a full programme of events weekly including classic movies, a Thai themed night, a cycling club, a pipe-cleaning club, a fun quiz with music and a meat draw.
 - Live music is held monthly with a special emphasis on local up and coming solo and duo acts.
 - The pub is patronised by Fordingbridge Rugby club.
 - The applicant provided by way of support a list of web pages and a copy of the Augustus John's web site for November 2015, including references to live music, the pub's sponsorship of the ladies team at Fordingbridge Rugby Club, the movie night, Thai Tuesday, the pub's own cycling club that meets there every Wednesday, the Thursday Fun Quiz night and the meat draw. In addition the web site confirms that cyclists and walkers can leave their cars in the car park and go off if they have eaten and had a drink at the pub.
- 3.6 In addition the applicant makes a number of more generic points:
- The British Public House has been proved in several studies to promote social well-being in a manner that cannot be matched by any other facility. The reference to "studies" is unsourced.
 - All pubs are different and have their own loyal clientele.
 - 31 pubs are closing every week in the UK. The applicant asserts that many of these have been trading satisfactorily and have been closed and sold for property development and unchallengeable change of use. However the applicant provides no evidence in support of its assertions.
 - The Augustus John is particularly vulnerable as it was included in a portfolio of 202 pubs sold by Marstons to New River Retail, an "aggressive property development company registered in the Channel Islands. New River Retail specifically target pubs in prime positions with car parking facilities to facilitate the cancerous spread of unwanted convenience stores."
 - The current landlord is understood to have a short tenancy agreement and the threat of pub closure is looming ever nearer despite the growth of trade and stature of the Augustus John in the local community.

The remarks about the present owner and their perceived intentions are not supported by any additional evidence and are no more than unsourced, campaign group opinions.

So far as the Regulations are concerned the issue is whether, in the opinion of the local authority, the land is of community value.

- 3.7 Finally, the applicant provided a list of supporters for the proposal to nominate the Augustus John as an asset of community value.

4.0 THE OWNERS COMMENTS

- 4.1 The Owner of The Augustus John has been asked to comment on the Application. Planning advisers for the owners replied on 3rd December making an objection to the proposal. They make these points:

- The application provides insufficient evidence to conclude that the pub furthers the social wellbeing of the community. The nomination refers to a series of commercial activities associated with the pub i.e. car boot sale, craft sale (commercial not recreational or cultural activities), visiting groups, (unspecified and not linked at all in the submission to the local community), general activities at the pub i.e. quiz, theme nights (none of these are unusual and all are available in other pubs in Fordingbridge) and the patronage by Fordingbridge Rugby Club (no suggestion the Augustus John is the only pub used by the club).
- The second part of the application which is critical of “Pubcos” and refers to the owner as “an aggressive property development company registered in the Channel Islands” has absolutely no relevance to the nomination as an asset of community value.
- This application is merely a knee jerk reaction to a planning application that actually proposes to develop only part of the existing car park for housing; the pub itself would remain and it has always been made clear that it will continue to trade.

- 4.2 On this last point, the proposition the application is a “knee jerk reaction” is itself unsupported by any comments made in the application. Indeed the planning application referred to by simplyplanning is not expressly referred to in the application at all.

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, as described in section 4 above.

6.3 The current tenant of the Property was asked to comment on the application. Mr Greenwood, the tenant, commented that he had nothing to add to the application except to say he supported it. N.B. Mr Greenwood saw both an earlier nomination and the present one. His comments were based on the earlier nomination but since that earlier nomination was substantially on the same basis as the present one, nothing appears to turn on that point.

6.4 Fordingbridge Town Council was informed of the Application and was invited to provide comments. No comments have been received.

6.5 The Head of Planning and Transportation stated there appeared to be no reason why the Property should not be put on the register.

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 she would leave it to the local Councillors to make any comments.

6.9 Cllr James Binns, Portfolio Holder for Health & Leisure stated that he had no objection to the nomination.

6.10 Local ward member Cllr Ann Sevier did not support the application. She commented:

"Many public houses are struggling to financially survive - and I understand as a local resident - it has struggled in the last few years. So I question the viability of it continuing as a P.H.

I would have no objection to it becoming residential accommodation as that is something we are short of in Fordingbridge. I would be against demolishing the building as it has an interesting history as the Station Hotel, then The Load of Hay and more recently The Augustus John. It has a good Victorian frontage.

There are 3 PH under a mile away at the Market Place in Fordingbridge - The Ship, The Crown and the other which keeps changing its name? We are not short of P.H's.

I appreciate that public houses are a place where groups meet. But it is not the only P.H in the area AND the church at Sandleheath under half a mile away has recently been taken over by Sandleheath Parish Council to become their village hall. Also the same

distance on the other side there is Avonway Community Centre and there are other centres in the town 2 X church halls, the town hall and a place called Victoria Rooms. I also question the amount of parking available at the Augustus John for it to become used by the community.

Also no local residents have approached me - looking to save the pub!! At the moment I feel unable to support this public house becoming an asset of community value."

6.11 Local ward member Cllr Roxy Bellows provided these comments on the nomination:

"I am aware that the Augustus John had been nominated and the residents I have spoken to seem to be excited at the prospect. The Augustus John is valued by its surrounding community as it is the only amenity within an easy walk. It is a place where the nearby residents can meet and socialise."

7.0 CONCLUSION

7.1 The reasons given by the nominating body set out in section 3 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 in this report.

8.0 RECOMMENDATION

8.1 It is recommended that you as an Executive Head of Service 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 CAMRA -
Southern Hampshire Branch

Letter dated 3rd December -
simplyplanning

APPENDIX

Nomination by CAMRA – Southern Hampshire Branch

1. Land may be included in a list of assets of community value only in response to a “community nomination” See Section 89(1)(a) Localism Act 2011 (“the Act”). In this case, for a nomination to be valid it must be made “by a person that is a voluntary or community body with a local connection”. See Section 89(2)(b)(iii).
2. Voluntary or community bodies are defined in Regulation 5(1) The Assets of Community Value (England) Regulations 2012 (The Regulations”) as meaning:
 - a. A body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990(1)
 - b. A parish council;
 - c. An unincorporated body
 - i. Whose members include at least 21 individuals, and
 - ii. Which does not distribute any surplus it makes to its members;
 - d. A charity;
 - e. A company limited by guarantee which does not distribute any surplus it makes to its members;
 - f. An industrial and provident society which does not distribute any surplus it makes to its members;
 - g. A community interest company.
3. “Local Connection” is defined in Regulation 4 of the Regulations. In the context of this case, for a body to have a local connection with land in the New Forest, its activities must be wholly or partly concerned with the New Forest or with the area of a neighbouring authority. See Regulation 4(1)(a).
4. There is an additional condition for those unincorporated bodies within Reg 5(1)(c), (e) and (f) i.e. unincorporated bodies, companies limited by guarantee and industrial and provident societies. Any surplus which they make must be applied at least in part for the benefit of the New Forest area or that of a neighbouring authority. See Reg 4 (1)(b).

The case of St Gabriel Properties Limited v London Borough of Lewisham is directly relevant to an application to list land as an asset of community value by a CAMRA branch.

5. CAMRA (Campaign for Real Ale Limited) is a company limited by guarantee. Article 5 of its Articles of Association prohibits distribution of its income or property to members.
6. Article 4(h) empowers CAMRA, in support of its objectives, “to establish and support branches whose objects are the same as the objects of CAMRA”.
7. The CAMRA – Southern Hampshire Branch confirm that its activities are wholly or partly concerned with the New Forest or with the area of neighbouring authority’s.
8. The CAMRA – Southern Hampshire Branch confirm that branch funds are used in the New Forest and surrounding area to set up beer festivals, deal with administrative matters, producing and distributing a local newsletter to members and pay for venues to hold monthly meetings.

9. In the case of a national company limited by guarantee which also has a network of branches, the judge in St Gabriel confirmed that on a proper application of the regulation the law treats organisations such as this in a hybrid way. CAMRA – Southern Hampshire Branch is entitled to rely on CAMRA’s status as a company limited by guarantee which does not distribute any surplus it makes to its members in order to satisfy Regulation 5(1)(e). It is then entitled to rely on its own activities in order to satisfy Regulations 4(1)(a) and (b) i.e. that the nominating body’s activities must be wholly or partly concerned with the New Forest or with the area of a neighbouring authority and that any surplus it makes must be applied at least in part for the benefit of the New Forest area or the area of a neighbouring authority.
10. The Judge in St Gabriel decided that this approach to national organisations with local branches was the proper and realistic approach. However as an alternative the judge accepted the proposition that a CAMRA branch also satisfies Regulation 5(1)(c) as an unincorporated body. “Unincorporated Body” is a broad term which includes community groups of many descriptions. Although the branch constitution does not contain a clause which prohibits distribution of any surplus to members, the Judge stated that there is no requirement for an unincorporated body within Reg 5(1)(c) to even have a written constitution let alone a further requirement that a particular clause be included.
11. Taking into account the branches link with CAMRA nationally and with the evidence of CAMRA – Southern Hampshire Branch as to what it actually does with its money as fact it is considered that CAMRA – Southern Hampshire Branch would satisfy Regulation 5(1)(c) (ii).