

## **DECISION NOTICE**

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

#### **Decision on the nomination of The Cartwheel Fordingbridge Road, Whitsbury, Fordingbridge, Hampshire SP6 3PZ 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 Whitsbury Parish Council to nominate The Cartwheel Fordingbridge Road Whitsbury Fordingbridge Hampshire SP6 3PZ 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 of Operations**

Dated: 4 September 2017

## **REPORT TO COLIN READ**

### **Application to nominate The Cartwheel Fordingbridge Road Whitsbury Fordingbridge Hampshire SP6 3PZ as an asset of community value**

#### **1.0 INTRODUCTION**

- 1.1 This report relates to an application made to the Council by Whitsbury Parish Council to nominate The Cartwheel Fordingbridge Road Whitsbury Fordingbridge Hampshire SP6 3PZ (“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.

#### **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 2 October 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.

#### **3.0 THE APPLICATION**

- 3.1 The Application was made by Whitsbury Parish Council and was received by the Council on 7 August 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 Whitsbury 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 Marston’s Estates Limited. The Property is registered under title number HP157977.
- 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 Whitsbury 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 some details about the use of the Property by the community in the Application. At B2 the applicant says the Property “is the only public house in Whitsbury and is an important drinking, eating and meeting place for the residents of the village”. At B5 the applicant says the Property “is an important part of village life” and “village events usually start or finish at [the Property]” and many of those who enjoy “walks around the village will include a visit to [the Property].”

#### **4.0 THE OWNERS and OCCUPIERS COMMENTS**

4.1 The Owner of the Property made no comment on the Application.

4.2 The Occupier/Landlord of the Property advises:-

- a) the villagers rarely use the Property rather the Property is popular with “tourists, visitors and people from the surrounding area but not from Whitsbury”
- b) events “do not start or finish [at the Property]” rather “most events are held in the village hall which is really the centre of the village and the asset to the community”
- c) “the last village event that was held [at the Property] was 2 years ago.” “The village hall is used for wakes, weddings, christenings, birthday parties, bingo nights, quiz nights... harvest festival and many more.”

#### **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 Council 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 made no comment as referred to in section 4 above.

- 6.3 The Occupier/Landlord was informed of the Application and did not support the Application as described in section 4 above.
- 6.4 Whitsbury Parish Council submitted the Application and accordingly of course supports the Application.
- 6.5 The Executive Head for Governance and Regulation has no comments on the Application.
- 6.6 The Executive Head for Economy, Housing and Planning has no comments on the Application
- 6.7 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.
- 6.8 Cllr James Binns was informed of the Application as portfolio holder for Health and Leisure and he made no comments on the Application.
- 6.9 Cllr Heron was informed of the Application as the local member and he supports the Application advising Whitsbury is a “close- knit community that naturally revolves around two key facilities within the village, the Village Hall and the [Property]” and commenting further that “not only has the [Property] fulfilled the usual role of a Public House within a small community as a place for those employed and living within the Parish to meet and socialise, it has also played an active role in community organised events such as the Diamond Jubilee celebrations.”

## **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 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). Whitsbury Parish Council have not provided additional evidence to support their application but have simply provided 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
- 74 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:**

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### **Background Papers:**

Application by Whitsbury Parish  
Council