

## **DECISION NOTICE**

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

#### **Decision on the nomination of The Wheel Inn, Sway Road, Pennington, Lymington SO41 8LJ 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 The Wheel Inn (Pennington) Community Group to nominate The Wheel Inn, Sway Road, Pennington, Lymington SO41 8LJ 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 Wheel Inn Pennington Lymington as an asset of community value**

#### **1.0 INTRODUCTION**

1.1 This report relates to an application made to the Council by The Wheel Inn (Pennington) Community Group to nominate The Wheel Inn Sway Road Pennington Lymington SO41 8LJ (“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 6 September 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 The Wheel Inn (Pennington) Community Group (“the Group”) and was received by the Council on 12 July 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 The Group 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 Terramek Limited. The Property is registered under title number HP472336.

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 the Group 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:
- a) the Property is used by all ages throughout the week
  - b) the Property is open all day and has a late licence utilised mainly at weekends
  - c) different groups of clientele have regular patterns of attendance on different days of the week
  - d) facilities include a dartboard, pool table, gaming machine, television, roving karaoke and music centre, an award winning Thai restaurant and children's play equipment

At B5 the applicant says the Owners have given notice for the current Landlord to leave the Property by 31 July 2017 and have stated their intention that the Property will not reopen as a public house. The applicant says the only significant protection for the Property to enable it to continue trading is the Asset of Community Value listing route.

#### **4.0 THE OWNERS AND OCCUPIERS COMMENTS**

- 4.1 The Owner of the Property has been asked to comment on the Application but no response has been received.
- 4.2 The Tenant of the Property has been asked to comment on the Application but no response has been received.

#### **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 and the Occupier were informed of the Application as referred to at section 4 above.
- 6.3 Lymington and Pennington Town Council have no comments on the Application.
- 6.4 The Executive Head for Governance and Regulation has no comments on the Application.
- 6.5 The Executive Head for Economy, Housing and Planning has no comments on the Application.
- 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 if the public agree and the legal test for listing is made.
- 6.8 Local ward members Cllr Jackman and Cllr White were informed of the Application. Cllr Jackman supports the Application in the hope the Property can become a community hub once again and provided the legal test for listing is made. Cllr White advises the Property has struggled commercially and he considers permanent closure to be a commercial matter.

## **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). The Group have not provided any 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
- 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:

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Background Papers:

Application by The Wheel Inn  
(Pennington) Community Group