

## DECISION NOTICE

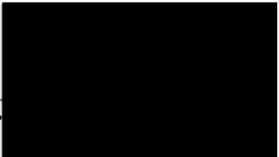
### THE LOCALISM ACT 2011 Section 88

#### **Decision on the nomination of Horse and Groom public house 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 Woodgreen Parish Council to nominate Horse and Groom public house, Woodgreen, Fordingbridge, SP6 2AS 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 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 therefore meets the criteria set out in the Localism Act 2011 to be eligible for listing.

Signed:  .....

Colin Read

Executive Head

Dated: 4/4/2017

## **REPORT TO COLIN READ**

### **Application to nominate Horse and Groom public house, Woodgreen as an asset of community value**

#### **1.0 INTRODUCTION**

- 1.1 This report relates to an application made to the Council by Woodgreen Parish Council to nominate Horse and Groom public house, Woodgreen, Fordingbridge, SP6 2AS ("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 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 within 8 weeks of receiving the nomination. The nomination was submitted on Saturday 18 February 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 Woodgreen Parish Council and was submitted to the Council on Saturday 18 February 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 Woodgreen 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 Hall & Woodhouse Limited. The Property and other land are registered under title number HP469412.
- 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 Woodgreen 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 details about the use of the Property by the local community at B2 and B5 of the Application. The applicant states:

- The Property is used by cricket club and darts team; local dining clubs; pub/quiz; bank holiday festivals both music and food; also supportive of church activities
- Only pub in village. It is open to all villagers. It is the busiest hub for community activities eg music and community celebrations. Used by a high proportion of elderly and isolated people of limited mobility for lunch etc. It is a useful source of employment for local young people

#### **4.0 THE OWNERS COMMENTS**

4.1 The Owner of the Property has been asked to comment on the Application.

4.2 The Owner wrote to the Council objecting to the nomination. The following numbers refer to the paragraph numbers in the Owner's letter dated 8 March 2017:

1.1 Cricket team. The Owner notes the nomination does not set out the frequency with which the cricket team meets at the pub and Woodgreen has its own cricket club complete with clubhouse facilities, although no evidence is given as to what facilities are available at such clubhouse and whether such would include refreshments.

1.2 Local dining clubs. The Owner notes the nomination has not provided any evidence as to how often local dining clubs attend the Property nor who the dining clubs are. The Property's web site and boards in and around the Property do however clearly advertise theme nights for dining with both weekly and "specials".

1.3 Hosts a pub quiz. The Owner considers the hosting of a pub quiz to be ancillary to the primary use of the Property as a public house. However it is for the Council to decide whether such uses and activities taken together with others referred to in the nomination mean the Property does provide a social function within the local community.

1.4 Has a darts team. The Owner notes the nomination did not provide evidence to support any team and the Owner considers the provision of a darts board as ancillary to the use of the Property as a pub.

1.5 Hosts bank holiday festivals. The Owner contends all events run by the pub are ancillary to the primary use of the Property as a pub. However again it is for the Council to decide whether such activities mean the Property does provide a social function within the local community.

1.6 Is supportive of church activities. The Owner contends the nomination does not provide any evidence as to what church activities the Property supports and the Owner refers to General Conference of the New Church v. Bristol City to support a contention that this use should be disregarded. However that case concerned the use of a former church which had closed because of severely reduced congregation. The Tribunal held that the expression "social wellbeing and social interests of the community" does not encompass religious observances in a church unless there is some other non ancillary use. The Applicant has not stated the Property is used for religious observances rather supportive of church activities.

1.7 Busiest hub for community activities eg music and community celebrations, used by a high proportion of elderly and isolated people of limited mobility for lunch etc, and as a useful source of employment for local young people. The Owner highlights there is a thriving village shop with tea and coffee facilities and indoor and outdoor seating areas, there is also a village hall which is active and a meeting point for community activities as well as being available to hire. There is also another pub approximately 1 mile distant in Braemore which also provides facilities which is also used by elderly people. However the Property clearly endeavours to attract elderly people offering OAP Specials Mon – Fri on a black board at the

Property. The existence of the village shop and village hall would not prevent the Property from satisfying the legal test for the nomination if it otherwise would do so.

1.8 The Owner concludes "The nomination fails to disclose any credible evidence that the Property furthers the social wellbeing or social interests of the community, whereas there is clear evidence of other properties, including other nearby properties, which substantially further the social wellbeing and social interests of the community". Firstly a flexible approach can be taken for nominations for assets of community value and the Council can use local knowledge and draw reasonable conclusions rather than rely on specific evidence. Second, it is not necessary for the Council to decide to list a Property only where there are no other facilities available. Public houses can further the social wellbeing or social interests of the local community notwithstanding there are other tea shops, clubs, pubs or the like in the area.

## **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 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 submitted objections to it as described in section 4 above.
- 6.3 The Tenants were informed of the Application but no response has been received from them.
- 6.4 Woodgreen 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 proposal.

- 6.6 The Executive Head for Economy, Housing and Planning does not disagree with any comments in 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 Binns was informed of the Application as portfolio holder for Health and Leisure and he also commented that he would leave it to the local Councillors to make any comments.
- 6.9 Local ward member Cllr Heron supports the Application.

## 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 all the comments made and the information provided in the Application, it does 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).
- 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 and the information provided in the Application, it does also seem the second element of the test set out in s 88(1)(b) is satisfied.

## 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 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:

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Background Papers:

Application by Woodgreen Parish  
Council  
  
Letter from the Owner