

**Officer Decision Record – 16 October 2025**

**The King Rufus, Eling Hill, Totton, Southampton  
SO40 9HE**

Classification	Public - Lists of assets must be published by virtue of paragraph section 94 of the Localism Act 2011
<b>Decision taken</b>	<p><b>It is recommended that you as a Strategic Director, Corporate Resources &amp; Transformation and Section 151 Officer of the Council decide this Application pursuant to delegated powers as follows:</b></p> <p><b>In the opinion of the local authority, there is a time in the recent past when an actual current use of the building or other land that was not ancillary use furthered the social wellbeing or social interests of the local community, and it is realistic to think that there is a time in the next five years that there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community and is therefore of community value and therefore may be listed.</b></p> <p><b>It does therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.</b></p>
Finance and Resourcing implications	N/A
Risk assessment	N/A
Impact assessment	N/A

Any conflict of interest by officer taking the decision	N/A
Decision taken by	Alan Bethune – Strategic Director Corporate Resources and Transformation (Section 151 Officer)
Background information	
Ward(s)	Marchwood & Eling
Portfolio Holder(s)	Councillor Dan Poole – Community, Safety & Wellbeing (incl Assets of Community Value)
Strategic Director(s)	Alan Bethune - Strategic Director Corporate Resources and Transformation (Section 151 Officer)
Officer Contact	Richard Davies Solicitor, Legal Services Tel: 02380 285298 Email: richard.davies@nfdc.gov.uk

# **DECISION NOTICE**

## **THE LOCALISM ACT 2011 SECTION 88**

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

#### **The King Rufus, Eling Hill, Totton, Southampton SO40 9HE**

I, Alan Bethune, Strategic Director Corporate Resources & Transformation, and Section 151 Officer of the District Council of New Forest, pursuant to delegated powers, have considered an application made by 'The King Rufus Eling Supporter', nominating The King Rufus, Eling Hill, Totton, Southampton SO40 9HE 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, there is a time in the recent past when an actual current use of the building or other land that was not ancillary use furthered the social wellbeing or social interests of the local community, and it is realistic to think that there is a time in the next five years that there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community and is therefore of community value and therefore may be listed.

It does therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

Signed:



**Alan Bethune**

Strategic Director Corporate Resources &  
Transformation, and Section 151 Officer

Dated: 16 October 2025

# **Application to nominate The King Rufus, Eling Hill, Totton, Southampton SO40 9HE**

## **Introduction**

1. This report relates to an application made to the Council by 'The King Rufus Eling Supporters' ("the Nominator") to nominate The King Rufus, Eling Hill, Totton, Southampton SO40 9HE ("the Property") as an asset of community value ("the Application"). The report reviews the Application, the criteria against which a decision must be made, the result of consultations and makes recommendations.

A copy of the Application is annexed to this report.

The Property was previously placed on the ACV list on 14 September 2020 (same Nominator) and, after expiry of the five year listing, was removed from the list on 19 September 2025. Prior to that, it was previously listed in 2015.

## **Background**

2. 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 22 October 2025 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.
3. If the Property is listed as an ACV, the owner(s) 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.
4. 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 e.g. still operating as a pub, 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.

## The Application

5. The Nominator's Application was received by the Council, on 27 August 2025 (the Application is dated 26 August 2025 but the Nominator hand delivered the application the next day). The Council is the proper decision-making authority to determine the Application and delegations have been granted to the Strategic Director to make a decision on the matter. The Application is valid under the criteria laid down by the Act.
6. 'The King Rufus Eling Supporters' is an unincorporated body comprising more than 21 local individuals who are on the Electoral Register for the District (there are 108 signatories in support of the Property being listed as an ACV).
7. The nominating unincorporated body merely has to demonstrate a local connection, which the Assets of Community Value (England) Regulations 2012 ('the Regulations') define as having members registered to vote in the District or a neighbouring District – i.e. the members of the unincorporated group do not have to be local to the pub in the sense of being physically proximate to it. In any event, the listed nominees have addresses in the immediate locality.
8. A copy of the body's Constitution is attached to the Application in which it states that "... *The [Nominator] is non-profit distributing i.e. any surplus is not distributed to members*" and at section A5 of the nomination form, it states "*Any surplus assets on the dissolution of the group will be donated to local charities*" so therefore the Nominator is not profit making.
9. The Nominator is included in the definition of those bodies which may make a 'community nomination' (as defined in section 89(2)(b)(iii) of the Act). The Nominator is therefore entitled to make an application to list the Property as an ACV.
10. The Nominator provided a copy Land Registry plan of the Property with red lined boundaries showing the title plan for HP383105.
11. In section B7, the form states that 'Mr & Mrs Wallace' are the owners and lawful occupiers of the Property address, which is where they both also reside.
12. Investigation of the title at the Land Registry register shows that the owner is actually Ashbys Pubco Ltd, the registered office for which is the Property address with the sole director being Michael John Wallace.

13. The Nominator has completed section B3 'Current use of asset' and stated that the Property is a "Public House" and answers "Yes" when asked "Do you consider that the current and main use of the asset furthers the social wellbeing or cultural, recreational or sporting interests of the local community and is likely to continue?"
14. Continuing at section B3 it states that "For more than a 150 years the King Rufus has been regularly used by local residents both for... beverages and as a social meeting place and continues to do so. Since the closure of the other public house in the village the King Rufus remains the only public house available ...". It states that it anticipates this use to continue "Hopefully indefinitely into the future" and confirms that the local community has a legal and authorised use of the land "... when open as a public house".
15. Section B4, which lists questions for assets not currently used for community benefit, was left blank or completed with "N/A".
16. Section B5 states that "... there is accommodation within the property for use by the landlord" and at section B6 'Further information' the Nominator says "This application is submitted as a renewal of the current Community Order in place which expires on the 14<sup>th</sup> September 2025. The circumstances resulting in the successful application for the original order have not changed and the new application is submitted accordingly."
17. Following an initial review of the Application, by an email of 5 September 2025 (attached), the Council invited further comments from the Nominator as it was noted that, other than saying there is a 150 years of history of the Property as a meeting place and the assertion that all other matters were unchanged from previous applications, there was no supporting evidence for why the Property should be listed as an ACV.
18. The Council email went on to explain that the "... first [ACV] application was in 2015 and the second, and last, application was made in June 2020, over 5 years ago. That second application in 2020 also stated that the application was "a renewal" of the 2015 application in the same wording as above. However, as that original application was made over 10 years ago, there is no up to date evidence provided of the use of the property even though there have been several landlords since then and certain highly influential events such as Covid".
19. The issue of whether the Property was even open for business was unclear as there were conflicting entries when a basic internet investigation was carried out. Therefore, the Nominator

was asked whether it wished to submit any evidence in support as required by section 88 of the Act. When the Nominator, in response, asked whether this meant *'a further update of the history of the pub?'* (Nominator email of 10 September 2025), it was explained that a history was not required but *"... information and evidence in support of why the pub should be listed as an ACV in accordance with s88(1) or (2) of the Localism Act 2011 and reg 6(c) of the Assets of Community Value Regulations 2012"* (email reply of the same date).

20. By email of 19 September 2025 (attached), the Nominator submitted an amended ACV Application (which revised Application is the attached version) and in that accompanying email confirmed that the Property closed as a pub in August 2024.
21. Despite the pub being closed, in the amended Application the Property was once again described at section B3 as currently being used as a Public House and that this current and main use *"... furthers the social wellbeing or cultural, recreational or sporting interests of the local community and is likely to continue"*.
22. Further information was provided at B3 to say that *"Since the original application [in 2015] the pub has continued to serve the needs of the local community well up until the last two incumbents. Mr and Mrs Gould reduced the hours and Mr and Mrs Wallace reduced them further to a point where the pub was probably not economical despite requests from a large number of residents to increase them. It is not known why this situation developed and the pub ceased trading in August 2024. Subsequently the pub has been advertised for sale initially as a pub and currently as a house with use as a pub and subject to a Community Order. The asking price is very considerably higher than the price at which it was sold and set at a level which could both possibly be considered unachievable in the current market place and could inhibit bids. It is thought that should this situation continue the pub will be demonstrated as unsellable as a business and that the only way forward would be to market it as a house ..."*. The Application points to the strong local support shown by the number of signatories and that *"There has always been a need for a pub in Eling particularly since the other pub in the village was sold some years ago and the nearest pub is now in central Totton. When the pub was open for extended hours and served food on a regular basis there was a good trade and we would again point to the level of support via the signatures collected locally over a short period of time to evidence that with a sensible approach to the business it could provide both a profit for the owner and a benefit to the local community"*.

## The owner's comments

23. The Council wrote to the Company Secretary of Ashbys Pubco Ltd by letter of 3 September 2025 to notify it of the nomination. A letter was received from Michael & Catherine Wallace (as 'Owner Occupiers') dated 12 September 2025 (attached), expressing opposition to the nomination "... *primarily based on the fact that the pub will not be re-opening in the future*" which would preclude it being of community value.
24. The letter goes on to say that "*The property has now been marketed for over a year with both commercial and non-commercial estate agents and received no serious interest ... [and that] ... the pub has been in financial decline for years and is no longer commercially viable. A combination of fewer customer numbers and huge increases in overheads have combined to create a broken business model which has resulted in the pub closing with no new interest from any potential buyers*".
25. The Owner considers this decline is also because "*The pub is over served by similar facilities in the local area*" and lists competing businesses, The Anchor Inn, Eling Sailing Club, Tonic Rooms, The Peg and Parrot and Totton Recreation Social Club "... *within 0.8 miles of The King Rufus ... competing for a dwindling customer base*"; also the "*rural location ... and the lack of parking at the property*" are identified as weaknesses when trying "... *to compete with these other better served facilities*".
26. A further point of contention raised is that "*The freehold of The King Rufus has now been offered for sale three times in the last ten years and at no point has an offer been made to buy the property by a community group. Why list the property if the community never offers to buy it when they are given the chance? It is our opinion that this listing proposal is primarily based on nostalgia*" and that "*During our tenure at the pub we really have tried to make The King Rufus a thriving business but despite our best efforts it just couldn't turn a profit and if it's not commercially viable there is no realistic chance of it re opening*".
27. In further correspondence with Mr Wallace, he stated in his email of 10 October 2025 (attached) that the opening hours of Friday evenings and Sunday afternoon/early evening were based on the comments of the previous owners who suggested these as the most popular times. Those opening hours were "*mainly an economic choice ... [but] ... it still struggled to make a profit even when open*".

## **Legal power and delegations**

28. The Council must consider the nomination and decide whether to list the Property as an ACV.
29. The Council has put in place delegated powers for a Strategic Director or Chief Planning Officer to make the decision in consultation with relevant heads of service and portfolio holder(s).
30. The legal criteria to make the decision are laid down in the Act and supporting Regulations. The Council must decide whether the Property is eligible and of community value.
31. The Property is of community value if, in the opinion of the local authority an actual current use (or alternatively a time in the recent past when an actual use) of the building or other land that is not an ancillary use furthers (or furthered in the recent past) the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be (or that there is a time in the next five years when there could) 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.
32. 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.

## **Consultations**

33. A number of consultations have been made by informing parties about the Application and are summarised below.
34. The notification sent to the Owner is described at paragraphs 23-27 above (who also responded as 'Occupier').
35. Totton & Eling Town Council were notified and initially requested more time so that the matter could be discussed in the next planning meeting. Following that meeting, it responded to say "I can confirm all members voted in favour of: Members would

- abstain and accept the decision reached by District Council Officers”.
36. The Legal Service Manager was informed of the Application but confirmed she had no comment.
  37. The Strategic Director of Place Operations & Sustainability and the Strategic Director Housing & Communities were informed of the Application respectively, but neither responded.
  38. The Estates & Valuations Manager was notified of the Application but did not respond.
  39. Portfolio Holder for Safety & Wellbeing (including ACVs) Cllr Dan Poole was notified and responded to say *“I am, in principle, supportive of their application to renew the King Rufus status as an ACV. Whilst the venue has recently only operated under limited opening hours, it still provides for many residents in Eling and Marchwood somewhere that undoubtedly furthers their social wellbeing”*.
  40. Cllr Richard Young and Cllr Patrick Mballa, as the Ward Members, were notified of the nomination. Cllr Young responded to say, *“Having already engaged with a number of local residents on this matter I am in principle supportive of their application to renew the King Rufus status as an ACV. Whilst the venue has recently only operated under limited opening hours, it has in my view still continued to provide for many residents in Eling and Marchwood somewhere that undoubtedly furthers their social well-being”*.
  41. Cllr Mballa replied to say *“The King Rufus pub has long served our community and has been an historical and iconic feature in the village. I am in favour of adding it to the list of ACV, however I would like to know if the current landlord is in agreement and fully on board with the T&Cs, before promoting this nomination”*. Cllr Mballa was subsequently informed that the landlord had said he objected to the nomination and that the pub had been closed since August 2024 as it was not profitable. There was no response to that provision of further information.

### **Investigation & Conclusion**

42. There is no doubt that there is support for the nomination of the Property and that it has met some of the criteria in that the Property has in the past, furthered *‘... the social wellbeing ... of the local community’* (as per s.88(2) of the Act), which is obviously illustrated by the ACV listings in 2015 and 2020.

43. However, it is important to note that although the Application is predicated on the Property being in current use as a "*Public House*", it became clear from the Owner's letter of 12 September 2025, and then echoed in the Nominator's email of 19 September 2025, that at the time of this report, the Property has not been operating for nearly 14 months.
44. As can be seen from some of the comments in the consultation section above, it does not seem everyone was aware of that.
45. From basic internet searches, a Southern Daily Echo media report dated 29 August 2024 tells of the Property closing "*after 171 years*" and saying that it was built "*around 1850*" but the owners Mike and Cat Wallace had decided to sell and "*Hopefully this won't take too long and once new owners are found the pub will open again*". A later report by the same paper (13 February 2025) states that the Property is on sale for £625,000 and comments are reported from local councillors saying how they hope it will remain as a pub and fears of it being sold for housing.
46. On Trip Advisor, there are six reviews between April-July 2022 and August 2023 which give top marks, and highly praising the pub. Other positive reviews can be found elsewhere for 2022 and 2023.
47. The CAMRA (Campaign for Real Ale) website reviews the Property and says it closed on 29 August 2024 and is being sold as a going concern. It lists opening times at the time of closure as being Friday '5pm-10pm or later' and Sunday 1pm to 7pm.
48. As the Owner had raised the issue of the opportunity to bid for the Property, the Council put that question to the Nominator as to whether it intended to bid. It confirmed by email of 9 September 2025, that "*Regrettably the group is not in a position to make a bid only wish it was*".

### **In Summary**

49. Although there is no doubt that the Property has been of community value in the past, from August 2024, the Property has not been operating as a pub and so therefore the Application is incorrect when it states that the use as a pub is 'current' (section B3). This would frame the Application as falling under section 88(1) of the Act. However, it is clear that the Application actually falls to be considered under section 88(2) -

“(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of

community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

- (a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and
- (b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community."

- 50. For the purposes of sub-section (a) above, considering that the Property has been operating as a pub since c.1850 prior to closing in August 2024, it seems reasonable to assess the Property as having been used in such a way that furthered the social wellbeing or interests of the local community in "*the recent past*".
- 51. However, the second limb to this test at (b) requires an assessment by the local authority as to whether the Property can return to furthering the social wellbeing or interests of the local community (whether or not in the same way). In the reference text, 'Assets of Community Value – Law and Practice' (Simon Adamyk, 2017), it explains that, in assessing this issue, the "... *civil standard of proof...i.e. the balance of probabilities does not apply in this context ...*" but "*that it is 'realistic to think' that it 'could'*" return to being of community value (para 4.65).
- 52. The same reference text refers to a First-tier Tribunal decision which stated that '*Whether something is realistic does not mean that it must be more likely than not to happen. A use may be "realistic", even though it is one of a number of possibilities' – Haley (t/a Old Boot Inn) v West Berkshire DC [2016](ibid – para 4.67). Also in the First-tier Tribunal, it was found that the 'realistic to think' test 'is not a demanding one. Parliament has chosen to set the bar low' - King v Chiltern DC [2016] (ibid – para 4.69).*
- 53. It goes on to say that "*The effect of these cases is that the threshold needed to satisfy the 'realistic to think' test is low*" (ibid – para 4.70) and in other cases, the same Tribunal "... *has also made it clear that it is important not to concentrate too closely on ... financial analysis. Owners of pubs or other businesses which have failed often argue that it is not 'realistic' to think that the pub or other business can operate in the future, as it is not*

*financially viable. Such arguments usually fail*" (ibid – para 4.72).

54. It is clear on one hand that the Owner, who obviously has the best perspective of the current financial position of the Property, considers that *"there is no realistic prospect of any future community use"* and that there is no outside interest in running the pub as a going concern and says *"During this 13 month period we have had one viewing."*
55. However, in "Assets of Community Value Guide" (Christopher Cant – 6<sup>th</sup> Edition, 2018) it explains that *"The First-tier Tribunal has emphasised that it will not treat the declarations of owners as to the future use of a nominated asset as conclusive. To do so would be to confer a unilateral power on the owner to prevent an ACV listing."* (p46)
56. Whilst it appears that custom has fallen, the amount of supporting signatories show that there is support for the pub to continue. Similarly, the very positive internet reviews, while not conclusive (and inevitably out of date), show that the public has enjoyed and rated the Property as a place of community value.
57. It must be understood that the exercise of assessing and the balancing of factors by the local authority when considering an ACV nomination is not one based on sentiment or whim, but on the legislation, legislative guidance and caselaw. Section 90(3) of the Act states that, on receiving a community nomination, *'The authority **must** accept the nomination if the land nominated (a) is in the authority's area, and (b) is of community value'* (emphasis added).
58. Consequently, when the Application is considered with the evidence and information referred to above, this indicates that, whilst continuation of the Property as a place that furthers *"... the social wellbeing or interests of the local community"* is, currently, not the most likely possible scenario, it is nevertheless *"realistic to think that there is a time in the next five years"* that it could return to being so. Therefore, the Application does appear to meet the legal criteria set out in the Localism Act 2011 for the Council to accept the nomination.

## **Recommendation**

59. It is recommended that you as a Strategic Director, Corporate Resources & Transformation, and Section 151 Officer, of the Council decide this Application pursuant to delegated powers as follows:

In the opinion of the local authority, there is a time in the recent past when an actual current use of building or other land that was not ancillary use furthered the social wellbeing or social interests of the local community, and it is realistic to think that there is a time in the next five years that there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community and is therefore of community value and therefore may be listed.

It does therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

**Appendices:**

**Background Papers:**

Amended Application by 'The King Rufus Ealing Supporters' attached to email dated 19 September 2025

The King Rufus Ealing Supporters Constitution

Email from NFDC dated 5 September 2025

Nominator email of 19 September 2025.

Letter from Michael & Catherine Wallace dated 12 September 2025; and email from Michael Wallace dated 10 October 2025