

# THE AUGUSTUS JOHN 116 STATION ROAD FORDINGBRIDGE HAMPSHIRE SP6 1DG – REVIEW OF LISTING AS AN ASSET OF COMMUNITY VALUE

## 1.0 INTRODUCTION

- 1.1 The Localism Act 2011 (“the Act”) gives local groups a right to nominate a building or land for listing by the local authority as an “asset of community value”. An asset can be listed if a principal (“non-ancillary”) use of the asset furthers or has recently furthered the local community’s social wellbeing or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future.
- 1.2 The Augustus John, 116 Station Road Fordingbridge Hampshire SP6 1DG shown edged red on the attached plan at **Appendix 1** (“the property”) was nominated as an asset of community value by The Campaign For Real Ale - Southern Hampshire branch (“CAMRA”). On 6 January 2016 Colin Read, an Executive Head of Service, acting under delegated powers from the Council, decided to list the property as an asset of community value pursuant to Section 88 of the Act.
- 1.3 The owners of the property, New River Trustee 7 Limited and New River Trustee 8 Limited have requested a review by written representations of the Council’s decision to list the property as an asset of community value. The Council’s Chief Executive, Bob Jackson, will undertake the review. He was not involved in the original decision and has delegated authority from the Council to determine such matters.

## 2.0 BACKGROUND

- 2.1 On 13 November 2015, the Council received an application from CAMRA to nominate the property as an Asset of Community Value. A copy of the nomination is at **Appendix 2**. At the time of the original listing, CAMRA were accepted as being entitled to make the nomination.
- 2.2 The owners are the freehold owners of the property. The property is presently used as a public house.
- 2.3 The report prepared for the Executive Head of Service when he decided to accept the nomination for listing is attached at **Appendix 3**.
- 2.4 The decision to list the property as an asset of community value was made on 6 January 2016. On 1 March 2016 the owners submitted a request for a review of the decision to list the property as an asset of community value. The owners confirmed the review could be made by written representations and they did not request an oral hearing.
- 2.5 The owners submitted written representations received on 8 April 2016 by Simply Planning, who are acting for the owners which are attached as **Appendix 4**. The nominators were asked to provide their comments on the representations made by the owners and they did so with their comments dated 22 April 2016 which are attached as **Appendix 5**.
- 2.6 Finally the owners were asked to provide their final comments on the remarks made by the nominators. On 12 May 2016 they confirmed they had no further comments.

### **3.0 SUMMARY OF RELEVANT LEGISLATION**

- 3.1 Under the Act, an asset 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 of the Act). “Social interests” include cultural interests, recreational interests and sporting interests (section 88(6) (b) of the Act).
- 3.2 The land can also be nominated as land of community value which has furthered the social wellbeing or social interests of the local community in the recent past and it is realistic to consider will do so again during the next five years.
- 3.3 Neither the Act nor The Assets of Community Value (England) Regulations give an express definition of what use “furthers the social wellbeing or social interests of the local community”. It is for the local authority to decide depending on all the circumstances of a particular case.
- 3.4 If the Council is satisfied the nomination is valid and the nominated asset is land of community value, then the Council must add the land to its list of assets of community value.
- 3.5 The owner is entitled to seek a review of the decision pursuant to Section 92 of the Act provided the request is made within 8 weeks of notification of the decision. The request for the review was made within this time limit and is valid.
- 3.6 The review comprises a review of written representations made by both the owner and the nominators by the Chief Executive of the Council, who is an independent senior officer of the Council not involved in the original decision.

### **4.0 SUMMARY OF THE REVIEW**

- 4.1 The review will consider a number of matters, set out in headings A – C below.

**A. Is the property within the local authority’s area?**

- 4.2 The Council can only list assets of community value in its area. There is no dispute that the property is within the area of New Forest District Council. .

**B. Is the Nomination valid?**

- 4.3 The Council was satisfied that the original nomination was valid for the reasons explained in the report prepared for the Executive Head of Service. The owner has made no complaint about the validity of the nomination and the view of the Council remains that the nomination was valid.

**C. Is the property of community value?**

- 4.4 The Council must list the property as an asset 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 of the Act).
- 4.5 “social interests” can include cultural, sporting or recreational interests (Section 88(6) (b) of the Act).
- 4.6 Neither the Act nor the Regulations give an express definition of what use “furthers the social wellbeing or social interests of the local community”. It is for the local authority to decide depending on all the circumstances of a particular case. Examples of possible uses could include a village shop, pub, community centre or allotments.
- 4.8 The Council accepted that the property should be listed as an asset of community value as set out in the report to the Head of Service, which is attached as **Appendix 3**.
- 4.9 The owners have sought a review of that decision and provided written representations in support. The written representations are attached at **Appendix 4** and are summarised in paragraph 5 below.
- 4.10 The nominators made a number of comments on the owners’ written representations. These comments are attached at **Appendix 5** and are summarised in paragraph 6 below.

## 5.0 SUMMARY OF OWNERS’ CASE

- 5.1 The owners have made a number of representations in support of the proposition that the property should not be listed as an asset of community value. The owners argue that the property does not qualify as an asset of community value on the basis that the actual current use of the building does not further the social well-being or social interests of the local community and so the nomination fails to meet the requirements of s88(1) Localism Act 2011.
- 5.2 Firstly, the owners assert that no evidence has been provided that the primary use of the property is for the benefit of the local community, nor that those community uses are more than ancillary. The owners assert that the primary use of the property is as licensed premises selling alcohol and food to the general public. The additional activities carried on at the property are activities ancillary to the primary pub use and are not additional primary uses within the definition of having community value.
- 5.3 It should be noted the owners accept that pubs are capable of being assets of community value and confirm the owners intend to retain the existing successful pub business.
- 5.4 The owners comment that the lead nominator lives in Lymington, he is not part of the local community and that there appears to be an organised campaign by CAMRA to nominate pubs where there has been a change of ownership. The owners refer to remarks made in the original application which described the owners as an aggressive property development company. The owners remark that the application is a personal crusade rather than seeking to protect a pub with a genuine community use.

- 5.5 The owners refer to assertions made in the application that the pub has a tastefully decorated bar and restaurant and has horticultural displays outside the pub. The owners argue these matters are not evidence of community use.
- 5.6 The owners refer to the car boot sales, craft sales and farmers markets held at the property. The owners state these activities are not held with the regularity indicated by the nominators and in any case are ancillary to the primary pub business.
- 5.7 The owners refer to visiting groups including classic cars and motor cycles and parking facilities for walkers and cyclists and argue there is no evidence of a connection to the local community.
- 5.8 The owners refer to the designated "artists" wall for local artists and toys and games available. The owners accept these activities can further social well-being but are ancillary and do not meet the requirements of s88(1) Localism Act 2011.
- 5.9 The owners refer to the preparation of food and take-away facility for fish and chips and burgers and argue these activities are not evidence of community use but are part of the primary use of the pub as a restaurant.
- 5.10 The owners refer to the weekly programme of events such as movies, Thai themed food nights and quiz and also refers to the less frequent (monthly) music nights. The owners argue these activities are part of the pub's business and are not uncommon. The owners comment that other local pubs provide similar events and have not been listed as assets of community value.
- 5.11 The owners refer to patronage by the Fordingbridge Rugby club and other local societies. The owners argue there is no real evidence such local clubs use the property as a regular meeting place, they are no more than customers and they patronise other pubs.
- 5.12 The pub is close to Rockbourne Roman Villa, the Avon Valley path and local coarse fishing facilities. The owners argue this is not relevant as to whether the pub has community benefit.
- 5.13 The owners argue that the points made by the nomination in Appendix B (also referred to in the report to Colin Read as the generic points) are not relevant to the consideration of whether the property is an asset of community value.
- 5.14 The owners make reference to the comments made by Councillor Ann Sevier who was not in favour of the nomination (but make no reference to the comments of Councillor Roxy Bellows, who was in favour of the nomination).
- 5.15 Overall the owners argue that insufficient evidence was provided by the nominators to meet the requirements of the Act and therefore the nomination should not be upheld on review.

## **6.0 SUMMARY OF NOMINATOR'S CASE**

- 6.1 The nominators of the property as an asset of community value were asked to comment on the owner's witness statement and these are attached as **Appendix 5**.
- 6.2 The nominators note the owners comments that the current use of the pub is likely to continue and that the business is successful and that pubs are capable of being listed as assets of community value.

- 6.3 Although it is accepted the lead nominator comes from Lymington, the nominator notes “a local person” under the Act is a person eligible to vote in the district or a neighbouring district. In any event the nominator is CAMRA. Mr Simpson notes that he does frequent the property from time to time because the property does offer activities of community value and which further social well-being and supports the local community of customers.
- 6.4 The nominators then restate a number of activities carried on at the property, including food using local suppliers, the artists wall, quiz nights, live music from local performers, and unusual silent movies not shown in other pubs. The nominators believe all these activities are evidence that the actual current use of the property that is not an ancillary use furthers the social wellbeing or social interests of the local community.
- 6.5 The nominators contest the proposition that CAMRA put forward nominations just because there has been a change of ownership. The nominators accept there is a campaign by CAMRA to nominate pubs which they believe may be “under threat”, in particular pubs with large land areas which may be more at risk of re-development.
- 6.6 The nominators note that the property is presently being run to a high standard and is “fully deserving” of its nomination as an asset of community value.
- 6.7 The nominators go on to refer to the specific points made by the owners in their written representations.
- 6.8 With reference to the pub’s décor, the nominators argue that it provides a comfortable and homely atmosphere for customers, including when watching classic films on advertised nights. The owners point out the property is a long way from the centre of Fordingbridge and the large car park allows walkers to park off the highway for walks on routes supported by maps provided by the pub.
- 6.9 The nominators agree the horticultural displays are good business practice but also reflect the internal ambience of the pub and the horticultural interests of the landlord which supports the wellbeing of customers.
- 6.10 The nominators contend that car boot sales were taking place up to the date of the nomination. The nominators concede that car boot and other sales have been discontinued or are at least less frequent since then, but the pub has added new activities such as early opening and provision of breakfast for walkers who can now park in the car park. The nominators provided a photograph of a recent car boot sale in the vicinity of the property.
- 6.11 The nominators refer to the classic car and motor car enthusiasts and although such owners may not be local, the vehicles provide an attraction and talking point and therefore contribute to the social wellbeing of the local community.
- 6.12 The nominators refer to the artists’ wall and the toys and games having been accepted by the owners as contributing to the social wellbeing of the local community. The nominators argue that these activities are part of an overall method in which the pub fulfils the requirements of a community pub.
- 6.13 The nominators argue the provision of take away food is of necessity providing a local service because the food cannot be taken far before going cold.

- 6.14 The nominators argue that the Act has no requirement for the property to be compared to other properties in the area. The issue is whether the property fulfils the purpose of social wellbeing of the local community. The nominators again refer to the various activities undertaken by the pub and makes particular reference to local performers at the music nights which promote their own wellbeing as well as that of the local community.
- 6.15 The nominators state that patronage of the pubs by local groups is confirmed by local customers.
- 6.16 The nominators argue the location of the pub to other attractions is relevant because the pub provides parking and breakfast facilities for both local people and visitors and furthers social well-being and social interests of the local community.
- 6.17 The nominators refer to the comments made by Councillor Ann Sevier by remarking that there is insufficient awareness within the general public of the threat to pubs.
- 6.18 The nominators make the positive case for nomination, stating that the procedure provides a welcome method to promote and reward pubs which are of benefit to the local community.
- 6.19 The nominators provide a definition made by CAMRA for a community pub as follows:

“A licensed hub which encourages social interactions and puts something back into the communities it serves”. By “encourage social interactions” we mean discussions and conversation between customers, whether those customers be family, friends, acquaintances or strangers. By “put something back” we mean to offer some facility or undertake some action which is of benefit to a community, without any motivation based on direct financial benefit to the pub.

By “community” we do not necessarily mean a group of people living in a specific geographical location. A community is a group of individuals with something in common: neighbourhood of residence, workplace, hobbies and mutual interest are a few obvious and relevant examples. The members of a community have some interest in common: something which enables them to identify, one with another. Each person is likely to belong to many different communities, some important, some unimportant, some with a strong sense of identity, some with very little. People establish personal identities in relation to the communities to which they feel they belong. Membership of a community often implies some responsibility for other members. Communities have a capacity for mutual care and support in distress or when problems arise, and the way that communities respond to the threatened loss of their pub is an example of this.

## **7.0 DECISION**

- 7.1 The Council is satisfied the nominated property is within its area and that, for the reasons explained in the report to Colin Read, the nomination is valid in accordance with the Act. The owners made no additional comments in respect of those matters.
- 7.2 The issue in this review is whether the property is an asset of community value pursuant to s88 of the Act, as described in section 4.C of this report. A nominated property must be listed as an asset of community value if the actual current use of the property, which is not ancillary, furthers the local community’s social wellbeing or social interests (which includes cultural, sporting or recreational interests) and is likely to do so in the future.

- 7.3 Plainly the use of The Augustus John is as a public house and this is not an ancillary use. The case of *St Gabriel Properties Ltd v London Borough of Lewisham*<sup>1</sup> is clear that “licensed premises are capable of furthering the social well-being and social interests of the local community”. It is clear also that the possibility of listing pubs is within the scope of the Act – for example the Ministerial Foreword to the “Community Right to Bid: non statutory advice note for local authorities” starts in its first sentence: “From local pubs and village shops to village halls and community centres, the past decade has seen many communities lose local amenities and buildings that are of great importance to them”. The owners do expressly accept the point that pubs are capable of being listed as assets of community value.
- 7.4 The owners make the argument that the primary use of the property is a licensed premises and restaurant and no evidence has been provided that the primary use of the property is for the benefit of the local community. However, there is no requirement in the Act that the primary use of the property must be for the benefit of the local community, but that in the opinion of the local authority the actual current use of the property (which is not an ancillary use) furthers the social wellbeing or social interests of the local community.
- 7.5 The Local Authority must make its listing decision based on local context and all the circumstances and it is not mandatory to list any pub that is nominated for listing. When considering whether a nominated asset furthers the local community’s well-being, the Local Authority should consider the use of the asset and the role it plays within the local community. Whilst the Local Authority notes the proposed definition of a “Community Pub” proposed by the nominator, it is not definitive and has no particular status. However, equally the owners made no comment about it.
- 7.6 Both the owners and the nominators agree the Augustus John is a successful pub. There is evidence that the pub provides a wide range of facilities and activities which will cater for a wide variety of interests, ages and social groups over the whole week and encourages social interaction across social groups and generations. There are a large number of activities throughout the week catering for different interests, from the quiz nights, movie nights, the Thai food night, the pub’s cycling club (the “AJ Wheelers”) regular meeting place/start point for cycle rides, and special weekend promotions for cyclists and walkers and encouragement for classic motor car and motor cycle owners to use the pub at weekends. There are toys and games for families with children. The pub appears to be frequented by local sports clubs, although there was no evidence the pub was an official meeting place for such clubs. In addition there is the provision of the “artists’ wall” for the display of works by local artists and the regular live music events, including by local performers. The pub itself promotes its proximity to other local attractions and walking or cycling destinations, which would doubtless be of interest to both locals and visitors, as is to be expected in a tourist destination such as the New Forest. These activities when taken together are more than capable of demonstrating that the property furthers the social wellbeing and social interests of the local community. The fact they are activities undertaken by the pub owners as part of their business may well be right but do not detract from the fact that the pub can be regarded as a community asset; if anything the success of the activities and the pub rather supports that conclusion.
- 7.8 All agree the Augustus John is a successful pub, so it is reasonable to think the property will continue to be used in a way that will further the social well-being or social interests of the local community.

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<sup>1</sup> [2015] UKFTT CR 2014 0011

- 7.7 The Local Authority notes the points made by the nominators about the “need” as they see it, to protect pubs, in particular those with large gardens or other land capable of development and is concerned about the sale of pubs to companies or organisations who are active in property development. Whilst this may be a motivation for a campaign group, the Local Authority makes its decision based on the need to show the asset is one of community value as defined by the Act.
- 7.8 The report to Colin Read noted in the consultation process that the local ward councillors took different views on the nomination. Councillor Sevier was not supportive and noted she had not received any public requests for support. On the other hand, Councillor Bellows was supportive and said she had received some positive comment from the public about the proposal. It can be noted in this context that although not a requirement of an application by CAMRA, the nomination included a petition in support signed by 42 persons and the landlord of the pub, Mr Greenwood, was supportive of the nomination.
- 7.9 I am therefore satisfied that the actual current use of the property does further the social interests or social wellbeing of the local community as required by the Act. I therefore confirm the Council’s original decision to list the property as an asset of community value.

[Signed]

**R JACKSON**

**ACV Review: Mr R Jackson, Chief Executive NFDC**

**Date: 25 May 2016**



### **List of documents attached to this report**

- Appendix 1: Site plan
- Appendix 2: Copy original nomination
- Appendix 3: Report to Executive Head of Service
- Appendix 4: Owners comments
- Appendix 5: Nominators comments.