

# THE HORSE & GROOM WOODGREEN FORDINGBRIDGE SP6 2AS – 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 Horse & Groom Woodgreen Fordingbridge Hampshire SP6 2AS (“the Property”) was nominated as an asset of community value by Woodgreen Parish Council. On 4 April 2017 Colin Read, Executive Head (Operations), 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, Hall & Woodhouse 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 18 February 2017, the Council received an application from Woodgreen Parish Council to nominate the Property as an Asset of Community Value. A copy of the nomination is at **Appendix 1**.
- 2.2 The owners are the freehold owners of the Property. Since the decision to list the Property as an asset of community value it has been brought to the Council’s attention that part of the Property comprises a separate field. See paragraph 7 below. The remainder of the Property is presently used as a public house.
- 2.3 The comments provided by the owner prior to the decision to list the Property are attached at **Appendix 2**.
- 2.3 The report prepared for the Executive Head (Operations) 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 4 April 2017. On 22 May 2017 the owners submitted a request for a review of the decision to list the Property as an asset of community value. It was agreed that the review be made by written representations and not oral hearing.
- 2.5 The owners submitted written representations received on 16 June 2017 by Freeths solicitors, who are acting for the owners, which are attached as **Appendix 4**.
- 2.6 The nominators were asked to provide their comments on the representations made by the owners and they did so with their comments dated 6 July 2017, which are attached as **Appendix 5**.

- 2.7 Finally the owners were asked to provide their final comments on the remarks made by the nominators which are attached at **Appendix 6**.

### **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 2012 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. The Chief Executive of the Council, who is an independent senior officer of the Council not involved in the original decision will carry out the review.

### **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. The owner has questioned the validity of the nomination for the 2 reasons set out at paragraph 8 of Freeths letter dated 16 June 2017 namely:-
- 1) the nomination failed to refer to a plan at section B2 of the original nomination. See further paragraph 8.1 below in this regard.
  - 2) the nomination failed to provide any evidence that Woodgreen Parish Council is eligible to make a nomination. Again see paragraph 8.1 below.

**C. Is the Property of community value, either in whole or in part?**

- 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 Executive Head (Operations), 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 & 6** 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 consider at paragraph 4 of Freeths letter dated 16 June that there is no realistic prospect of this community interest group bidding for the Property should the owner give notice of an intent to enter a relevant disposal. However subsequently at paragraph 43 of Freeths letter dated 16 June Freeths noted the Council may take the view it is not necessary to prove an intention to purchase a nominated asset in order for an ACV nomination to succeed.
- 5.3 The owners note at paragraph 13 of Freeths letter dated 16 June 2017 that it cannot have been the intention of Parliament that all pubs should satisfy the test set out in s 88 and at paragraph 14 it is not sufficient for a nominator to say of a pub that it is a pub.

- 5.4 The owners refer to patronage by the cricket club, darts team and local dining clubs. The owners argue at paragraph 19 of Freeths letter dated 16 June there is no real evidence such local clubs use the Property or of the frequency.
- 5.5 The owners refer to pub quizzes and argue the mere fact the Property may be used for entertainment is not sufficient to satisfy relevant requirements and refer to bank holiday festivals arguing merely because a property hosts such events does not satisfy the relevant requirements.
- 5.6 The owners agree the location of the Property is irrelevant in determining whether it satisfies the relevant test.
- 5.7 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 representations and these are attached as **Appendix 5**.
- 6.2 The nominators restate a number of activities carried on at the Property, including the Horse & Groom Gentlemen's Society (HAGGIS), Ladies Night, the garden with its play area, annual beer festival in August, weekday pensioner's menu, foreign cuisine nights, New Year's Eve celebrations, use by darts team and cricket team. The nominators believe all these activities are evidence that the actual current use of the Pub that is not an ancillary use furthers the social wellbeing or social interests of the local community.
- 6.3 The owners point out the nearest alternative mentioned in Freeths letter dated 16 June is 0.9 miles away on a busy "A" road and accessed from Woodgreen along an unlit country lane with no pavement and there is no public transport to and from the village.
- 6.4 The owners highlight the importance of the Pub to the village community. When the village last answered a general survey, it was established that the four most valued community assets were the shop and post office, the Pub, village hall and the church.
- 6.5 The owners highlight the community efforts to raise sufficient funds to secure the future of the shop and post office for the foreseeable future when the proprietors of the village shop wished to retire. In the event the owners not wishing to sell the Property as a going concern, the nominators would like the opportunity to secure the Pub's future in a similar way.

## **7.0 SHOULD THE FIELD BE EXCLUDED FROM THE LISTING?**

- 7.1 The Property comprises not only the public house building, car park and garden ("the Pub") but also a large plot of land to the rear of the Pub ("the Field"). A plan was enclosed with Freeths letter dated 16 June as referred to at paragraph 28 thereof, such plan shows the Pub outlined in black and the Field hatched red.
- 7.2 The owners argue at paragraph 31 of Freeths letter dated 16 June that the Field is physically separate from the remainder of the Property. The owners argue at paragraph 35 and 36 that the car park and the garden form part of the main economic unit, however the Field must be treated as separate from the main economic unit. The

Field is not open, accessible to or used by patrons of the Pub and is treated entirely separately by both the owners and the members of the local community. The owners state at paragraph 38 of Freeths letter dated 16 June that the Field is largely not used at all, let alone in a way that is of any benefit to the social interests or social wellbeing of the local community.

- 7.3 The nominators stated at the second paragraph of their letter dated 6 July that the nomination only (intended to) include the land and buildings currently being used by the village Pub in its trade and not the Field.

## 8.0 REVIEW CONSIDERATION

- 8.1 The Council is satisfied the nominated Property is within its area and that the nomination is valid in accordance with the Act.

As regards eligibility to nominate, pursuant to section 89 (2) of the Localism Act a nomination can be made by, inter alia, a parish council.

As regards the absence of a description of the proposed boundaries, neither the original nomination nor the owners' initial comments as attached at **Appendix 2** highlighted a potential concern about boundaries nor the inclusion or otherwise of the Field. The Council decided to accept the nomination on the basis of information produced to the Council on or before the date of the decision, 4 April 2017. However the issue of the boundaries and separability of the Field arose as part of the request for listing review. The nominators have sought to clarify the boundaries with the photograph attached to its letter dated 6 July 2017 (**Appendix 5**), the owners are of the view the boundaries of the land requested to be listed remain unclear (letter dated 28 July 2017: **Appendix 6**) however the extent of the Pub and of the Field appears to the Council to be a matter of fact. We attach a plan prepared by NFDC at **Appendix 7** showing the Pub shaded and the Field forming the remainder of title HP469412 left uncoloured. The Council is not of the view the owners are substantially prejudiced by this clarification of boundaries which are apparent on site and there is Tribunal authority to support the contention that the Council has a discretion to waive strict adherence to each of the obligations set out in regulation 6 .<sup>1</sup>

- 8.2 The Council takes the view it is not necessary to prove an intention to purchase a nominated asset in order for an ACV nomination to succeed. In any event the nominators have also described community efforts to raise funds in similar circumstances – see paragraph 6.5 above.
- 8.3 The next issue in this review is whether the Property either in whole or in part 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.
- 8.4 Plainly the use of the (Horse & Groom) Pub 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>2</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

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<sup>2</sup> [2015] UKFTT CR 2014 0011

<sup>1</sup> Hamna Wakaf Ltd v London Borough of Lambeth [2016] UKFTT CR/2015/0026 (GRC)

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 appear to accept the point that pubs are capable of being listed as assets of community value.

- 8.5 The owners indicate the primary use of the Pub is a pub and no evidence has been provided that the Property is for the benefit of the local community. However, the test pursuant to the Act is 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.
- 8.6 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.
- 8.7 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 number of activities throughout the week catering for different interests, from the Horse & Groom Gentlemen’s Society, Ladies Nights, pensioner’s menus, quiz nights, foreign cuisine nights, and use by the darts team and cricket team. There is a garden and play area for families with children. The Pub itself promotes its proximity to other local attractions and walking 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 Pub 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.
- 8.8 No suggestion has been made that the (Horse & Groom) Pub is other than a successful pub, so it is reasonable to think the Pub will continue to be used in a way that will further the social well-being or social interests of the local community.

## **9.0 REVIEW CONCLUSION**

- 9.1 I am therefore satisfied that the actual current use of the Pub as shown shaded on the NFDC plan attached at **Appendix 7** comprising the public house, car park and garden forming part 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 that element of the Property as an asset of community value.
- 9.2 The owners have provided additional evidence in the letter from Freeths dated 16 June 2017 not included in the owners’ initial letter dated 8 March 2017 to clarify that the Field is largely not used and is not part of the operation of the Pub. The nominators agreed.
- 9.3 I am therefore satisfied that the actual current use of the Field does not further the social interests or social wellbeing of the local community as required by the Act. In

addition there is no substantive evidence to suggest the Field has furthered the social wellbeing or social interests of the local community in the recent past or that it is reasonable to consider it will do so again during the next 5 years. The Council's original decision is therefore to be reviewed to the extent necessary to remove the Field from the listing of the Property as an asset of community value.

**R JACKSON**

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

**Date: 11 August 2017**

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

Appendix 1: Copy original nomination

Appendix 2: Owner's comments – Hall & Woodhouse letter dated 8 March 2017

Appendix 3: Report to Executive Head

Appendix 4: Owner's comments – Freeths letter dated 16 June 2017

Appendix 5: Nominator's comments – letter dated 6 July 2017

Appendix 6: Owner's comments on Nominator's comments – Freeths letter dated 28 July 2017

Appendix 7: NFDC plan