

DECISION NOTICE

THE LOCALISM ACT 2011 Section 88

Decision on the nomination of Land to the rear of Hotspur House, The Quay, Hythe, Southampton 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 Hythe and Dibden Parish Council to nominate Land to the rear of Hotspur House, The Quay, Hythe, Southampton SO45 6AU 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 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 social interests of the local community, and it does not believe 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 which would further (whether or not in the same way as before) 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

Dated: 22/3/2017

REPORT TO COLIN READ

Application to nominate Land to the rear of Hotspur House, The Quay, Hythe, Southampton as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by Hythe and Dibden Parish Council to nominate Land to the rear of Hotspur House, The Quay, Hythe, Southampton SO45 6AU ("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 by 23 March 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.
- 2.3 The Applicant advises the Property was used for ferry maintenance and the Property is indeed identified on the freehold title plan as "Ferry Repair Shops". The Applicant advises the current main use of the Property is various workshops, business use/storage.
- 2.4 This Application is one of two submitted simultaneously by Hythe and Dibden Parish Council. One is for the registration of the Pier and associated buildings that enable a ferry service to be operated and this application relates to land to the rear of Hotspur House as detailed at 1.1 above.

3.0 THE APPLICATION

- 3.1 The Application was made by Hythe and Dibden Parish Council and was received by the Council on 26 January 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 4.4 below.

- 3.2 Hythe and Dibden 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 The General Estates Company Limited. The Property and other land are registered under title number HP289847.
- 3.4 The Application contends that the main use of the Property in its recent past furthered the social well-being or cultural, recreational or sporting interests of the local community. The Application seeks to provide details as to how Hythe and Dibden Parish Council anticipate that the Property could return to furthering the social well-being or cultural, recreational or sporting interests of the local community.
- 3.5 The applicant provides details referred to at 3.4 above at B3 of the application, namely
- The asset was used in the past to further the interests aforesaid because “The buildings were used for ferry maintenance and are listed as Ferry Repair Shops with the adjacent Landing Stage”
 - The asset would return to furthering the interests aforesaid because “Hythe Pier Heritage Association has received many requests from the community to preserve the mv Hotspur IV as part of Hythe’s marine heritage. HPHA are in the process of aligning their work to preserve the Pier to include the feasibility of acquiring the Hotspur IV with a view to developing a marine heritage centre sited on the landing stage behind Hotspur House. This vision is long term however HPHA are keen to ensure that as many options for this proposal are available and this position would provide a suitable site for a Marine Heritage Centre next to the landing stage and potentially the mv Hotspur IV”

4.0 LEGAL POWER AND DELEGATIONS

- 4.1 The Council must consider the nomination and decide whether to list the Property as an asset of community value.
- 4.2 The Council has put in place delegated powers for an Executive Head to make the decision.
- 4.3 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.
- 4.4 The land is 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 (section 88(2) of the Act). “Social interests” include cultural interests, recreational interests and sporting interests.
- 4.5 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.

5.0 CONSULTATIONS

- 5.1 A number of consultations have been made as summarized below.
- 5.2 The Owner was informed of the Application but no comment has been received.
- 5.3 Hythe and Dibden Parish Council made the Application and accordingly of course supports the Application.
- 5.4 The Executive Head for Governance and Regulation has no comments on the proposal.
- 5.5 The Executive Head for Economy, Housing and Planning has no comments on this proposal although did comment on the application for registration of Hythe Pier as set out in the report relating thereto (see paragraph 2.4 above)
- 5.6 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.
- 5.7 Cllr Binns was informed of the Application as portfolio holder for Health and Leisure and he supports the Application.
- 5.8 Local ward members Cllr Poole and Cllr Andrews were informed of the Application and both support the Application.

6.0 ASSESSMENT

- 6.1 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(2) of the Act. The first element of this test, s88(2)(a), is whether in the opinion of the local authority there is a time in the recent past when the actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community.
- 6.2 Taking into account all the comments made and the information provided in the Application, it does not seem that there was in the recent past an actual use of the Property which furthered the social wellbeing or social interests of the local community which would satisfy the test set out in S88(2)(a). Hythe and Dibden Parish Council have not provided any evidence to support their application but have provided unsubstantiated statements as referred to at B3 and B5 of the Application.
- 6.3 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 (2)(b) of the Act. This requires the Council to decide whether 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.
- 6.4 Taking into account the comments made, the first element of the test set out in s 88(2)(a) has not been satisfied, it is not therefore necessary to consider the second element of the test set out in s 88(2)(b). However it is noted Hythe and Dibden Parish Council were not able to give any indication of timescale for the asset in its opinion to

realistically return to furthering the interests aforesaid, advising at B3 "This is a complex project that depends on a number of factors..."

7.0 RECOMMENDATION

7.1 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 there is not 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 social interests of the local community, and it does not believe 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 which will further (whether or not in the same way as before) 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 Hythe and Dibden Parish Council