

**DECISION NOTICE**

**THE LOCALISM ACT 2011 Section 88**

**Decision on the nomination of Hythe Pier 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 Southampton Friends of Hythe Pier to nominate Hythe Pier Prospect Place Hythe 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 an actual current use of the building or other land that is not an ancillary use that furthers the social wellbeing or social interests of the local community, and it does not believe 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 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: 9/2/2017

## REPORT TO COLIN READ

### Application to nominate Hythe Pier as an asset of community value

#### 1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by Southampton Friends of Hythe Pier to nominate Hythe Pier, Prospect Place, 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 10 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.
- 2.3 Hythe Pier is currently used to access Hythe ferry to travel between Hythe and Southampton and has been so used for many years. Steamers were operating between Hythe and Southampton by 1887 when Mr James Percy succeeded the lessee of the pier tolls and there began a long association of the Percy family with the pier and ferry service which continued for more than a century. White Horse Ferries bought the ferry business including Hythe Pier on 31 March 1994. The current registered proprietor of land including Hythe Pier is Hythe Ferry Limited which acquired the freehold land on 18 November 2015.
- 2.4 The future of the ferry service is in doubt after staff were issued with a letter in October 2016 warning them of possible redundancies. Hythe Ferry Ltd is holding talks with other operators and the owner recently advised such talks are ongoing.

#### 3.0 THE APPLICATION

- 3.1 The Application was made by Southampton Friends of Hythe Pier (“the Friends”) and was received by the Council on 16 December 2016. 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 The Friends are an unincorporated body comprising more than 21 local individuals who are on the Electoral Register for our neighbouring authority, Southampton City Council. A copy of the body's constitution is attached to the Application. The activities of the Friends are wholly or partly concerned within the area covered by New Forest District Council. The Friends are not profit making and any surplus is wholly applied to activities in support of the aims of the association. The Friends are entitled to make an application to list the Property as an asset of community value.
- 3.3 The Property is currently owned freehold by Hythe Ferry Limited. The Property and other land are registered under title number HP486565.
- 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 the Friends 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 in the statement accompanying the Application. The applicant says the Property is important to the social well-being of the local community. In particular the Friends assert:
- People of Southampton have been travelling to and from Hythe using the Pier for a long time.
  - Thousands of people have memories of childhood and of their families using the Pier and the ferry and they still want the Pier to continue to be used for the ferry.
  - People of Southampton and the Waterside have fond memories of using the Pier for fishing, for walks, for sightseeing cruise ships and other vessels, for special trips in the Forest or Southampton and for meeting people coming to and from their travels.
  - Tourists use the Pier and ferry to get to and from Hythe and Southampton attractions.
  - Waterside residents can use the ferry to enjoy Southampton entertainment, including the nightlife, shopping and football at Southampton.
  - Southampton residents use the Pier and ferry to visit and enjoy the Forest.
  - The Pier and ferry allow you to stay or live in Hythe, yet be easily connected to Southampton and surrounding areas such as Portsmouth.
  - The Pier and ferry allows travel and from the Isle of Wight via Red Funnel ferries, with the Red Jet located right next to Hythe Ferry pontoon and Isle of Wight ferry terminal also very close by.
  - Southampton City Centre is within easy walking distance of the landing at Town Quay. Southampton Central Station is also accessible by bus or a ten-to-fifteen minute walk.
  - As well as for leisure, the location of the Pier allows residents of the New Forest to work in Southampton and to commute to Southampton. Southampton residents also commute to work in the Waterside. This avoids road congestion, high fuel costs and expensive car parking charges. It also reduces air pollution from private single vehicles. The bus links at each end allow you to travel to Southampton, Portsmouth and surrounding areas and for residents of Southampton to have easy access to the Forest. All this reduces road traffic and in turn contributes to better air quality.

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

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

- 4.2 The Owner's first objection is that it is in negotiation with another operator to take over operation of Hythe ferry service which would include the sale of land including the Property. If the Property were listed that would introduce delay or even deter the proposed Purchaser from proceeding.
- 4.3 If the deal is not done with the proposed Purchaser, the future of Hythe ferry is questionable.
- 4.4 The next objection was that the sole purpose of the Pier is to operate the Hythe ferry service.

## **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 Hythe and Dibden Parish Council was informed of the Application and was invited to provide comments. The Parish Council does not support the Application. In particular they made the following points:
  - The Pier is not sustainable without the ferry and the ferry cannot operate without the Pier. The Application has not included the essential buildings that would enable the mutualism that exists between the assets and accordingly the Parish Council does not support the Application.

- 6.4 The Executive Head for Governance and Regulation has no comments on the proposal.
- 6.5 The Executive Head for Economy, Housing and Planning made the following points:
- the main use of the Pier is to enable a ferry service to operate from Hythe to Southampton at all states of the tide. So you can walk or ride along it if you are catching or have disembarked from a ferry.
  - a separate but related issue is the extent to which the Pier is used for the general wellbeing of the local population eg walking, fishing.
  - the Pier would be of very little community value if there was no ferry. The key issue is the operation of the ferry not the Pier itself, although without it the current ferry service could not continue to operate.
  - the ferry is known to be under threat of closure due to financial issues at the present time.
- 6.6 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.
- 6.7 Cllr Binns was informed of the Application as portfolio holder for Health and Leisure and he does not support the Application. He was of the view the applicant does not have the support of the local community.
- 6.8 Local ward members Cllr Poole and Cllr Andrews do not support the application. Cllr Poole commented and Cllr Andrews reiterated as follows:

“I don’t feel that the Southampton Friends of Hythe Pier application will help preservation of the Pier as it doesn’t include the buildings and freehold land that connect the pier to the land.

The ticket office and train sheds are not included and these are critical for any ferry operation, so on these grounds I do not recommend that this is approved.”

## **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 not 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). The Friends have not provided any evidence to support their “Case for Community Asset” but have provided an unsubstantiated statement as referred to at B2 of the Application.
- 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

74 Taking into account the comments made, the first element of the test set out in s 88(1)(a) has not been satisfied, it is not therefore necessary to consider the second element of the test set out in s 88(1)(b).

## 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 does not further the social wellbeing or social interests of the local community, and it does not believe 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 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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Application by Southampton  
Friends of Hythe Pier