

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, John Mascall, Executive Director of The District Council of New Forest, pursuant to delegated powers, have considered an application made by The King Rufus Supporters to nominate 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, the actual current use of the Property 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.

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

Signed J F Mascall
John Mascall
Executive Director

Dated: 20 July 2015

For Further information Please Contact:

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Application to nominate The King Rufus Eling Hill Totton Southampton SO40 9HE as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by The King Rufus Supporters to nominate The King Rufus public house, 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 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 King Rufus public house Eling Hill Totton Southampton SO40 9HE 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 before 28th July 2015. 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.

3.0 THE APPLICATION

- 3.1 The Application was made by The King Rufus Supporters (“the Supporters”) and was received by the Council on 2nd June 2015. The Council is the proper decision making authority to determine the Application and delegations have been granted to the Executive Director 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.
- 3.2 The Supporters are an unincorporated body comprising more than 21 local individuals who are on the Electoral Register for the District. A copy of the body’s constitution is attached to the Application. The Supporters are not profit making and any surplus is wholly applied to activities in support of the aims of the association. The Supporters 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 Michael Symons. The Application makes no reference to a separate occupant or tenant of the Property. The Property is presently used as a public house.
- 3.3 The Application contends that the current and main use of the Property furthers the social well-being or cultural, recreational or sporting interests of the local community and that it is likely to continue to do so in the future.
- 3.3 The Supporters provided details about the use of the Property by the local community in the statement accompanying the Application. The Supporters say the Property is

used as a public house and is important to the social well-being of the local community. In particular the Supporters assert:

- The Property caters for local residents and the wider area, creating a hub for the community, a place to share time and a sense of unity.
- The Property has regularly hosted events ranging from beer festivals, charity events, themed nights, music gigs and quiz nights.
- Funerals and weddings from the local St Mary's church Eling have historically been known to use the Property as a place of celebration and camaraderie.
- The local community has only 1 remaining pub to serve its needs, since a neighbouring pub, The Village Bells, has been sold and converted into residential use. The Supporters also say that the decision to permit the change of use of The Village Bells was taken in the context of there being a viable pub next door.
- The loss of The Village Bells ought to make The King Rufus more viable and with strong potential as a business.
- Preservation of the Property as a public house is in line with Council policy to encourage tourism and promote the waterside area.
- The Property should continue to be a focal point for the community as it has done for over 150 years.
- They wish to have some sort of say in the future of the Property
- The local community should not lose another pub due to the individual circumstances of the owner.

3.4 The Supporters believe there is a strong need to preserve the Property as an important community asset. They assert the local community cannot lose another part of its unique history due to an individual owner's circumstances.

4.0 THE OWNERS COMMENTS

4.1 The Owner of the King Rufus, Michael Symons, provided a reply to the Council dated 30 June 2015, received by me on 3rd July 2015 and a full copy of his reply is attached.

4.2 Mr Symons is strongly opposed to the registration of the Property as an asset of community value.

4.3 Mr Symons firstly asserts there is "no need" to register the Property since the Council has already registered the nearby Anchor Inn as an asset of community value. However the mere fact that a pub has been registered does not of itself rule out other nearby pubs from being registered.

4.4 Mr Symons asserts the Property has been losing money since he acquired it some 2 years ago. He says that the pub lost £35,000 during the first six months of his ownership and continues to make "heavy losses". Mr Symons asserts he has been trying to sell the Property for the last 7 months, without success, as a pub or pub/restaurant. Mr Symons blames a lack of regular trade from the local community, and the wider area. Mr Symons comments the Property is not well used for parties, wakes, weddings and social gatherings. Mr Symons says the number of people using the Property has declined over the last year even after the closure of the Village Bells. In short, the pub is not supported by the local community in terms of their use of it, and this is reflected in its declining sales and financial problems.

4.5 Mr Symons notes that even after the closure of the Village Bells, trade did not increase as expected. Mr Symons says that former customers of the Village Bells (including, he says, people supporting the nomination) dispersed to other local pubs and did not support the Property.

- 4.6 Mr Symons says he has invited the group making the nomination of the proposed sale to make an offer, which has not been forthcoming. This was not mentioned by the Supporters. Mr Symons puts this forward as evidence there is not a practical need for the registration nor is there the community support willing to finance a purchase of the Property. However, the Regulations provide the mechanism by which the Property can be sold and so the fact the group has not made an offer for the Property so far does not necessarily mean they would not do so if the regulatory process were engaged.
- 4.7 Mr Symons challenges the bona fides of the nominees, asserting they do not use the Property and they have their own personal agenda (although he does not clearly specify what this personal agenda is). He argues that the Supporters do not support his business by frequenting the Property regularly or even at all and so demonstrates the Property does not in fact further the social interest or social well being of the local community.
- 4.8 However the nominating unincorporated body merely has to demonstrate a local connection (which 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 for the most part have addresses either in Eling, Eling Hill, Jacob Gutter Lane or Totton.
- 4.9 Mr Symons is clear that he wishes to sell the Property quickly or else says he may have to close the Property because without further investment and local support it is not financially viable. Mr Symons says he is looking to sell the Property as a going concern and not for re-development. Mr Symons is concerned the registration of the pub as an asset of community value will impede its sale. A registration may put off buyers who wish to proceed quickly and if no sale is forthcoming, Mr Symons says the pub may be forced to close anyway. However the law sets out a process in the event of the sale of a property listed as an asset of community value.
- 4.10 Mr Symons indicates that if the pub is listed then he may seek an appeal against the decision, firstly to the Council (the Chief Executive) and to the First Tier Tribunal if that fails. Of course Mr Symons would be entitled to take these steps if he wished. It should be noted the ACV regime does not restrict who the owner can sell the Property to and at what price. They do not confer a right of first refusal to community interest groups.

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 Director to make the decision in consultation with the Head of Legal and Democratic Services, relevant heads of service and portfolio holder(s).
- 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. "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 invited to provide comments, which have been summarized in section 4 above.
- 6.3 Totton & Eling Town Council was informed of the Application and was invited to provide comments. However no comments have been received.
- 6.4 The Head of Planning and Transportation commented that he knows these premises as a local pub, that other similar premises have been designated as ACV's and knew of no reason why it shouldn't be designated if it meets the other legal requirements
- 6.5 The Head of Leisure and Employment commented that the application would seem to meet the criteria to be registered as an Asset of Community Value.
- 6.6 The Head of Legal and Democratic Services had no comments to make on the Application.
- 6.7 Cllr Jill Cleary was informed of the Application as portfolio holder for Housing and Communities and she commented that as this was not her area she would let the local members and Cllr James Binns comment/decide.
- 6.8 Cllr James Binns, Portfolio Holder for Health & Leisure supported the application on the basis that the public clearly feel an affinity to this property/business and thus want to ensure its continuation.
- 6.9 Cllr David Harrison supported the Application. Cllr Len Harris was happy to accept this public house is an asset to the local community, more especially now the Village Bells has ceased trading.

7.0 CONCLUSION

- 7.1 Mr Symons primary argument is that the lack of local support and declining trade during his ownership of the Property, as well as the nominating group showing no practical interest in purchasing the Property demonstrates that the pub does not further the social well-being or social interests of the local community at the present time and its use will not further the social well-being or social interests of the local community in the future.
- 7.2 Against that, the Property has been used as a public house for many years, including for the most of that time with another public house in direct competition for local trade directly opposite. Mr Symons himself indicates local people do frequent other pubs in the area. There were 2 pubs in the village until recently and the fact the Property is in

short term financial difficulties does not mean it is unrealistic to think there is a time in the next 5 years when it could be run as a public house in such a way as to further the social well-being and social interests of the local community. The business has a website and it has a number of relatively current testimonials on the website "Trip Advisor".

- 7.3 It seems reasonable to take into account the (lack of) use of the Property by the local community and its financial problems as being evidence of it not being an asset of community value in the sense of being supported by the local community. However it might also be said that the current financial problems of the Property appear to be relatively recent and may be due to the circumstances of the present owner (who for example has noted the need for financial investment but is unable or unwilling to make that investment) and the Property could be viable under new management as it presumably was before. It seems reasonable to assume the present owner is seeking to sell the Property as a going concern, i.e. with a long term future as a pub or pub/restaurant and so undermining the view that the Property will not serve the interests of the local community in the future.
- 7.4 As the owner freely admits, the owner has a clear intent to sell the Property and does not want the sale process to be inhibited by listing the Property as an asset of community value.
- 7.4 The reasons given by the nominating body set out in section 3.3 all indicate the Property does fulfil the criteria for listing summarized in paragraph 5.4 above.
- 7.5 On balance the Application appears to meet the legal criteria set out in the Localism Act 2011 for the Council to accept the nomination, for the reasons explained above

8.0 RECOMMENDATION

- 8.1 It is recommended that you as an Executive Director 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 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. It does therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

For Further Information Contact:

Background Papers:

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Application by The King Rufus
Eling Supporters
Reply from Michael Symons
dated 30 June 2015