

DECISION NOTICE
THE LOCALISM ACT 2011 Section 88
Decision on the nomination of The Musketeer 26 North Street Lymington Hampshire
SO41 8FZ as an asset of community value.

I, John Mascall, Executive Director of The District Council of New Forest, pursuant to delegated powers, have considered an application made by the Campaign for Real Ale – Southern Hampshire Branch to nominate The Musketeer 26 North Street Lymington SO41 8FZ 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: 7 September 2015

For Further Information Please Contact:

Andrew Smith
andrew.smith@nfdc.gov.uk

REPORT TO EXECUTIVE DIRECTOR

Application to nominate The Musketeer 26 North Street Lymington SO41 8FZ as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by the Campaign for Real Ale – Southern Hampshire Branch to nominate The Musketeer public house, 26 North Street Lymington Hampshire SO41 8FZ (“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 Musketeer public house, 26 North Street Lymington Hampshire SO41 8FZ 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 14 September 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. Note however that if the Owner wishes to sell the pub business as going concern, the moratorium on sale provisions of the right to bid are not engaged.

3.0 THE APPLICATION

- 3.1 The Application was made by The Campaign for Real Ale – Southern Hampshire Branch (“CAMRA”) and was received by the Council on 20 July 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 national body of CAMRA (The Campaign for Real Ale Limited) is a company limited by guarantee which does not distribute any surplus it makes to its members, as demonstrated by its articles of association. The applicant states that CAMRA (i.e. the the Southern Hampshire branch) has 1580 members, which includes the New Forest District. The Southern Hampshire Branch gives CAMRA a local connection as required by the Regulations and this relationship has been confirmed recently by the court (First Tier Tribunal). CAMRA 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 Mr Eric Thomas Light. The Property is presently used as a public house.

- 3.4 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.
- 3.5 CAMRA provided details about the use of the Property by the local community in the statement accompanying the Application. CAMRA say the Property is used as a public house and is important to the social well-being of the local community. In particular CAMRA assert:
- The Property was built in 1905 and is a popular freehouse pub
 - It is the only remaining pub in Pennington village following the conversion of the Sportsman's Arms into a small supermarket
 - The Property provides facilities such as food, darts and quiz nights
 - An annual beer festival is held in August
 - Customers include disabled persons, and community groups who socialise after events. There is a regular trade of different groups attending at different times of day.
 - The Property hosts birthday parties, wakes and special events and is close to St Marks Church.
 - The Property supports local breweries who have restricted access to the pubco market.
 - The Property was, under previous ownership, a nationally known long standing entry in the Campaign For Real Ale "Good Pub Guide".
- 3.6 It was noted by solicitors acting for the owner of the Property that the applicant had not provided detailed evidence to support some of these assertions, for example that no details of which community groups use the Property had been provided.
- 3.7 CAMRA also raise a number of other issues to support their contention that the Property is an asset of community value:
- That studies (unspecified) have shown that pubs promote social well-being in their local community
 - 31 pubs close every week even though many are trading satisfactorily for property development or other trading units. These figures are unsourced.
 - This Property is considered particularly vulnerable because it is currently being marketed for sale in the licensed trade press. The fact the Property is for sale is conceded by the solicitors acting for the owner. CAMRA's opinion is that if an early sale is not achieved as a pub, the temptation will be to sell the Property for development.
- 3.8 Cross check internet reviews of The Musketeer showed, for example:
- The Property has a Facebook page which is used to promote various activities.
 - The Property hosts an Annual Beer and Cider Festival (the Facebook page refers to 10th such festival), a 4 day event including food music and local performers. The Facebook page refers to beer festivals in previous years so the festival is plainly a regular event.
 - The advertisement promoting the latest Beer Festival included reference to the "Musketeer Mixer" as a "Thursday Night" singalong crew.
 - The Facebook page also revealed an Easter Bank Holiday weekend mini beer festival in 2014, including music and local performers including again the Musketeer Mixers
 - Other Facebook reviews include references to quiz night and a Thursday folk night.

- The longstanding nature of the pub can be noted by a CAMRA Southern Hampshire Branch web page from 2004 celebrating 25 years of management in the same family and earning its place in “the Good Pub Guide”
- The web site TripAdvisor makes reference to frequent live music sessions.

4.0 THE OWNERS OBJECTIONS

4.1 The Owner of The Musketeer has been asked to comment on the Application. The Owner’s solicitors replied on 24th August 2015 objecting to the Application on their clients behalf. A copy of the objection is attached to this report. They made a number of objections, summarised as follows:

- There are a number of other pubs within a short distance of The Musketeer (6 within 0.6 miles and 18 within 1 mile), including 2 pubs, the Borough Arms and The White Hart that have already been listed as assets of community value by the Council. Hence they argue the listing of The Musketeer as an asset of community value fails to further the social well-being or social interests of the local community as there is already ample provision providing similar social value to the local community.
- The applicant has failed to evidence that the actual current use of the Property offers any particular community value that sets it apart from the other local pubs. For example the Owner notes the Application does not detail which groups or organisations make bookings, which community groups use the Property, evidence that the property supports local breweries and provision of local employment.

4.2 The Owner’s solicitor makes reference to 2 decisions by other Councils in support of its position:

- A decision of Weymouth & Portland Borough Council not to accept a nomination for The Albert Inn, Wyke Regis on the grounds that there were other pubs in the vicinity providing similar social value to the local community.
- A review of a decision by Lambeth Council on the basis that the applicant did not provide sufficient information and the quality of evidence relating to the fundraising was debateable. Also the applicant failed to provide sufficient evidence of room bookings for fund raising events.

4.3 In contrast, however:

- a recent article in “Sweet & Maxwell’s Encyclopaedia of Local Government Law Bulletin (August 2015) says that the decisions of the court (First Tier Tribunal) confirm the definition of community assets includes pubs;
- a press release for the Department for Communities and Local Government (March 2015) notes that at that time more than 600 pubs had been registered as assets of community value and notes that pubs play a crucial role at the heart of communities.
- On its web site, CAMRA notes that over 800 pubs have been listed as assets of community value. CAMRA is presently promoting a scheme of “licensee support packs” and suggests that licensees can use the ACV status to promote the pub to customers and so increase trade.
- It may be that the 2 examples cited by the Owner are perhaps unusual rather than the norm in these decisions.
- The Application refers to The Musketeer being the only surviving pub in Pennington Village (as opposed to Lymington where it seems the other pubs “within 0.6 miles of The Musketeer” are located). The Owner cites The White Hart as a nearby pub within 0.3 miles of The Musketeer, yet at present The

White Hart is closed, albeit the Council understands that it is being actively marketed. Local member Cllr Michael White refers to The Musketeer as being one of only two remaining pubs in Pennington.

- 4.4 It seems reasonable to conclude therefore that this pub can further the social well-being or social interests of the local community notwithstanding the proximity of other pubs in the area.
- 4.5 The Owner cites a lack of detailed evidence in the Application as a reason the Council should reject it because the nomination fails to demonstrate that the “actual use” of the Property furthers the social well-being or social interests of the local community. However, one may also say the Owner does not seem to contradict the evidence in the Application (for example by saying that community groups do not use the Property in the way that is described). It seems reasonable to have expected such a contradiction if the Owner did not agree with the applicants assertions as to the use of the Property. As referenced above a review of internet sources, including The Musketeer’s own Facebook page, appears to support the proposition that the Property is a local community asset and do not give cause for the Council to be concerned about the veracity of the assertions in the Application. Cross referencing the Application using internet searches reveals the quiz nights, the long standing beer (and music) festivals, the music nights, the folk nights, and so on. In compiling the application the applicant gives a statement of truth on which the Council may place reliance.
- 4.6 The Owner confirms in the letter that The Musketeer is for sale. The Owner has doubtless been advised that the sale of a pub business as a going concern does not trigger the moratorium periods in the Act and its Regulations. The fact that CAMRA has not made any bid for the Property may be unsurprising since the Property is presently being marketed for sale as a pub business and so the right to bid would not be engaged.

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 provided an objection as described in section 4 above.
- 6.3 Lymington & Pennington 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 stated that he had no comments on the application.
- 6.5 The Head of Leisure and Employment commented that there would appear to be no reason not to add the nomination to the list.
- 6.6 The Head of Legal & Democratic Services had no comments on the proposal.
- 6.7 Cllr Jill Cleary was informed of the Application as portfolio holder for Housing and Communities and she said that she no comments re this application and would leave it to the relevant Councillors to raise any issues.
- 6.8 Cllr James Binns, Portfolio Holder for Health & Leisure stated that he had no comments to make.
- 6.9 Cllr Michael White commented: I am very much in favour of the application to nominate the Musketeer, as it is a community asset as one of the two Pubs remaining in Pennington.
- 6.10 Cllr Penny Jackman made no comments on the nomination.

7.0 CONCLUSION

- 7.1 The reasons given by the nominating body set out in section 3, taking into account the objections made on behalf of the Owner and set out in paragraph 4 above, indicate the Property does fulfil the criteria for listing summarized in paragraph 5.4 above.
- 7.2 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 in this report.

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:

Andrew Smith

Solicitor

Tel: 023 80285588

E-mail:

andrew.smith@nfdc.gov.uk

Background Papers:

Application by CAMRA

Letter of objection from the
Owner's solicitors