

DECISION NOTICE
THE LOCALISM ACT 2011 Section 88
Decision on the nomination of an asset of Community value.
The Old School House, Sway

I, John Mascall, Executive Director of The District Council of New Forest, pursuant to delegated powers, have considered an application made by Sway Parish Council to nominate The Old School House, Sway, as an asset of community value. Having considered the application I have decided that the application should be rejected for the following reasons:

The actual use of the land neither now nor in the recent past furthers the social wellbeing or cultural, recreational or sporting interests of the local community in that:

- The actual current use of the Property does not further the social wellbeing or social interests of the local community, as is conceded by the Applicant;
- The Property has not been used as a village school for 30 years and the Property has been used for the owner's business for the display, supply and fitting of wood burners and associated equipment since 1987. Hence there is not a time "in the recent past" when an actual use of the land furthered the social wellbeing or social interests of the local community.
- No evidence of proposals has been provided to demonstrate that it is realistic to think there is a time in the next 5 years there could be a use of the Property that would further the social wellbeing or social interests of the local community. No timescales have been provided as to when any proposals might be put into effect, since they depend on the current occupier leaving the premises. No evidence has been presented of any agreement or discussions with the present owner or with other groups concerning the future use of the Property.
- The Applicant has provided comments about the historic nature and quality of the buildings but the law on whether land is of community value does not include these as tests.

The application does not therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

Signed J F MASCALL
John Mascall
Executive Director

Dated: 31.05.15

For further information please contact:
Andrew Smith
andrew.smith@nfdc.gov.uk

REPORT TO JOHN MASCALL

Application to nominate The Old School House, Sway as an asset of community value

1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by Sway Parish Council to nominate The Old School House, Sway (“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 Old School House, Sway 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 24 June 2013. 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 Sway Parish Council and was received by the Council on 29 April 2013. 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 Property is currently owned by The New Forest Wood Burning Centre (“the Business”) which is a company run by Mr and Mrs P Bruce. The Property is used by the Business for retail purposes, selling and installing wood burning stoves flue systems, chimneys, fireplaces and associated paraphernalia. On its web site, the Business expresses itself as providing sales and services to the New Forest and beyond to Dorset, Wiltshire, Hampshire and Sussex. The Business’s web site states that the Business has operated from the Property since 1987. The Application states that the Property has not been used as a village school for 30 years.
- 3.3 The Application conceded that the current and main use of the Property did not further the social well-being or cultural, recreational or sporting interests of the local community.
- 3.3 The Applicant was invited to provide details as to whether, if the Property does not currently further the social well-being or cultural, sporting or recreational interests of the local community, that it did so in the “recent past”. In reply, the Applicant stated

that up until 30 years ago the Property “was the village school and formed a focal part of the village”.

- 3.4 The Applicant was also invited to explain how it anticipated that the Property would return to furthering the social well-being or cultural, sporting or recreational interests of the local community and when that might happen. In reply, the Applicant stated that they would “look to the building to be put to use providing social and recreational support for the local residents” and that this might happen at a time “dependent upon which the current occupiers left the premises”.
- 3.5 The Applicant provided no evidence to support how these proposals might occur or provide details of any scheme, agreement or discussions with the owner or with other groups to make these proposals a realistic prospect during the next 5 years. In this context it should be noted that the Business is the freehold owner of the Property, not a mere tenant or occupier.
- 3.6 The Applicant made final statements in support of the Application as to the nature and historic significance of the building and requested the Council accept the nomination of the property as an asset of community value because:
 - a). the Property is “a perceived heritage site by local residents”.
 - b.) the Property is a “beautiful Victorian building, well maintained and of significant historical interest”.
 - c). the Property is “one of the few buildings of great character left in the village”.

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 Director to make the decision in consultation with the Head of Legal and Democratic Services, relevant heads of service and portfolio holder(s).
- 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. In summary there are 2 alternative tests the Council must apply when making its decision.
- 4.4 The first test is that 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.
- 4.5 The Property is presently in use as a business for the display, supply and fitting of wood burners and associated equipment, not just locally but also nationally and internationally and has done so since 1987. The owners say that whilst the Business does trade locally, that is not the mainstay of its business. As such it does not further the social wellbeing of the local community.
- 4.5 The Applicant conceded the current main use of the Property does not further the social wellbeing or social interests of the local community and so the first test is not met.

4.6 The second test is that a building or land can also be land of community value if in the opinion of the local authority 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 social interests of the local community and it is realistic to think that there is a time in the next 5 years when there could be a 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.

4.7 When considering the second test it is relevant to note:

a). that the Applicant conceded the Property has not been used as a village school for 30 years. The Business's website indicates it has occupied the Property for the purposes of its business since 1987. Hence there does not appear to be a time "in the recent past" when an actual use of the land furthered the social wellbeing or social interests of the local community;

b). No evidence of proposals has been provided to demonstrate that it is realistic to think there is a time in the next 5 years there could be a use of the Property that would further the social wellbeing or social interests of the local community. No timescales have been provided as to when any proposals might be put into effect, since they depend on the current occupier leaving the premises. No evidence has been presented of any agreement or discussions with the present owner or with other groups concerning the future use of the Property.

c). The Applicant has provided comments about the historic nature and quality of the buildings but the law on whether land is of community value does not include these as tests.

5.0 CONSULTATIONS

5.1 On your instructions a number of consultations have been made as summarized below.

5.2 The owners of the Property were consulted on the Application and replied by letter from their architects on 28th May 2013. A copy of their reply is attached. In summary the owners believe that the property is not either already in use for a purpose that furthers community value or that have been used for such a purpose in the recent past.

5.3 The Head of Leisure and Employment commented on the Application as follows: "We are not aware of any outstanding demands in the village. There are a number of current facilities which, to our knowledge, are meeting demand – in fact there may be capacity in them." His recommendation was not to accept the nomination.

5.4 The Head of Legal and Democratic Services had no comments to make on the Application.

5.5 The Head of Planning and Transportation had no comments to make on the Application.

5.6 Cllr Jill Cleary was consulted on the application as portfolio holder for Housing and Communities. Cllr Cleary indicated that in her view the building did not meet the legal tests for inclusion on the list of assets of community value.

5.7 Cllr Di Brooks was consulted on the application as portfolio holder for Health and Leisure. Cllr Cleary also indicated that in her view the building did not meet the legal tests for inclusion on the list of assets of community value.

5.8 Strictly speaking the local parish council should be consulted on the Application. Since the parish council is the applicant I have written to the secretary of the parish council to say that the Council will take as read that the comments made by the parish council are those contained in the Application itself.

6.0 CONCLUSION

6.1 As described in section 4 above the application does not appear to meet the legal criteria set out in the Localism Act for the Council to accept the nomination, for the reasons explained above.

7.0 RECOMMENDATION

7.1 It is recommended that you as an Executive Director of the Council decide this application pursuant to delegated powers as follows:

- (1) the principle use of the land neither now nor in the recent past furthers the social wellbeing or cultural, recreational or sporting 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:

Andrew Smith
Solicitor
Tel: 023 80285588
E-mail:
andrew.smith@nfdc.gov.uk

Background Papers:

Application by Sway Parish
Council

Letter from Jerry Davies Planning
Consultancy on behalf of the
owners.

DRAFT DECISION NOTICE

THE LOCALISM ACT 2011 Section 88

Decision on the nomination of an asset of Community value.

The Old School House, Sway

I, John Mascal, Executive Director of The District Council of New Forest, pursuant to delegated powers, have considered an application made by Sway Parish Council to nominate The Old School House, Sway, as an asset of community value. Having considered the application I have decided that the application should be rejected for the following reasons:

The principle use of the land neither now nor in the recent past furthers the social wellbeing or cultural, recreational or sporting interests of the local community in that:

- The current main use of the Property does not further the social wellbeing or social interests of the local community, as is conceded by the Applicant;
- The Property has not been used as a village school for 30 years and the Property has been used for the owner's business for the display, supply and fitting of wood burners and associated equipment since 1987. Hence there is not a time "in the recent past" when an actual use of the land furthered the social wellbeing or social interests of the local community.
- No evidence of proposals has been provided to demonstrate that it is realistic to think there is a time in the next 5 years there could be a use of the Property that would further the social wellbeing or social interests of the local community. No timescales have been provided as to when any proposals might be put into effect, since they depend on the current occupier leaving the premises. No evidence has been presented of any agreement or discussions with the present owner or with other groups concerning the future use of the Property.
- The Applicant has provided comments about the historic nature and quality of the buildings but the law on whether land is of community value does not include these as tests.

It does not therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

Signed.....

John Mascal

Executive Director

Dated: