

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE		
DATE:	25 NOVEMBER 2014	AGENDA ITEM:	13
TITLE:	THE COMMUNITY VALUE OF PUBS		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
SERVICE:	PLANNING, DEVELOPMENT AND REGULATORY SERVICES	WARDS:	ALL
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1. EXECUTIVE SUMMARY

- 1.1 At the meeting of Council on 21st October 2014, Councillor White moved that Council note a number of items regarding the community role of pubs, and that Council resolve to undertake a number of actions as a result. Council deferred this item to be discussed at the November meeting of Strategic Environment, Planning and Transport Committee (Minute 32 refers).
- 1.2 The value of public houses and a recent trend for their loss to alternative uses is explained in this report. The report seeks to address each of the suggestions made in the Council motion, providing recommendations on the way forward.
- 1.3 An extract of the draft Council minute is attached as Appendix 1.
- 1.4 A copy of the letter sent by the Managing Director, at the request of the Deputy Leader and Lead Member for Environment, Planning and Transport, in response to the Government's consultation on the draft Small Business, Enterprise and Employment Bill is attached as Appendix 2.

2. RECOMMENDED ACTION

- 2.1 To note that existing policy already provides a level of protection for existing public houses, and ensures that a loss of a pub only occurs where the loss can be justified. As part of the Local Plan review, the relevant planning policy in relation to the retention of community uses (including public houses) be updated to secure an appropriate and sustainable level of protection. The review would take place in accordance with the adopted Local Development Scheme.
- 2.2 To note the powers contained within Article 5 Chapter 3 of the Localism Act 2011 in relation to the Assets of Community Value and to support appropriate future applications for listing from community groups.
- 2.3 To note the regulatory constraints in relation to Article 4 Directions which would not support the serving of a Borough wide direction.
- 2.4 To note that it is not considered appropriate to use the Sustainable Communities Act 2007 as a way of preserving public houses from development in the Borough.
- 2.5 To note that the Managing Director, at the request of the Deputy Leader and Lead Member for Environment, Planning and Transport, has written in response to the consultation on the proposed Small Business, Enterprise and Employment Bill.

3. POLICY CONTEXT

- 3.1 There have been a considerable number of pubs converted to other uses (primarily small retail units) in Reading over recent years. The change of use from pubs (use class A4) to A1 (shops), A2 (financial and professional services), and A3 (restaurants and cafes) has been permitted development for many years under amendments to The Town and Country Planning (General Permitted Development) (Amendment) (England) Order. That means that such changes of use can take place without planning permission. Therefore, while extensions or signage may require planning permission or advertisement consent, the actual use of the public house for one of these uses is not controlled by the planning system. In addition, nationally, the rate of loss of pubs to other uses seems to have increased in the last 2/3 years.
- 3.2 There has been considerable concern by the public about this lack of control and concern that issues, such as parking, deliveries, intensification of use, etc. are not being assessed when the use changes. In addition, there is a concern that some public houses fulfil an important community function where local people can congregate and if there are no other similar community facilities, this can lead to a detrimental impact on

community life. A number of other local authorities have recently started to address the issue.

- 3.3 Obviously there is a need to recognise the economic circumstances of public houses, as many are struggling and going out of business as patronage diminishes. In some cases an active alternative use can be preferable to an empty building. However, it is often the case that developers and investors see more value in public houses in alternative commercial or residential use and, undoubtedly, public houses are being lost solely because an alternative use provides a higher value to continuing a pub use. The change of use of a public house inevitably involves the loss of a public and community facility and can have a significant impact on a community. The fact that such a change of use does not require planning permission means the public have no say on their value to the community and the implications of their loss. In many cases, public houses remain viable businesses and they are being closed solely because the owner wishes to realise the higher property value in an alternative use.

4. THE PROPOSAL

- 4.1 Councillor White submitted a motion to the meeting of Council on 21st October 2014 regarding the community value of pubs. The draft minute of the meeting which includes the motion is attached to this report at Appendix 1. It was agreed at that Council meeting to defer the motion for discussion at Strategic Environment, Planning and Transport Committee at the November meeting (Minute 32 refers).
- 4.2 The motion has several elements, including five separate proposed resolutions. These are dealt with separately below.
- 4.3 To develop and adopt planning policies to give stronger protection to local public houses and therefore instructs the Managing Director to bring back proposed new policies for adoption within 6 months of the date of this motion.
- 4.3.1 The Council has already adopted policy protection for public houses. Policy DM15 (Protection of Leisure Facilities and Public Houses) is within the Council's Sites and Detailed Policies Document, adopted in October 2012. There are two elements of the policy:
- Within a defined district or local centre, if the pub is the only pub in the centre, it should not be lost;
 - Elsewhere, a pub should only be lost if it can be demonstrated that;
(a) there is no need for the pub in the area; (b) the pub's catchment can adequately be served by another facility; or (c) there are impacts on the amenity of residents that could not be addressed through other regulatory functions, e.g. licensing.
- 4.3.2 Therefore, the existing policy already provides a level of protection for existing public houses, and ensures that a loss of a pub only occurs where the loss can be justified.

4.3.3 Policies have to be realistic, and need to consider whether refusal of an application for loss of a pub will simply lead to a building standing empty for a number of years. The Council has had some experience of this matter at appeal. Policy LE17 of the old Local Plan (now replaced) stated that the loss of leisure facilities (including pubs) would normally be resisted unless a comparable replacement could be provided. It was therefore arguably a stricter policy stance on loss of pubs. As an example, this policy was one of the reasons for refusal of the original application for redevelopment of the County Arms, 84 Watlington Street (reference 09/01341/FUL). However, at the appeal, the Inspector did not support this position, noting that marketing information demonstrated that there was little prospect of the pub use continuing, particularly given the amount of other pubs in the area. Therefore, a less flexible policy position could well simply result in the loss of pubs on appeal.

4.3.4 If it was considered that the policy requires amendments, adopting new planning policy within six months is not achievable. The Planning Inspectorate has introduced streamlined procedures for examining self-contained planning policy changes such as this, but even in these cases the entire process of changing policy (which, at a statutory minimum, must contain two six-week public consultation stages and an independent examination) would be likely to take between eight months and a year.

4.3.5 The Council plans to bring forward a new single Local Plan for the Borough that would replace all current development plan documents. This would represent an opportunity to properly review the policy on pubs if necessary. The timescales are set out in the Local Development Scheme, to be discussed at this meeting of Strategic Environment, Planning and Transport Committee. It is preferable that changes to planning policies are undertaken together rather than as a series of self-contained processes, not only because it would substantially save resources, but also because policy revisions on one topic may have knock-on implications on another topic that should be considered in conjunction. For this reason, it is not considered appropriate to bring forward revisions to policy on pubs prior to the full Local Plan.

4.4 To help facilitate community groups to nominate pubs as Assets of Community Value.

4.4.1 Part 5 Chapter 3 of the Localism Act 2011 (the Act) provides for a local authority to maintain a list of Assets of Community Value which can be either land or buildings. The Act requires local authorities to maintain a list of Assets of Community Value which have been nominated by bodies representing the local community including Parish Councils, Neighbourhood Forums and Community Interest Groups with a local connection. Individuals cannot make a nomination. When listed assets come up for sale or change of ownership, the Act then gives community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. This will help local communities keep such assets in public use and part of local life.

4.4.2 Local community groups will be able to nominate the asset, and, if the nomination is accepted by the local authority, it will be listed; then, when it is put up for sale, the group will have to be informed and will be given time to communicate that they wish to bid for the property and if so, additional time to prepare their finances.

4.4.3 The Plain English Guide to the Localism Act summarises the background to the power:

“Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs. Local life would not be the same without them, and if they are closed or sold into private use, it can be a real loss to the community.

In many places across the country, when local amenities have been threatened with sale or closure, community groups have taken them over. In some cases, however, community groups who have attempted to take assets over have faced significant challenges. They often need more time to organise a bid and raise money than the private enterprises bidding against them.”

4.4.4 If any land or buildings have been nominated by bodies representing the local community the local authority then has eight weeks to make a judgment on whether the land should be listed. If it decides that the nomination meets the relevant criteria in Section 88 of the Act, the local authority must list it in its List of Assets of Community Value. In general, in order to be listed, the building must further the social wellbeing or social interests of the local community, or have been used to do so in the recent past. Residential property is excluded from listing, except where an asset that could otherwise be listed contains integral residential quarters, such as a pub or caretaker’s flat.

4.4.5 Once listed, the local authority must inform owners and other interested parties that it has been listed, enter this fact on the local land charges register and, in the case of registered land, apply for a restriction on the land register. The asset remains on the list for five years.

4.4.6 Provisions exist for appeals against the local authority’s decision and for compensation to be paid where the local authority believes listing has had a detrimental effect on the value of the asset. The Government meets the cost of compensation claims that exceed £20,000 in a financial year up to March 2015 but there is no certainty thereafter.

4.4.7 A moratorium will be applied when a listed asset is put up for sale. This is an initial six-week interim period, during which a community group must express interest in bidding. If one does, there is a six-month moratorium beginning from when the asset is put up for sale, i.e. including the six-week interim period, to allow a community interest group to put a bid together. The provisions for a community group to prepare a bid only apply when the asset is being put up for sale. There is no compulsion on the owner of the listed asset to sell it, nor any restriction on what the owner can do with the property while they own it.

- 4.4.8 There is no community right to buy the asset, just to bid. This means that the local community bid may not be the successful one. The owner can, at the end of the moratorium, sell to whomever they choose and at whatever price. The owner is also at liberty to negotiate a sale with a preferred buyer during the moratorium period: but the sale cannot be concluded during that period.
- 4.4.9 Where the sale of an asset has been announced but not yet concluded, it is still possible for a group to seek to list it. This circumstance may arise if a much-used local asset is suddenly put up for sale. If a sale is agreed before the asset appears on the list, there would be no opportunity for a group to put in a bid; but if the asset is listed before a sale is agreed, the moratorium provisions apply.
- 4.4.10 Part 5 Chapter 3 of the Localism Act 2011 has been used to protect pubs and other assets considered to be of value to the community against development proposals. It should be noted that a listing is a material consideration which may be given weight by the Local Planning Authority or an Inspector at appeal. However it does not prevent an owner from demolishing a public house and, as explained above, it does not protect the asset unless a community interest group nominates the asset, it is subsequently listed and any community bid is accepted.
- 4.4.11 The local CAMRA Group have applied for five public houses in Reading to be listed with four accepted, one rejected.
- 4.4.12 Two further assets were nominated and placed on the list being Kings Meadow Pool and the Arthur Clarke day home. Both of these assets are being sold. In the case of Kings Meadow Pool the Kings Meadow Campaign bid for the site but were unsuccessful. In the case of Arthur Clark the community group decided that it didn't want to bid.
- 4.4.13 The Council will continue to provide information and support to community groups who wish to submit nominations.
- 4.5 To give consideration, if appropriate, to the use of Article 4 Directions to protect threatened pubs from demolition or change of use OR to use a boroughwide Article 4 Direction to protect threatened pubs from demolition or change of use.
- 4.5.1 In response to concerns about the permitted development rights, the Secretary of State and DCLG have advised that councils can consider the use of Article 4 Direction powers. Article 4 directions must be made in accordance with national Government guidance given in the *National Planning Policy Framework* which directs that there must be a clear justification for removing national permitted development rights:
200. *The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require*

planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

- 4.5.2 The National Planning Policy Framework specifically states that the Local Planning Authority should consider community facilities and mentions pubs in the list of such facilities (see paragraph 70). However, recent Planning Practice Guidance makes it clear the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area. The potential harm that the Direction is intended to address should clearly be identified. It follows that unless there is clear evidence of harm to the Borough as a whole any Article 4 Direction should be specific to a certain public house or houses.
- 4.5.3 Therefore, there is existing national policy on which to base a justification for an Article 4 Direction for individual public houses. As indicated elsewhere in this report, the Council also has a policy in its Sites and Detailed Policies Document that would also form part of the justification for seeking to protect public houses via such a Direction.
- 4.5.4 It should be noted that an Article 4 Direction only requires that an application for planning permission be made. The application still needs to be determined against relevant policies. As indicated above, policy DM15 (Protection of Leisure Facilities and Public Houses) in the Council's Sites and Detailed Policies Document provides a policy basis against which applications proposing the conversion of a pub to another use can be determined. That might need to be backed up by some more detailed guidance (possibly via a Supplementary Planning Document) to give more detailed interpretation.
- 4.5.5 However, there are significant issues associated with Article 4 Directions. Firstly it needs to be noted that there are circumstances in which local planning authorities may be liable to pay compensation as a result of an Article 4 Direction. Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:
- i) refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction; or
 - ii) grant planning permission subject to more limiting conditions than the regulations would normally allow, as a result of an Article 4 direction being in place.
- 4.5.6 Compensation for abortive expenditure or any other loss or damage directly attributable to the withdrawal of the permitted development rights (which includes any depreciation in the value of the claimants interest in the land) will be payable to the owners and any other person with an interest in the land by the Local Planning Authority.

- 4.5.7 While Article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel such directions at any point.
- 4.5.8 It is possible to avoid claims of compensation by the Council giving one year's notice of its intention to serve an Article 4 Direction. However, giving such notice could lead to a rush of conversions within the one year period and may, perversely bring forward or force owners to decide to convert to avoid the deadline and the possible refusal of planning permission when the Article 4 comes into force.
- 4.5.9 Arguments relating to the protection of community facilities revolve around, amongst other factors, whether there are alternative facilities available to the community usually in terms of other similar facilities in proximity to the facility that is to be lost. In an urban area such as Reading, there are numerous pubs and in some areas, such as the town centre, it could be said that there is a high density of such facilities. It is very difficult to argue in planning terms that the loss of a pub as a community facility is unacceptable if there are other pubs in the vicinity. Of course pubs are different and one pub may be more popular to a local community pub compared to another. However, in planning terms, it is likely this would only apply to pubs outside of the city centre and even then the council will have to consider whether other public houses offer an alternative facility that is in reasonable proximity. It is clear that a borough wide Article 4 Direction to remove permitted development rights for all public houses in the borough is unlikely to be capable of justification. As indicated above, the recent National Planning Policy Guidance is clear the justification can only be made on the grounds of local amenity and well-being.
- 4.6 To submit, under the Sustainable Communities Act, a proposal to Government to protect community pubs in England by ensuring that planning permission and community consultation are required before community pubs are allowed to be converted to betting shops, supermarkets and pay-day loan stores or other uses, or are allowed to be demolished.
- 4.6.1 The Sustainable Communities Act 2007 received Royal Assent on 23rd October 2007. The Act represents the campaign success by Local Works, a UK coalition of over 85 national organisations, to introduce legislation that would help reverse the trend of community decline, also called 'Ghost Town Britain'.
- 4.6.2 Ghost Town Britain refers to the ongoing loss of local facilities and services including, amongst others: shops, markets, Post Offices, pubs, bank branches and health centres. The term 'Ghost Town Britain' was initially coined by the British think-tank the New Economics Foundation.
- 4.6.3 The Act sets up a process, by which Councils could drive government action. Councils are given the power to make proposals to the Secretary of State, as to how government can 'assist councils in promoting the sustainability of local communities'. The Secretary of State is then under a

duty to 'reach agreement' with councils, via their representative body, the Local Government Association (the LGA - called 'the selector' in the Act) on which proposals will be given priority. The Act seeks to open up the work of local communities to greater transparency by including 'local people' in the proposal process. The Act specifies that when making their proposals to the Secretary of State, councils must involve 'local people' by setting up, or recognising if they already exist, 'panels of representatives of local people' (or citizens' panels). Councils then must 'reach agreement' (not just consult) with those panels regarding ideas for proposals to put to the Secretary of State for government action.

4.6.4 Given the other powers referred to in this report it is not considered appropriate to use this scheme as a way of preserving public houses from development in the Borough.

4.7 **That the Managing Director will write to the Secretary of State at the Department of Business Innovation & Skills to request that publican lessees are offered a fair market rent-only option and at this be included in the Small Business Bill currently before Parliament.**

4.7.1 Written submissions for the Small Business, Enterprise and Employment bill have now closed. In relation to public houses, the Bill seeks to ensure that pub landlords receive a fair deal through the introduction of a statutory code and an Adjudicator.

4.7.2 There has been a sustained and vocal campaigning by both Federation of Small Business and CAMRA for changes to unfair business practices by pub companies that are forcing tenants to close. The Bill seeks to address some of those issues.

4.7.3 The Federation of Small Business's recommendations are to:-

1. Abolish the tie where it does not work giving tied tenants a chance to make a fair profit.
2. Initiate an Ombudsman for tied publicans who will support and advise tenants in the event of conflict that cannot be resolved between the tenant and the Pub company.
3. Enforce fully transparent rent reviews through a statutory code, allowing tenants to understand on what basis rents are calculated.

4.7.4 Following discussion between the Deputy Leader of the Council and Lead Councillor for Strategic Environment, Planning & Transport and the Managing Director, the Managing Director responded to the recent consultation. A copy of his letter is attached as Appendix 2.

5. CONTRIBUTION TO STRATEGIC AIMS

5.1 Pubs serving the local community will contribute to achieving the following strategic aims:

- The development of Reading as a Green City with a sustainable environment and economy at the heart of the Thames Valley - local pubs provide a ;
- Establishing Reading as a learning City and a stimulating and rewarding place to live and visit ;
- Promoting equality, social inclusion and a safe and healthy environment for all - local pubs can support community cohesion as a meeting place.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 The Council will continue to provide information on the nomination of property and buildings as Assets of Community Value.

7. EQUALITY ASSESSMENT

- 7.1 Whilst it is noted that public houses can offer support to the community, no equalities impact assessment is required in relation to this report. Proposals to amend the Council's planning policies as part of the Local Plan review would need to be considered fully through an equalities impact assessment.

8. LEGAL IMPLICATIONS

- 8.1 The report details the position in relation to Article 4 Directions. There are no other direct legal implications.

9 FINANCIAL IMPLICATIONS

- 9.1 Commencing a review of the relevant Planning Policy DM15 (Protection of Leisure Facilities and Public Houses) outside of the review of the entire Local Plan would have a financial and resource implication.

BACKGROUND PAPERS

- Sites and Detailed Policies Document (Adopted 2012)

APPENDIX 1: MOTION TO 21st OCTOBER 2014 COUNCIL BY COUNCILLOR WHITE

"This Council notes that:

- For many people community public houses are important local community amenities that support positive interactions between people from different backgrounds and enhance community cohesion;
- The new National Planning Policy Framework makes specific reference to the need to safeguard public houses;
- The Assets of Community Value scheme introduced in the Localism Act 2011 allows local communities to secure a degree of additional protection for local community assets.

This Council further notes that:

- Effective local planning policy is a key tool in safeguarding valued and profitable public houses;
- Weak national planning rules allow public houses to be demolished or converted into betting shops, pay day loan stores, supermarket metro stores and other uses without planning permission;
- In some cases, excessively high rents and tied product prices contribute to the failure of otherwise profitable pubs.

This Council resolves:

- To develop and adopt planning policies to give stronger protection to local public houses and therefore instructs the Managing Director to bring back proposed new policies for adoption within 6 months of the date of this motion;
- To help facilitate community groups to nominate pubs as Assets of Community Value;
- To give consideration, if appropriate, to the use of Article 4 Directions to protect threatened pubs from demolition or change of use OR to use a boroughwide Article 4 Direction to protect threatened pubs from demolition or change of use;
- To submit, under the Sustainable Communities Act, a proposal to Government to protect community pubs in England by ensuring that planning permission and community consultation are required before community pubs are allowed to be converted to betting shops, supermarkets and pay-day loan stores or other uses, or are allowed to be demolished;
- That the Managing Director will write to the Secretary of State at the Department of Business Innovation & Skills to request that publican lessees are offered a fair market rent-only option and at this be included in the Small Business Bill currently before Parliament."