

Sustainable Development Select Committee			
Title	Preserving public houses and community assets of value	Item No	3
Contributors	Planning Service, Community & Neighbourhood Development, and Licensing		
Class	Part 1	Date	9 September 2014

1. Purpose

- 1.1. The Sustainable Development Select Committee produced a document 'Preserving Local Pubs' in September 2012. The document set out seven recommendations. The Mayor of Lewisham responded to the document with a report dated 5 December 2012 presented to the Sustainable Development Select Committee on 5 February 2013.
- 1.2. This current report seeks to update the Sustainable Development Select Committee on the progress made in preserving local pubs.

2. Recommendation

- 2.1. The Select Committee is asked to note the content of the report and direct questions to officers at the meeting on the 9 September 2014.

3. Policy context

- 3.1. The Planning policy which protects viable local pubs from changes of use is found in the Development Management Local Plan (DMLP). The DMLP when adopted will be a Development Plan Document and as such will form part of the Council's policy framework. The DMLP will set out the detailed policies for consideration of planning applications in the borough and will implement the Core Strategy.

4. Background

- 4.1 The Sustainable Development Select Committee produced a document 'Preserving Local Pubs' September 2012, and referred the document to the Mayor and Cabinet meeting on 3rd October 2012. According to the Lewisham constitution, Select Committees can refer documents to the Mayor and Cabinet who are obliged to consider the document and respond to its content within two months of receipt
- 4.2 The Mayor of Lewisham responded to the document with a report dated 5 December 2012 presented to the Sustainable Development Select Committee on 5 February 2013. The Mayor's response addressed the seven recommendations contained in 'Preserving Local Pubs'. The Mayor's

response to a number of the recommendations required further action from officers.

- 4.3 This present report seeks to update the Sustainable Development Select Committee on the progress made by officers.

5. Progress in preserving public houses, and assets of community value

- 5.1 The Mayor's response to 'Preserving Local Pubs' required further action from officers. Progress on these actions is set out below.

5.2 Protection for pubs through planning policy, and economic viability testing.

- 5.3 'Preserving Local Pubs' set out the desire for stronger protection for pubs, and set out the need for viability testing before a pub is allowed to be demolished or before a pub's use is allowed to be changed. The Mayor's response described how the Development Management Local Plan (DMLP), which was under preparation at the time, would enhance the protection of local pubs.

- 5.4 The preparation of the DMLP has progressed since February 2013. Consultation was carried out on the Further Options document between December 2012 and January 2013. The Proposed Submission version of the DMLP was consulted on from August to October 2013, and the Submission version was submitted to the Planning Inspectorate for examination in November 2013. The Inspector issued his final report finding the DMLP sound in July 2014. The final stage of the process is for the Council to adopt the DMLP. This is expected to happen in November 2014. Although not yet formally adopted, the DMLP already holds significant weight when making planning decisions due to the publication of the Inspector's report.

- 5.5 DM Policy 20 protects viable public houses from change of use or redevelopment, and makes demonstrable evidence a central part of the policy. The policy requires an applicant to submit a viability report that demonstrates to the satisfaction of the Council that the pub is no longer economically viable. The policy requires the pub to have been continuously marketed for a period of at least 36 months. The policy also requires an assessment of the community role which the pub may play, and the character and heritage value of the pub. The policy provides strong protection for public houses against changes of use or redevelopment in situations where permitted development rights do not apply.

- 5.6 The wording of the policy is the same as that previously presented to the Select Committee in February 2013. The only change is the policy number, which was previously DM Policy 19. The full wording of the policy can be found at appendix A.

5.7 Protection of local pubs through article 4 directions and local listings.

- 5.8 Preserving Local Pubs' set out the desire to undertake a local listing review and to explore the enhancement of the protection of the borough's landmark

buildings through the planning system. The Planning Service has now investigated the potential for local listings, 'blanket' article four directions, and 'targeted' article four directions to strengthen the protection of pubs.

- 5.9 DM Policy 20 Public houses, in combination with DM Policy 37 Non designated heritage assets, DM Policy 38 Demolition of heritage assets, and Core Strategy Policy 19 Provision and maintenance of community and recreational facilities, provides strong protection for public houses and for non-designated heritage assets.
- 5.10 However, the existence of permitted development rights means that these policies are unable to protect pubs in all situations. Most notably there are permitted development rights to change the use of a pub to a retail outlet, restaurant, or professional services place, and for the demolition of a pub, without the need for planning permission.
- 5.11 The local listing of a building in itself does not remove permitted development rights. Therefore the Planning Service has explored ways in which pubs can be protected in situations where permitted development rights do exist. The service investigated the feasibility of combining local listings with article four directions which are the legal means of removing permitted development rights from pubs. The use of an article four direction to remove permitted development rights from all pubs in the borough, or from all locally listed pubs in the borough, is described as a 'blanket' article four direction as it is not targeted at a specific pub.
- 5.12 However, the use of such article four directions would expose the Council to compensation claims from any pub owner in the borough for the loss of value to their property resulting from the removal of permitted development rights. The Council could be exposed to compensation claims for an unlimited period of time for all pubs if a blanket article four direction was used.
- 5.13 As a result, officers would not recommend the blanket use of article four directions due to the potential future costs for the Council. Unfortunately the local listing of a building does not affect the permitted development rights for that building. Local listings in itself would not stop the change of use of pubs to retail premises nor the demolition of pubs. For these reasons officers consider that the inclusion of pubs on the local list would not have the desired impact of protecting pubs above and beyond the existing planning policies.
- 5.14 However, the Council is able to specifically target individual pubs when they are threatened with change of use or demolition. This can be described as a responsive solution. The Council in collaboration with the local community has taken steps to protect both the Baring Hall Hotel and the Catford Bridge Tavern in this way. This has been achieved through 'targeted' article four directions on the two individual properties.
- 5.15 The article four directions remove permitted development rights, meaning that planning permission must be sought for demolition or, in the case of the Catford Bridge Tavern, change of use. These two premises have also been

locally listed to afford the pubs greater protection if a planning application is subsequently submitted following the article four direction.

- 5.16 The Baring Hall Hotel and the Catford Bridge Tavern have both been successfully saved from either demolition or change of use through the Council's responsive intervention.
- 5.17 The Baring Hall Hotel has reopened as a pub, however the ongoing compensation negotiations with the owners of the premises serve to highlight the financial risk of intervening, and demonstrates the need to carefully weigh the costs and benefits of each intervention.
- 5.18 The Catford Bridge Tavern reopened as a pub, however it has since closed and is currently vacant.
- 5.19 It is considered that the responsive solution to protecting pubs through targeted article four directions and local listings is most appropriate in light of the risk of compensation claims which stem from blanket article four directions.
- 5.20 *Protection of local pubs through assets of community value legislation*
- 5.21 'Preserving Local Pubs' recommended that local groups should be encouraged to submit their local pub to the list of assets of community value.
- 5.22 The right to nominate an asset of community value was introduced under the Localism Act 2011 and came into effect on 21 September 2012. It means that an eligible local voluntary or community group can ask the Council to list certain assets as being of value to the community by making a nomination.
- 5.23 The listing of a community asset ensures that should the owner seek to make a relevant disposal (i.e. lease over 25 years or sale), there will be a moratorium of 6 months to allow the nominating group the chance to offer to purchase the asset. The regulations do not stop the asset being demolished or being leased for under 25 years, and do not have links to any other planning changes or protections.
- 5.24 Once the nominating group has made an offer to purchase, the owner is at liberty to disregard the offer and to sell to the buyer of their choice. They also have the right to claim compensation from the Council to cover the 6 month period when they were not allowed to sell.
- 5.25 The process for nominating an asset of community value starts with a community group submitting their application to nominate an asset. The Lewisham website provides details on the process and the relevant application form.
- 5.26 The application form gives details of how to apply, the information required, and the tests the Council will have to apply to the application to determine whether or not to agree to the nomination and list the nominated asset as an

asset of community value. The application form also details the relevant timescales involved in the process

- 5.27 When the Council receives an application it has to determine based on the evidence supplied whether the asset satisfies the definition of an asset of community value. It does if:
- the local authority decides that the actual main, current use of the building or land is to further the social wellbeing or social interests of the local community and it is realistic to think that there can continue to be a main use of the building or land which will further the social wellbeing or social interests of the local community; or
 - in the opinion of the local authority there is a time in the recent past when the actual and main use of the building or land furthered the social well being or social interests of the local community and, it is realistic to think that there is a time in the next five years when there could be a main use of the building or land that would further the social wellbeing or social interests of the local community.
- 5.28 There has been much interest and to date the Council has received 7 applications. Of the seven nominations the Council has so far received, four have been for pubs.
- 5.29 Three were successful:
- Baring Hall Hotel - listed 14/1/13
 - The Honor Oak - listed 13/11/13
 - And in it's second nomination - The Windmill Pub - listed 20/12/13
- 5.30 One was not successful:
- An earlier application for The Windmill Pub - decision not to list 16/7/13
- 5.31 The Baring Hall Hotel is now trading again as a pub, run by Antic
- 5.32 The Honor Oak is in the process of being renovated by the company who own it and is due to re open as a pub shortly.
- 5.33 The Windmill pub is currently closed and the owners are appealing against the Council's decision to list it as an asset of community value. The pub is currently on the market for sale, but as yet no relevant disposal has been initiated.
- 5.34 *Register of community venues*
- 5.35 The Mayor's response to 'Preserving Local Pubs' stated that the Head of Community and Neighbourhood Development would contact all pubs in the borough and invite them to provide details of space for hire. These venues would be included on the register of venues for hire.

- 5.36 Planning officers are in the process of compiling a database of all pubs in the Borough, and are in the process of creating a questionnaire to be sent out to all pubs on this database. It is anticipated that the relevant evidence will be gathered by Spring 2015.

Background Documents:

Response to recommendations of Overview and Scrutiny, (Sustainable Development Select Committee) Reports referred to Mayor and Cabinet on 3rd October 2012:

<http://councilmeetings.lewisham.gov.uk/documents/s19453/Responses%20to%20SDSC%20on%20Pubs.pdf>

Preserving Local Pubs:

<http://www.lewisham.gov.uk/mayorandcouncil/overview-scrutiny/Overview-and-Scrutiny-Reports/Documents/Preservinglocalpubsreview.pdf>

If you have any questions about this report, please contact Brian Regan, Planning Policy Manager (ext. 48774) or David Knight, Planning Policy Officer (ext. 47669).

Appendix A: Extract of pubs policy from Development Management Local Plan (DMLP) proposed adoption version (July 2014).

2.20 Public Houses

What is the aim of this policy?

- 2.145 The aim of this policy is to prevent the loss of public houses or pubs unless robust evidence is provided to justify the loss and the proposed change of use has been adequately assessed as suitable. In recent years, the loss of many local pubs across the borough has been cause for concern. Lewisham's pubs are an important community resource. Pubs can provide a central focus to an area or enhance the vitality of a residential neighbourhood. Pubs can be hubs for generating social interactions and can provide important space for community groups to meet. Some pubs are housed in buildings of cultural, architectural and historic value, which means their use as pubs may preserve important assets for citizens.

DM Policy 20

Public houses

1. The Council will only permit the change of use or redevelopment of a public house (A4) after an assessment of the following:
 - a. a viability report that demonstrates to the Council's satisfaction that the public house is no longer economically viable, including the length of time the public house has been vacant, evidenced by the applicant of active and appropriate marketing for a constant period of at least 36 months at the existing use value
 - b. the role the public house plays in the provision of space for community groups to meet and whether the loss of such space would contribute to a shortfall in local provision, including evidence that the premises have been offered to use or to hire at a reasonable charge to community or voluntary organisations over a 12 month period and there is no longer a demand for such use
 - c. the design, character and heritage value of the public house and the significance of the contribution that it makes to the streetscape and local distinctiveness, and where appropriate historic environment, and the impact the proposal will have on its significance
 - d. the ability and appropriateness of the building and site to accommodate an alternative use or uses without the need for demolition or alterations that may detract from the character and appearance of the building.
2. Where the evidence demonstrates to the Council's satisfaction that a public house is not economically viable, but where the building is assessed as making a significant contribution to the local townscape and streetscape, or is assessed as making a positive contribution to the historic environment, the Council will require the building to be retained, and for the ground floor to remain in use for a range of non-residential uses, including D1, as appropriate.
3. The proposed change of use of a public house for residential use will only be acceptable where:
 - a. the proposal has been assessed against parts 1c and 1d of this policy and the impact of the proposal on these features and
 - b. where the Council is satisfied that residential use is acceptable, the accommodation to be provided is to be of the highest quality and meet the requirements outlined in DM Policy 32 (Housing design, layout and space standards).

Justification

- 2.146 The NPPF (paragraph 70) identifies public houses as a community facility that contributes to enhancing the sustainability of communities and residential environments. As such, pubs should be safeguarded and retained for the benefit of the community and planning policies and decisions should guard against the unnecessary loss.
- 2.147 This approach is supported by the London Plan (Policy 3.16 Protection and enhancement of social infrastructure) which cites the protection and enhancement of social infrastructure, which can include pubs. Proposals which would result in a loss of social infrastructure in areas of defined need for that type of social infrastructure without realistic proposals for re-provision should be resisted. The suitability of redundant social infrastructure premises for other forms of social infrastructure for which there is a defined need in the locality should be assessed before alternative developments are considered.
- 2.148 The Council has prepared a report 'Pubs in Lewisham: an evidence based study' (2013) which draws together information about public houses in Lewisham and the UK and provides the evidence base for this policy. The report shows there are currently 92 pubs in the borough down from 115 in 2006, and during the period c.1995 to 2011, 62 pubs were closed. This follows a national trend where pub numbers have been falling for many decades.
- 2.149 The General Permitted Development Order currently allows public houses (A4 Use Class) to change to some other uses including retail, professional and financial services, and restaurants without the need for planning permission. In instances where planning permission is required, the council will resist the loss of public houses as they fulfil the following important community role:
- a social role in supporting local community interaction and activities to help maintain sustainable neighbourhoods;
 - an economic role in contributing to the vibrancy and vitality of shopping and commercial areas, and the vibrancy of residential areas contributing to a mix of land uses and
 - an environmental role in their intrinsic value to the cultural and historic heritage of local neighbourhoods.
- 2.150 The Council may consider the use of Article 4 directions to remove GPDO rights in relation to the change of use from A4 uses.

Viability report

- 2.151 In order to ensure that the Council can make a sound assessment when a change of use is proposed, applicants will be required to submit a viability report. This will need to include:
- i. Evidence in the form of at least the last three trading years of audited accounts.
 - ii. All reasonable efforts have been made to preserve the public house (including all diversification options explored) and evidence supplied to illustrate that it would not be economically viable to retain the building or site for its existing use class. Examples of the initiatives or proposals that could be explored are as follows:⁽¹¹⁾
 - adding a kitchen and serving food, or improving the existing food offer
 - making the pub, garden, food offer more 'family-friendly'
 - providing events and entertainment such as quiz nights, amplified or non-amplified live music, comedy/cabaret nights

- hiring rooms out or otherwise providing a venue for local meetings, community groups, businesses, youth groups, children's day nurseries
 - offering take-away food and off-licence services
 - provision of bed & breakfast or other guest accommodation
 - sharing the premises with other businesses
 - altering opening hours.
- iii. Details should also be provided of any changes to the public house in the period that corresponds with the trading information plus 1 year beforehand (so 4 years in total) that may have impacted on the business. For example:⁽¹²⁾
- Did the opening hours alter so that the pub opened less often or less frequently?
 - Were any facilities (e.g. kitchen, darts board, pool table etc) removed or regular events (e.g. quiz) cancelled?
 - Was space for meetings redeveloped or were any local groups told they could no longer use the space?
- iv. The local planning authority will require evidence that demonstrates that the public house has been operated positively i.e. that it has not been run poorly in order to smooth the way for redevelopment. Applicants should be aware that local people/customers will provide anecdotal evidence in response to neighbourhood consultations on any planning application submission.
- v. Any ancillary use associated with a public house, such as accommodation for staff or otherwise, will need to be assessed as part of the viability report.

Marketing

2.152 The Council will require clear evidence of appropriate marketing to show a lack of demand for the pub. This will mean the submission of evidence showing the following:

- i. Details of the company/person who carried out the marketing exercise.
- ii. The marketing process should last for at least 36 months.
- iii. The asking price should be pre-agreed in writing with the local planning authority following independent valuation (funded by the developer) by a professional RICS valuer with expertise in the licensed leisure sector and who is not engaged to market the property.⁽¹³⁾
- iv. The marketing exercise should be sufficiently thorough and utilise all available forms of advertising media and therefore include as a minimum:⁽¹⁴⁾
 - a For Sale/For Rent signboard
 - adverts in the local press
 - adverts in appropriate trade magazines/journals
 - adverts on appropriate trade websites
 - adverts through both national and local estate agents (including their websites) and
 - a targeted mail shot or email to an agreed list of potential purchasers.

Copies of all sales literature (and in the case of a signboard, dated photographs) will be required.

12 This list is not exhaustive and the local planning authority may seek evidence through standard community consultation procedures

13 The asking price(s) should be based on the valuation of the site as a trading pub without tie

14 Adverts should contain a similar amount of detail as a property listing in an estate agents

- v. Both freehold and leasehold options should be made available without a 'tie' requiring the purchase of drinks through the vendor and without restrictive covenants that would otherwise prevent re-use as a public house such that other pub operators, breweries, local businesses or community groups wishing to take over the premises and trade it as a pub are not excluded.
- vi. Copies of all details of approaches and offers should be provided together with full reasons as to why any offer has not been accepted.
- vii. As part of the community consultation exercise (see below), the public are to be informed about the marketing strategy and allowed the opportunity to put together their own bid.
- viii. Any attempts to sell the business at a price which reflects its current use should relate to the business in its entirety, and not to parts of it.

Local consultation and use of the public house by community and voluntary organisations

- 2.153 The use of pub space for community groups is a valued resource and evidence will be required demonstrating consultation has taken place with local community and voluntary organisations. The applicant will be required to carry out an assessment of the needs of the community for community facilities to show that the existing or former public house is no longer needed and that alternative provision is available in the area.
- 2.154 Where there is local need, this use should be retained or replaced within the building, unless an alternative approach can be identified and agreed. The retention of the ground floor for non-residential use will help maintain street activity and a mixed use neighbourhood.
- 2.155 The Council may also consider adding certain public houses to the Community Assets Register if the community support for their retention is significant.

Townscape, streetscape and historic significance

- 2.156 The townscape, streetscape and heritage significance of the public house will need to be assessed, where relevant.
- 2.157 This will mean submitting a report prepared by a suitably qualified professional, and where the heritage significance needs to be assessed, the submission of a heritage statement assessing the heritage values of the building as set out in English Heritage's Conservation Principles: Policies and Guidance (2008), including a townscape appraisal. This report should be undertaken by a suitably qualified conservation professional and assess the following:
 - i. The aesthetic merits of the building deriving from the quality of design, detailing, materials and craftsmanship, including its visual contribution to town- and streetscape of the area and any landmark qualities it may exhibit
 - ii. Any evidential value and significance the building may hold in terms of the development and social history of the area and its use.
 - iii. Any historical value the pub may hold by way of illustrating the intention of the builder or demonstrating aspects of use or social organisation; or association with an important organisation, patron, architect or historic event.
 - iv. Any commemorative or symbolic value the building may hold, or social value as a place that people perceive as a source of identity, distinctiveness, social interaction and coherence.
- 2.158 Where the building is deemed significant but the retention of the public house use is shown not to be economically viable, then the building itself or the identified significance will need to be retained. Where, after a full assessment, the Council considers a change of use

appropriate, consideration will need to be given to DM Policy 19 Shopfronts, where relevant. DM Policies 30 and 37 in relation to the treatment of heritage assets should also be referred to.