

Mayor and Cabinet		
Report Title	Preserving Public Houses and assets of community value - response to the Sustainable Development Select Committee	
Key Decision	No	Item No.
Ward	All	
Contributors	Executive Director of Resources & Regeneration, Executive Director of Community Services and Head of Law	
Class	Part 1	Date: 3 December 2014

1. Summary

- 1.1 This report responds to the referral by the Sustainable Development Select Committee, considered at the Mayor and Cabinet meeting of 1 October 2014 and seeks to answer two questions raised. The first relates to the status of article 4 directions and asset of community value listings that have been placed on the Baring Hall Hotel and Windmill pubs. The second relates to details of how compensation for the owners of premises under an article four direction will be decided upon, and covers the Catford Bridge Tavern as well as the Baring Hall Hotel.
- 1.2 The report is in two parts. Part 1 addresses the majority of the questions raised. Part 2 covers those parts of the questions which contain information about the financial affairs of the Council, from which the press and public are therefore excluded.

2. Purpose

- 2.1 To respond to the matters raised by the Sustainable Development Select Committee in a report to Mayor and Cabinet on 1 October 2014.

3. Recommendation

- 3.1 The Mayor is recommended to note the content of this report and agree that it is reported back to the Sustainable Development Select Committee.

4. Policy Context

- 4.1 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.

5. Background

- 5.1 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.
- 5.2 The Mayor 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.
- 5.3 A further report was presented to the Sustainable Development Select Committee on 9 September 2014 updating the Committee on the progress made in preserving local pubs. Following that meeting the Sustainable Development Select Committee referred a report to Mayor and Cabinet on 1 October 2014 which recommended that the Mayor note the views of the Committee and agree that the Executive Director for Resources and Regeneration be asked to provide a response to the comments raised. Section 6 of this report responds to the issues raised.

6. Matters raised by the Sustainable Development Select Committee

- 6.1 On 9 September 2014, the Select Committee considered a report entitled Preserving public houses and community assets of value. Following discussions at the meeting the Committee referred a report to Mayor and Cabinet, dated 1 October 2014 recommending that the Executive Director of Resources and Regeneration provide a response to the comments made.
- 6.2 The two issues raised and the associated responses are set out below.
- 1. The Committee should be provided with updated details on the status of the article four directions and asset of community value listings that have been placed on the Baring Hall Hotel and Windmill pubs. This should include information about any ongoing compensation claims or legal cases relating to these pubs.*
- 6.3 There are two pubs, the Baring Hall Hotel and Catford Bridge Tavern, covered by Article 4 Directions in the borough. The effect of an Article 4 direction is to withdraw the right to undertake specified categories of development without the need for planning permission. In the case of the Baring Hall Hotel permitted development rights to demolish the building without applying for planning permission have been withdrawn. In the case of the Catford Bridge Tavern, permitted development rights to change the use of the building from pub to shop without planning permission have been withdrawn. In terms of their status, both Directions remain in effect.

- 6.4 In the case of the Baring Hall Hotel a compensation claim has been made and negotiations are on-going. No compensation claim has been received for the Catford Bridge Tavern.
- 6.5 In terms of Assets of Community Value, there is no further update on the Baring Hall Hotel, and the report to the Sustainable Development Select Committee on 9 September remains up to date. With regard to The Windmill Pub, the owners are currently appealing to the First Tier Tribunal against the Council's internal review decision to formally list the Windmill Pub. The nominator - CAMRA are currently being consulted as to whether they wish to join the appeal as a second defendant. The Council are awaiting further information from the Tribunal regarding this and as such no date has yet been set for the hearing. Additionally the Council has received formal notice from the owners of their intention to dispose of the asset, which has triggered an initial moratorium period where the nominating group have been invited to confirm their intention to bid on the property. Other eligible community groups in the area will also have the opportunity to make an intention to bid and information on this is being circulated via the Local Assembly coordinating groups in the area and is also on the Council's website - <http://www.lewisham.gov.uk/getinvolved/community-support/community-assets/>. If any intentions to bid are received before the moratorium ends at 5 pm on the 19 November, this will trigger a further 6 month moratorium which is designed to give the bidding community group time to raise the funds to offer to purchase the property. Although the Localism Act makes provision for the moratorium periods, it does not give the bidding groups a first right of refusal, determine the price at which the asset can be sold or restrict who the owner should eventually sell the asset to. The Windmill Pub remains closed.

2. The Committee should be provided with detailed information about how compensation for the owners of premises under an article four direction will be decided upon.

- 6.6 The threshold for meeting the appropriate criteria for an Article 4 Direction are high; in that it needs to be demonstrated that the development proposed (demolishing the building) would be prejudicial to the proper planning of the area or constitute a threat to the amenities of the area. In both cases the Mayor and Cabinet agreed that these criteria had been met.
- 6.7 The withdrawal of permitted development rights by way of an Article 4 direction may give rise to the liability to compensate the developer. Any person interested in the land may seek compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. The Town and Country Planning Act 1990 requires that a planning application should first have been made and permission refused or only granted subject to conditions other than those previously imposed by the development order. Compensation may be claimed not only by owners and tenants, but also by persons with a contractual right to use the land.
- 6.8 Compensation liability arises even if the Council subsequently refuses to confirm the direction. If a direction is made and an express planning application

for demolition is refused or granted on conditions beyond those set out in the Order, the Council may be liable for a compensation claim.

- 6.9 In the case of the Baring Hall Hotel, the Article 4 direction was confirmed, a planning application to demolish the hotel made and refused and a claim for compensation submitted in December 2012. The claim is based on the alleged loss of value at the time of the notice of refusal of planning permission arising from the article 4 Direction, namely 2 November 2012. The claim is principally based on the diminution in the value of the claimant's freehold interests as a consequence of the refusal of planning permission for the permitted development. The diminution is represented by the difference at 2 November 2012 between the value of the property in its existing state and reflecting the Article 4 Direction and refusal of planning permission against the value of the property with the benefit of planning permission for the permitted development. Associated professional fees can also be added to the claim. The claim and the amount arises as a result of the Article 4 Direction only, and is not linked with earlier decisions regarding prior approval for the building's demolition.
- 6.10 Following the claim officers and specialist consultants have been working to achieve a negotiated settlement with the claimant. If an agreement cannot be reached between the parties, the claimant may refer it to the Lands Chamber (previously known as the Lands Tribunal). The Lands Chamber's decision on the amount of compensation payable is binding. Costs of the proceedings are likely to be awarded to the successful party. The costs of valuation and legal fees associated with preparing for and appearing at the tribunal-are likely to be substantial. The negotiations are presently on-going and the claimant has not yet resorted to the Lands Chamber. Further details are set out in Part 2 of the report.

7 Legal Implications

- 7.1 Where the Local Planning Authority is satisfied that in the circumstance it is expedient that development permitted by schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO)" should not be allowed, unless permission is granted for it, because the development is prejudicial to the proper planning of their area or constitutes a threat to the amenities of their area the LPA may remove those permitted development rights by a directive under Article 4 of the GPDO . This is know as an Article 4 Direction.
- 7.2 The effect of the Direction is that the permitted development right is withdrawn. The developer, in order to undertake the development will then need to obtain planning permission.
- 7.3 Compensation liability arises (section 108 of the Town and Country Planning Act) when the following conditions are met:

1. an Article 4 Direction withdrawing the permission (permitted development right), making it necessary for an application to obtain planning permission to carry out the development, is made
2. an application for planning permission to carry out the formerly permitted development is made to the planning authority within 12 months beginning with the date on which the Direction took effect
3. permission is refused for the development or granted subject to conditions other than those granted by the GPDO

7.4 If 1, 2 and 3 are met then the Applicant is entitled to compensation. Compensation is payable under two heads (section 107 of the Town and Country planning Act 1990). They are: (1) Abortive expenditure, which includes the preparation of plans for the purposes of any work and similar preparatory works, and (2) other loss or damage directly attributable to the withdrawal of the permitted development, which includes the depreciation of the claimants interest in the land. In all cases the loss must be directly attributable, ie a causal link must be established.

7.5 Any disputed compensation claim is to be referred to the Lands Chamber, (formerly the Lands Tribunal) for determination.

7.6 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.7 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

7.8 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

7.9 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the

equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

7.10 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

7.11 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8 Financial Implications

8.1 There are no specific financial implications arising from this report. There may be future financial implications arising from the outcome of negotiations in respect of any claims received however these are not yet known as either claims have not been received or negotiations not yet concluded. In the case of Baring Hall hotel a claim has been received which is subject to negotiation. Details of the amount of compensation sought are contained within the part 2 report. In the case of the Windmill pub no claim has yet been received. In the case of Catford Bridge Tavern no claim has been received.

9 Crime and disorder implications

9.1 There are no specific crime and disorder implications arising from this report. However the car park area of the Baring Hall Hotel has been subject to fly-tipping and it is understood that the Catford Bridge Tavern was temporarily squatted. Both events can be attributed to the building's and site's periods of vacancy, as much the product of the development process generally as from the Article 4 Directions.

10 Equalities implications

- 10.1 *Shaping our future*, Lewisham's Sustainable Community Strategy for 2008-2020, sets out a vision for Lewisham;-

“Together we will make Lewisham the best place in London to live work and learn.”

This is underpinned by hard-edged principles for:

- **reducing inequality** – narrowing the gap in outcomes for citizens
 - **delivering together efficiently, effectively and equitably** - ensuring that all citizens have appropriate access to and choice of high quality local services
- 10.2 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities to support the Sustainable Community Strategy and to ensure compliance with the Equality Act 2010.
- 10.3 A full Equality Analysis Assessment (EAA) (previously known as Equality Impact Assessment) was carried out for the policies in the Council's Core Strategy in February 2009. The overall assessment was that the policies in the Core Strategy would not discriminate and that most policies have a positive impact. Three potential adverse impacts were identified: protection of employment land; designation of mixed use employment locations; and concerns of community groups about the amount of new housing development putting undue stress on the existing network of facilities (shops, transport, health facilities, community facilities and other services) particularly in the Deptford/New Cross area.
- 10.4 The Site Allocations DPD followed on from the Core Strategy and identifies sites, usually 0.25 hectares and above which area likely to be developed during the lifetime of the LDF (2011 – 2026). The Core Strategy sets out the policy context and principles for the development of the allocated sites.
- 10.5 An EAA of the Site Allocations DPD was undertaken in 2011 to identify the positive and negative impacts of the Core Strategy DPD and as a consequence the Site Allocations DPD, on three protected characteristics that were not included in the earlier EIA as it pre-dated the Equality Act 2010. This EAA also provided an update on the Core Strategy EIA.
- 10.6 The Development Management Local Plan proposes specific objectives and policies to help ensure that new development complies with inclusive design principles to ensure that the town centres are safe, attractive and inclusive places. Planning applications for development will need to demonstrate how proposals meet these objectives and policies. The DMLP was the subject of an EAA in 2012.

11. **Environmental implications**

11.1 There are no specific environmental implications from this report.

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Development Management Local Plan	2014	Laurence House	Planning Policy	Brian Regan	No
Baring Hall Hotel report to M&C	18 January 2012	Laurence House	Design and Conservation	Philip Ashford	No

If you have any queries on this report, please contact Philip Ashford, Design and Conservation, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8533.