

MAYOR AND CABINET		
Report Title	Response to recommendations of Overview and Scrutiny, (Sustainable Development Select Committee) Reports referred to Mayor and Cabinet on 3 October 2012	
Key Decision	No	Item No.
Ward	All	
Contributors	Executive Director for Resources & Regeneration (Head of Planning, Head of Law.)	
Class	Part 1	Date: 5 December 2012

1. Summary

- 1.1 This report sets out the Mayors response to the Sustainable Development Select Committee's report on 'Preserving Local Pubs' and the request for information relating to the Baring Hall Hotel planning application. The details of the response to the committees recommendations are set out in section 6 of this report. The details concerning the Baring Hall Hotel are set out in section 7 of this report.

2. Purpose

- 2.1 To report back on 1. the recommendations made by the Sustainability Development Select Committee's report on 'Preserving Local Pubs' and 2. the comments made by the Committee on the Baring Hall Hotel.

3. Recommendation

- 3.1 The Mayor is recommended to respond to the Sustainable Development Select Committee as set out in section 6 and 7 of this report.

4. Policy Context

- 4.1 All Development Plan Documents (DPD) are part of the Council's policy framework. The Development Management Local Plan (DMLP) when adopted will be a DPD 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. It will include a policy on protecting viable local pubs from a change of use.

- 4.2 The DMLP will contribute to the implementation of the Council's priorities. As a major policy document the DMLP will contribute to all six priorities identified in the Sustainable Community Strategy, which are:

- Ambitious and achieving – where people are inspired and supported to fulfil their potential

- Safer – where people feel safe and live free from crime, antisocial behaviour and abuse
- Empowered and responsible – where people are actively involved in their local area and contribute to supportive communities
- Clean, green and liveable – where people live in high quality housing and can care for their environment
- Healthy, active and enjoyable – where people can actively participate in maintaining and improving their health and well-being
- Dynamic and prosperous – where people are part of vibrant communities and town centres, well connected to London and beyond

5. Background

5.1 At the 12 July 2012 meeting of the Sustainable Development Select Committee they heard evidence for their review on ‘preserving local pubs’. Evidence was provided by the Council’s planning and licensing officers and by the Campaign for Real Ale, Antic Group Ltd, Fair Pint Campaign and the Grove Park Community Group.

5.2 The Select Committee were particularly interested in:

- Whether there had been a decline in the number of pubs and if so what were the reasons for the decline.
- Which of Lewisham’s pubs are located in historic buildings and where this is the case what is done to protect historic buildings
- What happens when a pub closes
- What can the local authority do to protect local pubs

5.3 Following the meeting on 12th July the Select Committee produced a report ‘Preserving Local Pubs’ and referred the report that contained a number of recommendations, to the Mayor and Cabinet meeting on 3rd October 2012. According to the Lewisham constitution, Select Committees can refer reports to the Mayor and Cabinet who are obliged to consider the report and respond to its content within two months of receipt.

6. Response to recommendations set out in the select committee’s report ‘Preserving Local Pubs’

6.1 The Select Committee’s report contains a number of recommendations which are detailed below together with the response from the Executive Director for Resources and Regeneration and Executive Director for Community Services.

6.2 Recommendation 1: *The Council should ensure that its economic viability test for pubs sets a new benchmark for best practice. The test should ensure that there is a high standard of evidence required to demonstrate the effective marketing of a pub before approval is given for demolition or change of use. The period of marketing to test economic viability should be increased to 36 months.*

- 6.3 *Response.* The Planning Service is preparing a Development Management Local Plan (DMLP) that will set out a number of detailed policies to be used when considering planning applications. The Further Options Version of the DMLP was approved by the Mayor and Full Council for public consultation in November. The DMLP Further Options Version contains at option 19 the preferred policy option in relation to public houses. This recommended policy option is set out in full as appendix 1 to this report.
- 6.4 The preferred policy option seeks to protect viable pubs from a change of use 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 tests demand a high standard of evidence from the applicant. The supporting text sets out what would need to be included in the viability report and this includes evidence of marketing for 36 months. Officers consider that this preferred policy represents best practice in requiring substantial evidence on viability and marketing.
- 6.5 *Recommendation 2: The Council should update its register of community venues for hire to include available spaces in local pubs*
- 6.6 *Response.* The Head of Community and Neighbourhood Development will contact all Pubs in the borough and invite them to provide details of space for hire. The information provided will then be included on the register of venues for hire.
- 6.7 *Recommendation 3: The Council is reviewing all local pubs to see whether they should be considered for local listing. Local residents and community groups are already entitled to put forward buildings for local listing but may not be aware that this is the case. The review should be widely publicized to make them aware of the process of applying for local listing.*
- Where pubs do not meet the criteria for listing, the Council should assist communities in protecting local pubs from development. Officers should bring forward a range of further recommendations for enhancing the protection of the borough's landmark buildings through the planning system.*
- 6.8 *Response.* Work on the local listing review has started by the planning service. A Development Management policy to protect pubs is being prepared as part of the emerging Development Management Local Plan.
- 6.9 *Recommendation 4: The Development Management Development Plan Document (DMDPD) should include enhanced protection for pubs through its 'pubs policy'. Any new policy relating to pubs should be consulted on widely and brought before the Sustainable Development Select Committee for scrutiny before being approved.*

The new planning policy should assume a default protection for pubs both as a building and as a pub business with the onus on developers to prove why a particular building cannot any longer be a pub by using the following key sections from the National Planning Policy Framework 2012:

- *Section 8, paragraph 70, which promotes social, recreational and cultural facilities and services, including pubs.*
- *Section 12, which seeks to conserve and enhance the historic environment.*
- *Paragraph 152 which seeks a balance to economic, social and environmental dimensions of sustainable development, with mitigations to negative impacts considered.*

- 6.10 *Response.* The DMLP Further Options Version contains the preferred policy approach to the protection of local pubs. This is set out as appendix 1 to this report. Officers consider that the draft policy offers considerable protection for viable local pubs. The aspects of the National Planning Policy Framework mentioned in the committees recommendation are included in the draft policy. The preferred policy is currently subject to public consultation in accordance with the adopted Statement of Community Involvement and statutory requirements for Local Plans. The Local Plan consultation list contains over 1000 addresses of local people, organisations and businesses who have been notified about the consultation. Advertisements were placed in the South London Press to give notice about the consultation and a web based consultation process is open to all. The consultation period will last until January 2013. Officers consider that the consultation process is extensive and goes well beyond the statutory minimum requirements.
- 6.11 The process for adopting a Local Plan as a statutory document requires that, after this initial consultation a final draft local plan is prepared taking into account all the representations made during this consultation period. The final draft plan is then subject to a further round of consultation and the comments made together with the draft plan are submitted to the Planning Inspectorate for an Independent Examination. The Inspector will submit a report to the Council following the Examination determining whether the plan is 'sound' and if not what changes are required to make it 'sound'. The council can only go onto adopt the Local Plan if it makes any changes needed to make it 'sound'.
- 6.12 The Mayor and Full Council will be required to approve the DMLP for submission for Examination. The Planning Service can report any revised pubs policy to the Select Committee prior to it going to the Mayor and Council for agreement to submit.
- 6.13 *Recommendation 5: Local groups should be encouraged to submit their local pub to the list of 'assets of community value' when it becomes available.*
- 6.14 *Response.* Information has been made available on the Lewisham website with regard to Assets of Community Value and how to make an application to the register'.
- 6.15 *Recommendation 6: The proposed changes to local licensing should be carefully examined to determine their potential impact on businesses in the borough. Where possible, pubs should be protected from additional bureaucracy or excessive financial burdens.*

- 6.16 *Response.* The Police Reform and Social Responsibility Act 2011 has brought in significant amendments to the Licensing Act 2003. Two regulations which could significantly affect licensed premises are the Late Night Levy and the Early Morning Restriction Order (EMRO).
- 6.17 The Late Night Levy allows local authorities to levy an additional fee on premises that hold alcohol licenses between the hours of midnight and 6am. It is optional for the Authority to adopt this but if it does so it must apply the levy to the whole Borough. This levy is designed to raise money to pay for additional policing that may be required for the late night trade. The EMRO is designed to enable local authorities to designate certain areas where the sale of alcohol will be prohibited between the hours of midnight and 6am. (or hours within these limits)
- 6.18 Both of these policy options could have a major effect on the licensed trade, specifically pubs. The Levy could significantly increase annual fees and an EMRO could reduce income. These are both decisions that the Council has discretion whether to implement or not. As yet no decisions have been made and full consultation and policy adoption procedures have to be completed before either or both of these can be implemented.
- 6.19 It is acknowledged that either of these measures could have a serious effect on premises. Every effort will be made to ensure that any impact on pubs and other businesses is kept to the minimum possible
- 6.20 *Recommendation 7: A further report on local pubs, including updated information relating to the recommendations set out in this report should be brought before the Sustainable Development Select Committee in the 2013/14 municipal year.*
- 6.21 *Response.* The Mayors response to the Select Committee is set out above. Paragraph 6.12 sets out the Mayors commitment to consult the select committee on a final draft pubs policy prior to any agreement to submit the DMLP for Independent Examination.

7 Response to Committee's comment on Baring Hall Hotel

- 7.1 The select committee made one further recommendation in relation to the Baring Hall Hotel. This was that *The Mayor should request a full explanation as to why a demolition order was approved for Baring Hall Hotel by officers prior to a decision that was scheduled to be made at Planning Committee on an application that pertained to the same building.*
- 7.2 *Response.* There is no specific term "demolition order" in planning legislation. However, the demolition of buildings is controlled through the planning system through what is termed a "prior approval" process. Demolition would normally require planning permission but legislation set out in the General Permitted Development Order makes demolition what is termed "permitted development" i.e. does not require planning permission. Demolition however is only allowed if the method of demolition is approved through an application seeking "prior approval". The "prior approval" can only be refused if the method of demolition

is unacceptable or "permitted development" rights have been removed through what is termed an "article 4 direction". Furthermore, the Council only has 28 days to make a decision on the method of demolition as permission is automatically given if no decision is made by the Council.

- 7.3 In parallel to the planning application to redevelop the Baring Hall Hotel (which also included demolition); an application was received for the method of demolition for "prior approval". Class A of Part 31 of the General Permitted Development Order gives permitted development rights for the demolition of buildings subject to the method of demolition being approved through the prior approval process. Therefore the "prior approval" application did not seek approval for the principle of demolition but for the method of demolition. The application sought the approval of details of: the erection of hoarding and scaffolding, method of demolition, removal of any asbestos material and nature of equipment. As the methods of demolition were acceptable, the application for "prior approval" was granted.
- 7.4 The decision on the "prior approval" application was taken before the Committee decision on the redevelopment of the Baring Hall Hotel due to two reasons. First, the Council had to make a decision within 28 days as permission would have been granted anyway and second, the decision did not approve the demolition but only approved the method of demolition.
- 7.5 Following the grant of the "prior approval" and the refusal of planning permission, the Grove Park Community Group challenged the decision to grant the "prior approval notification" by way of Judicial Review and sought a temporary injunction preventing the demolition of the Baring Hall Hotel pending determination of the Judicial Review. The determination of the 10 August for prior approval of the demolition has, by consent, been quashed.
- 7.6 Following the determination of the prior approval application for the demolition of the Baring Hall Hotel, the Council's Constitution has been amended so that "all town and country planning matters relating to the demolition of any building that is in use as a public house, or which is currently unoccupied but was in use as a public house immediately prior to becoming unoccupied" are considered by a Planning Committee. This includes applications for both "prior approval" and "planning permission."

8 Legal implications

- 8.1 Paragraph 5.3 of the report identifies that Rule 12 of the Overview and Scrutiny Procedure Rules of the Council's Constitution, requires that the Executive considers the report produced by the Select Committee and responds to its content within two months
- 8.2 This report identifies a number of measures that the Council is taking which may address the issues raised in the Select Committee's report. Any particular legal implications arising in respect of such measures will be addressed when any decision is proposed to be made in respect of the particular measure.

9 Crime and disorder implications

- 9.1 Crime and disorder implications are a central concern of spatial planning and are reflected in both the Core Strategy and the DMLP Further Options Version. There are no direct crime and disorder implications arising from this report.

10 Equalities implications

- 10.1 An Equalities Analysis Assessment (EAA) will be prepared as part of the preparation of the next stage of the Development Management Local Plan, that is, the draft plan following the options consultation. This will ensure that the equalities implications of the draft pubs policy are fully considered.

11 Environmental implications

- 11.1 There are no specific environmental implications arising from this report. The proposed pubs policy set out as appendix 1 has been subject to an environmental appraisal and this is included in the sustainability report on the Development Management Local Plan – Further Options Version.

12. Financial Implications

- 12.1 There are no specific financial implications arising from this report. The proposed planning policy to protect local pubs states that the Council may consider the use of an Article 4 direction to protect a pub where the change of use or demolition of a pub would otherwise harm local amenity or the proper planning of the area. If the Council did use an Article 4 it could potentially result in compensation costs if issued after the development application. Where Article 4 directions are issued 12 months in advance and no planning applications are received in that period then no compensation is payable. The particular financial implications relating to the making of such a direction will be addressed in the body of the report relating to the making of any particular direction..

13 Conclusion

- 13.1 The Select Committee has made a number of recommendations for action by the Mayor. Section 6 of this report sets out in detail how the Mayor will respond positively to these recommendations. The draft pubs policy is considered to offer a very high level of protection for viable local pubs as recommended by the select committee. The Mayor will require the planning service to consult the committee on the final version of the pubs policy prior to its submission to the Planning Inspectorate.

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
				Brian Regan	No
NPPF	2012	Laurence House	Planning Policy	Brian Regan	No
Local Plan Regulations	2012	Laurence House	Planning Policy	Brian Regan	No

If you have any queries on this report, please contact Brian Regan, Planning Policy Manager, 5th floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8774.

Appendix 1: Extract of pubs policy from Development Management Local Plan Further Options Version, November 2012.

2.21 Public Houses

What is the aim of this policy option?

2.192 The aim of this policy option 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.

Council's recommended option 19

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 option 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 Option 31 (Housing design, layout and space standards).

Justification

2.193 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.

2.194 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.

2.195 The Council has prepared a report 'Pubs in Lewisham: an evidence based study' (2012) which draws together information about public houses in Lewisham and the UK and provides the evidence base for this policy option. The report shows there are currently 92 pubs in the borough down from 163 pubs in 1994, and during the period 2001 to 2011, 53 pubs were closed. This follows a national trend where pub numbers have been falling for many decades.

2.196 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.

Viability report

2.197 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:

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. (This list is not exhaustive and not all ideas will apply to every public house).

- 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:(17)

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

2.198 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.(18)

iv. The marketing exercise should be sufficiently thorough and utilise all available forms of advertising media and therefore include as a minimum:(19)

a For Sale/For Rent signboard

advertises in the local press

advertises in appropriate trade magazines/journals

advertises on appropriate trade websites

advertises 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.

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.

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

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

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

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

2.199 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.

2.200 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.

2.201 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

2.202 The townscape, streetscape and heritage significance of the pub building will need to be assessed, where relevant.

2.203 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.

2.204 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 Option 18 Shopfronts, where relevant.

Alternative uses

2.205 The Council will consider alternative uses for a public house only after the submission and assessment of the evidence and documentation outlined above. Non-residential institutions and assembly and leisure uses may be appropriate. The use of the building for residential use will need to provide the highest quality of accommodation.

2.206 The Council may consider the use of an Article 4 direction to protect a pub where the change of use or demolition of a pub would otherwise harm local amenity or the proper planning of the area.

Alternative option/s 19

An alternative for this option could include:

1. Reducing the 36 month time period specified in 1a. to 24 months
2. Not requiring a viability report to justify the loss of a public house
3. Not requiring a building to be retained if loss of the A4 use is deemed acceptable

What does the sustainability appraisal say?

2.207 The sustainability appraisal showed there may be minor positive impacts on population and human health through social inclusion and access to community infrastructure. There may also be minor positive impacts through the maintenance and enhancement of local townscapes and the promotion of employment opportunities in Lewisham. The policy option presents restrictions which may increase the cost of development leading to adverse effects on the local economy.

2.208 Alternative option 1 is likely to have similar impacts to the recommended policy option, however, the shorter timeframe would allow redevelopment of public houses which may reduce the financial pressure on developers. Alternative 2 is likely to have similar impacts to alternative 1 however there is an added minor negative impact through the potential greater loss of public houses to other use. Alternative 3 may have additional negative impacts on townscape/streetscape, and on air, water, waste and natural resources through increased new build work.