

Sustainable Development Select Committee			
Title	Progress on Public Houses and Assets of Community Value – 2015 update	Item No	9
Contributors	Planning Service, Legal Service		
Class	Part 1	Date	22nd October 2015

1. Purpose

- 1.1 The Sustainable Development Select Committee work programme includes a standard item for an update on the policy to protect viable local public houses in Lewisham. This information report sets out the detail of the progress made since September 2014 in relation to the steps taken to preserve local pubs as per the recommendations contained in the 2012 Preserving Local Pubs report.

2. Recommendation

- 2.1. The Select Committee is asked to note the content of this information report and direct any questions to officers.

3. Background

- 3.1 The Sustainable Development Select Committee produced a document 'Preserving Local Pubs' September 2012 which set out seven recommendations, and referred the document to the Mayor and Cabinet meeting on 3rd October 2012. 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.
- 3.2 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.
- 3.3 This report provides an update on what has taken place since September 2014 in relation to planning matters affecting public houses and an update on the latest situation regarding proposals to list pubs as assets of community value.

4. Progress in preserving public houses

Protection of pubs through planning policy and economic viability testing

- 4.1 'Preserving Local Pubs' set out the desire for a stronger protection for pubs and set out the need for viability testing before a change of use can take place.
- 4.2 The last progress report in September 2014 informed Members that the Council's Development Management Local Plan (DMLP) was due to be adopted. Since the report, the DMLP was adopted in 2014. The DMLP contains policy DM 20 which seeks to protect viable pubs from changes of use (where planning applications are required for such development). The policy requires an applicant to submit a viability report to the Council to demonstrate that the pub is no longer viable in order to change the use. The policy requires the pub to have been continuously marketed for a period of at least 36 months as per the recommendations contained within the Preserving Local Pubs report.

Planning application review

- 4.3 Since September 2014 the Council has received two planning applications involving a change of use (CoU) from a shop (A1) to an A4 use (public house, wine bar or other drinking establishment). The planning application at 167 Sydenham Road has been approved and the other planning application at 66 Honor Oak Park is awaiting a decision.
- 4.4 There have been seven applications that seek permission for development involving an element of A4 use. These are as follows:
- A planning application at 88 Verdant Lane has been lodged and seeks permission for the change of use of the premises to (A4) Drinking Establishment. The application is currently awaiting a decision.
 - An application involving CoU to A3 and A4 has been granted for units 3-4 Resolution Way, Deptford.
 - An application for student housing with an element of A4 use on the ground floor has been granted 403-407 New Cross Road, with no. 407 comprising the site of the former Walpole Arms public house.
 - An application has been approved at the site of the Lord Clyde public house, 9 Wooton Road. The application comprises the CoU at first and second floor from A4 to residential (C3) with the construction of 2/3 storey rear extension to accommodate A4 use at basement level with residential use at first and second floor.
 - A planning application for a comprehensive redevelopment of the Leegate shopping centre has been lodged which involves, in part, an element of A4 use. No decision has yet been made on this application.

- An application has been lodged for the demolition the Windmill Pub (125-131 Kirkdale) and rebuilding with A4 and A3 uses on ground floor, B1 (office use) on ground floor to the rear and 8 flats above. No decision has yet been made on this application.
- Following the fire at the Catford Bridge Tavern on March 1st, Solitaire Limited (who are the new owners of the Catford Bridge Tavern) intend to re-open the pub at the earliest opportunity. An application has been lodged which seeks to retain the Pub use at ground floor and lower ground floor but change the use at first and second floor to Use Class C3 (residential) as well as other associated works to repair fire damage. The applicant has stated that the residential units are required in order to supplement the pub income. Officers have requested further information from the applicant on whether the change of use at first and second floor would impact the viability of the pub. Officers have also requested more information to demonstrate that the sound insulation is adequate so that the residential use would not impact on the continued viability of the A4 use. The application has not yet been determined, but a decision is expected to be made in the next two months.

4.5 A Certificate of Lawful Development has been issued for the change of use of the basement and ground floors from A4 to A2 at 2-4 New King Street (the Harp and Erin public house). This application was considered to comply with the permitted development requirements that allow a change of use from A4 use to an A2 use if certain conditions are met.

4.6 The Mayor receives quarterly updates on the progress of the Greyhound pub, Sydenham, at the Mayor and Cabinet meetings. At the meeting held on 30th September 2015, the Mayor and Cabinet were informed that the Greyhound site had been in a poor condition since the stalling of development in 2013, which had resulted in an adverse and unacceptable impact upon the character of the Cobbs Corner Conservation Area and the streetscene generally. Building works recommenced in May 2015, and officers are continuing to work closely with the developers to ensure the rebuilding process is compliant with the Planning and Building Regulation approvals.

4.7 In addition to the information contained in paragraph 4.4, it should be noted that In May 2015, a planning application was submitted by Purelake proposing the construction of an extension to the western side of the building, and the formation of external stairs down to the basement located at the rear. Further information relating to the detailing of the proposed conservatory has been requested by officers. The application is due to be determined in November 2015.

- 4.8 An Article 4 Direction is a direction under Article 4 of the General Permitted Development Order which enables the Secretary of State or the Local Planning Authority to withdraw specified permitted development rights across a defined area. This means that any changes covered by Directions will be subject to a planning application, although this does not imply that any application relating to a public house identified as being worthy of protection will automatically be refused. Each planning application will be judged on its individual merits.
- 4.9 The Town and Country Planning (Compensation) (England) Regulations (2015) specifies whether a claim for compensation can be made for the diminution in the value of land directly attributable to the Article 4 Direction made and whether a claim for the same is restricted to within a certain timeframe. Whether a claim for compensation can be made depends on whether the development is 'prescribed' and how the Article 4 Direction was made (whether there was a delay of at least 12 months in confirming the Direction).
- 4.10 The change of use from A4 to A1 (shop), A2 (financial and professional services) and A3 (restaurants and cafes) as allowed through the General Permitted Development Order (2015) is not classed as prescribed development. Therefore, regardless of how the Direction is made, there is no time limit to restrict when a claim for compensation can be made for the diminution in the value of land if an Article 4 Direction was made to remove the Changes of Use allowed through the 2015 General Permitted Development Order. However, it is worth noting that the permitted change of use from A4 to A1, A2 and A3 is not permitted for five years of the building becoming a community asset and the permitted development right is suspended if the building is nominated as an asset (and the developer has been notified) until the nomination is determined. This is discussed further in section 6 of this report.
- 4.11 As a result of the compensation issues, officers would not recommend the blanket use of an Article 4 Direction. This recommendation was also included in the report to Members in September 2014. However, the Council has undertaken a responsive approach through applying Article 4 Directions to individual pubs under threat. The Catford Tavern and the Baring Hall Hotel have been protected through the responsive application of an Article 4 Direction.
- 4.12 In the case of the Baring Hall Hotel a compensation claim has been made by the owners for the diminution in the value of land directly attributable to the Article 4 Direction made as reported previously in December 2014. There has been no change in the position on this issue since the previous report in December 2014.

Protection of local pubs through assets of community value legislation

- 4.13 The Localism Act 2011 introduced a new power for an eligible local voluntary or community group to ask the Council to list certain assets as being of value to the community. If an asset is listed by the Council and then comes up for sale, the new right will give the eligible community interest group the right to be treated as a potential bidder to purchase the asset. The community group will have 6 months to put together a bid to buy the asset.
- 4.14 As of 29th September the following public houses have been successfully nominated as Assets of Community Value:
- Baring Hall Hotel, 368 Baring Road, Grove Park (registered 14/01/13).
 - The Honor Oak Pub, 1 St German's Road, Forest Hill (registered 13/11/13).
 - The Windmill Pub, 125-131 Kirkdale (registered 20/12/13).
 - The Golden Lion, 116 Sydenham Road, London SE26 5JX (date of registration unknown).
- 4.15 As of 29th September the following public houses had been nominated as assets of community value:
- Dacre Arms, 11 Kingswood Place London, SE13 5BJ.
 - Blythe Hill Tavern, 318 Stanstead Road, London SE23 1JB.
 - The Ladywell Tavern Pub, 80 Ladywell Road, London SE13 7HS.
 - The Talbot 2-4 Tyrwhitt Road, Brockley London SE4 1DQ.
- 4.16 The owners of the Windmill Pub appealed against the decision of the council to list it as an asset of community value. A hearing was held and the decision to list upheld.

Register of community venues

- 4.17 The update report of September 2014 noted that planning officers would create a questionnaire to be sent out to all pubs in order to better understand the spaces that are available for hire and to invite those venues to join the register of venues for hire.
- 4.18 Planning officers undertook a telephone survey in September 2014. Seventeen pubs requested inclusion on the Council's register of community venues and eight pubs that were already on the Council's register requested their details to be updated to update their venue capacity and offering. These pubs will be listed to appear on the Council's website within the next two weeks.

5. Financial Implications

- 5.1 There are no direct financial implications arising from this report.

6. Legal Implications

- 6.1 At present the change of use of a building from a drinking establishment (A4) to a use falling within Class A1 (shops) or Class A2 (financial and professional services) or Class A3 (restaurants and cafes) is granted permission by article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015. (Class A and Class B of part 3, Schedule 2 of the Order). Having said that, the change is not permitted for five years of the building becoming a community asset, by being entered onto a list of assets of community value (that is the list of land of community value maintained by a local authority under the Localism Act). The permitted development right is suspended if the building is nominated as an asset, until the nomination is determined.
- 6.2 The removal of the permitted prescribed development, as stated above, by a Direction under the Order on all drinking establishments within the borough, carries the risk of compensation claims. The making of such an order is subject to a separate procedure and principally involves assessments of expediency and amenity within a planning context.
- 6.3 Any application for planning permission must be determined with regard to the provisions of the development plan and to any other material considerations (section 70(2) of the Town and Country Planning Act 1990). The relevant policy considerations for the local planning authority in relation to retaining viable public houses have been set out in the report. That a building has been listed as an asset of community value is a material consideration and can carry substantial weight in the determination of that application, subject to planning policy and other relevant material planning considerations.

Background Documents:

Preserving Local Pubs, Sustainable Development Select Committee (2012)
<https://www.lewisham.gov.uk/mayorandcouncil/overview-scrutiny/Overview-and-Scrutiny-Reports/Documents/Preservinglocalpubsreview.pdf>