

Council - 18th November 2013

Notice of motion to Council – Protecting Community Pubs

Set out below is a notice of motion to Council on 18th November 2013 from Councillors I. Shires, D. Shires and Barker:

“Council recognises the important role local pubs play in the life of our borough by providing a community hub for residents to meet, relax, debate and do business.

Council notes with regret the decline of community pubs in recent years, as the use of properties for other means has become more financially lucrative.

Council supports campaigns by CAMRA to reverse this decline and put local pubs back at the heart of our communities.

Council calls on the Cabinet to reflect the Council’s commitment by:

- (i) supporting community groups who wish to register their local pubs as assets of community value;*
- (ii) submitting a request to the Secretary of State for Communities and local Government under the Sustainable Communities Act for full planning powers to be returned to the Council to allow it to prevent pubs from being converted to alternative uses; and*
- (iii) amending Walsall’s local planning policies to stipulate that no pub will be allowed to change use unless it is demonstrated that continued trading is not economically viable, the premises has been marketed as a pub unsuccessfully for a stipulated minimum period, and the change will not create a shortage of pubs within easy walking distance of the premises”.*

A Notice of Motion was submitted to the Council meeting on the 23rd September to:

“support the national ‘Fair Deal for your Local’ campaign, and welcome the Government’s commitment to introduce a statutory code of practice to ensure fair dealing by pub companies and for tied licensees; in particular to support Option 3 of the parliamentary Business, Skills and Innovation committee consultation, which gives tied pub tenants the ability to buy products from the open market and to pay a fair market rent for the building.

And to:

“submit the following proposal under the Sustainable Communities Act: ‘That the Government help protect community pubs in England by ensuring that planning permission and community consultation are required before community pubs are allowed to be converted to betting shops, supermarkets, pay-day loan stores or other uses, or are allowed to be demolished”.

Overview

Pubs can play a crucial social role in supporting local community interaction and activities to help maintain sustainable neighbourhoods; an economic role in contributing to the vibrancy and vitality shopping and commercial areas; and an environmental role in their intrinsic value to the cultural and historic heritage of local areas. Whilst the principle of protecting pubs for their community value is widely supported, it is important to recognise that the vast majority of pubs are run as businesses and need to be viable

to continue trading. The Campaign for Real Ale (CAMRA) has reported that 26 pubs are closing a week (a total of 1,300 a year) across the country. There are a number of large-scale and long-term social and economic factors that can be cited and attributed to the decline in pubs. These include competition from supermarket discounting of alcohol, changes to people's drinking habits and the ban on smoking in public areas, as well as pressures to realise higher value uses. Unless patterns and habits change the ability of the Council to reverse the decline of pubs within Walsall may be limited, but there are some potential actions that could make the Council's position stronger when trying to protect community pubs.

Assets of Community Value

The Localism Act 2011, which came into effect on 21 September 2012, creates opportunities for local groups to bid for buildings and land defined as community assets when the owner wishes to sell them. The legislation aims to help communities faced with losing local amenities and buildings that are important to them. Community interest groups, organisations and parish councils can nominate an asset to be included on a 'list of assets of community value'. This list is managed by the local authority and can cover all kinds of community assets including council properties.

The process by which buildings or land is listed is a legalistic one rather than a matter of policy and there is no scope to support a nomination where the legal requirements are not met. Walsall currently has one pub building listed as an Asset of Community Value (The Magic Lantern) and one failed application (The Red Cow), which lacked the information needed to demonstrate that there was a realistic prospect of the closed pub returning to its former use.

If the owner of a listed asset wants to sell the asset, a six-week interim moratorium period must be given for expressions of interest from the community and if a community group does say it wishes to acquire the property there will be a further four and a half months moratorium during which the asset cannot be sold, except to a community group. This period gives community groups time to develop a proposal and raise the required capital to bid for the property when it comes onto the open market at the end of the moratorium period. It is important to recognise that listing does not give a community group any right to acquire a property, and that once the moratorium period ends the owner of the asset can sell the asset to whoever he chooses and at whatever price.

It is also important to note that inclusion on the list of community assets places no restriction on what the owner can do with the property or use it for and that the effect of being on the list of community assets only relates to selling the property. Owners of the properties also have the right to appeal against the nominations, first to an officer of the Council and then to a tribunal. Another point worth noting is that in certain circumstances the council can be liable to pay compensation to listed property owners where they have suffered a cost (e.g. costs arising from a period of delay in entering into a binding contract to sell which is caused by the moratorium period). The Neighbourhoods Directorate currently provides help and support to those wishing to make a nomination and the Council has a webpage providing information. Further support is available through Walsall Voluntary Action (WVA) to those who wish to make a nomination and the organisation is also looking to promote the process to communities.

The Council continues to support interested parties by providing them with information on the nomination process. The Council does not offer practical assistance to prospective nominators of land/buildings (either in the form of help or finance), in order

to remain impartial as it performs the role of regulator, with responsibility for considering and determining applications, as well as dealing with appeals. If there is demand Council officers could look to provide training to members and/or interested parties on the process.

Relationship to the planning regime

It is important to recognise that the Assets of Community Value regime is separate from the planning regime. It is perfectly possible for a property that has planning permission for a different use but which presently satisfies the listing criteria and / or likely is to, to be listed as an as a community asset in future. Equally, it is possible that a property listed as a community asset could be granted planning permission for a use entirely different to the use under which the asset was listed, provided that was justified in planning terms (and it could prejudice the council's position to suggest that all changes of uses could be prevented).

The use of a pub or another community asset could only be restricted through the planning system if a change of use is subject to planning control. However, whilst most external works are likely to require planning permission, important changes of use do not. Since 2005 a pub (which would be in Class A4 of the Use Classes Order) has had permitted development rights to change to a shop (A1), professional and financial services (A2) and / or a restaurant / cafe (A3). Since May 2013 if a pub has floorspace of no more than 150 square meters it could be used – for up to 2 years - for a flexible use involving any or all of the following: as a shop, financial and professional services, a restaurant / cafe and also office / light industry (B1). In recent years Governments have tended increasingly to deregulate changes of use.

In this context there have been several pubs in the borough that have been converted or proposed to convert to shops without a need for planning permissions (except for external works). Not all of these might have been supported had there been a need for planning permission for change of use. The council would have been able to consider range of issues (such as the development of shops outside of existing centres) as well as the loss of pub facilities.

Sustainable Communities Act 2007

The Sustainable Communities Act 2007 provides a mechanism to ask the Government to consider changing planning law to make changes of use from pubs and other drinking establishments in Class A4 to other uses. As amended, it enables anyone to submit proposals to Government for changes to help improve the economic, social or environmental well-being of their area. The Government has to make a formal response, and if a proposal by a local authority is not accepted the authority can ask for the decision to be reviewed (by the Local Government Association).

The Government considers the Act to be a deregulatory measure; proposals are to be submitted via a website <http://barrierbusting.communities.gov.uk/>. Previous proposals under the Act to increase controls on changes of use (that have enabled the expansion of betting shops) have been rejected on the basis that the Government is committed to reducing the need for planning applications.

The Act requires that before a local authority submits a proposal it must consult affected parties and seek agreement to its proposal, and that it must have regard to the matters contained in the Schedule to the Act. Experience elsewhere indicates some scepticism about authorities' ability to save pubs, and a proposal to control changes of use is likely to generate opposition from pub operators and owners. Nevertheless, Members' concerns about the future of pubs are shared widely among other authorities and several have expressed support for the current campaign by CAMRA. At least one

other authority (Southampton) has been reported as intending to submit a proposal under the Sustainable Communities Act to bring all changes away from pub use under planning control.

The Council's Annual Monitoring Report could monitor the loss of pubs to retail through permitted development so we have more information about the impact of the regulations. It is also open to members to consult with affected parties on the proposal to make a submission under the Sustainable Communities Act asking Government to make changes of uses to public houses subject to planning control, so that all of the issues raised could be properly considered.

Walsall's Local Planning Policy

Where planning permission is required for development that would lead to the loss of a pub then the Council will apply current Walsall UDP 'saved' Policy LC8: Local Community Facilities.

Proposals involving the loss of local community facilities, including public houses, clubs and other meeting places, will only be permitted if it can be demonstrated that:

- I) There are other existing facilities, in an equally or more convenient location, which could accommodate any community activities displaced by the proposed development; or*
- II) A replacement facility could be provided in an equally or more convenient location; or*
- III) There is no longer a need for the facility, or for any other community use which could be appropriately provided on the site in accordance with other policies of this Plan; or*
- IV) It would not be possible to retain the facility, or provide an alternative community facility because, despite all reasonable efforts, this would not be viable.*

The reasoned justification recognises the importance of such facilities for community identity and the difficulty in replacing them when they are lost. Paragraph 8.37 of the UDP states that when considering applications for change of use of community facilities to other non-community uses, the Council will expect developers to provide detailed evidence to show compliance with Policy LC8.

Over recent years a number of 'change of use' or redevelopment applications have been submitted where the applicant is able to demonstrate that the pub has been vacant and marketed for some time. The most likely expression of need derives from the presence or absence and scale of objection to the application. If there is no significant community objection or no objection by someone who wants to use the site for another community use it could be accepted that there is no need and this criterion would be satisfied. This is often the case with such applications and it is therefore difficult to protect these facilities in light of the current market for pubs. The Council has to therefore, weigh up the loss of a community facility and the benefits of bringing a vacant unit or site back into use.

It is considered there are two main differences between existing policy and what has now been put forward:

1. The criteria in the notice of motion would all have to be met for an application to be approved (i.e. viability and the creation of a shortage of pubs), whilst existing UDP Policy requires any one of the criteria to be met (viability, or lack of need or replacement facility). The approach in the UDP is more appropriate as it would be unreasonable to refuse a change of use from a pub where it has been demonstrated that continuing pub use would not be viable. Therefore, it is not considered that a

change of planning policy is required. In addition, the creation of new policy or the amendment of an existing policy could not be done quickly (through a Supplementary Planning Document (SPD)). It would have to be undertaken through a Development Plan Document, which would require a formal legalistic process that would be likely to take 2 years. It would be most worthwhile if it were to consider all the development management used by the Council, but – given current work on the SAD and AAP - there are not the staff or other resources to do this.

2. Whilst the Notice of Motion begins to advance ideas about how viability might be assessed, the existing policy does not. Good practice on assessing viability has been identified in various planning and appeal decisions around the country. Some of these could be captured in an SPD that would explain what kinds of evidence would be required and what marketing would need to be undertaken. Public consultation on an SPD would give the guidance some status. The production of a SPD could only start after the Council has received a response from the Government in relation to the Council's submission to the Sustainable Communities Act as this potentially alters the proposals to which planning policy is applied.

The SPD could also be used to set out the council's view on how a designation or nomination as an Asset of Community Value might be taken into account in the determination of a planning application. Producing an SPD would have resource implications but could help to firm up the Council's position in protecting pubs and possibly other community facilities.

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**Simon Neilson
8 November 2013**