

WEST OXFORDSHIRE DISTRICT COUNCIL
ECONOMIC AND SOCIAL OVERVIEW & SCRUTINY COMMITTEE
THURSDAY 24 APRIL 2014

NOTICE OF MOTION – SUPPORT FOR LOCAL PUBLIC HOUSES

REPORT OF THE STRATEGIC DIRECTOR

(Contact: Dene Robson, Tel: (01993) 861481)

(Decisions on this matter will be recommendations to Council)

1. PURPOSE

To consider the Notice of Motion proposed by Councillor D S T Enright and seconded by Councillor G Saul at the Council meeting held on 26 February 2014 and referred to this committee for consideration and report back to Council.

2. RECOMMENDATION

That, the committee considers the Notice of Motion and makes recommendations to Council.

3. BACKGROUND

3.1. The following motion was proposed by Councillor D S T Enright and seconded by Councillor G Saul at the meeting of the Council held on 26 February 2014:

“Pubs are important local assets and West Oxfordshire District Council has a record of supporting pubs across the District. They are under threat as a result of a number of pressures including the economic situation, the structure of the tied beer trade, and high property prices.

The Council therefore resolves to create a really simple "toolkit" or online nomination form so parishes and other bodies can nominate pubs as assets of community value, and promote the power to relevant bodies, as an enhancement of the details already available at <http://www.westoxon.gov.uk/residents/communities/community-rights/>.

In addition the Council supports the introduction of a statutory code, as follows, and will write to CAMRA and our MP to share our support:-

- 1. The Beer Tie, whereby landlords can only buy products from their PubCo, works for some licencees. However, for many others it means they can only buy limited products at inflated prices. We want every landlord to have the choice of whether to go free-of-tie. This would allow licencees to operate in a re-constructed market which would actually be more competitive.*
- 2. When a new licencee takes over a pub, or when an existing rent contract expires and is renegotiated, there should be a fully transparent and independent rent review completed by a qualified surveyor.*
- 3. There must be a truly independent body to monitor the regulations and adjudicate in disputes between licencees and pubcos”.*

3.2. The Council decided to refer the motion to this committee for consideration, prior to it being determined at the May 2014 meeting as it wished for more information to be presented to help councillors consider the issue.

The Community Right to Bid (Assets of Community Value)

- 3.3. The purpose of the Community Right to Bid is to provide an increased opportunity for people to bid to buy and take over the running of assets that are of value to the local community. This right came in to force on 21 September 2012.
- 3.4. The legislation gives local communities a legal right to nominate a local amenity as an asset of community value. This action then requires the local authority (the District Council) to maintain a list of assets of community value that have been nominated. The assets could be currently owned by the local council, other public body, private company or an individual. There are a wide range of such assets that can be deemed to enhance the community's social wellbeing including a village shop, swimming pool, library, local pub open spaces etc. The right to bid can be used by a local voluntary/community group, parish council or neighbourhood forum.
- 3.5. The Act specifies various criteria in determining whether land is of community value and there are some categories of assets that are excluded from listing e.g. residential property.
- 3.6. When listed assets come up for sale or change of ownership, the Community Right to Bid then gives community groups the time to develop a bid and raise the money to buy the asset when it comes on the open market. Unless an exemption applies, the owner will only be able to dispose of the asset after a specified time period has expired. It is intended that the trigger of a pause in the disposal process will help communities to build a business case and seek funding that will enable them to compete on the open market to buy a local asset. In turn, it is hoped that this regulated process will enable a community response to form in addressing the loss of local facilities through action that will keep important local facilities open, transforming their use and drawing in new business models that will generate income and a sustainable future approach.
- 3.7. The Localism Act 2011 and The Assets of Community Value (England) Regulations 2012 prescribe how the local authority must implement the new Community Right to Bid. There are definitions and procedural direction applied to the following:
 - What constitutes an asset of community value;
 - What constitutes a local connection with land in a local authority's area and the eligibility of voluntary or community bodies;
 - The contents of community nominations;
 - The procedures to be followed when considering whether to list land (including the time period for decision-making (eight weeks) and notice requirements;
 - The procedure to be followed in conducting a listing review in response to an owners request following a listing decision and the handling of the owners further right to appeal against a listing review through a tribunal process; and
 - The right of private owners to claim compensation for loss and expense incurred through the asset being listed or previously listed. As part of the compensation provisions, the local authority must follow a further procedure in cases where a compensation review is sought and there is potential for the challenge to the compensation review to result in an independent appeal through a tribunal.

- 3.8. There are implications for the council in terms of the introduction of these areas of work. The council is required to:
- Set up a process to enable local community and voluntary groups to nominate assets;
 - Maintain and publish a list of Assets of Community Value (and a list of failed nominations);
 - Introduce an appropriate decision-making process that oversees what is essentially an administrative process but will require judgement in applying the criteria that govern the inclusion of items on the list;
 - Issue appropriate notices in connection with the administration of Assets of Community Value (owners and occupiers of listings; and Parish Councils);
 - Administer the appropriate land charge for listed assets;
 - Establish and monitor a moratorium process so that when an asset from the list comes on to the market, community groups have time to register an intent to bid and then potentially form a business plan that can underpin an attempt to purchase the asset;
 - Arrange an internal review process that can handle appeals against listing decisions and that draws on staff members that are separate to those used in guiding any decision-making on the original listing and provide representation at any subsequent Tribunal process;
 - Operate a compensation scheme to compensate owners for loss or expense incurred as a result of listing and complying with any of the procedures required by the scheme; and
 - Arrange an internal review process for compensation decisions (again using separate staff to the original compensation decision-making) in cases where an owner is not satisfied with the authority's response to the compensation claim. The further consideration of a case through a Tribunal process may also ensue.
- 3.9. The Government's Non-Statutory Advice Note for Local Authorities comments that the Community Right to Bid Provisions"do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However, the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case".
- 3.10. In terms of the more general policy context in West Oxfordshire for how the Council seeks to protect community assets (including pubs), it is relevant to review an extract of the Council's relevant planning policies. Services and facilities (including pubs) in villages are afforded a degree of protection from change-of-use through the relevant planning policy summarised at Appendix I of this report.
- 3.11. At a Cabinet meeting held on 12 December consideration was given to the impact of various aspects of the Localism Act 2011 and a number of appropriate procedures and decision making arrangements were agreed to ensure that the council was able to effectively discharge its responsibilities. A copy of the relevant minute from that meeting is attached at Appendix 2 to this report.

- 3.12. Since the introduction of the legislation the following three public houses have been listed as Assets of Community Value:
- Gardiner Arms, Tackley
The Carpenter's Arms, Middle Barton
The Quart Pot, Milton under Wychwood
- A further two public house nominations as assets of community value are currently being processed and these will be determined before the date of the Overview and Scrutiny Committee meeting.
- 3.13. In terms of the promotion given to the Localism Act Community Rights provisions, the following considerations are relevant. As part of the consideration given to the Cabinet Report (12 December 2012) which introduced the Localism Act and the new Community Rights, Cabinet was invited to provide a steer on the extent and prominence of the publicity given to the new Community Rights. Cabinet noted the relevant publicity developed at the date of the report and resolved that the further publicity, information and support to accompany the implementation of the Localism Act's new Community Rights be undertaken through the Council website and at the Town/ Parish Council Forum.
- 3.14. The Council's officers have given briefings on the Localism Act Community Rights at three Town/ Parish Council Forums and at a District Councillor Briefing Session in November 2013. Additionally, Council officers have worked with a number of parish and town councils in advising on potential nomination cases.
- 3.15. The Notice of Motion proposes that the Council "*...resolves to create a really simple "toolkit" or online nomination form so parishes and other bodies can nominate pubs as assets of community value, and promote the power to relevant bodies, as an enhancement of the details already available at* <http://www.westoxon.gov.uk/residents/communities/community-rights/>.
- 3.16. In considering possible changes to the asset nomination process (eg a toolkit or online form) it is now possible to draw on experience gained in dealing with early asset of community value nominations. Any new approach must support the requirements imposed on the decision-making process for Asset of Community Value nominations. The nomination process must capture defined information so that a proper decision can be taken and a record kept. The information submitted must be available to answer queries submitted from the property owner or their representatives. Additionally, it is useful for the nomination process to provide for the return of a sketch plan or map where this helps describe the nominated property/ land and its defined boundaries.
- 3.17. Currently, the Council supplies a Word version of the nomination form on request (our website includes PDF documentation). The advantage of this step lies in the early contact being established with the local community that is forming a case for a nomination. This gives an opportunity for a relevant Council officer to work with the community in looking at an asset where community protection is being sought and to consider the best ways of achieving this. The Council is then able to signpost to sources of help and to advise on useful evidence/ information to set out in an ACV nomination. This interaction can help deliver an effective nomination that sets out the case for listing to best effect.
- 3.18. Council Officers have been careful to manage community expectations in connection with the new community right to bid through the provision of clear information on what it actually means. The ability to nominate assets of community value and then bid for such assets does not constitute a right to buy.

There is a significant route to be traversed between nominating an asset and actually securing the continuation of a service or community facility through buying a property on the open market.

- 3.19. Ultimately, the effectiveness of any attempt to preserve and develop local facilities (including pubs) through the asset of community value route will hinge on a co-ordinated and proactive community action coming forward. In any given case, the willingness of the Town or Parish Council (or potentially other community group) organising an appropriate and co-ordinated response and the appropriate business planning to secure the purchase of an asset is the real action that has scope to protect a valued asset. There are sources of help that can be drawn in to assist communities in this type of endeavour – Government provides funding to business partners (such as Pub is the Hub and the Plunkett Foundation) to support their work in helping communities to bring their pubs into community ownership.

Other Issues

- 3.20. In respect of the second part of the Notice of Motion: these matters are outside of the council's control. However the council could potentially take a campaigning stance on such matters if it so wished. For example, the District Council could determine that it supports campaigns such as the one here from the Campaign for Real Ale (CAMRA) which focuses on the beer tie:
<http://www.camra.org.uk/beertie>
- 3.21. Another potential opportunity for the Council to make representations on the issues affecting pubs would be to use the Barrier Busting Portal to tell Central Government about the barriers faced by pubs – see link here:
<https://barrierbusting.communities.gov.uk/who>.
- 3.22. Other legislation is in place such as the Sustainable Communities Act 2007 that gives an opportunity for Councils to submit proposals to central government to remove legislative or other barriers that prevent them from improving their area's wellbeing. Such proposals can be concerned with anything that could improve the economic, social or environmental wellbeing of the area. Under the Sustainable Communities Act, Councils must consult representatives of the local community and agree the proposal with them before it can be submitted under the Act. The proposal would then be submitted through the Barrier Busting Portal.
- 3.23. CAMRA has invited the District Council (letter of 24 February 2014) to endorse its Sustainable Communities Act Proposal that seeks to protect community pubs. A copy of the CAMRA proposal is included at Appendix 3. The Proposal seeks central Government action to “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 and pay-day loan stores or other uses, or are allowed to be demolished.”
- 3.24. The Committee can report back to Council on its views in relation to CAMRA's Sustainable Communities Act Proposal and include an assessment of whether it is relevant for support and endorsement from West Oxfordshire. The extent of local pubs in the District which would be afforded a protection through such policy is perhaps limited due to the character of the District's settlements, but it may be relevant to a restricted number of cases in some communities.

3.25. The Committee is now invited to return to the Notice of Motion set out in paragraph 3.1 and to consider making recommendations to Council in light of the further information provided in this report and the supporting appendices.

4. ALTERNATIVES/OPTIONS

None applicable

5. FINANCIAL IMPLICATIONS

None applicable

6. RISKS

None

7. REASONS

To meet the Council's specific aim to sustain vibrant, healthy and economically prosperous towns and villages.

Andrew Tucker

Strategic Director

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Date: 4 April 2014

Background Papers:

None

Planning Policy – Extract

WODC Local Plan Policy: TLC-12 : Protection of Existing Community Services and Facilities, which states that:

Development proposals should not result in the loss of useful local services and facilities unless it can be demonstrated that:

- The existing use is not viable; or
- Adequate and accessible alternative provision remains or will be provided.

The forthcoming Local Plan Policy (Draft Local Plan – October 2012) elaborates on this further in **Core Policy 15 - Local Services and Community Facilities** by stating that:

The Council will promote the development and retention of local services and community facilities to promote social interaction and healthy inclusive communities.

Proposals that would result in the loss of community facilities and services will only be supported where it can be clearly shown that appropriate alternative provision of at least equivalent suitability and accessibility, particularly by foot, will remain or that the existing use is no longer required or viable and is incapable of being made viable or adapted for other community uses. Where possible a robust marketing exercise will be required to demonstrate a lack of commercial or community interest in continuing the community facility or service.

Commentary:

The above policy does not preclude change-of-use of services and facilities (including pubs) to e.g. residential, but does place a fairly onerous Planning test upon proposals, only allowing the loss of a village pub if it can be demonstrated that the pub is not viable or an alternative will be provided. This policy has successfully been used in the District to resist the loss of village pubs.

108. THE LOCALISM ACT 2011 – NEW COMMUNITY RIGHTS

The report of Andrew Tucker, Strategic Director, outlining new community rights introduced in the Localism Act and seeking consideration of appropriate procedures and decision making arrangements to allow the Council to effectively discharge its responsibilities was received.

Mr Langridge introduced the report and explained that the recommendations provided a framework to drive the localism agenda. Mr Langridge indicated that it was difficult to predict which aspects of the legislation would be most used. It was highlighted that the Community Right to Bid had the potential to protect assets, such as public houses and other community resources of value, within the district. Mr Langridge emphasised the links with the planning process and the need for a collaborative approach where possible.

Mr Langridge then proposed the recommendations subject to the deletion of the bracketed words in recommendation (f) and recommendation (n) being that initial publicity be via the Council website and the annual town/parish forum. Mr Robinson seconded the proposal.

DECISIONS:Neighbourhood Planning and the Community Right to Build

- (a) That the relevant Strategic Director, in consultation with the Cabinet Member with responsibility for Strategic Planning, be authorised to determine straightforward proposals for the designation of neighbourhood areas, i.e. those not falling within (c) below.
- (b) That, following the completion of the required consultation undertaken in accordance with The Neighbourhood Planning (General) Regulations 2012, Chipping Norton be recognised as a designated neighbourhood area pursuant to the Town Council's area application (April 2012).
- (c) That the Cabinet determines Neighbourhood Plan/ Community Right to Build areas in cases where the proposed area relates to two or more parishes; a geography that does not fit parish boundaries; or where in the opinion of the Strategic Director, the suggested area is contentious (perhaps due to the inclusion of overlapping areas represented in separate proposals).

The Community Right to Bid (Assets of Community Value)

- (d) That the core management and administration of the new Community Right within the Council's Planning and Sustainable Communities Service be noted.
- (e) That the Head of Planning and Sustainable Communities, in consultation with the Cabinet Member with responsibility for the Local Economy and Communities, be authorised to make listing decisions on nominations of assets of community value, in accordance with the relevant statute and Government guidance.
- (f) That the Cabinet be responsible for conducting any reviews of listing decisions as appropriate.

- (g) That the Head of Planning and Sustainable Communities, in consultation with the Head of Finance (GO Shared Services East), be authorised to consider and determine claims for compensation from asset owners for losses and expenses that arise as a result of assets being listed.
- (h) That the relevant Strategic Director (Development) in consultation with the Cabinet Member for Resources be authorised to consider and determine requests for the review of compensation determinations.
- (i) That the development of relevant publicity (including website material) that meets the Localism Act requirements for establishing and publicising the new Community Right be noted.

The Community Right to Challenge

- (j) That the management of cases brought forward under the Community Right to Challenge through the Council's Business Improvement and Change Service as a complementary service to the provision of expert advice on procurement be noted.
- (k) That the relevant Strategic Director, in consultation with the Cabinet Member with responsibility for Resources, be authorised to determine Expressions of Interest.
- (l) That the Community Right to Challenge Policy (set out in Appendix 1), outlining the Council's approach to the implementation of the Community Right to Challenge and the link from Expressions of Interest to potential procurement exercises that must then follow relevant regulations, be approved.
- (m) That the development of relevant publicity (including website material) that meets the Localism Act requirements for establishing and publicising the new Community Right be noted.

Localism Act New Community Rights

- (n) That further publicity, information and support to accompany the Council's implementation of the Localism Act's new Community Rights be undertaken through the Council website and at the Town/Parish Council Forum.

REASONS: It was considered that the decisions ensured that the Council was in a position to effectively discharge its statutory responsibilities under the Localism Act.

OPTIONS: None appropriate.