

Agenda item:

Title of meeting: Cabinet

Date of meeting: 27th July 2017

Subject: APPEAL: DECISION NOT TO LIST AS AN ASSET OF
COMMUNITY VALUE
Eldon Arms Pub

Report by: Planning Policy Manager

Wards affected: St Thomas

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 This is a report on the outcome of the review of a decision to not list the Eldon Arms Pub as an Asset of Community Value, in accordance with the Localism Act 2011, together with a recommendation on whether to allow the appeal or not.

2. Recommendations

The Cabinet is recommended to:

- 1. Decline to list the Eldon Arms Pub as an Asset of Community Value.**

3. Background

- 3.1 The Council received an Asset of Community Value nomination in respect of the Eldon Arms public house, Southsea on 12th December 2016. The city council assessed the nomination against the guidance set out in the `Policy for defining Social Interests/Wellbeing` which was adopted by the council on 4 February 2013. The tests in the guidance reflect those set out in the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
- 3.2 Portsmouth City Council refused the nomination for the Eldon Arms to be listed as an Asset of Community Value on 23 March 2017 on the grounds that the use of the building does not further the social well-being or interest of the local community.

- 3.3 Guidelines set out in the Council's `Community Right to Bid` guidance allow the nominating group (The Eldon Arms Community Preservation Society) to seek a review of the decision not to list the Eldon Arms as an Asset of Community Value through the council's Cabinet. The review of the original decision is an internal officer review of the original decision and is set out below.

4. Review of the Decision

- 4.1 I have, in my review of the decision, considered the original officer report (dated 23rd March 2017), together with the letter of the applicant seeking a review (dated 19th April 2017). The criteria for assessing the listing of an Asset of Community value in the Council's guidance are set out below:-

1. The extent to which the approval of the nominated site would enhance the social interests and social well being of the local community because in its absence the local community would be deprived of land or a building that is essential to the special character of the local area and provides:
 - a. A place to meet and socialise, or
 - b. A place to shop, or
 - c. A recreational, sporting or cultural facility
2. The definition of the extent of the local community will depend on the nature of the use and each case will be considered on its merits, with particular reference to the character and heritage of the local area, its community cohesion and its sense of belonging.
3. The City Council will have regard to the realistic prospect of the continued or resumed use of the asset within the next five years and in particular and where it is a matter relevant to that use, the commercial viability of the proposal (including the ability to raise funds) and the sustainability of that use.

5. Assessment against Criteria 1 and 2

- 5.1 The test provided by criteria 1 has a number of different elements
- i. Whether the use enhances the social interests and social well being of the local community
 - ii. Whether its absence would deprive the local community of a building that is essential to the special character of the local area
 - iii. Whether it provides a place to meet and socialise/a place to shop; or a recreational, sporting or cultural facility.
- 5.2 Criteria 2, in my view, amplifies the definition of special character by referring to the character and heritage of the local area, its community cohesion and sense of belonging.

- 5.3 As a public house, the Eldon Arms provides an opportunity to enhance the social interests and social well being of the local community. The nominating group provide information on the clubs and activities which take place at this venue. However, the purported high-level of activity from the different users was not borne out by officer visits to the venue.
- 5.4 It needs to be considered if it is '*essential*' to the special character of the local area. Special character comprises a number of aspects including
- i. The contribution the physical building makes to the character of the area
 - ii. The function it plays in meeting the needs of the community (ie. its contribution to community cohesion and sense of belonging)
 - iii. The number of places making up the special character - is it one of a kind and thus essential to the character or one of a number?
- 5.5 In relation to i) above the Eldon Arms is locally listed (an undesignated heritage asset) and lies within King Street Conservation Area. This means that any planning application to make changes would need to take this into account and would be a material consideration. It forms a positive feature in the character of the street scene. However, its contribution to special character is protected through another means and not related solely to its current use.
- 5.6 Criteria ii) above seeks to judge how much of a role it plays in meeting the needs of the community through supporting social cohesion and sense of belonging. The relatively low levels of patronage observed, indicate that it is not essential to the local population as they do not visit in large numbers. Also, there are other public houses close by (the King Street Tavern and the Raven) which have higher levels of patronage suggesting that they play a bigger role in providing a sense of belonging and community cohesion to the local population.
- 5.7 The Eldon Arms therefore does provide a place to meet/socialise and a venue for recreation, sport and culture. However, it is not judged to be '*essential*' to the special character of the local area through its lower levels of local patronage and the presence of alternative facilities located close by which are better used. The character of the building itself is protected to an extent through its location in a conservation area and local listing. Overall, it is therefore considered that the Eldon Arms does not meet the test of being essential to the special character of the local area.

6. **Assessment against Criteria 3**

- 6.1 There have recently been a number of changes in landlord/landlady in recent years and indeed a vacancy has recently been filled and the public house re-opened. Enterprise Inns who own the freehold have actively sought to re-open the public house and have not sought to discontinue its use or close the venue. This suggests that the facility has on-going viability even with seemingly low levels of patronage. It therefore seems that there is a reasonable prospect of this use continuing over the next five years. Therefore the nomination meets this criteria.

7. Letter of objection

7.1 Various points are made in the objection letter. Most points material to this review are referred to above. However, in addition, the letter of objection refers the following points which warrant a detailed response:

- 1) The third objection refers to the legislation, defining land of community value. The Council's policy is more explicit and requires an examination of the factual circumstances which suggest that the asset does not further the social interests or social well-being of the local community - being one of a number within a close proximity, and having (as observed by the investigating officer) notably low patronage;
- 2) Mention is made of judicial dicta in case CR/2014/019, stating that the pub (in that case):

plainly furthered the social wellbeing or interests of the local community. Not only was the pub used by locals for eating and drinking (albeit that their numbers were small), various clubs and other bodies used it

- 3) There is no evidence in this application of the Eldon Arms being used by clubs and other bodies.
- 4) Reference is made to the patronage levels of the Eldon Arms. This is relevant to our local criteria, as is described above. However, it is also relevant when considered against the test of the legislation considered in isolation from the local criteria. An asset whose use is minimal (and in relation to such use, no adequate evidence of use in the recent past has been shown), and which is near to others of a similar nature in the local vicinity, does not act as a hub or promoter of social interests, or social well-being enough to form the basis of a conclusion that it furthers them. I conclude that the Eldon Arms does not further the social interests or social well-being of the local community - and the evidence submitted within the nomination, or gathered as part of a review of that evidence, does not substantiate the objectors' contention.

8. Conclusion

8.1 Overall, it is therefore considered that the Eldon Arms does not further the social well being or social interests of the local community or meet the test of being essential to the special character of the local area as set out in Portsmouth City Council's Policy for Defining Social Interests/Well-being and does not. The review therefore supports the recommendation made in the report dated 23rd March not to list the Eldon Arms as an Asset of Community Value.

9. Legal comments

9.1 Legal comments are contained within the body of this report.

10. Finance comments

10.1 There are no financial implications.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Decision report - Eldon Arms (Asset of Community Value Application)	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: