

Agenda item:

**Decision maker:** CABINET

**Date of meeting:** 5<sup>th</sup> February 2015

**Subject:** Public Houses

**Report by:** Alan Cufley Head of Corporate Assets, Business and Standards

**Wards affected:** All

**Key decision (over £250k):** No

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**1. Purpose of report:**

- 1.1 This report is written in response to Notice of Motion b) - Public Houses, City Council Meeting 11<sup>th</sup> November 2014. (minute 103/b)
- 1.2 The report sets out a response to this Notice of Motion and the options already available to the Council in trying to protect local pubs from being sold.

**2. Recommendations:**

- 2.1 That the Cabinet notes the Community Right to Bid and will support the community to pursue this option where a public house can be shown to be a viable community asset.
- 2.2 That the Cabinet Member for PRED considers the purchase of public houses as part of its commercial property portfolio, if and when they can be shown to provide the greatest available return.

**3. Background:**

- 3.1 The following notice of motion was resolved at the Council meeting of the 11<sup>th</sup> November 2014:

*Council asks the Cabinet to explore the possibility of protecting the public houses of Portsmouth by this Council purchasing any pubs that are being sold off by the breweries or pub companies rather than them becoming supermarkets or developed into flats, therefore being lost forever. Some of these buildings are historic and are part of our heritage. We must prevent them from disappearing.*

*Then this Council will hold the asset of the building and make money from the ongoing rent as landlord.*

*The tenant as the licensee who would be freed up from the constraints of being tied to a brewery for supplies where they are restricted on brand and price.*

- 3.2 As in many towns and cities across the country, Portsmouth has experience of the closure of the neighbourhood pub mirroring a well-documented national trend with 31 pubs closing in Britain every week<sup>1</sup>.

Some of the main reasons for closure can be summarised as:

- 3.2.1 Fewer people visit pubs during times of recession
  - 3.2.2 Tastes and lifestyles change over time, with more people now drinking wine instead of beer
  - 3.2.3 Restaurants and cinemas now provide stiff competition in the evening and night-time economy
  - 3.2.4 More people are drinking at home
  - 3.2.5 Beer prices in pubs have risen much faster than those in supermarkets
  - 3.2.6 The pub companies are charging high prices for their beer to tied landlords, and in some cases are charging above the market value in rents.
- 3.3 Portsmouth has historically had a large number of pubs given the naval and ship yard presence, however, as lifestyles and the market have changed over time this number has naturally declined.
- 3.4 Although pubs play an important role in local communities and are an important social institution, a large number of pubs still remain in Portsmouth. Therefore whilst it can be argued that a pub closure results in the loss of an important local facility, the overall impact may be less in this city.
- 3.5 Many of the pubs in Portsmouth outside of the designated town and local centres are located within primary residential areas. Therefore, the provision of residential units is generally supported by the planning authority and is deemed an ideal future use.
- 3.6 The vast majority of the pub sales in Portsmouth can be categorised as 'bottom-end freehold' transactions, this is where a pub is sold without accounts, sold in a

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<sup>1</sup> [www.pubmatters.org.uk](http://www.pubmatters.org.uk) - CAMRA 2014 campaign to save local pubs

forced sales situation, or vacant / closed. Statistics show that the vast majority of buyers in this market have been individuals looking to operate as a freehouse or a restaurant or for conversion to a single residence<sup>2</sup>. With the rise in residential values, sales returns achieved for alternative uses are very much in line with those for continued pub use.

### Planning Position

- 3.7 A pub is an A4 use and, as such, no planning permission is needed to change to A1(shop), A2 (financial services) or A3 (restaurants and cafes) . [For the time being, there is also permission granted by order of the Secretary of State to change up to 150sq. m from a pub to B1(offices) for a period of up to two years]. Therefore, the local planning authority has no control if the owner of a pub wishes to convert their premises in this way. However, this also allows pubs to diversify to provide food without the need to apply for planning permission.
- 3.8 Planning permission is required for a change of use to housing (C3 or C4). The majority of applications of this type received in Portsmouth involve pubs which have already ceased trading. In these cases it is often considered better to bring the unit back into use (usually as housing given the largely residential location of many out of centre pubs) rather than leave an empty unit. This conversion then enables the city to meet our needs for new housing.

### Assets of Community Value (Community Right to Bid)

- 3.9 With the introduction of the Localism Act 2011, including the provisions on *Community Right to Bid*, and regulations, communities now have the opportunity to 'stop the clock' on the sale of assets listed as having community value, such as a local pub or shop, for an initial period of 6 weeks in which community bodies may express an interest to purchase the asset, with a full period of six months. This window of opportunity will give communities the time they need to create a business plan and gather the necessary finances to bid for the asset.
- 3.10 Under the legislation, local community groups can nominate properties to be listed as 'assets of community value'. A submitted nomination would be assessed by Planning against the city council's adopted Community Right to Bid policy (see Appendix). Furthermore, in accordance with the council's adopted Community Right to Bid guidance, in the event of an unsuccessful listing decision the community have the right of appeal to the Cabinet. At the present time there has been only one Community Right to Bid nomination, which was unsuccessful and was not appealed.
- 3.11 A property which is successfully accepted as an 'asset of community value' will, if being sold for anything other than an unbroken continuation of the same business purpose, be subject to a six week interim moratorium period where only an eligible community interest group can buy the asset. If a community interest group 'expresses interest' in buying the asset during this time, a six

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<sup>2</sup> Survey of Pub Prices December 2014 - Fleurets Leisure Property Specialists

month full moratorium period is activated, within which only an eligible community interest group can buy the asset.

- 3.12 Owners of listed assets can claim compensation from the council for losses and expenses incurred wholly as a result of the property being listed, including legal expenses from successful Tribunal appeals against the listing. Therefore, as part of the city council's Community Right to Bid policy, in order to be listed the property needs to have a 'realistic prospect' of continued or resumed use as a community asset within five years. To demonstrate viability, the city council would expect a viable outline business plan to be included within any Community Right to Bid application.

#### CAMRA's 'Pubs Matter' campaign

- 3.13 CAMRA (Campaign for Real Ale) is calling for changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) Order 1995 to remove the public houses from the A4 Use Class and place them in the a class of their own (Sui Generis).
- 3.14 In addition, the 1995 Order allows the demolition of buildings (including pubs) without planning permission provided that a 'Prior Notification' application is made to the Local Authority. CAMRA is also seeking to change the legislation to ensure that planning permission is required for the demolition of pubs.
- 3.15 To date 66 MPs have signed up to the campaign and a primary motion has been tabled calling for the Government to amend planning laws to protect local pubs.

#### The Small Business, Enterprise and Employment Bill 2014-15

- 3.16 The Small Business, Enterprise and Employment Bill 2014 recognises, as part of its proposed legislation, the decline in pubs and the hardships being felt by publicans. It seeks to make provision for the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants.
- 3.17 The Bill is intended to enable tenants of large pub owning business to enjoy market rent-only options and for them to be able to purchase the drinks they wish to sell from any provider, no longer being tied to their landlord or their landlord's nominated supplier. These measures should enable pub operators to be able to drive down operating costs and hopefully enable more pubs to continue to operate.

## **4. Options**

- 4.1 Many of the problems causing the closure and redevelopment of pubs are national issues, not local ones which makes the ability to influence and control this difficult. It could be argued that Portsmouth's historically high concentration

of pubs is reducing to find a natural equilibrium of pubs to population in line with classic supply and demand theory.

- 4.2 As mentioned above the vast majority of visible pub property sales in Portsmouth relate to those that have ceased trading due to failure of the business. Whilst the purchase of a pub for an investment is possible the sales of assets in Portsmouth that form the basis of the notice of motion are those that have ceased trading and are therefore not viable. In addition to this the Council would need to be very clear on its willingness to participate in a market that would give direct conflict and contradiction to its Public Health role and responsibilities.
- 4.3 Aside from the direct purchase of pubs there are a number of options this Council could consider when looking to preserve the local pub:
- a. Do nothing - recognise the economic situation facing the pub industry nationally.
  - b. Actively promote the options already available, through CAMRA, Community Right to Bid, and the Small Business and Enterprise Bill 2015.
  - c. Introduce a requirement in the Local Plan for a viability test for applications for a change of use from a public house to housing
- 4.4 Option b would involve the city's Members of Parliament getting behind CAMRA's campaign and their motion to amend planning legislations and continue to the support of the relevant sections of the Small Business and Enterprise Bill 2015. It would also see active promotion of the Community Right to Bid to ensure that the community has the greatest possibility of securing those pubs it believes forms vital community infrastructure.
- 4.5 Option c requires the introduction of viability testing, as adopted by some local authorities, could be introduced as part of the review of the Portsmouth Plan. Where an application includes an existing pub a viability test is provided which would be expected to show whether the pub is a viable business and, if it is, argue that a dedicated owner should be found who could take the business forward. The results of the test would be a consideration in the determination of any planning application for a change of use.
- 4.6 CAMRA have developed a suitable viability test. However, as described above, given the high population density environment of Portsmouth it would be hard to justify classifying a local pub as a key community facility. Furthermore, the majority of planning applications received by the Council are in relation to pubs that have already closed. This makes it much harder to argue that the pub was a viable business. It is also quite possible that the introduction of a viability test will result in pub owners deliberately running down the business to the prove the pub is not viable. This could actually make a bad situation worse, putting off anyone who may have been interested in the pub as a going concern.

**5. Equality impact assessment (EIA)**

- 5.1 Covered by Acquisition and Disposal of Land and Property EIA already in existence.

**6. Legal comments**

- 6.1 The relevant legal considerations are appropriately referred to in the report.

**7. Finance comments**

- 7.1 In the event that a public house can be shown to be a viable community asset, it is anticipated that any support for a Community Right to Bid, would be met from within existing budgets. However if a successful compensation claim was likely to be made against the Council, as discussed in paragraph 3.12, a further report would be need to be forthcoming identifying the funding.
- 7.2 The Head of Corporate Assets, Business and Standards already has delegated authority to complete the purchase of commercial assets for investment purposes, providing the City Council have approved such a purchase, and the relevant expenditure forms part of the PRED Capital Programme.
- 7.3 This approval would be subject to the completion of a detailed financial appraisal being signed off by the Head of Finance and Section 151 Officer, which demonstrates that the proposed purchase delivers the best return for the Council.
- 7.4 As a result, in the event that the Council wishes to consider the direct purchase of a public house in the future, a report to Full Council would be required.

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Signed by: Alan Cufley Head of Corporate Assets, Business and Standards

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

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Signed by: Councillor Donna Jones, Leader of the City Council

## **Appendix**

### Adopted policy for defining social interests / well-being

When assessing nominations for inclusion on the Register of Assets of Community Value the City Council will have regard to the following criteria:-

1. The extent to which the approval of the nominated site would enhance the social interests and social wellbeing 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:
  - i. a place to meet and socialise, or
  - ii. a place to shop, or
  - iii. 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.