DOVER DISTRICT COUNCIL

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4 September 2018

Dear Councillor

NOTICE OF DELEGATED DECISION – (DD07 18) REVIEW OF ASSETS OF COMMUNITY VALUE LISTING FOR THE SPORTSMAN PUBLIC HOUSE, THE STREET, SHOLDEN, DEAL CT14 0AL

Please find attached details of a decision taken by Mr David Randall, Director of Governance and Monitoring Officer, to keep The Sportsman Public House in Sholden on the Council's list of Assets of Community Value following a request for a review.

As a non-Key Officer Decision, call-in does not apply (paragraph 18(a) of Part 4 (Rules of Procedure) of the Constitution).

Members of the public who require further information are asked to contact Kate Batty-Smith on 01304 872303 or by e-mail at democraticservices@dover.gov.uk.

Yours sincerely

Kate Batty-Smith

Democratic Services Officer

ENCL

1 **NOTICE OF DELEGATED DECISION - (DD07 18) REVIEW OF ASSETS OF COMMUNITY VALUE LISTING FOR THE SPORTSMAN PUBLIC HOUSE, THE STREET, SHOLDEN, DEAL** (Pages 2-12)

Decision Notice

Delegated Decision

Decision No:	**DD07**
Subject:	**REVIEW OF ASSETS OF COMMUNITY VALUE LISTING FOR THE SPORTSMAN PUBLIC HOUSE, THE STREET, SHOLDEN, DEAL CT14 0AL**
Notification Date:	**4 September 2018**
Implementation Date:	**3 September 2018**
Decision taken by:	**David Randall, Director of Governance and Monitoring Officer**
Delegated Authority:	**Delegation 93 of the Scheme of Officer Delegations (Section 6 of Part 3 (Responsibility for Functions) of the Constitution**
Decision Type:	**Executive Non-Key Decision**
Call-In to Apply?	**No (*Call-in does not apply to Non-Key Officer Decisions*)**
Classification:	**Unrestricted**
Reason for the Decision:	A request for a review of the listing of The Sportsman Public House, Sholden within the Council's list of Assets of Community Value was received from the owner. The owner is entitled to request a review of the listing.
Decision:	The Sportsman Public House to remain on the District Council's list of Assets of Community Value (ACV).

1. **Consideration and Alternatives** ***(if applicable)***

1.1 This is set out in the attached formal decision letter.

2. **Any Conflicts of Interest Declared?**

2.1 None.

3. **Supporting Information** ***(as applicable)***

3.1 Letter to the owner. A redacted copy was also provided to the Parish Council, as the nominating body.

Governance
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Telephone: (01304) 821199
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Mr xxxx
Savon Limited
Mill Lane
Eastry
SANDWICH
Kent CT13 0JS

Contact: David Randall
Direct line: (01304) 872141
e-mail: davidrandall@dover.gov.uk
Our ref: DR/MISC005580
Your ref:
Date: 3 September 2018

By email to: uksavon@gmail.com

Dear Mr xxxx,

Localism Act 2011
The Assets of Community Value (England) Regulations 2012
The Sportsman Public House, The Street, Sholden, Deal,CT14 0AL
Owners: Savon Limited (Co. Reg.No 08147497), Mill Lane, Eastry, Sandwich, CT13 0JS
Review of Assets of Community Value Listing

Introduction

1. I am writing to you as the representative of the owners of the land and buildings being the Sportsman Public House, The Street, Sholden, Deal, CT14 0AL (‘the Sportsman’’). I am not writing separately to the owners themselves. I am entitled to take this approach by virtue of paragraph 5(2) of Schedule 2 to the Assets of Community Value (England) Regulations 2012.

2. I have been appointed by the District Council ('the District Council') to review the decision taken on 4 May 2018 by Mr Roger Walton, Director of Environment and Corporate Assets, on behalf of the District Council, to include the Sportsman in the list of assets of community value maintained by the District Council under section 87 Localism Act 2011 ('the Act').

3. I am required to conduct this review under the provisions of the Act and the Assets of Community Value (England) Regulations 2012.

4. The request for review was received by the District Council on 1 July 2018. The period of eight weeks in which the Council is required to complete the review was extended by agreement with the owners of the Sportsman as permitted by paragraph 9 of Schedule 2 to the Assets of Community Value (England) Regulations 2012. The review period now expires on 14 September 2018.

5. The owners of the Sportsman, Savon Limited, were given the opportunity to require an oral hearing as part of this review in accordance with the provisions of paragraph 7(1) of Schedule 2 to The Assets of Community Value (England) Regulations 2012. The owners did request an oral hearing which I conducted on 29 August 2018 at the Offices of the Dover District Council, White Cliffs Business Park, Whitfield, Dover.

6. The owners were represented by Mr xxxx and Ms xxxx at the hearing. The role of Mr Mr xxxx in relation to Savon Limited was not explained to me and is not relevant save that he was representing them. Ms xxxx is the owner and sole director of the parent

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company of Savon Limited. Harvey Rudd, Solicitor to the Council, Dover District Council, was present at the hearing as my legal advisor. No-one other than Mr xxxx, Ms xxxx, Mr Rudd and me were present at the hearing and nor had anyone else been invited to be so.

7. At the opening of the hearing I had before me the following documents:-

1. Review of Listing – Oral Hearing Procedure.
2. Nomination Form.
3. Request for review including subsequent email exchange with The Council's Legal Department about administrative arrangements for the review.
4. Six emails received by the Council at the nomination stage supporting the retention of the Sportsman as a public house (personal details of authors redacted).
5. Decision Notice dated 4 May 2018.
6. Notice of Listing dated 4 May 2018.
7. Official Copy of Register of Title – Title No. K369754.
8. Results of Clive Emson Auction of the Sportsman 11 December 2017 taken from Clive Emson website.
9. SS.87-108 Localism Act 2011.
10. Assets of Community Value Regulations 2012/2421.
11. Department for Communities and Local Government publication "Community Right to Bid: Non-statutory advice note for local authorities" – October 2012.

8. I have not visited the Sportsman in the process of conducting my review but did view maps, aerial and street scene images of the premises and surrounding area on Google Maps during the course of the hearing, together with Mr xxxx.

9. In this letter I set out my decision in relation to the review and my reasons for it.

The Land

10. The buildings and land, the subject of the listing under review is The Sportsman Sholden. The Sportsman is located in The Street, Sholden and it is understood that it dates from 1684 having originally been a cottage for local farm workers under the Manor of Sholden before being licensed as a pub in 1836.

The Nomination for Listing

11. On 12 March 2018, The District Council received a nomination submitted by Sholden Parish Council to include the Sportsman in the list of assets of community value, which the District Council is required to maintain by virtue of section 87 of the Act. Sholden Parish Council is entitled to make the nomination by virtue of section 89(2)(b)(i) of the Localism Act 2011.

12. In support of their nomination for listing, Sholden Parish Council stated in answer to the question on the pre-printed application form "Does it currently further the social wellbeing or social interest of the local community or has it done so in the recent past? If so, how?" the following:-

"HISTORY - The building itself is of immense historical interest, parts of the building date back to 1684, however, it was in 1836 when a licence was obtained to sell beer. In 1887 Flint Brewery of Canterbury carried out alterations and a full licence was granted. It was then that the building was registered under the title of the Sportsman.

Although the Sportsman ceased trading in 2017 it still remains a public house and the community's wish and anticipation is that the new owners would embrace the possibilities of a successful village pub and reopen the business. The Sportsman has been a hub for the local community for almost 200 years. The local community has benefited from this venue for its social wellbeing and interests by offering activities and clubs which are offered by many pubs. A place to meet friends, play a game of darts, enjoy a meal, companionship from others for those who live alone, the list is endless. The three chalets offer accommodation for visitors. Until recently the Sportsman fulfilled this role as the village pub and heart of village community".

13. In response to the further question on the pre-printed nomination form "Could it in future further the social wellbeing or social interests of the local community? If so, how?" Sholden Parish Council submitted as follows:-

"Sholden is a growing community and given the chance the Sportsman can fulfil its role again as a village pub and the place for the community to meet and enjoy social events or just call in for a chat and a coffee. The three chalet units offer accommodation for visitors and additional space for visitors to residents of Sholden if/when required. Recently after years of closure, the village shop reopened. The community have embraced and benefitted from having a well stocked shop on their doorsteps and have come to enjoy the service offered, not only as a retail outlet but a place to exchange information".

14. In response to the question on the pre-printed nomination form "How could the building or land be acquired and used in future?" Sholden Parish Council submitted as follows:-

"This building is of historical interest and actions will be put in place to ascertain listed building status. Given its long history, preservation as a public house is essential. A pub is the heart of a village community and this village community is growing. With over 500 homes having been built over the past 5 years the parish council does not wish to see the demise of the Sportsman. It must be noted that the applications for housing developments subsequently agreed by DDC include the Sportsman as an asset for the community.

Furthermore, developers included the Sportsman as an asset to the community in their advertising for the new house. Future use as a pub and hub for the community is the direction the parish council would wish for this building".

The Decision to Include the Land in the List of Assets of Community Value

15. On 4 May 2018 the nomination for listing was considered by Roger Walton, Director of Environment and Corporate Assets of the District Council for determination. Mr Walton concluded that the Sportsman was an asset of community value within section 88(2) of the Act; He therefore accepted the nomination and caused the Sportsman to be included in the District Council's list of assets of community value.

16. In a Decision Notice dated 4 May 2018 recording his decision Mr Walton set out reasons for his decision and concludes in the following terms:-

- *"That the nomination meets the definition of a community nomination as set out in Section 89(2)(b)(iii) of the Localism Act 2011.*

- *That the nominating body has provided reasonable justification to satisfy the test set out in section 88(2)(a) & (b) of the Localism Act 2011 as to whether*

there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, AND it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

I have therefore decided that the property should be included within the District Council's list of Assets of Community Value".

The Request for Review

17. Mr xxxx, the owners', representative requested a review of the decision of Mr Walton pursuant to section 92 of the Act by email dated 1 July 2018. Mr xxxx indicated that he would wish that representations on the matter be submitted orally.

The Grounds for Review

18. The owners' representative's grounds for review were not specified in his request for review but were explained to me at the hearing. I would broadly summarise the grounds of review as follows:-

> The Council was wrong to conclude that it is realistic to think that there is a time in the next five years when there could be a non-ancillary use of the Sportsman that would further the social wellbeing or social interests of the local community.

19. The owners did not seek to challenge the decision of Mr Walton that there is a time in the recent past when an actual or current use of the Sportsman that was not an ancillary use furthered the social wellbeing or social interest of the local community as required by section 88(2) Localism Act 2011. I have therefore not reviewed this aspect of Mr Walton's decision in any detail.

The Owners Evidence and Submissions

20. I am grateful to M xxxx and Ms xxxx for the structured and measured way in which they put to me the owners' evidence and submissions during the course of the hearing.

21. At the hearing the owners put forward the following evidence and made the following submissions:-

    a. The first point concerned the viability of the Sportsman going forwards. Mr xxxx told me that the reputation of the public house was severely damaged by a food hygiene inspection on 31 August 2017 when a hygiene prohibition order was served closing the restaurant. Mr xxxx told me that this was because of a mouse infestation. I was told that the news of the closure was reported on the internet and in the Kent news. Mr xxxx submitted that everybody in the area knew about the incident and that with that sort of past, it is difficult to use the property as a restaurant in the future.

    b. Mr xxxx next addressed me on the issue of financial viability. He told me that the previous owner had been running the property as public house and restaurant. She had been trying to sell the business and property for about five years. She was running the business with her son. The business got into

serious debt and featured in a TV Programme “Can’t Pay? We’ll Take it Away!”. When Savon Limited took over the property they found lots of mail about debt in the premises.

c. The previous owners originally put the Sportsman up for sale for £499,000 about five years ago. It did not sell and was subsequently placed in auction with a reserve of £350,000. It did not sell. The owner was desperate to sell and the property was placed in auction for a second time in December 2017 with a reserve of £275,000. Savon Limited bought in this auction for £315,000.

d. Mr xxxx posed the rhetorical question to me, “there are a lot of established pubs nearby so we are not sure why someone would want to go to the Sportsman that has been closed for a year? He then told me that heading in the direction of Deal there are three existing public houses within a mile of the Sportsman these being:-

   i. The Farrier on London Road (0.6 miles).
   ii. The Magnet Inn (100 yards from the Farrier).
   iii. The Three Horses (0.7 miles)

e. Going in the other direction there are:-

   i. The Coach and Horses (1.4 miles).
   ii. The Crown at Finglesham (1.5 miles).

Both of these have a well-established food offer.

f. There are also at least 20 pubs within 2 miles within Deal providing a range of drink and food offers.

g. Mr xxxx told me about the state of repair of the Sportsman. I was told, “It is in quite a nasty state”. It needs a lot of work to bring it back into use. Savon Limited has already spent £11,000 on repairing part of the roof.

h. In response to a question put to him by Mr Rudd, Mr xxxx said that Savon Limited had not undertaken any costings to reopen the premises as a public house/restaurant although a Heineken employee who had visited the premises to take out bar equipment had offered a view that it would cost about £50,000 to bring it back into use as a restaurant.

i. I asked Mr xxxx what plans and proposals Savon Limited had for the site. He told me that Savon Limited would like to turn it into disabled holiday accommodation. He was mindful of this need because his sister is disabled. There is decent parking for up to about 20 cars, also a garden. There are three existing chalets around the back, two of which have ramp access. The public house accommodation would convert to three two bedroomed self-contained disabled access flats. All units would be disabled friendly with ramp or level access and low level wheelchair accessible work surfaces.

j. The upstairs of the public house comprises an existing two bedroomed landlord’s flat. This could be used to provide

accommodation for carers as it would not be possible to install lift access and convert for disabled use.

k. Mr xxxx explained to me that although the prime business activity of Savon Limited is the manufacture of candles, flowers and diffusers from manufacturing facilities in Eastry, Shanghai and Australia the company has more recently diversified into property and now owns a property in Dover, one in Eastry and also, the Sportsman. He also explained to me that his mother runs a couple of holiday flats locally, not disabled adapted, but that had given him an insight into running holiday accommodation.

l. On the issues of planning permission. Mr xxxx told me that no application has yet been made for planning permission to convert the Sportsman into disabled holiday accommodation. However, the three existing chalets were used as holiday accommodation in the past, he believed with the benefit of the necessary planning permission. He has estimated the conversion costs to be in the order of £150,000 and the necessary finance is available. There is no financial charge on the property.

m. Mr xxxx told me that he believed that ACV listing would be a material consideration in the determination of any application for planning permission. Further, that if the review of the ACV listing did not succeed, Savon would still apply for planning permission.

n. I asked Mr xxxx about how he viewed the more recent housing developments at Sholden in terms of business opportunity for a public house. He told me that in his observation all the residents have cars; a lot of new people have moved into the new development, they are not necessarily interested in the parish and the community at all. In his view they are more likely to go to a destination pub than a local one. Mr Rudd asked Mr xxxx to explain what he meant by a ‘destination pub’ and he told me, “Something that people have heard about, are happy to drive to and make a day out. Maybe picked it up on social media”.

o. Mr xxxx submitted to me that locals would not walk to the Sportsman and footpath access from the new Sholden Fields development would be via London Road and The Street. He thought the success of Deal as a destination with facilities detracted from the ability of the peripheral pubs to compete. Quite a few new licensed premises/restaurants have opened in the centre of Deal itself but nothing on the periphery. The existing Dunkerleys and the King’s Head on the seafront had particular appeal and are not far away from Sholden.

p. Mr xxxx also drew my attention to the narrow access to the Sportsman via The Street and he felt that this would further detract from the attractiveness of driving to the premises as once in a car they could drive elsewhere to a more accessible venue.

Discussion

22. I am required to conduct this review under section 92 of the Localism Act and the Assets of Community Value (England) Regulations 2012. In so doing I consider that I am required to look at the nomination afresh and to make my own decision but in the light of the representations of the Owners which are before me.

23. In reaching my decision I consider that I am entitled to have regard to the reasons given by Mr Walton in his original decision, but the weight which I can accord to them is a matter for me.

24. Turning now to the substantive issues on this review. Section 88 of the Localism Act set out the tests which must be met in determining what is an asset of community value. The section deals with two situations. Section 88(1) of the Act is engaged when there is an actual current use of the land which furthers the social wellbeing or social interests of the local community.

25. Section 88(2) addresses the situation in which there is not an actual current use of the land which furthers the social wellbeing or social interests of the local community, but that there was a time in the recent past where there was a use which fulfilled these requirements.

26. Mr Walton concluded that this nomination as an asset of community value falls to be determined under section 88(2). I agree with him since the Sportsman is not in actual use at the present time.

27. Section 88(2) of the Act sets out a two part test. The first part of the test set out in section 88(2)(a) is concerned with whether the land had in the recent past an actual or current use that furthered the social wellbeing or social interests of the local community. Mr Walton concluded that this part of the test is met.

28. In order for land to be properly regarded as land of community value it must also meet the second part of the test as set out in section 88(2)(b). This requires that in the opinion of the authority:

> *"It is realistic to think that there is a time in the next five years when there could be a non-ancillary use of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community".*

29. Both parts of the test must be met in order for the land to be treated as land of community value.

30. The Localism Act does not define what is meant by 'social wellbeing' but, at section 88(6) it does provide that "social interests" include (in particular) each of the following:-

    (a) cultural interests
    (b) recreational interests
    (c) sporting interests.

31. In this review the owners do not challenge the decision of Mr Walton in so far as the first part of the test is concerned. I consider that they are right not to do so. Mr Walton concluded that there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community. I agree with that conclusion and do not consider it further.

32. I accept the view of the owners that this review turns on the issue of whether it is realistic to think that there is a time in the next five years when there could be a non-ancillary use of the land that would further the social wellbeing or social interests of the local community.

33. Turning now to the issue of future use. The test to be applied is that set out in section 88(2)(b) of the Localism Act (see paragraph 28 above). I will repeat it. It reads;

> *"It is realistic to think that there is a time in the next five years when there could be a non-ancillary use of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community".*

34. The threshold to be applied is not particularly high. According to the decision of the First-tier Tribunal in *Patel v London Borough of Hackney* Tribunal Reference: CR/2013/0005 the correct test is "whether it is realistic to think" not the "balance of probabilities". I accept this view of the law. Accordingly, there may be a number of different possible outcomes which are realistic. I am not required to consider which one may be probable and do not do so.

35. Nevertheless, in my view the concept of it being "realistic to think" engages a need to at least consider that something is reasonably possible, as opposed to being purely aspirational or fanciful.

36. I accept the evidence before me relating to the previous closure of the Sportsman on health grounds. However, although I recognise that this is a legacy which would have to be overcome, I am not persuaded that this necessarily precludes a successful relaunch of the premises as a public house/restaurant under new ownership.

37. Turning now to the issue of financial viability. I recognise the plight of many public houses, particularly those in rural areas. The number of these which have closed is well documents and indeed, the provision contained in the Localism Act relating to Assets of Community Value may properly be regarded as a governmental response to this issue. Nevertheless, I am mindful that the Sportsman has only been closed for a year. I have not had evidence put before me as to the precise past trading figures of the premises or, of any future projections of profit and loss. Without such evidence I am unable to arrive at any proper conclusion as to the likely financial viability of the premises as a public house/restaurant. I am unable to regard the financial failure of one previous owner/landlord as determinative of the issue.

38. Although I was presented with evidence that the previous owners of the Sportsman tried to sell it for £499,000 without success I have no evidence before me as to the marketing efforts that were made or, as to how realistic that asking price may have been. Similarly, I have no evidence before me as to the extent and nature of any marketing prior to the property being placed in either the first or second of the auctions. Therefore, to the extent that I am invited to do so, I am unable accept the proposition that there is no market for the Sportsman as a public house/restaurant. I do accept that such marketing efforts as were made did not result in the premises being sold for that purpose.

39. Turning now to viability in a more general sense. I fully accept the Owner's evidence as to the level of competition in the local area for a public/house restaurant. This is not however to say that it would not be realistic to think that properly developed and marketed a public house/restaurant in these premises could not compete successfully.

40. I accept the Owners evidence that the premises are in need of significant repair/renovation. What is equally apparent to me on the evidence provided is that

the owners have the finance available to convert the premises to disabled holiday accommodation at a cost of approximately £150,000. I am also told (and accept) that the premises could be returned to their existing use at a much lesser cost of approximately £50,000. Although no business plan for either use has been put before me, I can appreciate that the owners feel that their proposals would give a better financial return than the previous use as a public house/restaurant. This however does not persuade me that the condition of the premises is such that it would not be realistic to believe that someone could return them to their former use.

41. I accept the evidence of the Owners as to their proposals to convert the premises to disabled holiday accommodation if planning permission could be obtained. I am of the view that it is realistic to think that this project could be delivered.

42. I accept the evidence of the Owners as to their intention to apply for planning permission for the conversion of the premises to disabled holiday accommodation. It is realistic to think that planning permission could be granted. Equally, it is realistic to think that it may not. If planning permission is granted I accept that it may well be implemented and the property converted. If however, planning permission is not granted one possible outcome is that it will be returned to the market where it will be purchased by others who may be prepared to develop it as an asset of community value, whether as a public house/restaurant or otherwise.

43. I accept Mr xxxx explanation of what he meant by a 'destination pub' as, "Something that people have heard about, are happy to drive to and make a day out. Maybe picked it up on social media". However, this doesn't persuade me that it would not be realistic to believe that the Sportsman could become a high end destination restaurant, rather than a local village public house offering food.

44. I accept that access to the Sportsman via the Street is narrow and constricted in parts particularly at the junction with London road and that the junction arrangements themselves are less than ideal. Also, that this may impact on the attractiveness of the premises as a venue to drive to. I also accept that if the Sportsman was again to thrive as a public/house restaurant it would be unlikely to do so relying solely on the support of people visiting the premises on foot, many of the patrons would be car borne. Nevertheless, the Sportsman has the benefit of an established use and would not require the grant of a planning permission, where access may be raised as an issue. The premises also have the benefit of quite a large off-street car park. In my view the access issues are not of sufficient weight to cause me to think that it is not realistic to believe that the premises could be returned to their former use.

45. I note the reasons submission made by the Sholden Parish Council on the pre printed nomination form to the question "Could it in future further the social wellbeing or social interests of the local community? And "How could the building or land be acquired and used in future?" I accept what the Parish Council say as a statement of their wishes and aspirations for the future but note that their submissions are not supported by any convincing evidence that their aspirations are realistic. Accordingly, I can attach very little weight to their submissions.

46. As noted above at paragraph 34 there may be a number of different possible outcomes which are realistic. I am not required to consider which one may be probable and do not do so. On the basis of the evidence presented to me I am of the opinion that it is realistic to think that the Sportsman could be returned to another community use within the next five years.

Formal Decision

47. In conclusion, and for the reasons set out above, I reject the review. It is therefore my decision that the Sportsman is to remain on the list of assets of community value maintained by the District Council.

What Happens Next?

48. The nomination remains successful. The Sportsman will remain on the District Council's list of assets of community value.

49. The Owners are entitled to appeal this decision to the First Tier Tribunal. They have 28 days from the date of this notification to lodge any appeal. Appeals should be made to:

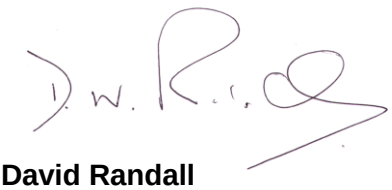
General Regulatory Chamber
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Telephone: 0300 123 4504

Owners may also send an appeal to the First-Tier Tribunal by email at:
grc@hmcts.gsi.gov.uk

51. For the avoidance of any doubt I wish to make it clear that the Council's functions in relation to this nomination and its review are now at an end. The Council will not hear any further representation into this matter or enter into any further dialogue or correspondence in relation to it with the nominating body, the Owners or any third parties.

Yours sincerely



David Randall
Director of Governance and Monitoring Officer