

To: City Executive Board

Date: 9th April 2014

Report of: Head of City Development

Title of Report: Saving Community Public Houses

Summary and Recommendations

Purpose of report: To

Key decision: No

Executive lead member: Councillor Colin Cook

Policy Framework: Policy RC18 (Public Houses) which is a 'saved policy' from the Local Plan 2016 and forms part of the Development Plan.

Recommendation(s): That City Executive Board:

1. To approve the preparation and publication of a Technical Advice Note to support Policy RC.18 on public houses
2. To support officers in working with amenity bodies and the local community to ensure public houses of heritage significance are included on the Local Heritage Assets Register; and to increase awareness of listing public houses as Assets of Community Value.
3. To support Kirklees submission under the Sustainable Communities Act.
4. Officers will also continue to monitor and review the operation of the Sustainable Communities Act's effectiveness in bringing forward new proposals for measures that would help to protect community public houses in other Local Authority Areas.

Appendix 1: Present Local Plan Policy

Appendix 2: Risk Assessment

Introduction

1. This report has been produced in response to a Council motion agreed in February, the details of which are set out in para. 2 below. City Executive Board is asked to endorse a range of measures and actions to help protect community pubs in Oxford. The report therefore sets out the present policy position and considers how it could be strengthened, together with an assessment of the options and implications for taking action under the Sustainable Communities Act.

Agreed Motion for Saving Community Pubs

2. Full Council at its last meeting on 3rd February 2014 passed the following motion that:
 - “Oxford City Council notes the possibility of submitting the following proposal to the government under the Sustainable Communities Act:
 - ‘That the Secretary of State 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.’”
 - This Council notes that if this power was acquired it would allow the council to determine if pubs should be demolished or converted into other uses and could save many valued community pubs.
 - This Council resolves to ask City Executive Board to consider and submit the proposal to the government under the Sustainable Communities Act and to work together with Local Works and the Campaign for Real Ale to gain support for the proposal from other councils in the region and across the country.”

Sustainable Communities Act

3. The Sustainable Communities Act is a piece of legislation introduced originally in 2007 which does give campaigners and local people the power potentially to make bids / proposals seeking Government action to local authorities who in turn will ask the Government to implement these proposals. Since the Sustainable Communities Act was originally introduced the Government has now made changes to the regulations to allow communities to use the Act on an on-going basis, submitting bids / proposals at any time.
4. Officers have undertaken some initial research to understand how the Sustainable Communities Act could be used to help to protect public houses. This suggests that the experience so far shows that the process can in practise be quite lengthy. It needs to be taken forward by the City Council submitting proposals for particular bids; which have to be subject to extensive consultation with the local community before being presented to Government. These ‘bids’ are not normally bids for funding, infact the term ‘bids’ could probably be described better as ‘proposals’ since these often relate to requests to Government to amend some element of existing legislation.
5. In relation to the process if the bid or proposal is initially rejected by Government it would then need to be presented to the Selector for Principal Council’s (the Local Government Association at present). The Selector will then resubmit to Government for their consideration. If the Selector resubmits to Government discussions will then take place between the Selector and Government where both sides will ‘try to reach an agreement’ on a compromise around the proposal.
6. Early experience has shown that during the first round of bids / proposals put forward under the Act a number of individuals and community groups

(including CAMRA) proposed ideas to Government. Since then, campaigners have faced delays of more than a year while the Government finalised the regulations to allow people on going involvement in the Act.

7. The types of proposals put forward during the first round included for example one by Islington London Borough Council to require full planning permission before any facility (such as a pub or shop) is demolished; but to date no action has been taken by Government. An alternative proposal by another Council has sought powers to remove restrictive covenants put on buildings such as pubs, which are closed by national chains to prevent them from re-opening as a public house. The Government are currently consulting on these restrictive covenants.
8. The new regulations do now mean that the Sustainable Communities Act can be used on a rolling basis so local people can make proposals to Government at any time to strengthen their communities. The process is however rather lengthy, potentially time consuming and requires a significant level of consultation to assess the amount of local support for any such proposal. The proposals put forward by a number of different Local Authorities have had limited success; since it needs to be clearly demonstrated to Government that there are no other methods or means of achieving the desired objective that could be pursued instead. In these circumstances officers do not consider the Sustainable Communities Act to be an appropriate mechanism to protect public houses.

Present Planning Policy

9. Policy RC.18 in the Oxford Local Plan 2016 is a 'saved policy' in the Local Development Plan (Appendix 1) that provides some protection to seek to prevent the loss of public houses within the City. The policy recognises the two distinct roles played by public houses, both as important community facilities and as part of the historic legacy of Oxford. It uses a criteria based approach to safeguard the existing stock of public houses in Oxford. It requires an assessment to be made of a particular proposal according to a range of criteria including: marketing; evidence on non-viability; and a demonstration that suitable alternative public houses already exist in the area.
10. The main weakness in the policy results from some changes made to the wording of the policy by the Inspector at the Local Plan 2001-2016 Examination, which means in practise that the applicant only needs to satisfy a minimum of one criterion to meet the requirements of the Policy. In these present challenging economic times the issue of 'non-viability' is often argued by the applicant and certainly public houses along with many other businesses are facing difficult times.
11. The Town and Country Planning General Development Order makes it possible through 'permitted development rights' to change the use of a public house (Class A4) to a restaurant (Class A3) without the need to apply for planning permission. If this takes place then clearly Policy RC.18 cannot be applied. More recently the Government has introduced some

further changes to the GDO which allows 'temporary' changes of use to occur to a range of uses for a period of two years irrespective of whatever local planning policies may be in place.

National Planning Policy Framework

12. The National Planning Policy Framework (NPPF) provides some useful support for public houses in urban areas. It encourages Local Planning Authorities to, amongst other things, 'plan positively for community facilities'; and 'guard against the loss of facilities and services'.
13. So whilst the Development Plan and in particular Policy RC18 represents the starting point for the determination of any planning application, the NPPF does comprise an 'important material consideration' for the Local Planning Authority in seeking to assess the value of the public house to the local community and the case for resisting its loss.

Campaign for Real Ale (CAMRA) Viability Test

14. CAMRA has promoted a 'viability test' for public houses for some time. The latest guidance uses a range of broad factors to assess the viability of a particular public house. This includes an assessment of the 'trade potential' which explores the population density (catchment area); visitor potential; competition; flexibility of the site; parking; public transport' and prospects for multiple use. It then considers other key aspects such as competition case studies; how the business operates at present; and the potential sale and marketing of the property.
15. Policy RC18 does already include a number of these key criteria requiring evidence of marketing; non-viability; and that suitable alternative public houses already exist in the area. The supporting text makes reference to examples of factors that should be taken into account when providing supporting evidence for a proposed change of use from a public house. The policy would however benefit from the support that could be provided by a Technical Note, which could offer further advice and guidance to explain how this assessment should be carried out.

Assets of Community Value

16. Officers would seek to promote greater community awareness of the advantages that can be derived from listing public houses as Assets of Community value, which would include contacting ward members and amenity groups. This would then encourage the local community and amenity bodies to come forward with their suggestions. The procedure for nominating an asset of community value is already set out in a guidance note on the City Council's website.
17. The nomination has to be submitted to the Head of City Development and should be made by a community body (such as a charity or unincorporated body with at least 21 individuals).
18. If a public house is designated as an 'asset of community value' this would make it necessary for the owner of the property to formally notify

the City Council of their intention to place the building on the 'open market' for sale. The community body would then have an opportunity to purchase the site within a six month period from the notification date.

Heritage Assets

19. There are many locally valued heritage assets which do not meet the criteria for national designation. The City Council has a register of local value Heritage Assets, which can be viewed and assets 'nominated' on the City Council's website. Pilot studies are running in four areas of Oxford (West Oxford, East Oxford, Summertown and Blackbird Leys), working with the local communities to identify heritage assets. This has been undertaken through external funding.
20. The NPPF (Para. 131) requires Local Planning Authorities when dealing with planning applications to take account of, amongst other matters, the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses; and an awareness that the conservation of heritage assets can contribute to sustainable communities and their economic viability.
21. Officers will email ward members with details of those public houses already identified as potential heritage assets from the pilot studies already undertaken. This would be important information that could be used to seek to support existing public houses and avoid their loss to other uses.

Proposals to strengthen protection of existing public houses

22. Officers consider that the following key actions should be taken:
 - To prepare and publish a Technical Advice Note to support Policy RC.18, which would provide more details for the prospective applicants to explain how this policy should be applied and the factors that need to be considered. It offers the opportunity to provide further advice and guidance on the key aims of the policy which seeks to protect public houses both for their community use and their historic importance.
 - The Technical Advice Note, together with the Public House Viability Test (CAMRA) and the latest Government advice (NPPF) could then be used as a basis for reviewing the present policy in the future.
 - The City Council wish to fully support Kirklees submission under the Sustainable Communities Act. Officers will also continue to monitor and review the operation of the Sustainable Communities Act's effectiveness in bringing forward new proposals for measures that would help to protect community public houses in other Local Authority Areas.
 - As a matter of priority officers will explore any and all opportunities for reviewing, amending and strengthening the present policy at the earliest opportunity as part of a Local Plan document.
 - To work with amenity bodies and the local community to ensure that public houses of historic or architectural interest but without a statutory listing are considered for inclusion on the City Council's Heritage Assets Register;

- To promote greater community awareness of the advantages that can be derived from listing pubs as Assets of Community Value;
- To support the work of other Local Authorities to collectively seek Government changes for measures that would positively encourage public houses to be protected as important local community facilities and often buildings of heritage significance.

Climate change / environmental impact

23. The proposals seek to provide further advice and guidance (Technical Note) to an existing Development Plan Policy RC.18, which aims to protect public houses. This approach would effectively be to maintain the status quo and ensure that local facilities, such as public houses continue to be available for the local communities within the City. This links to other key strategic policies in the Core Strategy, such as the spatial strategy, which has as one of its key planks the aim to reduce the need to travel. The Core Strategy has been subject to a Sustainability Appraisal and Strategic Environmental Assessment (SEA).

Equalities impact

24. Consideration has been given to the public sector equality duty imposed by Section 149 of the Equality Act 2010. Having paid due regard to meet the objectives of that duty and of the package of measures proposed to safeguard existing pubs the view is taken that the duty is met.

Financial implications

25. There are potentially some staff and resource implications for preparing a Technical Advice Note; assessing sites for inclusion in the Local Heritage list and publicising the opportunity to bring forward individual sites for inclusion in the list of Assets of Community Value; and processing applications for new Assets of Community Value. The proposal is for this to be taken forward using existing staff resources but may need to take place in a phased way to ensure that there is no conflict with existing work priorities that the Spatial Planning and Economic Development Team are already committed to.
26. According to the Regulations 2012 for listing Assets of Community Value the responsible authority is liable for costs incurred by a landowner as a result of listing a site as an Asset of Community Value. This could potentially include the possibility of the landowner asking for legal costs to be covered and also for any costs incurred.
27. The proposal to put forward a bid through the Sustainable Communities Act does appear to be a rather lengthy process and potentially both time consuming and could have significant resource implications.

Legal implications

28. The package of proposed measures will serve to support the adopted Local Plan policy RC18, which seeks to resist the loss of public houses; and as such serves to ensure the effective implementation and delivery of the Core Strategy.

29. The Sustainable Communities Act does offer an alternative opportunity for bringing forward other measures but at this stage officers do not propose to submit a proposal / bid.

Risk assessment

30. A risk assessment has been undertaken, which is set out in the Risk Register attached as Appendix 2. All risks have been mitigated to an acceptable level.

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List of background papers: No

Appendix 1

Public Houses

12.9.9 Public houses have two distinct roles: firstly, in mainly residential areas as a community facility; and secondly as part of the historic legacy of Oxford. The City Council will prevent their loss to alternative uses unless a lack of viability can be clearly demonstrated over a reasonable time-scale, which is not due to operational or marketing practices. Viability should take into account a range of factors such as evidence of the property having been properly marketed for its existing use at a reasonable price, the catchment population, other facilities in the area serving the same market, and accessibility by modes other than the private car.

POLICY RC.18 - PUBLIC HOUSES

Planning permission will only be granted for the change of use of a public house if one or more of the following criteria are met:

- a. no other potential occupier can be found following a realistic effort to market the premises for its existing use;**
- b. substantial evidence of non-viability is submitted; and**
- c. it is demonstrated that suitable alternative public houses exist to meet the needs of the local community.**

Appendix 2 Risk Register

Risk ID	Risk						Corporate Objective	Gross Risk		Residual Risk		Current Risk		Owner	Date Risk Reviewed	Proximity of Risk (Projects/Contract Only)
Category -000- Service Area Code	Risk Title	Opportunity/Threat	Risk Description	Risk Cause	Consequence	Date raised	1 to 6	I	P	I	P	I	P			
	Policy and other measures	Threat	The policy and other measures are not taken forward providing no additional support to save pubs	No authorisation to undertake measures	More public houses risk closure and or change of use	3.03.14	1, 3	1	3	1	3	1	3	Michael Crofton Briggs		
	Costs incurred by landowner	Threat	The Local Authority is potentially liable for costs incurred by a landowner as a result of listing.	ACV Regulations 2012	Liability for costs of listing, which could include legal costs but cases are few	3.03.14	1, 3	1	4	1	4	1	4	Michael Crofton Briggs		

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