

**Planning and Rights of Way Panel 24<sup>th</sup> April 2018**  
**Planning Application Report of the Service Lead – Infrastructure, Planning and Development.**

<b>Application address:</b> 128-130 West End Road, Southampton			
<b>Proposed development:</b> Change of use from a drinking establishment (Class A4) to flexible use within A1, A2, A3 or A4 (Retail, financial, professional services, restaurants, cafe and drinking establishments).			
<b>Application number</b>	18/00347/FUL	<b>Application type</b>	Full
<b>Case officer</b>	Andrew Gregory	<b>Public speaking time</b>	15 minutes
<b>Last date for determination:</b>	Over	<b>Ward</b>	Harefield
<b>Reason for Panel Referral:</b>	Five or more letters of objections have been received.	<b>Ward Councillors</b>	Cllr Daniel Fitzhenry Cllr Valerie Laurent Cllr Peter Baillie

<b>Applicant:</b> MHH Poole Ltd	<b>Agent:</b> HLF Planning Ltd
<b>Recommendation Summary</b>	Conditionally Approve
<b>Community Infrastructure Levy Liable</b>	<b>No</b>

**Reason for granting Planning Permission**

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. The pub was marketed for freehold sale for 6 months without any interest from existing pub operators and no bid was made by the community interest group during the asset of community value moratorium period. Furthermore there are alternative pubs and community buildings within the surrounding area to meet the day to day needs of the community. The premises has a floor area of less than 750 sqm and therefore the proposed flexible use would not have an adverse impact on the viability of existing town and district centres. The site does not have a site specific policy allocation and the range of flexible uses are appropriate for this vacant pub site. Other material considerations including, impact on neighbouring amenity, tree impact and on street car parking pressure have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP4, SDP5, SDP10, REI7 of the City of Southampton Local Plan Review (Amended 2015) and CS3, CS18, CS19 and CS20 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

Appendix attached			
1	Development Plan Policies	4	Map to show location of nearby pubs
2	ACV Decision Notice	5	PROW Minutes
3	ACV Notice of Intended Disposal	6	Decision notice ref 17/00750/FUL

## Recommendation in Full

Conditionally Approve

## Background

Savills were instructed to dispose of the Big Cheese Public House on behalf of Green King PLC in July 2016. Green King took the decision to dispose of the asset because of declining return and because a re-branding exercise (Hungry Horse) had failed to improve turnover and profitability. The pub was marketed between July 2016 and December 2016 for freehold sale and as having potential for retail conversion and residential redevelopment opportunity. During this period, three acceptable offers were received, all from residential developers. The pub was closed in February 2017 and sold for £651,000 to a residential developer, £510,000 over the guide price.

### *Asset of Community Value*

The Localism Act was introduced in November 2011 and gave communities a chance to save assets that are important to them. The Department of Communities and Local Government indicate that 'assets of community value' can include pubs. The Community Right to Bid came into effect on 21 September 2012. Local Authorities are required to keep a list of all these 'assets of community value' (ACV). If an owner of a listed asset wants to sell it they have to notify the local authority. The local authority then has to notify any interested parties. If community groups are interested in buying an asset they can use the Community Right to Bid to 'pause' the sale, giving them 6 months to prepare a bid to buy it before the asset can be sold.

The Council received an ACV nomination from a community interest group on 14 February 2017 (supported by a petition with circa 150 signatories) and decided to list the Big Cheese Public House as an ACV on 27 April 2017 for the following reasons:

*“From the evidence submitted in recent times ie prior to its closure earlier this year, the premises were of significant and wide-ranging benefit to the community and community groups over and above simply being a well-used pub.”*

On 18 May 2017, the owner notified the Council of their intention to sell the property and the community interest group responsible for the listing were given until 29 June 2017 to make a request to be treated as a bidder and until 18 November 2017 to complete a bid. It should be noted that the provisions of the community right to bid do not restrict in any way who the owner of a listed asset can sell their property to, or at what price. As such the

owner is under no obligation to dispose of the property to the community interest group and after the 18 November 2017 is free to sell on the open market. The community group made a request to be treated as a bidder however no bid was made by 18 November 2017 and therefore the owner is now free to sell on the open market.

A planning application for residential redevelopment comprising 10 x 3-bed houses following demolition of the public house was submitted on 08 May 2017 (LPA Ref 17/00750/FUL). Consideration of this application was delayed until expiration of the ACV moratorium period. On 09 January 2018 the Planning and Right of Way Panel resolved to refuse planning permission for overdevelopment and S106 reasons with no principle objection to loss of the public house. An appeal against the decision is pending but the loss of the ACV or pub use is not an issue that the Council will be defending.

## **1 The site and its context**

- 1.1 The application site has an area of 0.2 hectares and comprises a vacant public house. A large car parking area is located to the side and garden area to the rear. Access is taken from West End Road, in close proximity to the West End Road / Mousehole Lane / Dean Road / Townhill Park roundabout. The pub building is now boarded up and temporary herring fencing has been installed to secure the site. Mature trees, protected by the Southampton (Bitterne Village) Tree Preservation Order 1974, enclose the side and rear boundaries to Dean Road and Tenby Close.
- 1.2 The area surrounding the site is predominantly residential, comprising a mix of two storey housing and 3-4 storey flatted blocks. A convenience retail unit occupies the adjoining site to the north-east. The nearest alternative pubs are the Fox and Hound, Humble Plum and the Red Lion, all less than 1 mile from The Big Cheese Public House. Alternative community meeting places within the vicinity include Gordon Hall and Moorlands Community Centre all within 1 mile of the Big Cheese Public House. Bitterne District Centre is 0.6 miles from the site.

## **2 Proposal**

- 2.1 The proposal seeks change of use from a drinking establishment (Class A4) to flexible use within A1, A2, A3 or A4 (Retail, financial, professional services, restaurants, cafe and drinking establishments). The proposal is not seeking planning permission to demolish the existing building.
- 2.2 The submission indicates that the applicants are seeking to establish a fallback position should they fail to secure planning permission for a viable residential redevelopment scheme. The applicants have lodged an appeal following refusal of residential redevelopment for 10 houses and whilst this current planning application must be considered on face value, it is possible that should this application for flexible use be granted, then the applicants may use the decision as evidence to support the loss of this public house at appeal, despite it not forming a Reason for Refusal by the Council.

## **3 Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at Appendix 1.

- 3.2 The National Planning Policy Framework (NPPF) came into force on 27<sup>th</sup> March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated
- 3.3 A key thread to the NPPF is the promotion of healthy communities (section 8 refers). Paragraph 69 indicates that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Paragraph 70 goes on to indicate the need to plan positively for the provision for community facilities and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
- 3.4 Policy CS3 of the Core Strategy (January 2010) is the Council's most up to date planning policy relating to community facilities and indicates that:  
*"proposals that result in the loss of a community facility throughout the city will not be supported if it is viable for the commercial, public or community sector to operate it and if there are no similar or replacement facility in the same neighbourhood. Community facilities include: community buildings; drop-in centres / day centres; Meeting Rooms / Day Centres; Places of Worship; Sports Club and recreation; Youth Clubs / Scout huts / Guide huts / Clubs for Senior Citizens."*
- 3.5 Public houses and cafes are not included within the list of community facilities as set out within policy CS3. However it should be noted that the Council did seek to have public houses included within the defined list of community facilities within the draft Local Development Framework. During the examination into the Core Strategy the Inspector decided not to include pubs and cafes for the following reasons:  
*"Whilst desirable in principle, experience elsewhere suggests that such a policy can be difficult and complex to operate reasonably and realistically in practice, especially in relation to commercially run facilities and privately owned businesses, such as public houses and cafes, as distinct from public sector organisations.....  
Moreover, in a densely built up area such as Southampton, unlike a small rural settlement, equivalent or similar businesses are usually available nearby and within a reasonable walking distance. In such circumstances it is not necessary or realistic for the Council to seek to control the operations of the free market in this way in relation to public houses and cafes, which can be distinguished from the other types of community facilities listed by virtue of their normally operating in the fully commercial sector."*
- 3.6 The National Planning Policy Framework post-dates this analysis and specifically references pubs as community use and as such becomes directly relevant.
- 3.7 The site does not have a site-specific policy allocation and is located outside of a defined town, district and local centre. Section 02 of the National Planning Policy Framework and policy CS3 of the Core Strategy indicates that retail and commercial uses with a floor area of less than 750sqm can be supported outside of existing town, district and local centres.

#### **4. Relevant Planning History**

4.1 A planning application for residential redevelopment comprising 10 x 3-bed houses following demolition of the public house (LPA Ref 17/00750/FUL) was refused on 12.01.2018 for the following reasons:

##### **01. Site Overdevelopment**

The proposed redevelopment represents an overdevelopment of the site by reason of a residential layout and design that fails to respond to the established pattern of development within the locality, is reliant upon a significant amount of building and hardstanding (in excess of 50% of the site), fails to meet the Council's standards in respect of useable amenity space; particularly in respect of Units 1-3, but also in terms of usability for Units 8-10 given the boundary planting and subsequent shade, and which proposes car parking in close proximity to the main living space of Units 8-10 to the detriment of these residents' amenity in terms of noise, disturbance and headlight glare. As such, the application is considered to fail the requirements of Local Plan Review (Amended 2015) policies SDP1 (i) and SDP7 as supported by Policy CS13 of the adopted Local Development Framework Core Strategy (2015) and the relevant paragraphs from the Council's approved Residential Design Guide SPD (2006); with particular reference to sections 3.9 and 4.4 and paragraph 2.3.14.

##### **02. Lack of Section 106 agreement to secure planning obligations.**

In the absence of a Section 106 agreement the development fails to mitigate its impact in the following areas:

- i. Contributions towards site specific transport improvements in the vicinity of the site in line with Policy SDP4 of the City of Southampton Local Plan Review (as amended 2015) Policies CS18 and CS25 of the adopted LDF Core Strategy (as amended 2015) and the adopted SPD relating to Developer Contributions (April 2013);
- ii. Submission of a highway condition survey to ensure any damage to the adjacent highway network attributable to the build process is repaired by the developer;
- iii. Contributions or otherwise towards a scheme of measures that mitigate against the impacts of the development on the Solent Special Protection Area as required by LDF Core Strategy (Amended 2015) policies CS22 and CS25; and
- iv. An Employment Training and Skills Plan to secure local employment initiatives during the construction phase as required by LDF Core Strategy Policy CS24.

#### **5 Consultation Responses and Notification Representations**

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners and erecting a site notice (23.03.2018). At the time of writing the report 56 representations have been received from surrounding residents. The following is a summary of the points raised.

##### **5.2 Loss of the public house as a community meeting place**

*Officer Response – The pub has been closed since February 2017. The site was marketed as a freehold pub for sales for 6 months and during that period no*

*acceptable offers were received from pub operators. Furthermore no bid was made by the community group during the ACV moratorium period. There are alternative public house and community buildings with the area to meet the day to day needs of the community. The Council does not have a public house protection policy (see planning policy section). The proposed range of flexible uses incorporates A4 (Drinking Establishment) and therefore the premises could re-open as a public house if the developer fails to secure a viable scheme for residential redevelopment or alternative fall back us.*

**5.3 No other pubs in the area have disabled facilities to this high standard and this is the only pub locally which is fully DDA compliant.**

*Officer Response – The proposal does not seek to demolish the existing building. It is unfortunate that this pub has been closed but attempts by the previous owners to run a viable pub appear to have failed and there was no viable interest from other pub operators when the site was marketed. Furthermore no bid was made by the community interest group to purchase the pub during the ACV moratorium period. It would be unreasonable to refuse to support alternative uses on this site simply because this closed pub building is fully DDA compliant.*

**5.4 The community does not need any new shops, dentists or businesses within the local area.**

*Officer Response – The proposed flexible uses can be supported outside of existing centres on the basis that that the pub building has a floor area of less than 750sqm. The proposed flexible uses will have no new impacts on character or neighbouring amenity having regard to the authorised A4 use. It rests with the market to decide if additional shops, restaurants or businesses would be viable. It should be noted that Savills marketing evidence dated 20 June 2017, does indicate that the pub was marketed to retailers and other interested parties however no acceptable offers were received. However there is no policy requirement for the applicants to demonstrate need for the proposed range of flexible uses.*

### **Consultation Responses**

**5.5 SCC Highways – No objection subject to conditions.**

In terms of trip generation, the level of difference between the existing and proposed uses will be dependent on the end-user and therefore difficult to clearly assess. However, as a worst case scenario, generally, a food retail use (A1) would have the biggest impact from highway's perspective. Most importantly, although A4 uses do usually require large servicing vehicles, A1 use could require an articulated lorry (16.5m) and therefore in order to allow for an A1 use, tracking diagrams will be required in order to demonstrate that a 16.5m articulated lorry can enter and leave the site in a forward gear.

**5.6 Environmental Health – No objection. The premises has previously been used as a food establishment with necessary extraction equipment and refuse storage provision which is not indicated to change drastically.**

## **6. Planning Consideration Key Issues**

**6.1 The key issues for consideration during the determination of this planning application are:**

- The principle of the development;
- The impact on the amenities of neighbouring and surrounding residents;
- Highway matters.

## Principle of Development

- 6.2 The Big Cheese Public House has been closed since February 2017. Green King took the decision to dispose of the asset because of declining return and because a re-branding exercise (Hungry Horse) had failed to improve turnover and profitability. A marketing exercise for freehold sale was carried out by Savills between July 2016 and December 2016 however no acceptable offers were received from pub operators or other groups or individuals seeking retained public house use. All offers were from residential developers.
- 6.3 DCLG (non-statutory) guidance in the 'Community Right to Bid: Non-statutory advice note for local authorities (October 2012) indicates that:
- "...the fact that the site is (a) listed (Aocv) 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."*  
(Para 2.20 refers)
- 6.4 In this case, it is considered the Asset of Community Value can now only be given limited weight because the community group did not make a bid for the premises during the 6 month moratorium period. The ACV listing process is designed to give community groups the opportunity to purchase and operate valued community buildings. The ACV process does not protect community buildings from redevelopment if no community bid is made. The current owner is now free to sell the site on the open market for a protected period of 12 months following the close of the moratorium period on 18 November 2017. A copy of the Council's Decision to list the Big Cheese as an Asset of Community Value is attached as *Appendix 2* and a copy of the Notice of Intended Disposal is attached as *Appendix 3*.
- 6.5 Public houses are not protected within the development plan and they not defined as community facilities under the requirements of policy CS3 of the Core Strategy. Paragraph 70 of the National Planning Policy Framework, which post-dates policy CS3, does indicate that public houses can be considered as community facilities and that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. Whilst the loss of the Big Cheese Public House will clearly reduce the number and availability of public houses within this area, it is not considered to reduce the community's ability to meet its day to day needs having regard to the availability of alternative pubs and community facilities within the vicinity of the site, namely:
- Alternative A4 pub uses
- The Fox and Hounds Public House (0.3 miles / 5 minute walk from the site)
  - Humble Plumb (0.4 miles / 7 minute walk from the site)
  - The Red Lion (0.6 miles / 13 minute walk from the site)
- Alternative community facilities
- The Gordon Hall (0.1 miles / 2 minute walk from the site)
  - Moorlands Community Centre (0.4 miles / 7 minute walk from the site)
- 6.6 A plan showing the location of alternative public houses within this area is attached as Appendix 4. The previous decision to refuse planning permission for residential redevelopment raised no principle objection regarding loss of the public house because the premises was marketed for freehold sale for 6 months

without any interest from existing pub operators and no bid was made by the community interest group during the asset of community value moratorium period.

- 6.7 A copy of the minutes from the Planning and Rights of Way meeting are attached as *Appendix 5* and the previous decision notice is attached as *Appendix 6*.
- 6.8 The proposed flexible uses can be supported outside of existing centres on the basis that that the pub building has a floor area of less than 750sqm. The proposed flexible uses will have no new impacts on character or neighbouring amenity having regard to the authorised A4 use. Therefore the principle of change of use to flexible use within A1, A2, A3 or A4 is supported.

The impact on the amenities of neighbouring and surrounding residents;

- 6.9 The proposed development will have no adverse impact on the residential amenities of neighbouring occupiers having regard to the existing authorised A4 use with provision for 33 car parking spaces. A condition will be added to require details of any new extract ventilation equipment to be agreed in writing with the Local Planning Authority to guard against additional noise impact.

Highways

- 6.10 No objection has been raised by Highways Development Management. The existing car park provides 33 car parking spaces for the authorised A4 use. The size of the car park can comfortably accommodate the maximum level of car parking spaces for A1, A2 and A3 use for a building of this size (333sqm) as set out within the Car Parking Standards SPD. The maximum provision required is 11 spaces for A1 and A3 use and 16 spaces for A2 use. A large servicing area is provided to the front however vehicle tracking is required to demonstrate that a 16m long articulated lorry could manoeuvre on site to serve A1 retail use and a planning condition linked to an A1 use is recommended. Adequate space is available on site to provide cycle and refuse storage to serve the proposed flexible uses.

**7 Summary**

- 7.1 The pub freehold was marketed for 6 months without any interest from existing pub operators and no bid was made by the community interest group during the asset of community value moratorium period. Furthermore there are alternative pubs and community buildings within the surrounding area to meet the day to day needs of the community. The premises has a floor area of less than 750 sqm and therefore the proposed flexible use would not have an adverse impact on the viability of existing town and district centres and there is no planning policy objection on this basis. The site does not have a site specific policy allocation and the range of flexible uses are appropriate for this vacant pub site.

**8 Conclusion**

- 8.1 The positive aspects of the scheme are not judged to be outweighed by the negative, despite the significant local objection and as such the scheme is recommended for conditional approval.



## **Local Government (Access to Information) Act 1985**

### **Documents used in the preparation of this report Background Papers**

1 (a) (b) (c) (d), 2 (b) (c) (d), 4 (f) (g), 6 (a) (c), 7 (a), 9 (a) (b)

## **AG for 24/04/2018 PROW Panel**

### **PLANNING CONDITIONS**

#### **01. APPROVAL CONDITION - Full Permission Timing Condition - Change of use**

The use hereby permitted shall begin not later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990(as amended).

#### **02. APPROVAL CONDITION - control of noise, fumes and odour [Pre-Commencement Condition]**

If the building is to be occupied for A3 use and new extract ventilation is required, the use shall not commence until a written scheme for the control of noise, fumes and odours from extractor fans and other equipment have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and findings and retained thereafter as agreed.

Reason: To protect the amenities of the occupiers of existing nearby properties.

#### **03. APPROVAL CONDITION - Hours of Use [Performance Condition]**

Unless otherwise agreed in writing by the Local Planning Authority the uses hereby approved shall not operate outside the following hours:

Monday to Sunday 0700hours - 2300hours (7.00am to 11.00pm)

Reason: To protect the amenities of the occupiers of existing nearby residential properties.

#### **04. APPROVAL CONDITION - Floorspace flexibility**

The units can flip between the agreed uses and this "dual A1 (retail) and/or A2 (financial and professional) and/or A3 (restaurant) and/or A4 (drinking establishment) " hereby permitted for the development shall, under Class E Part 3 Schedule 2 of the Town and County Planning (General Permitted Development) Order 1995, be for a limited period of 10 years only from the date of this Decision Notice. The units shall remain as the prevailing use at that time as hereby agreed in writing by the Local Planning Authority.

Reason: In order to provide greater flexibility to the development and to clarify the lawful use hereby permitted and the specific criteria relating to this use

#### **05. APPROVAL CONDITION - Servicing Management**

If the building is to be occupied for A1 retail use, a servicing management plan shall be submitted to the Local Planning Authority and agreed in writing. The servicing management plan shall include details of the maximum length of vehicle to service the site and shall demonstrate that servicing vehicles can enter and leave the site in a forward gear

Reason: In the interests of highway and pedestrian safety.

#### 07. APPROVAL CONDITION - Cycle parking (Pre-Commencement Condition)

Before the development hereby approved first comes into occupation, cycle parking facilities shall be provided and made available for use in accordance with plans to be submitted and agreed in writing by the Local Planning Authority. The cycle parking facilities shall thereafter be retained as approved.

Reason: To encourage cycling as an alternative form of transport.

#### 08. APPROVAL CONDITION - Active Ground Floor Frontage (Performance)

Notwithstanding the provisions of Class 12 of Schedule 3 of the Class 12 of Schedule 3 of the Town and Country Planning (Control of Advertisements) Regulations 2007, or any Order amending, revoking or re-enacting these Regulations, the occupiers of the ground floor frontage to north and east-facing elevations of the building hereby approved shall retain clear glazing on the ground floor along the length of the shop frontages hereby approved (without the installation of window vinyl or equivalent) unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of retaining a lively and attractive street scene without obstruction and to improve the natural surveillance offered by the development.

#### 09. APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.