

Subject: Nomination for the Eldon Arms Public House, Southsea, to be placed on the Register of Assets of Community Value

Report by: Claire Upton-Brown - Assistant Director of Culture and City Development

Wards affected: St Thomas Ward

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 To discuss the Asset of Community Value Nomination Form that came to Portsmouth City Council on 12th December 2016 from the Eldon Arms Community Preservation Society. The Nomination Form is available on the Council website and was received by post on the 12th December 2016. Extra information was requested from them on the 27th February via Email, this meant that we extended the 8 week period for decision making to consider the nomination and this period ends on the 24th March.

2. Decision

- 2.1 **Under delegated powers to the Assistant Director of Culture and City development a decision has been made to REFUSE the Nomination on the grounds the building is not essential to the special character of the local area, it is not something the community depend upon and there is doubt as to its commercial viability.**

3. Background

- 3.1 This Nomination was the second to arrive at the end of 2016, and these two were the first Nominations the Council has dealt with since South Parade Pier and St Peters Theatres in 2013.
- 3.2 This Nomination has been submitted by the Eldon Arms Preservation Society, an organisation that was founded on the 8th December 2016 (four days before the Nomination was received). They also have their own Facebook page: <https://en-gb.facebook.com/TheEldonArmsCommunityPreservationSociety/>
- 3.3 There are a number of types or voluntary bodies which can submit a nomination. This one has been submitted by an unincorporated body which includes 21 members (most of who live in the city), and which does not distribute any surplus it makes to those members.

3.4 The Eldon Arms is a traditional type of public house that ceased trading shortly before Christmas 2016 when the tenant landlord vacated the premises. Originally the Council wrote to the landlord to obtain information about his intentions, after finding he had left contact was made with the owner Enterprise Inns in an attempt to gain more information about the Company's plans for the premises. They advised the Council that a new landlady would be in place on the 20th January, and that the Company did not support it becoming listed as an Asset of Community Value. On the 2nd February after advice from Legal we formally sent an official letter to Enterprise Inns and the new landlady.

4 Summary of the owners' comments

4.1 Whilst Enterprise Inns advised the Council that they did not support the Nomination via Email no explanation was provided. Enterprise Inns were prompted to provide further detail but no response has been given. The new landlady did not respond either.

5 Summary of resident's comments

5.1 Residents have been informed by way of A4 site notices requesting a response by Friday the 17th February (however the posters were left in place until Monday the 20th). One was fastened directly outside the door of the Eldon Arms on the lamppost. Only one response has been received, from a neighbour who objected to the Nomination before the posters went up.

5.2 The full set of their comments is in Appendix B, and a summary is here:

- The Eldon Arms, along with many other pubs has struggled since the 2008 financial downturn further compounded by the smoking ban, increases in beer duty, supermarket discounting and general shift in consumer habits/spending
- It is misguided to be protecting city centre pubs that are no longer financially viable
- This policy is predominantly aimed at community pubs/shops within small rural settlements that if lost, would detrimentally affect the local population by depriving them of essential services and a place to meet, socialise, shop
- The council's guidance states that a listing is to be put in place to prevent the loss of a community asset. A community space that if lost will deprive the local community of a building or property which is essential to the special character of the local area
- The important factor is whether or not this property's continued use as a public house is essential to the local area, and if ceased would deprive the community of its special character – to which I would argue the answer here is no
- The offer of darts, music, pool, food and alcohol can all be found a short distance from the subject property at the King Street Tavern and The Raven and is therefore not unique
- The locality is full of pubs and restaurants, all of which offer a similar service
- The current use as a pub has been shown to not be commercially viable with four different landlords/tenants in as many years

6 Consideration of the social interest and social wellbeing

6.1 The Localism Act says the following on social issues:

88 Land of community value

(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority -

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community

6.2 Social interests in the Localism Act in Para 88(6) are defined as:

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

6.3 The Eldon Arms as a public house serves alcohol and is a place for social gatherings, both informal and formal. The Eldon Arms Preservation Society has told us:

The property is a public house which is used by all ages throughout the week and provides many social facilities:

- Having a capacity of up to 105 people this pub is one of only a few places in the local area that can support large gatherings for family events, music performances, local society meetings and so on
- The pub is open to all and is not restricted or unwelcoming to any particular group catering for a mixed clientele including local families, social groups and pensioners
- The pub has a number of facilities such as a dartboard, pool table, bar billiard table, juke box, piano and a television which is used for sporting events
- The pub hosts local wakes, christenings, birthday parties and local social events and social group meetings, such as the Spanish Society and 'The Cotton Club' (a group of ex-city council engineers)
- The pub supports music performances by local bands, including regular performances by the University of Portsmouth Big Band
- The pub holds weekly quiz nights
- The pub dart teams competes in the local summers and winter leagues

- The pub is a 'family pub' with a commitment to social responsibility regularly holds collections for various charities and hosted several special charity nights including events for Cancer Research, Alzheimer's and Multiple Sclerosis

7 Purchase of the Asset

7.1 The Act does allow a Moratorium period when the Community can put in a bid to acquire it. We do not know whether the Eldon Arms Community Preservation Society could raise the funding to purchase and run it, however there is no need for a business case at this point in time and if the Moratorium is enacted they will get an opportunity to bid for it.

7.2 The Act does ask us to assess:

88 2(b) 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.

7.3 The building has been here since 1899, and it is unlikely it will stop being used, although a sign outside says 'could you run this pub?' which suggests the current landlady is temporary.

7.4 The Campaign for Real Ale have told the Council there are about 40 public houses in the UK owned by local community groups, and that 52,750 public houses exist in the UK.

8 Consideration of the Portsmouth City Council Policies for defining social interests / wellbeing

8.1 The Portsmouth City Council Policy (reproduced in full in Appendix A) states that we must assess the Eldon Arms on a number of issues including:

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.**

8.2 The local area is here defined as Somerstown bounded by four key roads and to a lesser extent the surrounding area.

9 The characteristics of Somerstown

9.1 The northern area along Winston Churchill Avenue is dominated by the University with a number of buildings such as the Schools of Architecture, Art and Design, Media and Performing Arts and Creative Technologies. There are also two ageing 18 storey halls of residences and a modern 8 storey Unite halls of residence above a co-operative There are also smaller halls of residence and other commercial uses, including citizens advice, an Ibis Hotel and modern residential terracing.

- 9.2 West is the Conservation Area of Landport Terrace and Hampshire Terrace, a mix of office, residential, hotels and restaurants facing the University Campus. It backs onto the area of Park Street down to Kings Road which is mainly 4 storey maisonettes, part of post war slum and bomb damage clearance. The bulk of this is social housing, there is also a Salvation Army Hostel. There are some modern terraces and a few older houses that survived wholesale clearance and re-development.
- 9.3 The north east of Somerstown is a large area of post war redevelopment, 4 and 5 storey flats/maisonettes, as well as Tipton and Edgbaston House, two 18 storey tower blocks. There is also some modern terracing. The bulk of this is social housing.
- 9.4 Further east beyond Green Road to Victoria Road North in the East is a large area of more traditional terracing, including St Andrews and St Davids Road Conservation area. South of this is Cottage Grove Primary School, another University Building and more modern housing and then the retail area of Elm Grove.
- 9.5 The Southern boundary is Kings Road and Elm Grove (leading to Albert Road), with a wide range of restaurants, public houses and an eclectic mix of retailing that serve a wider clientele and passing trade.
- 9.6 The King Street Conservation Area where the Eldon Arms sits contains Listed Buildings and Buildings on the Local List as being of special architectural and historic interest.
- 9.7 The character of the local area is dominated by social housing, but even so it has a wide variety of uses within it. There are a number of retail facilities; two garage/repair shops, several convenience stores, a Chinese take away, a fish and chip shop, a funeral director, a barbers and a pizza takeaway. Elm Grove also has a range of shops and public houses.
- 9.8 The area also has a number of community facilities; three pocket parks with play areas including basketball courts, the Somerstown Community Hub spanning Winston Churchill Avenue and offering a café and a wide range of activities. Next to the Hub is Somerstown Adventure Playground. There is also an Art Gallery in a former church in the King Street Conservation Area. There are no health facilities within the boundaries described above.

10 Public Houses in the area

- 10.1 A short 92 metres south of the Eldon Arms is the King Street Tavern Public House. Lying between them was The Kitsch n' Dor restaurant established in 2000 (which was once the Elm Tavern with its own Brewhouse). This is now closed and the principle of residential conversion has been agreed with a small wine bar. 100 metres north of the Eldon Arms is the 1970's design of the Raven Public House.
- 10.2 South of them are a number of other Public houses selling alcohol and providing places to socialise, including the Hole in the Wall in Great Southsea Street, and on Elm Grove The Honest Politician, the One Eyed Dog and The Dec 'theme pubs', as well as a number of restaurants.

11 Is this an asset the community depend upon?

- 11.1 It can be said The Eldon Arms does provide a place to meet and socialise. But it is not well frequented: several visits at 17:30 in the working week and at lunchtimes have seen only one or two people in there. Bearing in mind the high density accommodation in the area of both local people and students it is conceivable patronage should be higher, although having been closed for a while this may have had an impact. Further visits later over several evenings did not show much of an improvement.
- 11.2 On Wednesday the 20th February at 19:00 the Eldon Arms was empty. The nearby Kings Tavern had only 3 people in it and The Raven 6.
- 11.3 On Thursday 21st February at 17:45 the Eldon Arms had 4 people in it, the Kings Tavern 6 and the Raven 16. At 20:00 on the same evening the Eldon Arms had 6 people, the Raven 10 and the Kings Tavern 7.
- 11.4 On Friday the 22nd February at 20:00 there were 9 people in the Eldon Arms, 30 in the Kings Tavern and 18 in the Raven.
- 11.5 On Saturday 23rd February at 19:45 there were only 6 people (and also 3 children), the Kings Tavern had 14 and the Raven had around 20. This is a very poor showing on a Saturday night.
- 11.6 The City Council will also 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. The viability of the Eldon Arms is questionable seeing the poor amount of patronage. On the Thursday 21st February when the Eldon Arms had 4 people in it the One Eyed Dog on Elm Grove had 16 people in it, and further into Southsea the Fawcett Inn had 20, the Lawrence Arms had 20, The Vaults had 30 plus and the Bold Forester 30. All looked busy and lively, whereas the Eldon Arms did not.
- 11.7 It is notable that there are 21 signatures on the Nomination Form, but the Council has not seen 21 people using the Eldon Arms at one point in time, the kind of numbers which would suggest it is a popular place. Were the Nomination successful and the community at some point able to raise funds to purchase this public house there seems uncertainty over whether it would be financially viable.
- 11.8 The definition of the extent of the local community will depend on the nature of the use is also part of the City Council Policy and it is clear from the above that the community do not depend on it.

12 Conclusions

- 12.1 The Assets of Community Value aspect of the Localism Act came into being partly to save the last public house in a village. The rationale behind this is clearly

understood, and such a public house could be seen as essential and something the community depend upon (but only if they used it).

- 12.2 The key issue for the City Council using its own policy for defining social interests/wellbeing is whether the Eldon Arms is essential to the character of the area. A generally agreed definition for the word 'essential' is a thing that is absolutely necessary.
- 12.3 As noted it is one of three public houses in very close proximity to each other. There are also many others in the nearby area and so it can hardly be described as being essential or absolutely necessary.
- 12.4 The building itself is already given a degree of protection by being in a Conservation Area and on the Local List. What needed to be assessed was its role as a public house and whether as such it is 'essential to the special character of the local area.'
- 12.5 The conclusions in summarising the above are that the Eldon Arms does not fit the Portsmouth City Council Policy for defining social interest/wellbeing which states we must define the extent to which the community would be deprived of land or a building that is essential to the special character of the local area. It is not essential, nor is it something the community use or depend upon. There is also some doubt giving its current levels of patronage as to its commercial viability in the long term. We therefore recommend not supporting the Nomination and placing it on the Register of Unsuccessful Nominations.

9 Legal comments

- 9.1 Legal comments have been incorporated into the body of this Report.

Appendix A Policy for defining social interests / wellbeing

Appendix B One residents response in full

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

Signed by:

Assistant Director of Culture and City Development

Appendix A - Policy for defining social interests / wellbeing

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.

Appendix B Response from neighbour

I would like to formally register my strong objection to any potential listing of this property as an 'asset of community value'.

I have in the past managed and run public houses, bars and restaurants, worked as a drinks wholesaler and I am currently a Chartered Surveyor with relevant experience in licensed leisure properties, having advised on the purchase sale and letting of multiple public houses in recent years.

I am therefore confident I am able to comment in an informed manner on this application and should it be required I would be happy to speak at any hearing.

The Eldon Arms, along with many other pubs in Portsmouth and the wider UK, has struggled since the 2008 financial downturn which further compounded problems already created by the smoking ban, increases in beer duty, supermarket discounting and general shift in consumer habits/spending.

Specifically within Portsmouth the development of Gunwharf Quays and the rise of independent cafes, restaurants and bars throughout central Southsea has had a large impact on large cumbersome local pubs such as the Eldon Arms that haven't moved/changed with the times.

Figures suggest 21 pubs per week are closing across the UK (CAMRA) however this statistic is somewhat misleading as many of those that have closed, have since re-opening as an alternative leisure use such as restaurants or cafés.

An interesting fact that the pub campaigners fail to mention is that at the same time as all these pub closures, over the last two years almost two coffee shops and cafes have opened each day in the UK (Local Data Company). This figure does not include new restaurant openings which are also substantial – by way of example to the new extension to the West Quay Shopping centre in Southampton has seen 21 new restaurants opened alone recently.

The above highlights the change in consumer spending and socialising trends, moving away from the traditional pub to restaurants, coffee shops and cafes. I believe it misguided to be protecting city centre pubs that are no longer financially viable.

Asset of Community Value

I have thoroughly read the Councils brief guidance on ACV's, the governments Policy Statement and guidance on ACV's and the relevant chapters of the Localism Act 2011.

I believe it to be quite apparent that this policy is predominantly aimed at community pubs/shops within small rural settlements that if lost, would detrimentally affect the local population by depriving them of essential services and a place to meet, socialise, shop etc...

The council's guidance states that a listing is to be put in place to prevent the loss of a community asset. A community space that if lost will deprive the local community of a building or property which is essential to the special character of the local area, and provides:

- a) a place to meet and socialise; or
- b) a place to shop; or
- c) a recreational, sporting or cultural facility.

I agree that loosely the Eldon Arms can be said to provide a place to meet, shop and for recreation, however arguably so can McDonalds, which clearly highlights there is more to it than just these features.

I believe therefore the important factor is whether or not this property's continued use as a public house is essential to the local area, and if ceased would deprive the community of its special character – to which I would argue the answer here is no.

In my opinion loss of the Eldon Arms is not going to deprive the community of any 'essential' service, as it does not provide any service that is essential or unique.

The offer of darts, music, pool, food and alcohol can all be found a short distance from the subject property at the King Street Tavern and The Raven and is therefore not unique.

The locality is full of pubs and restaurants, all of which offer a similar service, to highlight this fact the list below can be found within a quarter mile radius, (under 5 minute walk):

Former Kitsch N Dor, Restaurant and Wine Bar - 200 ft
The King Street Tavern, Public House – 250 ft
The Raven, Public House – 400 ft
All About Tea, Tea Room – 0.1 miles
Italian Bar and Grill, Restaurant and Public House – 0.2 miles
The Hole In The Wall, Public House – 0.2 miles
Chimes Restaurant – 0.2 miles
The Honest Politician, Public House – 0.25 miles
The Chambers, Restaurant and Bar – 0.25 miles
The Corner Café, Café – 0.25 miles
Koh Thai Tapas, Restaurant – 0.25 miles
The Barley Mow, Public House – 0.25 miles
T&J Mahal, Restaurant – 0.25 miles
Ibis Hotel, Bar and Restaurant – 0.25 miles
Brewhouse and Kitchen, Public House – 0.25 miles
Astoria, Nightclub – 0.25 miles

Trip advisor tells me there are 497 cafes, restaurants and pubs in the city. I see no reason why the Eldon Arms should be picked out as being in need of special protection when there are so many other comparable venues to choose from. It could also be said that if the Eldon Arms is deemed to be in need of protection, then arguably so should the other 496 properties.

I keep a close eye on the trade of this pub and others in the area, and there just isn't enough custom in this location to support them all, hence why the Kitsch N Dor closed last year, as did the King Street Tavern (albeit no reopened after a full refurbishment) and now the Eldon Arms (for the third time in the last five years).

I strongly believe the market should be left to decide whether a privately business should survive or not – not individuals at the council/government or a small minority who are nostalgic about what something used to be. If this pub is not financially viable in its current state it should not be forced to remain unviable for the next five years.

If the council supports this nomination, they will effectively be rendering a large, no longer fit for purpose building, irrelevant and unable to change.

My personal worry as the adjoining owner is how the forced continued use as a pub will affect my property. I share a party wall, have an interlinked roof and share a guttering system. Since my ownership I have seen a definite decline in the condition of the pub due to there being no maintenance works carried out by landlord or tenant (and likely many years before this). Should this continue for a further five years I am concerned it may start to affect the integrity of my property.

The council must also take into account the potential for compensation claims being made against them. To place a restriction on the Eldon, preventing any alternative use will materially affect its value.

I understand an offer has been made on the property for the sum of £390,000 due to its redevelopment potential. This offer was rejected by the owners as does not meet their aspirations on price, who are using the recent sale of the Kitch N Dor for £550,000 as a comparable.

As a surveyor who deals with licensed properties as part of my profession, to put a value on a public house with a tenant I would capitalise the rental income by the appropriate market yield. For public house of this type the current net yields are in the region of 8-10% depending on location, tenant strength and lease terms.

The openly advertised asking rent on the Eldon Arms is £14,500 per annum. To capitalise this at the lowest yield of 8% would give a capital value of £177,000 – some way off the price recently offered.

This crude calculation highlights how much the value of a property can be affected through the taking away its potential for alternative use. Theoretically the landlord could make a claim against the council for the loss in value which could be considerable.

I would also like to point out that it is also the council's responsibility to assess the commercial viability of the community group (including their ability to raise funds) and the sustainability of their ownership/use.

Have you received evidence of funding and a business plan from the applicants to highlight that they are willing, able and experienced enough to purchase and run this property as a pub for the next five years.

The current use as a pub has been shown to not be commercially viable with four different landlords/tenants in as many years, therefore financing is going to be very hard to come by, as such my experience tells me it is most likely all this protection will do is frustrate any future sale, incurring additional costs and potential compensation claims against the council.

As a tax payer I would not be happy to see the council compensating private landlords for loss of value of their properties due to these protections.

The problem does not stop with the Eldon Arms, should the council decide to protect this pub, they will open the flood gates for applications to protect every other pub, café shop or restaurant in Portsmouth wasting valuable council employee's time dealing with the applications and risking leaving themselves open to thousands of pounds of compensation claims.

Given all of the above I urge the council to decline this application for protection to set a precedent for future similar unsuitable applications.