

Agenda item:

Decision maker: Assistant Head of Planning Services

Subject: Community Right to Bid nomination - St Peter's Theatre and Community Rooms

Report by: Planning Policy Assistant

Wards affected: St Thomas

Key decision (over £250k): No

1. Purpose of report

- 1.1 The Council received a Community Right to Bid (CRTB) nomination for St Peter's Institute on the 28th February 2013. The determination date for the nomination is no later than the 25th March 2013.
- 1.2 The Council adopted a policy for determining Community Right to Bid nominations on the 4th February 2013. This policy is attached as Appendix A.
- 1.3 The purpose of this report is to make a recommendation to the Assistant Head of Planning in respect to the determination of the nomination of the St Peter's Theatre and Community Rooms (the nomination land), as land of community value, that is land:
 - a) where an actual use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community (either at the time of the application or at a time within the recent past): and,
 - b) it is realistic to think that that use can continue (or that there is a time within the next five years that it would so resume).

2. Recommendations

- 2.1 **The Assistant Head of Planning is recommended to refuse the nomination on the grounds that a 'realistic prospect' of the resumption of the social interest and social wellbeing use for the nomination land has not been demonstrated.**

3. Background

- 3.1 The nomination land occupies a 0.2 acre site in Fraser Road/Somers Road in Southsea. The nomination land is located to the immediate north of St Peter's

Church and connected to it by way of a covered walkway. To the immediate west of the nomination land lies St Peter's Vicarage.

- 3.2 The nomination land was built by the Church of England in 1924, with construction costs being partly met by public subscription. The ground floor of the two-storey property is composed of community rooms which have been used for a variety of community activities including public worship, sport and a parent and toddler group. The upper floor is composed of a purpose-built theatre space which is used for amateur theatre, dance, and other community activities.
- 3.3 Since its construction, the nomination land has been managed by the Church of England, creating a suitable environment for community groups such as amateur theatre groups to flourish. The Church has however, recently indicated that on financial and health and safety grounds they wish to close/find another use for the building. This has prompted a "Save St Peter's Theatre" campaign, and this subsequent nomination under the CRTB scheme.
- 3.4 The land is primarily registered to the Portsmouth Diocesan Board of Finance (PDBF), however a small section to the north-east is registered to the Incumbent Benefice of St Peter in the adjoining Vicarage.

4. Summary of the nomination

- 4.1 The nomination for the nomination land was submitted to the Council by the Phoenix Players theatre group. The Phoenix Players have satisfied the requirements for being a community group which is eligible to submit CRTB nomination by the declaration of:
- a. their registered charity number;
 - b. their activities being wholly concerned with the City of Portsmouth.
- 4.2 The nomination is for the resumption of use of the property as a community theatre and halls which serves the social interests and social wellbeing of the local community.
- 4.3 The property is not exempt from listing as an Asset of Community Value.

5. Summary of the owners' comments

- 5.1 The PDBF maintains that St Peter's Church and the nomination land should be viewed as one unit, and as such, the nomination should be rejected. To support this claim, the PDBF refers to the recent CLEUD refusal for St Peter's Theatre, which states that:

"The Council is not satisfied that the said building [St Peter's Theatre] is now or has even been subject to development by material change of use sufficient to create a separate planning unit in separate use from the range of buildings

included in the ownership of the church, including the listed building known as St Peter's Church, and other land and premises in the curtilage of the Church."

- 5.2 The PDBF considers the nomination's lack of clarity concerning the intended future use should be considered as grounds for refusal.
- 5.3 PDBF asserts that the nomination land would only be sold as part of a larger site which would include and be dependent upon the closure of St Peter's Church. As a disposal of this type would be exempt from the moratorium under 'part-listing' exemptions, PDBF believes that the nomination should be rejected.
- 5.4 PDBF also cite Schedule 3(12) of The Assets of Community Value (England) Regulations 2012 which states that a relevant disposal which is exempt from the moratorium includes:
- "A disposal of a church, together with any land annexed or belonging to it, pursuant to a scheme under Part 6 of the Mission and Pastoral Measure 2011(5)"*
- 5.5 The comments from the Incumbent Benefice of St Peter are attached in exempt Appendix B.

6. Summary of the occupiers' comments

- 6.1 Representatives from the South Downe Stage School, MADD [student] Productions, The University of Portsmouth Drama and Performance Department, and the University of Portsmouth Music Department have expressed interest in resuming or expanding their use of St Peter's Theatre. This adds weight to the determination of the nomination against policy criteria 3, however as it has not been quantified, it is difficult to ascertain its overall potential.
- 6.2 Victory-Land Theatre Group, Tiny Tots, the Cantrell Singers and Giselle Academy registered their support for the nomination and affirm the building's social interest and social wellbeing.

7. Summary of the internal consultation

- 7.1 During the determination process, Planning Services carried out an internal consultation with Cultural Services, who considered in particular the social interest and social wellbeing of the nomination. Cultural Services commissioned Artservice to undertake a report on the nomination, which has served as a background document to this report.
- 7.2 An internal consultation was also carried out with Financial Services, looking in particular at the consideration of the nomination's realistic prospect of resumption of use. The background document "St Peter's Theatre and Hall" is the result of this consultation.

7.3 An internal consultation was also conducted with Asset Management Services, who affirmed that the proposed purchase price of the property is reasonable.

8. Consideration of the social interest and social wellbeing

8.1 The nomination land was purpose-built as a theatre and community hall in 1924, with construction partly funded from public subscription. The nomination asserts that the amateur theatre's facilities are recognised as being unique, not only in Portsmouth, but nationally, as being one of only six amateur theatres in the UK that has a fly tower.

8.2 The Institute is located on the eastern edge of Somerstown, one of the most deprived areas of the city, and provides opportunities for local people to enjoy a variety of social activities. According to the nomination, the Institute is of particular benefit to young people in providing them with opportunities to develop their performance skills and career prospects.

8.3 Although the Institute's community hall serves the immediate area, in the case of the theatre, which has a wide catchment area, the definition of the 'local community' should be considered in the broadest sense.

8.4 It is notable that the Local Planning Authority recently refused the Certificate of Lawful Use or Development (CLUED) for St Peter's Theatre. The decision [12/01332/CPE] concluded that:

"The Council considers that use of the Institute building [the nomination land] for a range of different activities including Sunday worship, Sunday school, nursery school, church offices and choir vestry, for sport, and use by community groups including dramatic productions are other activities of local theatre groups, is consistent with such activities being ancillary to the church use or within the same Use class."

8.4 It is important to note that the above decision does not have the effect of either supporting or undermining the application here. Though there are tests of ancillary use within the relevant sections of the Localism Act 2011, these are treatments of the nomination land only, and any associated land which does not form the building: they do not consider the wider planning unit. Part of the nomination land is registered to the adjoining Vicarage, however it is reasonable to conclude that this land is not merely ancillary to the social interests and social wellbeing purpose of the building contained within the nomination land area.

8.5 The Council has found that the upper floor of the property has been in use for over 50% of the year as a theatre. Combined with the prominent community uses of the lower floor, the principal role of the property has been satisfactorily demonstrated as furthering the social interests and social wellbeing of the local community.

- 8.6 The nomination also includes an extract from a 'Save St Peter's Theatre' petition which has been signed by over 5,500 people. The petition's comments reinforce the social interest and social wellbeing of St Peter's Theatre.
- 8.7 The nomination cites the Full Council meeting on Tuesday the 13th November 2012 which recognised the social interests and social wellbeing of St Peter's Theatre. It must be noted however, that this recognition was made prior to, and independently of, the adoption of the policy for determining the social interests and social wellbeing of 'Assets of Community Value'. It is also independent of the consideration of this nomination.
- 8.8 The Council recognises that there is currently a shortage of other appropriate venues for amateur theatre production in the city. The city's professional theatres such as the King's Theatre and New Theatre Royal are considered to be too large and expensive for amateur productions. Groundlings Theatre may be considered an appropriate alternative venue, however Groundlings Theatre does not possess a fly tower or separate community halls. It should be noted that the nomination is in respect of St Peter's theatre and community hall. Furthermore, moving the venue to Groundlings Theatre would deprive the local community of Somerstown of a building that furthers social interests and social wellbeing. Many of the city's other smaller venues, such as community centres, lack both the necessary theatre facilities and the block booking capacity to appropriately accommodate amateur theatre productions.

9. Consideration of the realistic prospect of resumption of use

- 9.1 In consideration of the realistic prospect of the resumption of use, the nomination asserts that:

"We believe there is sufficient demand for the facilities that St Peter's Theatre and Halls can offer to sustain a viable 'Not For Profit' Company."

Other than the enclosed letters of support from the Corpus Christi Amateur Dramatic Society (CCADS) and the South Downe Stage School, the nomination does not demonstrate where this demand will originate. Additional interest groups have emerged through the occupiers' comment process, however inclusive of these groups, there is still not enough demand identified in order to instil confidence in the business plan's aims.

- 9.2 It is notable that there are other developments occurring in the Institute's vicinity, such as the Somerstown community "Hub", and the construction of a drama studio at the nearby Charter Academy. Potential competition from these new facilities has not been addressed within the business plan.
- 9.3 The sources of income identified within the business plan are hire charges for the theatre and community halls, and a maintenance levy for each ticket sold through the theatre. According to the business plan the hire charge income from the lower community halls is estimated to increase over four years by 190% from the submitted 2011 figures. While the hire charge income from the theatre

is estimated to increase over the same period by approximately 1170% from the 2011 figures, with an average audience of 50% from the 200-seat capacity. Although it is reasonable to consider that the current owners have not maximised the income potential for the building, there is little evidence of how these substantial income increases will be achieved.

- 9.4 Concerning staff, the business plan identifies one full-time manager, a part-time technician, a part-time book-keeper and a core of volunteers. The wages for the paid staff, which would peak at £25,000 in total, and do not make reference to National Insurance and superannuation, appear to be substantially underestimated.
- 9.5 The business plan appears to have estimated the maintenance costs of the building very optimistically. The business plan's assumes £12,000-£24,000 p.a, while a figure of £50,000 p.a. is considered more realistically. Moreover, should the property be acquired by the community, new utilities separate from the Church would need to be installed, along with a new heating system, seating, fire curtain, fly tower equipment and other facilities following their removal by the Church. Despite the reasonable assumption that an initial maintenance budget would be required to make the building fit for use, the business plan does not make an allocation for the funds to meet the associated costs of the installation work.
- 9.6 Under the Equalities Act 2010, service providers are required to make 'reasonable adjustments' to their properties to facilitate disabled access. The availability of finance is a factor in determining what is 'reasonable', so although an improvement in disabled access is desirable, in the context of a community asset, a lack of initial funding for works in this area should not be considered as grounds for refusal.
- 9.7 The established Use Class of the nomination land is D1, so a resumption of use as a theatre and community hall would not necessarily precipitate a change of use planning application. However, as proposed by the nomination's business plan, if the use of the property as a theatre was intensified and became the property's principal use, then a planning application for a change of use to 'sui genesis theatre' would be required. No funds have been identified within the business plan for preparing a planning application and the subsequent works which may arise, which for example, could include increased parking requirements.
- 9.8 The business plan acknowledges a long-term desire to purchase the freehold to the nomination land, but states that the preferred option is to secure a 25-year lease, which would satisfy the requirements of the CRTB process. The business plan also states another option to secure the lease of just the upper floor Theatre. As demonstrated by the CLEUD determination, this use would be considered 'ancillary' and therefore exempt from the CRTB process. For this reason only the options to acquire of the property as a whole will be considered.

9.9 In the context of the nomination land the likelihood of a disposal through a long-term lease currently appears to be low, though cannot be discounted. The nominator's proposed bid price for the building is considered reasonable, however the process pertaining to how the nominator would raise the necessary funds largely rests upon grant funding and charity fundraising. There are no tentative letters of interest from the identified grant funding bodies to support the nomination. The nomination does however assert that in recent years, a St Peter's Theatre 'user groups' has contributed some £30,000 to the maintenance of the property. This may be indicative of the community fundraising potential, although there needs to be more evidence of the funds that could be raised by the community.

10. Conclusions

- 10.1 The nomination for the nomination land to be listed as an Asset of Community Value has been submitted by the Phoenix Players theatre group. Through their charity status and declaration of their activities being wholly concerned with the City of Portsmouth, this group is considered to be eligible to submit CRTB nominations.
- 10.2 The nominated property is not considered to be exempt from listing. However as the property forms part of a larger site, it is feasible that if it is listed and the whole site simultaneously disposed of, under the 'part-listed' exemption and the exemption under Schedule 3(12) of The Assets of Community Value (England) Regulations 2012, the property may be exempt from the moratorium requirements.
- 10.3 The Council received comments from eight occupying groups on the nomination. All of the occupiers supported the nomination, with four of the groups expressing interest in continuing or expanding their use of the property. No information was however provided on the scale of their continued or expanded use.
- 10.4 The owners of the property have objected to the nomination primarily on the grounds that the community does not have a realistic prospect of operating the property viably.
- 10.5 The nomination has satisfied criteria 1(iii) of the determination policy "because in its [the St Peter's Institute] 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 a cultural activity".
- 10.6 In the context of criteria 2, the scope of the 'local community' should be judged to be wide, due to the uniqueness and nature of the building's use. Nevertheless, through the submitted petition extracts and the property's local community uses, the building's importance to its immediate community has been demonstrated.

- 10.7 Against criteria 3 of the policy, the submitted business plan does not provide a convincing argument that the resumed use of the property has a realistic prospect of being operated viably. The business plan relies upon an approximate 1170% increase in hire charge income from the building's theatre, and an approximate 190% increase in hire charge income from the building's community halls. Sufficient evidence was not included within the nomination to demonstrate how this will be achieved.
- 10.8 The business plan also appears to have significantly underestimated the maintenance budget and wages budget of the proposed paid staff.
- 10.9 It is notable that there are other developments occurring in the Institute's vicinity, such as the Somerstown community "Hub", and the construction of a drama studio at the nearby Charter Academy. Potential competition from these new facilities has not been addressed within the business plan.
- 10.10 In terms of acquisition, the submitted business plan favours an option to secure a 25-year lease of the property. Although the success of this option currently appears to be low, it is sufficient to satisfy the requirements of the CRTB process. The business plan does mention freehold acquisition, however a robust approach to this option has not been demonstrated, with the proposed bid price being largely met by unsubstantiated grant funding and/or charity fundraising.
- 10.11 In summary, the nomination does demonstrate the property furthers the social interest and social wellbeing of the local community. However the business plan does not make a convincing case for the realistic prospect of the building's resumption of use. As such, the recommendation for this nomination is to refuse.

11. Legal comments

- 11.1 Legal comments are incorporated into the body of this report.

Appendices

- Appendix A – Policy for defining social interests / well-being
- Exempt Appendix B - Comments from the Incumbent Benefice of St Peter

Background documents

- Artservice: "St Peter's Theatre, Portsmouth: Appraisal of Business Plan commissioned by Portsmouth City Council"
- Financial Services: "St Peter's Theatre and Halls"
- Asset Management Services: "Confidential St Peters"

The recommendation(s) set out above were approved/ approved as amended/
deferred/ rejected by Assistant Head of Planning on 25 March 2013

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Signed by Assistant Head of Planning Services:

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.