

## **FOR PUBLICATION**

### **THE WELLINGTON HOTEL – REQUEST FOR ARTICLE 4 DIRECTION - (J260L)**

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MEETING: Deputy Leader and Executive Member for  
Planning

DATE: 4<sup>th</sup> March 2015

REPORT BY: Development Management & Conservation  
Manager

WARD: Barrow Hill & New Whittington

COMMUNITY ASSEMBLY North

Key Decision Ref: 503

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#### BACKGROUND PAPERS:

TITLE: CAMRA/LGiU LOCATION: [www.camra.org.uk](http://www.camra.org.uk)  
GUIDANCE –  
How Councils and  
communities can  
save pubs

CHESTERFIELD LOCATION: [www.chesterfield.gov.uk](http://www.chesterfield.gov.uk)  
BOROUGH  
LOCAL PLAN:  
Core Strategy  
2011-31

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#### 1.0 PURPOSE OF REPORT

1.1 To consider a request for an Article 4 Direction to be served on The Wellington, 162 High Street, New Whittington.

## 2.0 RECOMMENDATION

2.1 That an Article 4(1) Direction is not served on The Wellington Hotel.

## 3.0 THE REQUEST

3.1 An 1800+ signature petition has been received requesting that The Wellington Hotel be both added to the list of Assets of Community Value (ACV) and that an immediate Article 4 Direction is served on the basis of the contribution The Wellington makes to the local community. The petition is from Friends of The Wellington campaign HQ, 66 Wellington Street. The case as set out by the petition refers to the following:

- The Community asset should be protected in compliance with Council policies;
- The hub of the community since 1865;
- A family pub for the community to gather for various social activities including pub quiz, snooker, darts, dominoes, live music, parties (for young and old), social drinking and dining – and much more;
- The only pub in the village serving food – home cooked and which runs an invaluable delivery service to local elderly, infirm and incapacitated residents who would otherwise not get a hot daily meal;
- The pub supports village life helping other businesses to survive, has a free meeting place for clubs and societies, children friendly.

3.2 A separate request has also been received from Councillor Bingham for an Article 4 Direction stating:

- The Wellington is a valuable and viable community hub which is vital to community cohesion. The pub delivers exceptional social value to the community and delivers all the aspirations that the Council policies seek to encourage;
- The services delivered by The Wellington save public expenditure e.g. Social Services, NHS, Policing & Borough amenities. The business cares for members of the community e.g. delivering meals to the house bound and no other facility with these benefits is available locally;
- The Wellington is the only business in the area to provide quality meals at affordable prices in an inclusive environment;

- The Wellington provides the only accessible free meeting place for clubs, Societies and Groups;
- The Pub with its Beer Garden is the only available facility where young and old members of the public can meet and socialise on an informal basis;
- The Wellington is the only wheelchair accessible asset of this type available to the local public;
- The Wellington supports the viability of other businesses in the village including the other smaller Pubs, the existing three convenience stores, The Butchers and The Bakers;

3.3 An e mail from Councillors D. and P. Stone supports the request for ACV listing and because of the character of the Wellington and its cultural, recreational, sporting and community/family users they also support an Article 4 direction on the basis of the reasoning provided by Councillor Bingham.

3.4 This report considers the case for consideration of the serving of an Article 4 Direction. A separate report has been prepared concerning the listing of the Wellington as an Asset of Community Value. As the petition had over 1000 qualifying signatures a full Council debate was triggered in line with the Council's policy and procedures.

3.5 The full Council debate took place on 11<sup>th</sup> February 2015 with over seventy local residents attending to show their support. A representative of the Friends of the Wellington made the case that The Wellington Hotel:

- is accessible to the whole community with a wide frontage with no steps, level access throughout the public areas of the pub and ramped access to an enclosed beer garden and children's play area
- contributes directly to the local economy via direct employment and the sourcing of products and services from New Whittington and the wider Borough
- has a wider community impact in terms of reducing social isolation and anti-social behaviour, delivering meals to local residents with mobility difficulties, hosting a variety of community events and providing a free meeting space of a variety of local clubs and societies
- In 2012 the Wellington Hotel was awarded runner up in Marston's PLC's regional community pub of the year awards

- 3.6 At the full Council debate councillors spoke in support of the Friends of the Wellington Campaign (including ward Councillors Bingham and Paul Stone). The points raised above were re-iterated along with the following additional key points:
- The Wellington is a thriving and viable community pub
  - No other pub in the village gives the same value to the community – it is a community hub
  - It is the only pub in the village to offer hot food on-site and via delivery to residents who are less mobile
  - The Wellington plays a vital role in reducing isolation for older people

It was resolved that:

1. The Council receives and notes the petition from the Friends of the Wellington Campaign group as part of the evidence supporting the requests made for :
  - a) The wellington to be added to the list of Assets of Community Value;
  - b) An Immediate Article 4 Direction to be issued.
2. That the Executive Member for Planning takes into account the petition and also the representations made at both the Council and the Planning Committee (scheduled for 23<sup>rd</sup> February 2015) before arriving at a final decision on both matters.

#### 4.0 BACKGROUND

4.1 The Wellington was owned by Marstons up to 2013 however New River Retail Ltd (NRRL) subsequently acquired 202 of their pubs. NRRL met with members on 21<sup>st</sup> November 2014 to confirm their plans for those pubs acquired in Chesterfield. Whilst they confirmed that they were looking at ways of keeping the pubs open and had a management agreement with Marstons to continue their trading for 5 years, they confirmed that 63 of the pubs were to be converted to convenience stores and they were in legal with Co-op. 3 pubs acquired were in Chesterfield and all were scheduled for convenience stores by the Co-op:

- The Spital – Conversion
- The Wheatsheaf, Newbold Road – Demolition and new build
- The Wellington – Conversion and Extension

4.2 It was confirmed that planning applications would be made, where required, before Christmas. The Spital and The Wheatsheaf applications have been submitted.

#### 5.0 ARTICLE 4 DIRECTION

5.1 The Town & Country Planning (General Permitted Development) Order 1995 provides the freedom to change the use of a public house (class A4) to a retail shop (class A1) without the need for a planning application. The Council as Local Planning Authority is only entitled to consider any external changes and not the use.

5.2 An Article 4(1) Direction removes the freedom to change the use and requires that a planning application be submitted. It cannot be served in retrospect.

5.3 Non-immediate Directions or Immediate Directions can be used depending on the perceived level of threat and urgency and having regard to the possible prejudice to the proper planning of the area. The Council has the power to serve Immediate Directions however it must then confirm the Direction following local consultation within 6 months. The Council as Local Planning Authority is required to send a copy of the Direction to the Secretary of State on the same day as it is first served and the Secretary of State has the power to Cancel or Modify the Direction. Compensation can be claimed however the procedure requires that a planning application should first have been made and permission refused or conditions imposed.

5.4 Service of an Article 4(1) Direction is limited to situations where it is necessary to protect local amenity or the wellbeing of the area.

#### 6.0 CONSIDERATIONS

6.1 There are common issues and considerations between the two processes however the ACV will consider the specific contribution the pub has to the local community at a point in time (and can be removed if this changes) whereas an Article 4 Direction is more broad brush considering a wider perspective and cannot easily be removed in the future.

6.2 Having regard to the proper planning of the area the Council has adopted a Core Strategy which specifically sets out its policy

regarding the loss of Social Infrastructure and facilities such as pubs. Policy CS17 states:

*Development will not be acceptable where it includes the change of use, amalgamation of uses or redevelopment of existing local community or recreational facilities, if it would result in the loss of a facility which is required to meet a local need or contributes to the network of facilities throughout the borough unless:*

- a) There is an equivalent facility available in the locality or an equally accessible one is made available prior to the commencement or redevelopment to serve the same need; or*
- b) It can be demonstrated through a viability assessment that the current use is economically unviable and all reasonable efforts have been made to let or sell the unit for the current use over a 12 month period.*

6.3 The Council as Local Planning Authority has no control what so ever regarding an owners intention to close a business, which beer they sell, where they buy their produce from and whether or not they sell food. The planning consideration as to the appropriateness and need for an Article 4 Direction must be informed by the Councils policy on safeguarding community facilities (policy CS17) and in this respect has to have regard to the opportunities available in the area in general. In this case in New Whittington there are numerous public house alternatives as follows:

- The Miners Arms, High Street – 110 metres from The Wellington.
- The Rising Sun, High Street – 260 metres from The Wellington.
- The Forge, Devonshire Road North – 420 metres from The Wellington.
- The Angel, South Street North – 205 metres from The Wellington. This is currently vacant and has received a planning permission for conversion to flats however this has not been implemented. The property remains a public house and can be reoccupied as such without the need for planning permission.
- New Whittington Social Club, Wellington Street – 20 metres from The Wellington. There is a charge of £3 a year (£1.50 for OAPs) to be a member

There are also function room facilities within the close vicinity as follows:

- St Barnabus Hall, Albert Road – 260 metres from The Wellington
- Primary School, London Street – 410 metres from The Wellington

- 6.4 Over recent years Chesterfield Borough has seen more and more proposals which involve the loss of pubs, Miners' Welfares and similar club premises through changes of use or the redevelopment of their sites for other uses.
- 6.5 It is widely recognised that pubs make a significant contribution to community life, and their loss can have negative effects however the adopted Core Strategy policy CS17 is clear in that it acknowledges that pubs are required to serve and support the local population and in areas of the borough where there are a lack of facilities the redevelopment of public houses will not be permitted unless it can be shown that they are no longer viable. No evidence is available in this case to indicate that the pub is or is not viable. Any assessment of viability is likely to require the submission of evidence relating to trading accounts, valuation considerations and the marketing of the business or property for a minimum of 12 months as set out in policy CS17.
- 6.6 The policy sets out specific tests and requires an applicant to provide evidence to meet a number of criteria in order to allow the Planning Authority to consider a proposal for the loss of a pub. The aim of the policy is to provide clarity for officers, applicants, councillors and members of the community about the necessary considerations when determining applications in accordance with policies CS17. It clearly indicates that a public house can be redeveloped if an *equivalent facility is available in the locality*. In this case there are numerous options available within the near vicinity with five other pubs within 5 minutes walk. Apart from food the alternative pubs in the vicinity provide a range of competing facilities. An Article 4 Direction could not however be justified on the basis of food sales since such a Direction would not safeguard this component of the use. The owner may decide to stop selling food and this would be their choice. Likewise other pubs could start to sell food and such situations are not controllable via an Article 4 Direction. Such local arrangements may well justify adding the

premises to the list of Assets of Community Value however it is considered that on the basis of the availability of equivalent facilities in the area (5 other pubs within 5 minutes walk and alternative function rooms) then the case to justify the service of an Article 4 Direction cannot be made.

- 6.7 The listing of a building as an ACVs is however increasingly being taken into consideration as a material planning matter when considering planning applications which affect them and a number of appeal decisions are emerging which show inspectors are giving weight to ACV designation. Furthermore the Government announced last week that it is their intention to remove permitted development rights for all pubs that are listed as ACVs and secondary legislation is to be brought forward at the earliest opportunity (ie automatically introduce control as if an Article 4 Direction were in place).

## 7.0 CORPORATE ISSUES

- 7.1 In preparing this report the relevance of the following factors has been considered:

**Financial Considerations** - No implications at this stage if an Article 4 Direction is not served. There are provisions for compensation to be paid in the event that such a Direction is considered appropriate.

**Legal and Human Rights Issues** - Similarly with equal opportunities considerations the community/ stakeholders and any other interested parties would be consulted on any formal planning application submitted and given the opportunity to make representations.

**Equalities Issues** - It is considered that an Equalities Impact Assessment is not required. Consideration of any subsequent planning applications for the redevelopment of public house sites will need to be assessed in the normal way according to the council's established procedures for deciding and reporting all planning applications. The community/ stakeholders and any other interested parties would be consulted on any formal planning application submitted and given the opportunity to make representations.



## 8.0 RISK MANAGEMENT

### 8.1

<b>Risks</b>	<b>Impact</b>	<b>Likelihood</b>	<b>Mitigating Actions</b>	<b>Residual Impact</b>	<b>Residual Likelihood</b>
If an article 4 Direction is served there is a risk of compensation being sought if a subsequent planning application is refused.	High	Very Likely	<ul style="list-style-type: none"><li>• Ongoing communication with the owners.</li><li>• Ensure a robust consideration of the issue</li></ul>	High	Likely

## 9.0 RECOMMENDATION

9.1 That an Article 4(1) Direction is not served on The Wellington Hotel.

## 10.0 REASON FOR RECOMMENDATION

10.1 To ensure consistency with the adopted Core Strategy policy CS17.

Officer recommendation supported/not supported/modified as below or Executive Member's recommendation/comments if no officer recommendation.

Signed

Executive Member

Date

Consultee/Support Member comments (if applicable)/declaration of interests