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## **Report to Cabinet Member – Regeneration**

### **Review of the relevant national and local policies, planning legislation and national guidance concerning the change of use or redevelopment of Public Houses**

#### **Purpose of Report**

1. To inform the Cabinet Member (prior to reporting to Development Control Committee) of the outcome of the review of the relevant National and local planning policies, planning legislation and guidance concerning the change of use or redevelopment of Public Houses with a view to addressing the elements within the motion of considered at Full Council on 1<sup>st</sup> December 2014; which were as follows.
  - a) A Viability report that demonstrates to the Council's satisfaction that the public house is no longer economically viable, including the length of time the public house has been vacant, evidenced by the applicant of active and appropriate marketing for a constant period of at least 36 months at the existing use value.
  - b) The role the public house plays in the provision of space for community groups to meet and whether the loss of such space would contribute to a shortfall in local provision, including evidence that the premises have been offered to use or to hire at a reasonable charge to community or voluntary organisations over a 12 month period and there is no longer a demand for such use.
  - c) The design, character and heritage value of the public house and the significance of the contribution that it makes to the streetscape and local distinctiveness, and where appropriate historic environment, and the impact the proposal will have on its significance.
  - d) The ability and appropriateness of the building and site to accommodate an alternative use or uses without the need for demolition or alterations that may detract from the character and appearance of the building.

## **Policy Background**

2. National Policy: The National Planning Policy Framework (NPPF) issued March 2012 seeks to promote healthy communities and identifies that planning has an important role in facilitating social interaction and creating healthy and inclusive communities. In particular it recommends that planning policies and decisions should: -
  - Plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.
  - Guard against the unnecessary loss of valued facilities and services particularly where this would reduce the communities ability to meet day to day needs.
3. Local Policy: Local Planning Authorities interpret national policy and have to be consistent with it at a local level which in Dudley Borough is via the Black Country Core Strategy adopted 2011 and other local plans such as the remaining parts of the Unitary Development Plan 2005, Area Action plans and the emerging Borough Development Strategy Development Plan Document (DPD). The DPD seeks to allocate land uses to sites and also covers general policies against which planning applications will be considered. Currently there are no specific policies within the existing Unitary Development Plan which relate to the protection of community facilities .The opportunity now arises where the draft Borough Development Strategy can address the matter of community facilities.

The approval of this emerging DPD would be through the usual Cabinet/Full Council route. The document is subject to statutory consultation on the publication submission in summer 2015 when there will be an opportunity to comment on the policies and allocations proposed; with a view to adoption in March 2016.

To address point (a) and point (b) of the motion it is proposed to draft a policy covering applications relating to community facilities and the criteria against which proposals which would result in their loss would be assessed. Where the loss of a community facility is proposed which would reduce a communities ability to meet its day to day needs applicants would be required to demonstrate that the community facility in question does not serve the local community (the definition being location dependant) or that it is clearly not viable to continue to operate as a community facility under either an alternative business model or in other ownership.

However, it should be noted that such a policy may have unintended consequences. Application of this policy will for a number of applications result in further cost to applicants and may add delay to the application

process. There is also the cost of assessing this information. Nor would the Local Planning Authority wish to create a situation where some community facilities were left vacant and boarded up due to onerous policy requirements putting off or preventing investors or developers taking action. There may also be third party objection to the policy during consultations and Inspector at the Examination could propose amendments to (or strike out the policy) if he/she felt that it was not justified or overly onerous.

In terms of point (a), demonstration of viability will necessarily include a raft of information such as the provision of marketing information to show that there is no market demand for the existing or an appropriate alternative community use at a reasonable market price (sale and rent). This market information is independently assessed. It may also include a business case demonstrating that continued community use is economically unviable and that the costs of continuing to operate the community use, or the works required to retain the building in meaningful community use are not sustainable/economically viable.

In terms of point (c), this element is already a part of the routine consideration of a planning application an assessment of the design, character and heritage value of the community facility is undertaken and a judgement made as to the contribution that it makes to the streetscape and local distinctiveness, and where appropriate historic environment, and the impact the proposal will have on this.

Similarly with regard to point (d), the ability and appropriateness of the building and site to accommodate an alternative use or uses is also currently a material consideration when determining a planning application. Demolition or alterations that may detract from the character and appearance of the building (or its surroundings) are resisted.

#### **Permitted development rights**

4. Irrespective of the above points, not all changes of use are within the control of the Local Planning Authority.

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. Public Houses, wine bars and other drinking establishments fall under Class A4.

Under this legislation buildings currently used as “drinking establishments” can change to a restaurant/ cafe use (A3), a professional and financial service use(A2) or a retail use (A1); without the need for planning permission.

This is deemed to be “permitted development” and unless other works (such as an extension or significant alterations to the external appearance of the building), are also taking place the Local Planning

Authority currently has no control and cannot explore therefore issues such as viability or the ability of the building to accommodate other uses.

### **Community Right to Bid**

5. The Community Right to Bid which came into effect on 21<sup>st</sup> September 2012 is outside and separate to the planning process and gives local groups the right to nominate a building (or other land) for listing by the Local Authority as an asset of community value. The right covers private as well as public assets.

The building (or land) can be listed if the principal use of the asset furthers their (or recently furthered) their community's social well being or social interest and is likely to do so in the future.

It is intended to give community groups a fairer chance to save assets that are important to them. Such assets can include village shops, public houses, community centres, children's centres, allotments libraries, cinemas and recreation grounds.

If an asset on the formal list of Assets of Community Value comes up for sale the local organisations will have up to 6 months to raise capital and bid to buy the asset from the owners before it goes on the open market. This new right is the "Community Right to Bid". However, there is no requirement on the owner to sell the asset to the relevant nominating body or indeed any other bidding local organisation.

It must be noted that this process has no legal bearing on the planning process. The Local Planning Authority will have regard to assets on the formal list, however not owning an asset does not prevent any organisation or person applying for planning permission for a particular site or indeed the consent being granted. All planning decisions have to be considered with regard to material planning considerations and must be determined according to the legal planning process.

### **Conclusion**

6. The Local Planning Authority has to have regard to National planning policy and legislation, including existing Permitted Development Rights. Local Planning policies have to be consistent with National policy; however a local dimension is included in adopted planning policies following their successful Examination by the Secretary of State. The current work on the new draft Borough Development Strategy Document provides the opportunity to clarify the policy on community facilities in relation to their part in sustainable communities.

## **Finance**

7. The production of the Borough Development Strategy is funded from existing budgets and resources dedicated to the production of Development Plan Documents and other statutory planning documents.

## **Law**

8. Pursuant to Section 1 of the Localism Act 2011, the Council has the general power of competence to do anything that individuals generally may do.

The Local Plan documents are produced in accordance with the relevant provisions of the Planning and Compulsory Purchase Order Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 and the National Planning Policy Framework (NPPF) 2012.

Permitted development is regulated by The Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2010.

Section 2 of the Local Government Act 2000 allows the council to do anything that it considers likely to promote or improve the economic, social or environmental well being of an area.

## **Equality Impact**

9. This work has been conducted in full accordance with the Council's equality and diversity policies and should in no way have any prejudicial impact on, any individual or group in respect of age, race, gender, disability, sexual orientation and/or other relevant groups as defined by protected characteristics.

## **Recommendation**

10. It is recommended that Cabinet Member note the contents of the report and agrees to further work being undertaken to explore the feasibility of a Community Facility policy being incorporated into the emerging Borough Development Strategy. The approval of this document would be through the usual Cabinet/Full Council route and subject to full public consultation prior to independent examination and adoption Spring 2016.



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Agreed on 9<sup>th</sup> January 2015

**Cllr. Judy Foster**

**Cabinet Member, Regeneration**

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### **List of Background Papers**

- Planning and Compulsory Purchase Order Act 2004
- Town and Country Planning (Local Planning) (England) Regulations 2012
- The Town & Country Planning (General Permitted Development) Order 1995 (SI 418/1995);
- The Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (SI 654/2010)
- Government Circular 9/95: General Development Order
- National Planning Policy Framework;
- Black Country Core Strategy 2011;
- Dudley Unitary Development Plan 2005;