

Report to Cabinet
10 December 2014
Report of Head of planning service
Subject Submission of a proposal to government under the
Sustainable Communities Act 2007 – protection of
community pubs.

Item

17

Purpose

To consider the submission of a sustainable communities act proposal to the Secretary of State.

Recommendation

To agree the content of the SCA proposal document (attached as Appendix 1) and to submit the document to the Secretary of State.

Corporate and service priorities

The report helps to meet the corporate priority “A prosperous city” and the service plan priority to respond appropriately to ongoing legislative and regulatory change.

Financial implications

None directly from submitting the proposal, although there would be cost implications for the council from any Government decision to introduce restrictions that resulted in an increased requirement to process planning applications for change of use of pubs.

Ward/s: All wards

Cabinet member: Councillor Stonard – Environment development and transport

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Background documents

None

Report

Introduction and Background

1. This report seeks agreement from cabinet on the content of a proposal under the Sustainable Communities Act 2007. The proposal seeks a change in national planning regulations to give greater protection to community public houses and prevent their change of use or demolition without community consultation through the planning application process. In Norwich more than 30 pubs have closed, been demolished or changed to other uses in the past ten years.
2. National planning regulations currently allow a wide range of development and changes of use to be carried out without having to apply for planning permission first (called “permitted development”). In recent years the government has steadily extended the range and scope of permitted development, either by removing the need for permission for certain categories of development altogether or introducing a streamlined prior approval process requiring only that permitted development passes a limited range of checks before it can go ahead.
3. The Sustainable Communities Act 2007 (SCA) provides an opportunity for local people to ask central government via local government to remove legislative or other barriers that prevent them from improving the economic, social and environmental well-being of their area. The aim of the process is to make government do more to help councils promote sustainable communities.
4. The SCA defines local sustainability as ‘encouraging the economic, social and environmental well-being of the authority’s area’ and that “social well-being” includes participation in civic and political activity’.
5. A valid proposal from a council under the SCA process has two simple criteria:
 - a) That the proposal is something that only central government could do, i.e. the council does not already have the power to do it.
 - b) That it can be shown that the proposed action from central government would promote sustainable communities as defined in the Act (see definition above).

Government responsibilities under the act

6. The Secretary of State’s responsibilities under the Act are set out in regulations as follows:
 - a) consider the proposal and decide whether to implement it, in whole or in part;
 - b) publish the decision in relation to the proposal, giving reasons; and the action that is to be taken, if the proposal is implemented, in whole or in part.
 - c) Provide an update in relation to implementation if that action has not been completed within one year from the date the proposal was submitted by the local authority.

The council resolution to support a proposal under the SCA

7. On 24 September 2013, in response to growing national and local concerns over the issue, the city council passed the following resolution in relation to the protection of community public houses under the SCA:

RESOLVED, unopposed, that –

Norwich has lost a number of community pubs in recent years. It is possible through the Sustainable Communities Act for the council to be given more power to determine if pubs should be demolished or converted into other uses and this could save many valued community pubs.

Council resolves to ask cabinet to –

- (1) submit a proposal to the government under the Sustainable Communities Act that the Secretary of State help protect community pubs in England by ensuring that planning permission and community consultation are required before community pubs are allowed to be converted to betting shops, supermarkets, payday loan stores or other uses, or are allowed to be demolished; and
 - (2) work together with Local Works and the Campaign for Real Ale to gain support for the proposal from other councils in the region and across the country;
 - (3) include in its response to the government's consultation on greater flexibilities in planning regulations a request for controls to prevent pub buildings being transferred to shops and banks and then to residential use with no requirement for planning permission.
8. Parts 1 and 2 of the resolution use the standard wording recommended by CAMRA under their "Pubs Matter" campaign. To date 35 other councils are indicated by CAMRA as having supported the campaign by backing a similar pub protection proposal under the SCA (although our own research suggests that very few councils have actually yet submitted one). According to information in the recently published report *Public Houses – how councils and communities can save pubs* published in August 2014, a further 21 councils are in the process of preparing similar bids¹.
 9. Members should note that Part 3 of the resolution has already been implemented through the formal city council response to the government's consultation on *greater flexibilities for change of use* in October 2013. A more recent CLG consultation on planning deregulation (*Technical consultation on Planning*, July 2014) proposed additional wide ranging reforms to extend the scope of permitted development and streamline various aspects of the planning process. The council has again expressed disappointment in its response that there were no proposals to increase planning controls preventing the loss of pubs, although the latest proposals do in fact propose more planning control over new betting shops and payday loan stores.

National and local issues around pub losses

10. The proposed submission is made in support of a bid by CAMRA to address a national issue arising from planning loopholes. As such, the submission document attached at Appendix 1 is based largely on an evidence paper originated by CAMRA and includes much of the material the organisation has collected at a national level

¹ *Public Houses – how councils and communities can save pubs* LGIU/CAMRA, August 2014.
<http://www.lgiu.org.uk/wp-content/uploads/2014/06/Public-Houses1.pdf>

on pub closures, using case studies of instances where it has not been possible under planning regulations to prevent the loss of well used local pubs.

11. Nationally, it is estimated that 28 pubs per week are lost for good, often with no means of protecting them and this rate has been accelerating. CAMRA highlights the great value of local pubs in providing essential local services and fostering community cohesion. It points to research estimating the economic value of beer and pubs to the national economy at £19 billion. It also suggests that money spent in local pubs is twice as likely to be retained in the local economy than money spent elsewhere.
12. It has often been argued by critics of CAMRA's stance that "only bad pubs close". This is not the case. There are numerous factors contributing to the loss of local pubs, including:
 - rising costs faced by landlords;
 - high rents, particularly in urban locations;
 - increasing land value, which raises the amount developers are prepared to pay;
 - the high price of alcohol in pubs as opposed to the supermarkets and off licences;
 - competition from alternative leisure pursuits².
13. Norwich is fortunate in possessing a thriving and vibrant pub culture with a wide range and choice of local and city centre pubs appealing to all ages and backgrounds. Thus, it is easy to take the view that because this city is not perceived to have a "problem" with pub closures there is no reason to support a bid for a change in the law nationally. Norwich has certainly not been immune to the loss of pubs in recent years - our evidence shows that 35 pubs have changed their use or been redeveloped for other purposes in the last decade. A further three pubs are long term vacant with no immediate prospect of being put to beneficial use and officers are aware of six further pubs where intending developers or occupiers have made recent approaches with informal proposals for alternative uses.
14. Accordingly, the national evidence has been supplemented by recent local case studies from Norwich and the immediate surrounding area where the demolition or change of use of pubs has occurred outside planning control or pubs have been allowed to fall into disrepair and neglect when they could have been put to a beneficial community use:
 - The Kings Arms, Mile Cross Road – closure and extended neglect;
 - The Romany, Colman Road – change of use to a betting shop and payday loan store (carried out under permitted development);
 - The Earl of Leicester, Dereham Road – demolition in 2005 (carried out under permitted development) despite significant local opposition, no impetus for redevelopment of the site;

² Quoted in *Public Houses – how councils and communities can save pubs*, link above.

- The Firs, Cromer Road, Hellesdon – change of use to Tesco Express local foodstore (carried out under permitted development)

15. Of the 35 pubs logged as lost in Norwich since 2004, many have been converted to restaurants and other commercial uses without the need for formal planning permission for the change of use. Five were on the list of historic and community pubs identified for protection in the City of Norwich Replacement Local Plan 2004.

Planning policy

16. Members will be aware that the new local plan for Norwich has been adopted very recently. The *Development management policies local plan* includes a strengthened policy to protect against the loss of community facilities (policy DM22). This policy affords specific protection for identified historic and community pubs, requiring intending developers to provide evidence to justify the loss of pubs under threat and demonstrate that they could not continue in a viable pub use. However, the newly adopted policy will have no effect whatsoever in the case of changes of use which can be made without planning permission. Accordingly, a change in the law requiring permission to be sought for any change of use or demolition of a pub would not only make the council's policies far more effective, but also give local people and elected members a genuine say in the fate of a threatened pub through the statutory consultation and decision making process for planning applications.

Community support for the proposal

17. Under the SCA regulations, councils that choose to submit proposals under the Act must first consult and try to reach agreement with representatives of local people. This is the mechanism in the Act's process whereby residents can put forward their ideas on what proposals they think the council should make to government.

18. To fulfil these requirements for the pub protection bid, a question was included in the 2014-15 city council online budget consultation which ran from October 2013 to January 2014. The question gave some background to the SCA and the potential role of pubs in furthering community wellbeing and quality of life. Respondents were asked whether it was a good idea for the council to "*ask the government to change the law in relation to planning so that if a landowner wants to convert a pub for another use such as a shop, they need to consult the local community and get planning permission*".

19. 69% of those responding said that this would be a good idea, 20% that it would not and the remainder were undecided. Consequently, it is considered that there is a firm mandate for the council to proceed to submit this proposal if cabinet decide to do so.

Submitting the proposal and next steps

20. If confirmed by cabinet, the proposal would be submitted electronically under delegated powers via the online "[Barrier Busting](#)" portal operated by CLG. The proposed summary submission form is detailed in Appendix 2. Supporting documentation, as set out in Appendix 1, would be emailed to CLG following confirmation that the proposal has been received.

21. As noted in paragraph 6, the Secretary of State is required to respond to the proposal setting out his intended course of action and state his reasons if the proposal is rejected. The Local Government Association (called “the selector” under the Act) may resubmit the proposal on behalf of the council if it is rejected – the government must then consult and try to reach agreement in discussion with the LGA on the course of action that should be taken and reach a final decision collaboratively. The responsibilities of the Secretary of State and the timescales for responding to a resubmission by the LGA are as set out in paragraph 6 as per the original submission, with a requirement for an update after a year if there is no progress.

What happens if the proposal fails

22. In the event that a proposal under the SCA is rejected and planning regulations remain unchanged, there are a number of potential alternative routes open to the council to strengthen pub protection in Norwich. (These could be taken forward whether cabinet agrees to submit this proposal or not, and could be the subject of a future options report to sustainable development panel to inform a recommendation):

- a) *Article 4 directions* which apply locally and have the effect of taking away permitted development rights for certain forms of development (Cambridge are pursuing this option on selected pubs). In this case nominated pubs such as those on the council’s protected pubs list might be included in a direction requiring planning permission to be obtained for certain changes of use which would normally be permitted automatically. Article 4 directions are expensive and legally complex to implement, and unless consulted on a year in advance, the council could be liable to pay substantial compensation to pub operators and other aggrieved parties. Perversely this could actually accelerate the loss of pubs as owners and operators rushed to bring proposals forward during the one year notice period to avoid the new restrictions. Additionally, because no planning fee is payable for planning applications which are needed solely as a result of an Article 4 direction, no income would be generated for the council to offset the considerable costs of implementation.
- b) *Registration of pubs as Assets of Community Value*. The Localism Act enables local communities to register community facilities as Assets of Community Value by making a proposal to the city council to include them on a statutory register. The provisions could allow the sale or development of a nominated pub to be delayed and the community to bid to operate or acquire it. This option is known to be favoured by the current planning minister, but *must* be community-led: the council cannot nominate such assets itself. To date only one pub in Norwich – the Marlpit – has been included on the ACV register. Registration as assets of community value give local people some influence in determining a pub’s future, but can only delay and not prevent its loss, nor could it block permitted changes of use which might be legitimately made without a change of ownership. The ACV process could also unintentionally delay a sale of a pub to another operator who was willing to invest in it and continue to run it beneficially as a going concern. The success of pub protection using Assets of Community Value legislation relies entirely on raising awareness by the community of the powers available and a commitment to protect pubs at a grass roots level.

- c) *Supplementary Planning Documents (SPD)* A number of authorities have prepared supplementary planning documents to augment pub protection policies in their local plans, detailing, for example, the evidence that must be submitted and the process to be followed to demonstrate that pubs are no longer economically viable, including evidence that there has been meaningful marketing to prove no interest in continued use as a pub. The LGIU *Public Houses* report cites a number of good practice examples. For Norwich these requirements are already embedded in policy DM22 of the local plan and apply equally to community public houses and other community facilities which may be under threat. Therefore it is considered that any further guidance on pub protection would be of little value without either a successful outcome for this proposal or local measures such as Article 4, because SPD could not be used in cases where changes of use occur outside planning control. Cambridge has adopted SPD on pub protection, but has supported this with targeted Article 4 directions and is taking an emerging local plan policy through examination which includes very stringent detailed requirements for demonstrating pub viability and effective community consultation.

23. CAMRA have very recently published a toolkit detailing some of the mechanisms available to local authorities to protect pubs, including the measures described above, as well as a model local plan policy on pub protection. (In Norwich's case there would be no immediate opportunity to revisit our local plan policies on pub protection, since the plan is newly adopted and policy DM22 has been found sound).

Conclusions

24. Asking for planning regulations to be tightened to bring the change of use and demolition of pubs within planning control is not intended to stall development, block beneficial change arbitrarily or keep pubs open which clearly have no reasonable prospect of continuing. The important thing is that it would give local people a meaningful say in the process. The government's favoured alternatives of local controls such as Article 4 directions and registration of pubs as Assets of Community Value are only partial solutions and in the former case could be very costly and resource intensive for the council to implement.
25. In the recent *Technical consultation on planning* the government indicated that it will remove permitted development rights that currently allow the unrestricted change of use of pubs and cafés to betting shops and payday loan stores. This shows that regulatory change to address an issue at a national level can be achieved through effective and sustained lobbying via the SCA. Submission of this proposal will send a strong message to government that planning regulations are still largely ineffective in protecting against the ongoing loss of valued local pubs and these regulations ought to be reviewed in the interests of supporting vibrant, sustainable communities. The government has given repeated assurances that their planning reforms "put communities in the driving seat" – a claim which appears baseless in relation to pub protection since a decision to sell, demolish or change the use of a community pub can be made in many cases with no involvement of the community that uses it at all. A change in planning rules may be the only guaranteed and cost effective way to ensure proper public involvement in these important issues through the planning process.

Integrated impact assessment



NORWICH
City Council

The IIA should assess **the impact of the recommendation** being made by the report

Detailed guidance to help with completing the assessment can be found [here](#). Delete this row after completion

Report author to complete

Committee:	Cabinet
Committee date:	10 December 2014
Head of service:	Graham Nelson
Report subject:	Submission of a proposal to government under the Sustainable Communities Act 2007 – protection of community pubs.
Date assessed:	19 November 2014
Description:	<p>This report follows on from a council resolution in September 2013 asking cabinet to submit a proposal to government under the Sustainable Communities Act (SCA) seeking a change in national planning regulations. The effect of the change sought would be that planning permission and community consultation would be needed before pubs could change their use or be demolished. Many of these changes do not currently need permission. The report seeks cabinet approval for the content of the SCA proposal documentation before it is formally submitted to the Secretary of State.</p>

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If successful, the proposal would result in some additional costs to the council from the need to process an increased number of planning applications for the change of use of pubs, but the alternative of bringing in local restrictions through Article 4 directions would be significantly more costly as there would be no planning fee income to offset the cost of implementation.
Other departments and services e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
ICT services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
Economic development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stricter measures to support the retention of community pubs would be potentially of benefit to the local economy through the retention of income generated to support local businesses. This income may not be retained locally in the event of changes of use of pubs to e.g. national food retailers which currently cannot be controlled through planning.
Financial inclusion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified

	Impact			
<u>S17 crime and disorder act 1998</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No direct impact identified from submitting the proposal, although the longer term effects of protecting pubs from change of use for other purposes might include localised impacts for crime and disorder if a particular retained pub was already giving rise to these problems
Human Rights Act 1998	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impacts identified
Health and well being	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Measures to support the retention of local pubs have significant potential to foster and enhance community cohesion and thereby contribute to health and wellbeing where these facilities are used responsibly
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Measures to support the retention of local pubs have significant potential to support and enhance community cohesion
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impacts identified
Advancing equality of opportunity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impacts identified
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No direct impacts identified from submission, although continued depletion of pubs through uncontrolled changes of use might result in an overall increase in the need to travel for local people to get to their nearest pub

	Impact			
Natural and built environment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Measures to support the retention of local pubs and stronger planning controls may reduce instances where pub sites and premises are acquired for redevelopment and then left to become derelict. The net result would be an improvement in the local environment.
Waste minimisation & resource use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
Pollution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	It is recognised that the proposal has been taken forward as a result of a council request to cabinet but evidence shows that the chances of success of such proposals are generally low - 90% of SCA proposals to government typically fail. Therefore the work involved in submitting the proposal may turn out to be abortive. However the council's decision to support a proposal on pub protection is strongly welcomed by CAMRA and has firm public backing from residents, with the initiative also being supported by a significant number of other concils. Impact on reputational risk is therefore judged as very positive.

Recommendations from impact assessment

Positive

The positive impacts of a successful proposal to protect community pubs would be largely indirect, but have the potential to increase community cohesion and boost income generation contributing to the local economy and small businesses, as well as reducing instances where pubs are closed and demolished or mothballed for development that never materialises, resulting in dereliction and eyesore sites. Risk management impacts are assessed as positive.

Negative

If the proposal succeeds, there may be some minor negative financial implications for the council resulting from the need to process an increased number of planning applications for the change of use of pubs. If it does not, the potential costs of bringing in equivalent local controls would be significantly higher, but cannot be quantified at present.

Neutral

There are no identified impacts in the majority of areas identified in this assessment.

Issues

It can be argued that at a local level Norwich has not suffered the same degree of impact from pub closures and unregulated changes of use as elsewhere and in general terms the city continues to benefit from a thriving and diverse "pub culture". Nevertheless the fact that pubs can be converted to a wide range of uses without planning permission continues to be an acknowledged issue of concern at a national level which undermines the democratic process and reduces the involvement of local people in determining the future of the community facilities that they value. In pressing for government action on the issue (with public backing), the council has agreed to support a high profile national campaign. The risks of cabinet not taking forward this proposal are therefore mainly reputational. Should the proposal fail, the council has several alternative options to secure the protection of pubs locally (as detailed in the report) - but most would have significant financial implications.