11 December 2014

Public Joint Decision Session of the Cabinet Member for Environmental Services, Planning and Sustainability and Cabinet Member for Finance and Performance

Report of Director of City and Environmental Services

Request for Article 4 Direction in respect of the Punch Bowl Public House, York

1.0 Summary

1.1 This report relates to a request from the York Branch of CAMRA that the Council make an immediate Article 4 Direction in respect of the Punch Bowl public house, 134 Lowther Street, York.

1.2 Members may recall that the matter was considered at the meeting of the Cabinet held on 7 October. The report to that meeting as appended (Annex A) sets out the basis for the request, the legislative and policy background and provides an analysis of the evidence presented along with the request. Officers recommended that an immediate Article 4 direction should not be imposed.

It was resolved:

(i) That, as a matter of urgency, the Director of City and Environmental Services and the Director of Customer and Business Support Services be requested to further investigate options in relation to the request for action to preserve the Punch Bowl public house, Lowther Street, York as a public house;

(ii) That the Cabinet Members for Environmental Services, Planning and Sustainability and Finance and Performance, each be asked to consider the options identified by the Directors under (i) above and, if satisfied that action is justified, to take such action under his delegated powers.

(iii) To confirm the delegation of powers to the Cabinet Member for Environmental Services, Planning and Sustainability to make an

Article 4 direction to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) if satisfied that sufficient evidence exists to justify the making of such a Direction.

(iv) That Officers be requested to bring a report back to a future Cabinet meeting outlining a long term strategy to assist with similar future requests.

Reason: In order to allow further work to evidence if exceptional circumstances exist to show that a change of use would harm the amenity or the proper planning of the area, and whether there is a need to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) by the making of an Article 4 Direction."

1.3 Members should note that at the time of writing this report, the minutes of the meeting have yet to be formally agreed. The purpose of this report is to address point (iii) of the Cabinet resolution, to provide advice regarding the available evidence in relation to the "exceptional circumstances" legal test relevant to an immediate Article 4 Direction. This update report should therefore be read in conjunction with the Cabinet report.

1.4 Members are asked to consider, having regard to the additional evidence provided from CAMRA and outlined in this report, whether exceptional circumstances exist to make an immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1).

1.5 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction restricting the change of use from Class A4 to Class A1 for the following reasons:

- The change of use would not harm the visual amenity of the area
- The change of use would not damage the historic environment
- The future provision of community facilities at the premises is entirely dependent on how it is managed, which is outside the control of the local planning authority
- Any issues that arise as a result of crime, disorder or anti-social behaviour could be more appropriately addressed through the Licensing process.
- The use of an *immediate* Article 4 Direction would expose the Council to a claim for compensation for abortive expenditure or other loss or damage

directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions. This would be likely to include business losses, which could be substantial.

- The imposition of an Article 4 Direction in this case may result in further requests being made in respect of public houses elsewhere within the city. It should be borne in mind that the General Permitted Development Order (GPDO) is national legislation which is intended (amongst other things) to provide a degree of flexibility between use classes and that an Article 4 Direction to bring a permitted change within planning control should only be imposed in *exceptional circumstances*. It is not recommended that Article 4 Directions be imposed on an "ad hoc" basis on individual sites in order to address particular situations as and when they arise. In situations where the problem relates to a wider area, it is considered that a more holistic approach would be appropriate.

2.0 Background

2.1 The request was accompanied by a petition with over 1200 signatories, strongly opposed to its replacement with a convenience store. The representations originally submitted by CAMRA have since been expanded upon and supplemented by a number of Witness Statements and relevant testimonials from users of the Public House. The documents include submissions from University of York Football Club, The Gravers - a specialist residential mental health care home, 2 longstanding patrons of the Punch Bowl and a resident who has made representations to the Cabinet Members.

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3.0 Consultation

3.1 No external consultation has been carried out in respect of this request for an immediate Direction. However Highway Network Management have been consulted with regard to potential traffic issues that would arise should be premises be used for retailing.

4.0 Options

4.1 Members can either agree that an immediate Article 4 Direction be made, or alternatively reject the request. In either case, reasons should be given. A third option would be to consider a *non-immediate* Article 4 Direction, imposed following a consultation period of, usually, 28 days and with at least 12 months notice of it coming into force. Clearly, this would not provide the instant protection that an immediate Article 4 Direction would provide, but would not expose the Council to subsequent claims for compensation.

5.0 Additional Submissions

5.1 Since the original request for the Article 4 Direction was made, further supporting information has been submitted by CAMRA. This can be broadly categorised and summarised as follows:-

The Punch Bowl is an invaluable resource for the local community

5.2 The Punch Bowl is an excellent example of a community pub serving a wide customer demographic. This includes pensioners, families, disabled clientele (neither The Castle Howard Ox nor The Brigadier Gerard are wheelchair friendly), vulnerable clientele who perceive the pub as a safe environment and do not fear intimidation or prejudice, and sports clubs. The pub has its own darts team, pool team, dominoes team and golf society. It provides a meeting place for teams from York St. John University, specifically the football team and netball team. There is a large function room which is used by the football team for meetings and social events, and which is also used for karate instruction.

The historical loss of similar facilities within The Groves area

5.3 Paragraph 70 of the National Planning Policy Framework (NPPF) clearly states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. The Groves area has already sustained the loss of The Reindeer, The Magpie and The Groves Working Men's Club. This has reduced the facilities within the immediate area to just two public houses.

The Punch Bowl provides social, recreational and cultural facilities for the local community not available elsewhere within a reasonable distance

5.4 The Punch Bowl has a large upstairs function room and ground floor games room that serve the needs of the local community. These would not be replicated by a convenience store and thus would constitute a net loss. Neither The Castle Howard Ox nor The Brigadier Gerard have similar facilities in one building that can all be used at the same time by different groups.

The need for a community to have pubs within a reasonable walking distance

5.5 Paragraph 70 of the NPPF refers to the need to plan positively for the provision of community facilities, including public houses, to enhance the sustainability of communities and residential environments. However, distance is not the only criteria cited by Planning Inspectors when considering alternative facilities, and the character of a particular establishment as perceived by those who use it is also an important factor.

5.6 Taking The Punch Bowl, The Castle Howard Ox, The Brigadier Gerard and Tap & Spile, there are 4 pubs serving 5762 adults in 2723 households within the three polling districts that make up the local community. In addition, it is not the distance from the Punch Bowl to the nearest pubs that should be measured, it is the distance from people`s homes to the alternative facilities. These alternative facilities are not well placed to serve the local community and for many are not within easy walking distance when compared to the Punch Bowl.

Planning permission would not be granted for a convenience store due to traffic concerns

5.7 CAMRA contends that the replacement of the public house with a convenience store would generate a significant increase in traffic. This is not an issue at the present time as customers do not drive to the pub. There is already insufficient parking for residents and shoppers in Lowther Street. There is nowhere for a delivery lorry to park, which would occur several times a week at a convenience store. A lorry parked in Lowther Street could block emergency vehicles from York Hospital, and there are traffic lights directly outside The Punch Bowl so parking would be impossible without restricting the free flow of traffic.

5.8 N.B. Highway Network Management have been consulted and do not consider that there would be grounds to refuse planning permission for the change of use to a shop on highway safety grounds. The comments are discussed in more detail below.

Significant local feedback has stated there is no desire for a convenience store

5.9 Over 1200 people have signed a petition stating “we have adequate shopping facilities already in the area”. The balance of amenities in the area has to be considered. A convenience store would merely duplicate existing facilities in the area whilst removing a valuable community asset. The strength and depth of local opinion has been an important consideration in the determination of appeals, particularly in terms of meeting a broader community need.

A convenience store represents a threat to the social and mental health balance of the Groves area

5.10 The area surrounding the proposed convenience store, which would include the sale of alcohol, is close to Arc Light (drug & alcohol rehabilitation centre), Bootham Park Hospital (mental health services), Sycamore House (mental health day centre) and 98 Union Terrace (community mental health facility|).

Conversion to a convenience store would adversely affect the visual amenity of the area

5.11 Although not listed, The Punch Bowl is a building of character dating back to 1856, and adds to the visual amenity of the area. It is in a prominent and highly visible location on a busy junction. The conversion to a convenience store would involve modifications which would significantly change the character of the building. It is likely that the traditional bay windows would be replaced with a more conventional shop front. Other works would be necessary in order to make it fit for purpose as a convenience store.

5.12 The conversion to a convenience store would have a negative impact on parking and highway safety, and would adversely affect the visual amenity of the area.

6.0 Officer Analysis of Additional Submissions

6.1 As reported to Cabinet, of the National Planning Policy Framework considers community facilities to include both shops and pubs. However, in this case the evidence suggests that the local community attach greater value to the public house than they would to another convenience store. The local plan policy background is reported previously. Paragraph 200 of the NPPF is very clear that there are two reasons to consider when issuing an Article 4 Direction – *"to protect local amenity or the wellbeing of the area"*.

6.2 The loss of The Punch Bowl needs to be assessed from both a qualitative and quantitative perspective. The local community perceive it as more than just a drinking establishment; it is reported that it performs a valuable role in the community by contributing to the social, recreational and cultural facilities in the area. It provides facilities that are not available elsewhere in the local community including a function room and games room, and provides a meeting place for a number of local organisations including sports clubs. In addition to not providing a similar range of facilities, it is contended that the nearest public houses are not as accessible for disabled users or as conveniently located to serve the local community, being located either on the periphery of The Groves (e.g. The Castle Howard Ox and Brigadier Gerard) or further towards the urban area (e.g. The Gillygate). The value of The Punch Bowl to the local community is illustrated by the petition signed by over 1200 people, who are opposed to its replacement with a convenience store.

6.3 However, an Article 4 Direction to control a change of use would not control the management of the public house, or guarantee the continued provision of the range of facilities currently made available. The community facilities are not the primary lawful use of the premises (which is as a public house) and their continued provision is entirely dependent on how the pub is managed. This is completely outside the control of the local planning authority. Also there is a requirement under the Disability Discrimination Act for service providers (including public houses) to ensure they are not unreasonably difficult for disabled users, which would apply to other public houses within the area.

6.4 Justification for an Article 4 Direction would be that exceptional circumstances exist whereby the change of use *would harm local amenity or the proper planning of the area*. If it could be demonstrated that there are site specific circumstances at the Punch Bowl which would make the change of use to a supermarket undesirable on planning grounds (which could, for example, include highway considerations), then an Article 4 Direction may be justified.

6.5 The representations made by CAMRA include reference to the lack of car parking at the site and other traffic issues that would arise should the supermarket proposal go ahead. Another issue could be whether large delivery vehicles in this location would interrupt the free flow of traffic and cause danger to highway users.

6.6 With this in mind, Highways Network Management has been consulted and were asked to comment on the basis that a formal application for planning permission had been submitted for the change of use of the public house to a shop, as would be required if the Article 4 Direction were imposed. They have commented as follows:

"The site is surrounded by a number of various Traffic Regulation Orders (TRO`s) which would prevent indiscriminate parking. The natural layout of the highway also assists in restricting where people could stop to wait or park for short periods. The building frontage is on a signal controlled junction; parking in this area would constitute obstruction and would result in vehicles proceeding beyond the traffic signal head, thus effectively waiting within the signalised area. An advanced cycle stop line also covers a large part of the site frontage.

In terms of impact on highway safety, I would be confident that the Planning Inspectorate would take the view that it is within the power of the Local Highway Authority to implement/amend TRO`s as may be necessary in order to protect the free flow of traffic and highway safety.

Furthermore the site is in a sustainable location and it is entirely reasonable to assume that a large proportion of customers will arrive by non car modes. The site is located in a residential area and will provide a convenience/top up shop facility for residents.

The building also has a side elevation to Lowther St. From experience of other developments of this nature it is likely that this is where the 'back of house' and servicing would be located.

Lowther St is also covered by various waiting restrictions, including double yellow lines and a residents parking scheme (R25 scheme with 10 min limited waiting).

At the junction of Haxby Road/Lowther St, on Lowther St there is an existing residents parking bay which is in a location which could be considered suitable

for servicing requirements. Any changes or loss to residents parking in the R25 scheme are likely to be controversial and unpopular given that the scheme is heavily subscribed. An alternative solution is that an existing traffic build out could be removed to enable the adjacent respark bay to be relocated. This, in turn, could allow a Goods Vehicle Only Loading Bay to be provided and protected by an appropriately worded traffic order (potentially also providing an area of limited waiting for customers of the shop).

We would seek funding to change the double yellow lines on the site frontage to a 24 hour loading ban and funds to cover the necessary highway works to Lowther Street. Changes to TRO`s are not guaranteed to be successful and as such there would be an element of risk to the developer should the orders not progress."

6.7 For these reasons, it is not considered that an Article 4 Direction could be justified on the grounds that the change of use to a shop would compromise highway safety.

6.8 Concerns have been expressed by CAMRA that a new convenience store would represent a threat to the social and mental health balance of the Groves area as a result of the availability of cheap alcohol. However, Members will be aware that the opening hours of the premises and sale of alcohol could be separately controlled through the Licensing process and those procedures are in place for licenses to be reviewed should any problems arise.

6.9 Concerns have also been expressed that the conversion to a convenience store would adversely affect the visual amenity of the area. However, this could not be argued in the case of a proposal for a change of use, particularly as any external changes could be controlled through a subsequent planning application.

6.10 It should be borne in mind that the imposition of an "immediate" Article 4 Direction, as requested by CAMRA, would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. Officers are aware that in similar circumstances elsewhere this has amounted to a claim of several hundred thousand pounds. Whilst acknowledging that it can not be used as formal evidence, CAMRA has stated that, according to the licensee, the retailer involved would cease their interest in the property in the event that an immediate Article 4 Direction were to be imposed. CAMRA suggests that there is no risk to the Council, as the Article 4 could be rescinded if a challenge were to be made. However, there remains a clear risk of compensation being claimed if an immediate Direction were to be made, as enshrined in Sections 107 and 108 of the Town and Country Planning Act 1990.

6.11 However, the basis for making a Direction must be that there are considered to be exceptional circumstances in planning terms, in the full knowledge of possible future significant compensation arising from a refused application or contested condition. Therefore if the planning amenity issues remained at the time of any challenge, it could be considered as a misuse of the Provision for the Council to rescind the Direction purely because of compensation concerns, having considered it necessary to protect amenity and imposed the Direction knowing full well that this scenario could arise. Further, officers are concerned that there is no guarantee the particular retailer would not contest the Article 4 Direction, nor is there any confirmation that the owners are obliged to offer the lease of the premises to the one retailer mentioned. Another may wish to pursue the proposed change of use and challenge the Direction.

6.12 A further consideration is that the imposition of an Article 4 Direction in this case may set a precedent for further requests to be made in respect of similar proposals which would otherwise not normally require planning permission, not just affecting public houses but also other uses/local amenities. In order to avoid this possibility, Members would need to be satisfied that The Punch Bowl is an exceptional case and presents a unique set of planning circumstances that may not necessarily occur elsewhere. The General Permitted Development Order (GPDO) is national legislation which is intended (amongst other things) to provide a degree of flexibility between use classes and that an Article 4 Direction to bring a permitted change within planning control should only be imposed in exceptional circumstances. It is not recommended that Article 4 Directions be imposed on an "ad hoc" basis on individual sites in order to address particular situations as and when they arise.

6.13 A non-immediate Article 4 Direction would not provide instant protection as 12 months notice prior to a direction taking effect is required, but would not expose the Council to significant costs arising from subsequent claims for compensation. However exceptional circumstances relating to the harm to planning amenity of the area would still be required for the imposition of such a Direction to be justified.

6.14 It is acknowledged that there are valid and genuine concerns regarding the potential loss of the public house and the much valued community facilities it provides. However in light of the above analysis of the additional representations from a planning perspective and in the circumstances outlined, officers still do not consider that there are exceptional circumstances to show that local amenity or the proper planning of the area would be harmed by the change of use of the public house, and could not therefore recommend that a Direction is made.

6.15 In situations where the issue and concern relates to a wider area, it is considered that a more holistic approach would be appropriate. This is the approach being adopted by Wandsworth Borough Council, who intend to address the issue through the Local Plan process, using a criteria based Supplementary Planning Document to guide decision making alongside an

Article 4 Direction which will identify specific public houses that require protection. In accordance with point (iv) of the Cabinet resolution, a report outlining a longer term strategy to deal with such requests will be brought to Cabinet in due course.

7.0 Council Plan

7.1 The most relevant section is that relating to Community Infrastructure, which seeks to establish appropriate community facilities, including housing, leisure opportunities, schools, and work and enterprise units. It states that in planning for our communities, the Council will work in a more joined up way in order to better meet the infrastructure needs of each neighbourhood.

8.0 Implications

8.1 **Financial** - the imposition of an "immediate" Article 4 Direction would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. A Direction with a 12 month notice period would not give rise to such a substantial financial risk.

8.2 **Human Resources (HR)** – There should be no Human Resources implications

8.3 **Equalities -** The Council`s duty under the Equality Act 2010 must be considered in determining whether to make an Article 4 Direction. Having regard to the circumstances of the case, it is not considered that the recommendation not to make the Direction would conflict with the Council`s statutory duty under the Act, particularly bearing in mind the requirement on other public houses in the area to ensure that they are not unreasonably difficult for disabled users.

8.4 **Legal** – Whether to make an immediate Article 4 Direction is a discretionary power to be exercised in accordance with the principles of Wednesbury reasonableness. An Article 4 Direction should only be made if Members are satisfied that exceptional circumstances exist where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Members must consider whether the change of use would be prejudicial to the proper planning of the area or constitute a threat to the amenity of the area. The potential harm must be identified to justify making the Direction. If an Article 4 Direction is made, and a subsequent planning application is refused, the Local Planning Authority can be liable for compensation.

8.5 **Crime and Disorder** - There are no known implications

8.6 **Information Technology (IT)** – There are no known implications

8.7 **Property** – There are no known implications

8.8 **Other** – None

9.0 Risk Management

9.1 The imposition of an "immediate" Article 4 Direction would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. There are also concerns that a precedent would be set for other similar requests which would then have to be dealt with on an "ad hoc" basis.

10.0 Recommendations

10.1 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) for the following reasons:

- The change of use would not harm the visual amenity of the area
- The change of use would not damage the historic environment
- The Article 4 Direction in itself would not prevent the public house from changing to a shop, it merely requires a planning application to be made
- The future provision of community facilities at the premises is entirely dependent on how it is managed, which is outside the control of the local planning authority
- Any issues that arise as a result of crime, disorder or anti-social behaviour could be addressed through the Licensing process.
- The use of an *immediate* Article 4 Direction would expose the Council to a claim for substantial compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions. This would be likely to include business losses, could be substantial.
- The imposition of an Article 4 Direction in this case may set a precedent for further requests to be made in respect of public houses elsewhere within the city, which if supported would also give rise to significant risk of further substantial compensation claims

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Annex

A - Report to Cabinet 7th October 2014
The Punch Bowl Public House, Lowther Street, York – Article 4 Direction