

ASSETS OF COMMUNITY VALUE – COMMUNITY RIGHT TO BID NOMINATION – DELEGATED AUTHORITY:

Chanctonbury Road Allotment Site, Chanctonbury Road, Burgess Hill, West Sussex, RH15 9EU

Report to:	Vicky Reader Head of Estates Services & Building Control Cllr John Belsey , Deputy Leader and Cabinet Member for Estates Services & Building Control	Date: 05/01/2023
Author:	Nathan Whittington – Estates Surveyor	

Authority under Recommendation 2.3 of the Cabinet Report dated 14th January 2013 (Assets of Community Value – Community Right to Bid) which authorises the Property and Assets Maintenance Manager ***“in consultation with the Cabinet Member for Planning & Regeneration or such other Cabinet Member as may be nominated by the Leader of the Council to determine any application under the Localism Act to list any building and/or land as an asset of community value”***.

Under this authority, the Head of Estates Services & Building Control approves the following proposal:-

Background

1. The Community Right to Bid was introduced by Part 5 of Chapter 2 of the Localism Act 2011 (“the Act”), which requires the Council to maintain a list of property within its jurisdiction that is of community value, known as the Council’s List of Assets of Community Value. The Act together with the Assets of Community Value (England) Regulations 2012 (“the Regulations”) establishes the regime for nominating and deciding if land and buildings should be included in the Council’s List of Assets of Community Value.
2. Section 88 of the Act sets out the qualifying criteria to be satisfied before a property can be listed as an Asset of Community Value (“ACV”).
3. Section 88(1) relates to land in use at the time of the nomination which furthers community use: that is,

“a building or other land in a local authority’s area is land of community value if in the opinion of the authority:

(i) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(ii) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.”
4. Section 88(2) relates to land that has furthered community use in the recent past: that is,

“a building or other land in a local authority’s area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority:

(i) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(ii) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.”

5. The statutory regime for ACVs does not explicitly define 'social wellbeing' or 'social interests'. Section 88(6) states that 'social interests' includes cultural, recreational, or sporting interests; the term is not limited solely to those interests. It is ultimately for the Local Authority to decide which activities fall within the scope of these terms.
 6. 'Social wellbeing' could involve facets of everyday life universally believed to constitute one's happiness and wellbeing. Moreover, having the ability to socialise with other people, be it through a common interest or otherwise, would likely satisfy that definition. It follows, therefore, that a venue which enables such social interaction would fulfil the social interests of a community.
 7. The listing process is triggered by a 'community nomination' to the Listing Authority (Mid Sussex District Council), which has no authority list an ACV on its own initiative or to initiate the nomination process. Nor is there a requirement for the nominator to contact the property owner prior to making the nomination; the owner may only become aware of a nomination when later notified by the Listing Authority.
 8. The Listing Authority is duty-bound to process the community nomination within eight weeks of receipt. Within that timeframe, it must also determine whether or not the nominator is qualified to make the nomination, and if the Nominated Property satisfies the ACV listing criteria. If both are fulfilled, the Listing Authority must list the Nominated Property as an ACV.
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9. On 24 November 2022 the Council received a completed community right to bid nomination form from Burgess Hill Town Council ("the Nominating Body") in respect of Chanctonbury Road Allotment Site, Chanctonbury Road, Burgess Hill, West Sussex, RH15 9EU ("the Nominated Property"). The Nominated Property is shown on the plan included with the nomination form and presently forms the entirety of an unregistered title.
10. The freehold owner of the property is Network Rail Infrastructure Limited of 1 Eversholt Street, London, NW1 2DN.
11. When determining if the Nominated Property is a qualifying asset, and the nominator a qualifying body: the Act, the Regulations, and non-statutory advice provided by the Department for Communities and Local Government (regarding Part 5, Chapter 3 of the Localism Act 2011) were followed.
12. If the Nominated Property is a qualifying asset within the District of Mid Sussex (not being within any excluded categories of property which cannot be nominated) and has been nominated by a qualifying body, Mid Sussex District Council, as the Listing Authority, must list the Nominated Property as an ACV and inform the following parties that the land has been so listed: -
 - a) the freehold owner of the asset;
 - b) the successful community nominator of the asset;
 - c) any leaseholders of the asset;
 - d) the Parish or Town Council within whose jurisdiction the property is situated.
13. As the land is not registered, the Council must apply for a restriction at the Land Registry in Form QQ.

Representations in support of listing

14. The Nominating Body has given representations in support of listing the Nominated Property in a nomination form. A plan showing the Nominated Property has also been submitted with the form.
15. Section B4 of the nomination form asks the Nominating Body to explain why the Nominated Property is of community value. It asks: "does it currently further the social wellbeing or social interests of the local community, or has it done so in the past? If so, how?"

The Nominating Body responded with:

'The site is an allotment site providing social wellbeing to 63 allotment tenants for over 70 years. Tenants are mainly residents living nearby. There is no limit to who can be a tenant but they must be from Burgess Hill. The site provides an important recreational aspect to local life and enables local people to grow their own produce. Appendix 3 (sic)'

16. Section B4 of the Nomination Form asks the nominator to explain if the Nominated Property could further the social wellbeing or social interests of the local community in the future, and if so, how.

The Nominating Body responded with:

'It will continue to further the wellbeing of the local community. there is a waiting list of 98 tenants for this site and 246 in total for all sites. It is particularly important to those on low incomes who are able to grow their own produce particularly in economically difficult times. See Appendix 3 (sic)'

17. Section B5 also asks the Nominating Body: how could the building or land be acquired and used in future?

The Nominating Body responded with:

'The Town Council could apply for a Public Works Loan Board loan to acquire the site. The Town Council currently leases the land and has managed the site for allotment holders for many years.'

Objections

18. The Council acknowledged the Nomination Form and wrote to the property owner on 25th November 2022, and occupiers of the property on 29 November 2022 and 30 November 2022, informing them of the Nomination by Burgess Hill Town Council and inviting them to make representations in response to the nomination. As of 14th December 2022, the Council has received no objections from the freeholder.

Conclusions

19. The **first** consideration for the Council is whether the nomination can be considered to be a 'community nomination' for the purposes of the Act.

The nomination was made by Burgess Hill Town Council – a Parish Council established on 1st April 1974 following Local Government reform under the Local Government Act 1972. Parish Councils can make a community nomination of land within their area by virtue of S.89(2)(b)(i) of the Act. Regulation 5(1)(b) of the Regulations also qualifies a Parish Council as a voluntary or community body.

Under s.89 (2)(b)(i) of the Act, Regulation 5(1)(b) and Regulation 4(2)(a), nominations by a Parish Council, such as Burgess Hill Town Council, qualify as a 'community nomination'.

20. The **second** matter for the Council to consider is whether the Nominated Property has "...an actual or current use of the building or other land that is not an ancillary use" and "...further the social wellbeing or social interests of the local community" as outlined in S.88(1)(a) of the Localism Act 2011.

Neither 'Social Wellbeing' or 'Social Interest' are defined with the 2011 Act or the Regulations, and although Section 88(6) of the Act expressly provides that 'social interests' include cultural, recreational, or sporting interests, the term is not confined to those interests.

Allotment Gardens have successfully been nominated as ACVs in England. The Department for Communities and Local Government acknowledges that "...allotments are valuable community assets..." in their 2014 publication *Allotments disposal guidance: Safeguards and alternatives*.

In *The Trustees of the Duke of Northumberland's Charity v Hounslow London Borough Council*, Judge Jacqueline Findlay comments that, "It has long been recognised that the use of land for allotments has served the community generally and not merely those who rent allotment space". Judge Findlay also takes Judicial Notice that, "...community benefits were clearly discussed in the Thorpe Report of 1971".

There is also no statutory definition for 'local community' and in the *Duke of Northumberland* case, it was considered that a facility does not need to be equally valuable or equally accessible to all sectors of the local community.

The Nominated Property is currently used as Allotment Gardens by sixty-three allotment holders, all of which are reported to be residents of Burgess Hill. It can therefore be deduced that the Nominated Property has both an actual and current use (that is not ancillary use) and furthers the social wellbeing or social interests of the local community.

21. The **third** consideration is if '*it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community*'.

The Nominated Property is owned by Network Rail Infrastructure Limited (Network Rail); the allotment gardens are operated by the Nominating Body, who occupy the site under the terms of an annual tenancy with Network Rail. The tenancy can be determined at any point upon prior notice. Moreover, the allotments are not protected by statute (so called *statutory allotments*) rendering disposal a possibility without Secretary of State consent.

It should also be considered that Mid Sussex District Council has identified the Chanctonbury Road Allotment site (the Nominated Property) as a housing site in their Regulation 18 Consultation Draft District Plan (as required by *The Town and Country Planning (Local Planning) (England) Regulations 2012*). It is therefore conceivable that the property owner might exercise the break clause in the tenancy agreement for the Nominated Property to facilitate development in the future. Nevertheless, the Draft District Plan has not yet been formally adopted and a planning application has not been put forward by Network Rail.

The Nominating Body has suggested that it would apply for a Public Works Loan Board Loan to acquire the site if nominated as an Asset of Community Value. The Nominating Body has successfully applied for such a loan in the past and it is reasonable to believe that the Nominating Body would be successful in the future, thus increasing its chances of securing the property by acquisition, if availed of the opportunity.

A waiting list comprising ninety-eight potential tenants for the allotments (the Nominated Property) has been mentioned by the Nominating Body along with two hundred and forty-six potential tenants for other sites across Burgess Hill. In view the apparent demand for allotment sites and the Nominating Body's statutory duty to provide allotments, it is realistic to think that there can continue to be a non-ancillary use of the land which will further the social wellbeing or social interests of the local community.

Decision

22. The nomination is a *community nomination* as far as the Act is concerned; the Nominated Property has an actual or current use that furthers the social wellbeing or social interests of the community as set out in s.88(1)(a) Localism Act 2011. It is also realistic to think that there can continue to be a non-ancillary use of the land which will further the social wellbeing or social interests of the community.
23. In view of the above considerations, the decision is made to list the Nominated Property as an Asset of Community Value.

COPY OF THIS AUTHORITY TO BE PLACED ON THE PROPERTY FILE AND A COPY PROVIDED TO LEGAL WITH INSTRUCTIONS

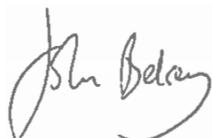
Vicky Reader
Head of Estates
Services & Building
Control



Signed

Cllr John Belsey,
Deputy Leader and
Cabinet Member for
Estates Services &
Building Control

I concur with the decision made by Nathan Whittington, Estates Surveyor – Estates Services & Building Control.



Signed