

Committee: Community and Health Committee	Date: 6 December 2021
Subject: Bracken Wood Greens, Warley	Wards Affected: Warley
Report of: Kim Anderson, Corporate Manager – Communities, Leisure & Health	Public
Report Author/s: Name: Zara Clarke, Community Development Assistant Telephone: 01277 312500 E-mail: zara.clarke@brentwood.gov.uk	For Decision

Summary

The Localism Act 2011 introduced the Community Right to Bid (the Right), a new right for local people to nominate buildings or pieces of land that they believe contribute to the social interests or wellbeing of their local communities to be listed on a register of Assets of Community Value (ACVs), managed by the local authority. The Right applied to public and private property, although there are a number of exceptions under the legislation, including private residences. Where land is listed as an ACV, if an owner of a listed asset subsequently wishes to dispose of it, there will be a period of time during which the asset cannot be sold, or a qualifying lease granted or assigned (a qualifying lease is a lease originally granted for a 25-year term). This period is known as a moratorium and would ultimately be for a period of six months. The moratorium is intended to allow community groups the time to develop a proposal and raise the required capital to bid for the asset when it comes onto the open market at the end of that period. The owner is under no obligation to accept a bid from the community group and can sell the property to whomever they wish once the six-month moratorium is over.

A valid nomination has been received to list Bracken Wood Greens, as an Asset of Community Value and this report asks the Committee to make a decision on this nomination.

Recommendation(s)

Members are asked to: -

R1. List the land known as Bracken Wood Greens, as indicated on the site map in Appendix B of the report, as an Asset of Community Value.

Main Report

Background

1. A report was presented to Policy, Performance and Resources Committee on 7 December 2011 (min. ref. 386) so that members were aware of the implications for the Council of the Localism Act 2011 which was given Royal Assent on 15 November 2011. Part of the Localism Act 2011 includes the ability for communities to be able to ask for community assets to be put on a register of 'Assets of Community Value'. These can include local pubs, shops, village halls, libraries and community centers.
2. A subsequent report was presented to Strategy and Policy Board on 20 November 2013 (min ref. 264) recommending that delegated authority to determine whether nominations should be included within the list of assets of community value, be given to the Head of Borough Health, Safety and Localism in consultation with the Chair of Strategy and Policy Board and relevant ward Councilors; and that the officer grade for carrying out and determining reviews be at Head of Service level or above.
3. The consultation part of the delegation was changed at Ordinary Council on 22 October 2014 (min. ref. 213) that the Communities Committee be granted delegated authority to determine applications/nominations for designation of Assets of Community Value.
4. The Localism Act provides an opportunity for communities to raise finance to competitively bid when a community asset comes on the open market. This is achieved through a legal framework governed by the Local Authority. The Act allows communities to nominate assets of community value (ACV's). The council is given eight weeks to determine whether it meets the criteria for listing from the date of submission, and then places its decision on the list. When the owner of a listed asset wishes to dispose of it, the Act introduces a delay or 'moratorium' before he or she can do so, to give any interested and eligible community groups the time to prepare a bid. However, at the end of the moratorium period the owner can sell to whomever they choose at a price agreed by the buyer.
5. The Council received a valid nomination (Appendix A) on 8 November 2021 from Bracken Wood Residents Association in relation to the land as indicated on the attached site plan in Appendix B. The regulations made under the Localism Act 2011 require the Council to determine within 8 weeks whether to list the nominated asset. Therefore, the deadline for a decision is 3 January 2022 which is why this report is before Members today.

6. In broad outline the new provision under the Localism Act 2011 for listing an Asset of Community Value and subsequent disposal are set out in Appendix C. In particular Members are reminded of what is meant by a relevant disposal of a listed asset (see 1.15 of Appendix C).

Issue, Options and Analysis of Option

7. The essential statutory test for an ACV is set out in Section 88 of the Localism Act 2011. It is for the local authority to judge whether the criteria are met (subject to any challenge by way of a judicial review). The criteria are set out as follows:
8. **Is the nominating organisation an eligible body to nominate?**
Officers have checked and confirmed that Bracken Wood Residents Association are an eligible body to nominate the land as an Asset of Community Value.
9. **Does the nominating body have a local connection to the asset?** Yes, Bracken Wood Residents Association operates in the Warley area.
10. **Does the nomination include the required information about the asset?**
(This includes the proposed boundaries, names of the current occupants of the land and names of the current or last known address of those holding a freehold or leasehold estate of the land). All of the necessary information was supplied to the Council (see nomination form Appendix A) and site plan (Appendix B).
11. **Is the nominated asset outside one of the categories that cannot be and Asset of Community Value (a residence together with land associated with that residence; land in respect of which site license is required under Part 1 of the Caravan Sites and Control of Development Act 1960; and operating land as defined in Section 263 of the Town and Country Planning Act 1990)?** The land indicated is not one of the exempt categories that cannot be listed as an ACV, so this nomination cannot be ruled out on that principle.
12. **Is the current or (recent usage) which is subject to the nomination an actual and non-ancillary usage?**
The nominee states the Community Asset under consideration is the land known locally as The Greens, which is land that was deliberately left open for communal use when the estate was constructed in the 1980s. This land was designed in collaboration with Brentwood Council following its previous use as an industrial area, considering a degree of pollution and underground structures.

13. **The Council also needs to consider if in their opinion (a) an actual current use further the social wellbeing or social interests of the local community, and (b) 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.** They may take into account the following:

- a) **What is the ‘local community’ of the asset as defined by geographical area?** Officers consider that this would include the immediate vicinity of the Borough of Brentwood and surrounding areas.
- b) **What is the current/recent use of the asset?** The nominated asset’s current usage is by residents of the flats adjacent to the field, and a green corridor for animals living in the nearby Hampden Wood through to the Donkey Lane woods and the wider Thorndon Park area.
- c) **What will be the impact if the usage ceases?** The nominee states that the loss of garden space for upstairs flats, diminishment of the visual attractiveness of the overall area in contrast to its appearance when most of the houses and flats when they were purchased, loss of wildlife corridor, elimination of sight lines, possible release of pollution in the subsoil.
- a) **How does it meet the social interests of the community as a whole and not users/customers of a specific service?** For information in the Act ‘Social interests’ includes each of the following – cultural interests, recreational interests and sporting interests. The Asset provides recreational interests for the local community.
- b) **How is the asset regarded by the local community (community consultation, evidence of support)?** Bracken Wood Residents Association have submitted the nomination form for this site and the Residents Association are representatives of the local community of Brentwood.

Reasons for Recommendation

- 14. The nomination has passed the Council’s due diligence tests including the submission of evidence that the group is eligible to nominated. The nomination passes the first statutory test as it clearly furthers the social interests and wellbeing of the local community.
- 15. There is a realistic chance that the asset will continue to provide the activities for which it has been nominated. The nomination therefore passes the second statutory tests.

16. The Council could decide not to list The Bracken Wood Greens as an Asset of Community Value, but this would mean that it was not fulfilling its statutory duty under the Localism Act 2011.

References to Corporate Plan

17. Assets of Community Value sit under the Developing Communities strand by encouraging individual and corporate volunteers to help strengthen communities.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources)
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18. Under the Assets of Community Value Regulations, the local authority is responsible for paying compensation in respect of listed assets within its area. This compensation is for an owner of an asset included in the Council's list of assets of community value. The compensation claim is in respect of incurred loss or expenses in relation to the asset which would be likely not to have been incurred, if the land had not been listed.
19. There is no statutory cap on the amount of compensation that may be payable in respect of any one claim, and one local authority may face multiple claims in any one year. The Department for Communities and Local Government has issued guidance in relation to the Community Right to Bid. With regard to compensation claims, any individual or total payments of over £20,000 in a financial year will be funded by the government. In addition, a New Burdens grant has been allocated to all administering councils to cover the costs associated with implementing the new scheme.
20. Whilst the funding from government will help to meet some of the costs of the new arrangement, local authorities will still be expected to fund the first £20,000 of any compensation payments.
21. The current balance in the Community Rights to Bid reserve has a balance of £37,644.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law and Governance) and Monitoring Officer

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22. The Council has a statutory responsibility to comply with the provisions as set out in the Localism Act 2011(the Act) and the Regulations made under the Act,

currently Assets of Community Value (England) Regulations 2012 SI 2421, to list assets nominated by community groups as assets of community value if these are deemed to pass the statutory tests set out in the Act.

23. Decisions on nominations made under the Community Right to Bid are considered by the Community and Health Committee within the timeframe which the Council is, by law, required to respond to the nominating group.

24. There is a clear penalty for non-compliance with the rules by owners. All new registrations on the Register of Assets of Community Value will also be recorded on the Local Land Charges Register and if the land is registered a restriction will be entered on the title of the property at the Land Registry (ACV Regulations 2012). Therefore, when the asset changes hands, a search of the register will reveal the asset's status. Where a sale is found to have taken place which does not comply with the Act the sale is deemed void.

Economic Development Implications

Name/Title: Phil Drane, Corporate Director (Planning & Economy)

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25. There are no direct economic implications. Bracken Wood Greens forms part of several attractive green open spaces that contribute to local residential amenity. Protection of such spaces helps to maintain reasons why people choose to live in the borough, which can contribute to indirect economic benefits.

Equality and Diversity implications

Name/Title: Kim Anderson, Corporate Manager (Communities, Leisure & Health)

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26. The process will be fair and consistent for all members of the community and therefore is not anticipated that there will be any direct impact on individual community groups or members.

Background Documents

- Localism Act 2011

Appendices

- Appendix A: Application of Asset of Community Value
- Appendix B: Nomination of land – Bracken Wood Greens site map
- Appendix C: Provisions under the Localism Act 2011 relating to Assets of Community Value

<https://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>