

<b>Committee:</b> Community Environment and Enforcement Committee	<b>Date:</b> 19 December 2022
<b>Subject:</b> Asset of Community Value – Iris Close	<b>Wards Affected:</b> Pilgrims Hatch
<b>Report of:</b> Kim Anderson, Corporate Manager Communities, Leisure and Health	<b>Public n/a</b>
<b>Report Author/s:</b> Name: Zara Clarke, Leisure Project Support and Liaison Officer Telephone: 01277 312500 E-mail: zara.clarke@brentwood.gov.uk	<b>For Decision</b>

### Summary

The Localism Act 2011 introduced the Community Right to Bid, 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 Community Right to Bid applies 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 25year 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 re-list Iris Close Amenity Green, as an Asset of Community Value and this report asks the Committee to make a decision on this nomination. The Asset had previously been agreed to be listed by Members at the 20 November 2014 Community Committee.

### Recommendation(s)

**Members are asked to: -**

**R1. List the land known as Iris Close Amenity Green, 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 centres.
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. Under the current committee structure this is delegated to the Community, Environment and Enforcement Committee.
4. The Localism Act provides an opportunity for communities to raise finance to competitively bid when a community asset comes onto 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 Thursday 27 October 2022 from Pilgrims Hatch Community Partnership in relation to the land known as Iris Close Amenity Green, 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 or not. Therefore, the

deadline for a decision is Thursday 22 December 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 Pilgrims Hatch Community Partnership 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, Pilgrims Hatch Community Partnership operates in the Pilgrims Hatch 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 redacted 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)?** Planning Act 1990). The Council has established that there are sewers that run underneath the nominated asset. Water and Sewerage Undertakers are Statutory Undertakers by definition in Section 262 of the Act and the foul and water sewers will be excluded from the registration so far as the blue and red lines on the plan are concerned. This will include 3m clearance on either side of the sewers. The view is taken after consultation with the Anglian Water authority that the exclusion of Operational Land includes not only the sewers underground but the land required by the Water Authority to carry out its maintenance and safeguarding duties under the Water Act 1989 and Town and Country Planning Act 1990 and

orders made under the Act. All the land is otherwise highway land. The current use and the historical records were investigated for the determination of two planning applications which are on the Agenda for the Planning and Development Committee meeting on the 19th November. The outcome of the investigation was reported as follows:

- The applicant is a company closely associated with the original developer of the housing estate.
- The owner of the application sites and adjoining undeveloped land is the applicant, as confirmed by land charge searches.
- All the green areas on the estate were adopted as highways. The Highways Committee of Brentwood Urban District Council on the 5th June 1972 in Minute resolution 69 authorised adoption of the roads.
- The planning statement submitted with the application included a signed copy from Essex County Council of the extinguishing of highway rights, subject to no objection from Brentwood Borough Council, by agreement or by grant of planning permission.
- A Deed of Agreement made under the Highways Act 1959 between George Wimpey and Brentwood Borough Council was exchanged in 1968 included reference to a proposal for the Council taking over the whole site as public open space and sewers, but there was no adoption of the green areas as open space. The operative clause of the Deed states that “the Council shall adopt the areas coloured as part of the roads maintainable at public expense”. It has been part of Highway Law since 1925 that the improvement of roads includes grass areas, and in the consolidation Highways Act of 1980 this power extends to the laying out of grass verges.
- Brentwood Borough Council granted a planting licence under the Highways Act 1980 to the then owner of 61 Iris Close. This confirms that the Council never did adopt the land for any purpose other than highways.
- Essex County Council have confirmed that they have no interest in the land other than highways authority and received transfer of this authority over the land in 2005, without qualification, from Brentwood Borough Council.
- The land has been maintained by up to 11 cuts of grass a year by Brentwood Borough Council probably since the estate was built out. The land being highway land, the Council received payment from Essex County Council for 2 cuts a year, since transfer back of the highway’s agency agreement. The maintenance, therefore, was not undertaken for amenity or other reasons separately from being Highway Land

It seems unarguable that the green areas shown on the plan attached to the Highways Agreement of 1968 were adopted other than under Highway powers. In addition to the points listed on the Planning Agenda,

- The only operative statutory powers cited in the Agreement were the Highways Act 1959;

- a planting licence that was given to the owner of 61 Iris Close under highway powers.
- The powers of a highway authority to lay out grass verges in a highway in the Highways Act 1980 Section 96 shows no inconsistency with the wording in the deed. This is not the only reference in Highways legislation to green verges or margins. Section 71 of the Highways Act 1980 states it is the duty of the highway authority to provide in or by the side of the highway, margins for horses or livestock, and these areas can be extensive. It cannot be argued successfully that the Council adopted the land separately as public open space under different legal powers entirely.

**12. Is the current or (recent usage) which is subject to the nomination an actual and non-ancillary usage?**

The current usage of the site is that it provides an open space/amenity green for local residents.

**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 specifically residents of Pilgrim's Hatch.
- b) What is the current/recent use of the asset?** The nominating body have stated in their application that the nominated asset currently provides an open space for children to play, and an area for dog walkers and a green for children's parties
- c) How well is the asset used?** The site is currently used by the local community as a recreational space for children to play, for parties and used by dog walkers.
- d) What will be the impact if the usage ceases?** Local residents will have to use the nearest open space available to them.
- e) 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 nominating body states that the Asset provides opportunities for recreation/sporting interests.

- f) **How is the asset regarded by the local community (community consultation, evidence of support)?** The Pilgrims Hatch Community Partnership has supplied 21 names and addresses of people in the Community who support the listing of the asset.

14. Members need to consider whether it is realistic to think that there can continue to be non-ancillary use of the Asset which will further the social well-being or social interests of the local community.

### **Reasons for Recommendation**

The nomination has passed the test as a valid nomination and the including the submission of evidence that the group is eligible to nominate the land. The Asset passes the first and second statutory test as it furthers the social interests and wellbeing of the local community as set out in the Localism Act. It has previously been listed by the Council.

### **References to Corporate Plan**

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

### **Implications**

#### **Financial Implications**

**Financial Implications: Tim Willis, Interim Director of Resources**  
**Tel/Email: 01277 312500 / tim.willis@brentwood.rochfordgov.uk**

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.

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.

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.

The current balance in the Community Rights to Bid reserve has a balance of £37,644.

### **Legal Implications**

**Andrew Hunkin, Interim Director of People and Governance**

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The Council has a statutory responsibility to comply with the provisions as set out in the Localism 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.

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

There is a clear penalty for non-compliance with the new 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 Localism Act 2011 the sale is deemed void.

### **Economic Implications**

**Name/Title: Phil Drane, Director Place**

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Delivery of planned growth in the Council's new local plan for the borough contributes towards economic growth, in line with corporate objectives. Not enabling a site allocation to provide for planned growth, either through listing as an asset of community value or other protection, would undermine the local plan examination process and have negative economic implications.

### **Equality and Diversity Implications**

**Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager**

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**Equality and Diversity implications** – 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.

## **Appendices**

Appendix A – Application of Asset of Community Value

Appendix B – Site Plan of nominated land - Iris Close Amenity Green

Appendix C - Provisions under the Localism Act 2011 relating to Assets of Community Value

## **Background Documents**

Localism Act 2011