

20 November 2014

Community Committee

William Hunter Way – Asset of Community Value

Report of: *Ashley Culverwell, Head of Borough Health, Safety and Localism*

Wards Affected: *All Brentwood Borough Wards*

This report is: *Public report*

1. Executive Summary

- 1.1.** The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that generally speaking an owner intending to dispose of the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the disposal cannot take place for six months. The theory is that this period known as the “moratorium” will allow the community group to come up with an alternative proposal- although, at the end of the moratorium, it is entirely up to the owner whether a disposal goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.
- 1.2.** A nomination has been received from Brentwood Access Group in relation to the existing blue badge holder’s car parking area within William Hunter Way Car Park (Appendix A).
- 1.3.** The report is for Members to consider whether to list or not to list the blue badge holder’s car parking area within William Hunter Way Car Park as an Asset of Community Value.

2. Recommendations

That members agree to:

- 2.1. Option 1: List the existing blue badge holder's car park located in William Hunter Way as indicated on Appendix B of the report as an Asset of Community Value; or**
- 2.2. Option 2: Not to list the existing blue badge holder's car park located in William Hunter Way as indicated on Appendix B of the report as an Asset of Community Value**

3. Introduction and Background

- 3.1.** A report was presented to Policy, Performance and Resources Board 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 in 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 assets can include local pubs, shops, village halls, libraries and community centres.
- 3.2.** 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 Councillors; and that the officer grade for carrying out and determining reviews be at Head of Service level or above.
- 3.3.** 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. Should the timing of Committee meetings not permit that, the Head of Borough, Health Safety and Localism be granted delegated authority to determine applications/nominations for designation of assets of community value provided that such delegated authority is only exercisable after consultation with the Leader of the Council and any ward Members, which is why this determination is before Members tonight.

- 3.4.** 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.
- 3.5.** The Council has received a valid nomination on 6 October 2014 from Brentwood Access Group in relation to the blue badge holders' car parking provision within the William Hunter Way Car Park. The Regulations made under the Localism Act 2011 requires the Council to determine within 8 weeks whether to list the nominated asset. Therefore the deadline for a decision is 1 December 2014.
- 3.6.** 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.

4. Issue, Options and Analysis of Options

- 4.1.** 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 judicial review). The criteria are set out as follows:
- 4.2.** *Is the nominating organisation an eligible body to nominate? The Council has received names and addresses of members of Brentwood Access Group and officers have checked the electoral role and confirmed that they are an eligible body to nominate (as an unincorporated body with at least 21 local members).*
- 4.3.** *Does the nominating body have a local connection to the asset? Yes the group has offered advice and guidance about access to public areas and mobility related facilities in the Brentwood area for all disabled people and worked closely with the Council for more than 30 years to improve the built environment within the Borough for people with disabilities in Brentwood.*

- 4.4. 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 and current or last known address of those holding freehold or leasehold estate in the land). *All of the necessary information was supplied to the Council (See Appendix B for the site plan).*
- 4.5. Is the nominated asset outside one of the categories that cannot be assets of community value (A residence together with land associated with that residence; land in respect of which site licence is required under Part 1 of the Caravan Sites and Control of development Act 1960; and operational land as defined in section 263 of the Town and Country Planning Act 1990). Car parks are not one of the exempt categories that **cannot** be listed as an ACV, so this nomination cannot be ruled out on that principle.**
- 4.6. Is the current (or recent – within past 3 years) usage which is subject of the nomination an actual and non-ancillary usage?** *The current actual usage is that it provides blue badge holder parking within William Hunter Way Car Park.*
- 4.7. The Council also needs to consider if in their opinion (a) an actual current use furthers 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:**
- 4.7.1. What is the ‘local community’ of the asset as defined by geographical area?** Officers consider that would include the Borough of Brentwood and surrounding areas.
- 4.7.2. What is the current /recent use of the asset?** The nominated asset is currently providing blue badge holder provision (28 bays) for car parking within William Hunter Way Car Park which is within a greater parcel of land which is the subject of proposals for a substantial redevelopment scheme.
- 4.7.3. How well is the asset used?** The Parking Manager has confirmed that the current usage is between 90-95% on each day.

- 4.7.4. What will be the impact if the usage ceases?** Brentwood Access Group has suggested that this parking provision provides a uniquely safe parking facility segregated from the dangers of highway traffic, yet is adjacent to the Town Centre. It notes the particular vulnerability of disabled people being hit by passing traffic and also notes the advantages of street level access parking to the disabled population compared to multi storey car parking.
- 4.7.5. 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. Brentwood Access Group within their nomination indicates that it encourages disabled persons to visit and spend money in Brentwood, benefitting the local economy.
- 4.7.6. How is the asset regarded by the Community (community consultation, evidence of support)?** As mentioned earlier in the report (4.7.3) the blue badge holder provision within the William Hunter Way Car Park is well utilised.
- 4.8.** Members also 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.
- 4.9.** There are also a number of other dedicated spaces designated for blue badge holders within the Town Centre which offer blue badge holders' parking, New Road (2 bays), High Street (15-20 bays), Multi Storey Car Park (44 bays out of 555 spaces), Chatham Way (3 bays out of 122 spaces) and on a Saturday the Town Hall (3 bays out of 163 spaces). Currently all these bays are fully used. The British Parking Association recommends that good practice is to offer 6% of your parking space for blue badge holders across the Council's provision. In total there are 840 spaces and 11% of these are designated for blue badge holders' parking.
- 4.10.** In addition to the dedicated blue badge parking arrangements, on street parking legislation allows the following for Blue badge holders. Blue Badge holders may park on single or double yellow lines (no waiting at any time restriction) provided they correctly display a valid blue badge and time clock.

- 4.11.** There are examples of car parks being considered to be ACV's by relevant local authorities. In one particular case it was the present use of the land which was paramount in considering whether the land 'furthers the social wellbeing or social interests of the local community'. Thus the prospect of alternative provision did not prevent the proper registration of the overflow car park as an ACV. On the other hand, other authorities have taken a stricter approach and refused to list a car park.
- 4.12.** There is guidance in the National Planning Policy Framework (NPPF) which deals with the social role of planning and indicates the breadth of the social dimension. The social role of planning is identified as "supporting strong, vibrant and healthy by...[providing] accessible local services that reflect the community's needs and support its health, social and cultural well-being". At para [69] the NPPF recognises the importance of facilitating social interaction and creating healthy, inclusive communities.
- 4.13.** Members should consider the following; firstly that there is currently an intention to provide an alternative (and broadly equivalent) disabled parking pursuant to the redevelopment scheme (albeit not in precisely the same place); secondly that disabled parking, by its nature, is an asset normally used by a numerically very small section of the community. However it would not be lawful to exclude from consideration an application for an ACV simply on the basis that it was limited to an identified section of the community (by definition). There is no such limitation in the statutory words and as a matter of fact local shops, pubs etc will typically be accessed – when considered individually – by a limited section of the overall population.
- 4.14.** However, the number of people who are likely to use a facility may lawfully be taken into account as one factor in deciding whether or not the land provides 'furthers the social wellbeing or social interests of the local community'.
- 4.15.** Members should also consider if there is a robust contingency plan to ensure equally effective blue badge car parking provision is made for the duration of the redevelopment, which could be taken into account when making the decision.
- 4.16.** The breadth of the statutory provisions indicates that a car park which more easily permits a recognised element of the community to access the Town Centre is capable of being an asset which 'furthers' both the social wellbeing and social interests of the local community.

- 4.17.** Whilst the list of potentially relevant factors may be broad, the weight to be given to each factor is for the Council alone to decide, subject to the conventional rules of not according a perverse level of weight to a factor.
- 4.18.** Members should also give consideration to the section 149 of the Equality Act 2010. More details are provided in the Equality and Diversity implications (**Paragraph 7 - Implications**)
- 4.19.** Currently Planning Permission is in place for the William Hunter Way site. This was extended in September 2013 for another 5 years. The Brentwood Replacement Plan August 2005, Policy TC10 relates to William Hunter Way. The Draft Local Plan 2015-20, Preferred Options for consultation July 2013, Policy CP5 relates to William Hunter Way. Details of these can be found in **Appendix D**.
- 4.20.** There was a proposed land swap with the old existing redevelopment plan with Barclays Bank PLC in respect of the specified parcel of land, although no paperwork was exchanged. Any new redevelopment plan would need to have all the relevant permissions and licences in place, prior to any redevelopment.

5. Reasons for Recommendation

The report provides guidance and facts to allow Members to make an informed decision as to whether to list the nominated asset as an Asset of Community Value.

6. References to Council Priorities

Assets of Community Value sit under the Localism priority enabling communities to do more for themselves.

7. Implications

Financial Implications

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Under the Assets of Community Value Regulations the local authority is responsible for paying compensation in respect of listed assets within its area. There is no statutory cap on the amount of compensation that may be payable in respect of any one claim, and a 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 £20k 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 arrangements, local authorities will still be expected to fund the first £20k of any compensation payments.

The current balance in the Community Rights to bid reserve has a balance of £29,642, and per agreement by the Council in March a further £16,000 will be transferred to the reserve during 2014/15.

Legal Implications

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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.

The Council also has a duty to comply with the Equality Act 2010 (see Equality and Diversity implications, section 7)

Risk Management implications – The Council has a legal duty to comply with the legislation relating to Assets of Community Value. In the event that the Council decides that the Car Park should be registered then consideration needs to be given to whether the moratorium would apply in this case as a result of the development agreement the Council previously entered into in relation to the William Hunter Way site.

There is also a possible reputational risk to the Authority by not listing the nominated asset for Brentwood Access Group.

There is possible financial risk, if the asset is listed and the moratorium is applied at the point of disposal.

Asset Management implications – The William Hunter Way Car Park is a Council owned community asset. The Council is committed to working with communities to ensure that this is developed with the long term interests of local people in mind.

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

Specifically the Council should consider Section 149 of the Equality Act 2010, Public Sector Equality Duty. The general equality duty requires public authorities to have '**due regard**' to the following three aims when delivering services and making decisions:

- **Eliminate unlawful discrimination, harassment, victimisation** and any other conduct prohibited by the Equality Act 2010;
- **Advance equality of opportunity** between people who share a relevant protected characteristic and those who do not share it; and
- **Foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.
- **Protected characteristics** have been extended under the Equality Act to cover:
 - Age
 - Disability
 - Gender
 - Gender reassignment
 - Pregnancy and maternity
 - Race – includes ethnic or national origins, colour or nationality
 - Religion or belief – this includes lack of belief
 - Sexual orientation
 - Marriage and civil partnership

8. Appendices

Appendix A – Nomination of William Hunter Way as Asset of Community Value

Appendix B – Site Map

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

Appendix D - Brentwood Replacement Local Plan TC10 – William Hunter Way and the Brentwood Draft Local Plan 2015-20, Preferred Options for consultation July 2013 – Policy CP5 William Hunter Way (page 36)

9. Background documents

9.1. Localism Act

9.2. Planning Permission September 2013 Planning and Development Committee
11 September 2013(min. ref 153.)

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