

20 November 2014

Community Committee

Iris Close Amenity Green – 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 the Flowers Estate Residents Association with the land adjacent to 61 and 42 Iris Close, Pilgrims Hatch (Appendix A).
- 1.3.** The report is for Members to consider whether to list the Asset in question as an Asset of Community Value.

2. Recommendation

- 2.1. That Members agree to: Option 1: List the land (excluding 3m either side of the public sewer as this is operational land and therefore exempt from listing as a community asset) adjacent to 61 and 42 Iris Close, Pilgrims Hatch as indicated in Appendix B of the report as an Asset of Community Value; or**
- 2.2. Option 2: Not to list the land (excluding 3m either side of the public sewer as this is operational land and therefore exempt from listing as a community asset) adjacent to 61 and 42 Iris Close, Pilgrims Hatch as indicated in 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 is 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 received a valid nomination on 22 October 2014 from The Flowers Estate Residents Association in relation to the land adjacent to 61 and 42 Iris Close, Pilgrims Hatch (Appendix 1). The Regulation within the Localism Act 2011 requires the Council to determine within 8 weeks whether to list the nominated asset. Therefore the deadline for decision is 17 December 2014.
- 3.6.** The site map for the nominated asset is set out in Appendix B.
- 3.7.** In broad outline the provision under the Localism Act 2011 for listing an Asset of Community Value (ACV) 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 The Flowers Estate Residents Association 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 Association are made up of local residents of the Flowers Estate in Pilgrims Hatch.*

- 4.4. Does the nomination include the required information about the asset? (this includes the proposed boundaries, names of current occupants of the land and names and current or last known address of those holding freehold or leasehold estate of the land). All of the necessary information has been subsequently 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). 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 highways agency agreement. The maintenance, therefore, was not undertaken for amenity or other reasons separately from being highway land.

4.6. 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.

- 4.7. Is the current (or recent – within the past 3 years) usage which is the subject of the nomination an actual and non-ancillary usage?** *The current actual usage is that it provides an open space/amenity green for local residents.*
- 4.8.** 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:
- 4.8.1. What is the ‘local community’ of the asset as defined by geographical area?** Officers considers that it would include the Borough of Brentwood specifically residents of Pilgrims Hatch.
- 4.8.2. 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 area for dog walkers and a green for children’s parties.
- 4.8.3. How well is the asset used?** The Flowers Estate Residents Association state in the nomination form that the asset is currently used by the local community as a recreational space for children to play, for parties and used by dog walkers.
- 4.8.4. What will be the impact if the usage ceases?** Local residents will have to use the nearest open space available to them.
- 4.8.5. 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. The Flowers Estate Residents Association state in the nomination form that it provides opportunities for recreational/sporting interests.
- 4.8.6. How is the asset regarded by the Community (community consultation, evidence of support)?** A total of 62 names and addresses from local residents have been supplied with the nomination form to list the asset.

4.9. 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.

5. Reasons for Recommendation

5.1. The report provides guidance and facts to Members 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

6.1. 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 transferred to the reserve during 2014/15.

Legal Implications**Name & Title:** Philip Cunliffe-Jones Planning Lawyer**Tel & Email:** 01277 312703 / p.cunliffe-jones@brentwood.gov.uk

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.

Any other legal implications are set out in the body of the report.

None

8. Appendices

- 8.1.** Appendix A – Nomination of land adjacent to no. 61 and 42 Iris Close
- 8.2.** Appendix B – site plan
- 8.3.** Appendix C – Provisions under the Localism Act 2011 relating to Assets of Community Value
- 8.4.** Appendix D - Original adoption agreement – 1968 and extract from Plan
- 8.5.** Appendix E - Planting Licence land adjoining 61 Iris Close and map
- 8.6.** Appendix F – Aerial map of site

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