

14 March 2016

Community & Health Committee

Asset of Community Value – Wharf Road Green

Report of: *Kim Anderson, Partnership, Leisure and Funding Manager*

Wards Affected: *All wards*

This report is: *Public*

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 by the residents of Wharf Road, Rollason Way, Chase Road and St James Road (Rollason Chase neighbourhood Group) Monday 1 February 2016 (**Appendix A**), in relation to land at Wharf Road Green as indicated on the attached site plan (**Appendix B**)
- 1.3.** The report is for Members to list or not to list the land as an Asset of Community Value as indicated in **Appendix B**

2. Recommendations

That Members agree to:

- 2.1 Option 1: List the land (excluding 3m either side of the gas pipe and public sewer as this is operational land and therefore exempt from listing as a community asset) as indicated on 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 gas pipe and public sewer as this operational land and therefore exempt from listing as a community asset) 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 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 Councilors; 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 (**Appendix A**) on 1 February 2016 from the residents local to La Plata Wood "Rollason Chase Community Group" 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 28 March 2016 which is why this report is before Members tonight.
- 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. In particular Members are reminded of what is meant by a relevant disposal of a listed asset (see. 1.15 of **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?** Officers have checked and confirmed that at least 21 of the name and addresses submitted as part of the unincorporated body nominees are listed on the Brentwood Borough Council Electoral Role and as such are an eligible body to nominate the land as an Asset of Community Value.
- 4.3 **Does the nominating body have a local connection to the asset?** Yes. The names and addresses listed live within the vicinity of the nominated land wishing to protect their environment.
- 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 a freehold or leasehold estate on the land). All of the necessary information was supplied to the Council (see Nomination form) **Appendix A** and (site plan) **Appendix B**.

- 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 operating land as defined in section 263 of the Town and Country Planning Act 1990).** The land indicated apart from the operational land indicated on the site map (gas pipe and public sewer near Kings Chase Road), is 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) usage which is subject of the nomination an actual and non-ancillary usage?** The current usage as submitted in the nomination form is as a green open space used by local residents. In the Land Register document the open spaces of the communal areas and facilities are subject to use for quiet enjoyment.
- 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:
- 4.8 **What is the ‘local community’ of the asset as defined by geographical area?** Officers consider that this would include the Borough of Brentwood and the immediate surrounding areas.
- 4.9 **What is the current/recent use of the asset?** The nominated asset’s usage is as a green open space, for exercising and dog walking and access local amenities.
- 4.10 **How well is the asset used?** The nominee has stated that the green is extensively used as outside space for the people living in the neighbouring flats. The pathways surrounding it are accessible for pushchairs and wheelchairs.

- 4.11 **What will be the impact if the usage ceases?** The nominee has stated that this is the only green within the recent heavy development; all other green areas are distant and would require children to cross many busy roads.
- 4.12 **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 nominee has stated that the green is used for recreational interests by those people living in the neighbouring flats.
- 4.13 **How is the asset regarded by the local community (community consultation, evidence of support)?** The nominee has stated that it is regarded as an integral green area for local people particularly those with children.
- 4.14 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 wellbeing or social interests of the local community.
- 4.15 The recent usage of the land at Wharf Road Green would suggest that it would seem reasonable that there can continue to be non-ancillary use of the asset which will further (whether or not in the same way as before) the social well being or social interests of the local community since there are examples of similar and comparable assets serving these interests elsewhere in the Borough.

5. Reasons for Recommendation

- 5.1 The report provides guidance 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 Corporate Plan

- 6.1 Assets of Community Value sit under the Community and Health strand enabling communities to do more for themselves.

7. Implications

Financial Implications

Name & Title: Ramesh Prashar

Tel & Email 01277 312513 / ramesh.prashar@brentwood.gov.uk

- 7.1 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 multiply claims in any one year. The Department for Communities and Local Government has issues 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.
- 7.2 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.
- 7.3 The current balance in the Community Rights to Bid reserve has a balance of £45,642.

8.0 Legal Implications

Name & Title: Saleem Chughtai, Legal Services Manager

Tel & Email: 01277 312860 / saleem.chughtai@bdtlegal.org.uk

- 8.1 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.

9.0 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.

10.0 Risk Management implications – The Council has a legal duty to comply with the legislation relating to Assets of Community Value.

11.0 Appendices to this report

Appendix A – Nomination of land off Wharf Road Green as an Asset of Community Value

Appendix B – Site Map

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

12.0 Background documents

Localism Act 2011

Brentwood Replacement Local Plan

Policy CP1 – General development Criteria

Policy H14 – Housing Density

Policy H16 Lifetime Homes

Policy LT8 Use of Redundant Institutional, Recreational and
Community Buildings

Policy LT11 – Retention of Existing Community Facilities

Policy C5 Retention and Provision of landscaping and Natural
Features in Development

Policy C6 Tree Preservation Orders and Works to Preserved Trees

Policy C7 Development affecting Preserved Trees, Ancient
Woodland and Trees in Conservation Areas

Policy C14 Development Affecting Conservation Areas

Policy C16 Development within the vicinity of a listed building

Policy C18 Ancient Monument and Archaeological Sites

Policy T2 Development of Existing Urban Sites

Report Author Contact Details:

Name: Kim Anderson

Telephone: 01277 312634

E-mail: kim.anderson@brentwood.gov.uk