

ASSETS OF COMMUNITY VALUE – COMMUNITY RIGHT TO BID NOMINATION – DELEGATED AUTHORITY:

Clair Hall, Perrymount Road, Haywards Heath, West Sussex RH16 3DN

Report to:	Peter Stuart, Head of Corporate Resources  Cabinet Member for Community, Cllr Norman Webster	Date: 12/11/2020
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Authority under Recommendation 2.3 of the Cabinet Report dated 14<sup>th</sup> January 2013 (Assets of Community Value – Community Right to Bid) which authorises the Property and Assets Maintenance Manager *"in consultation with the Cabinet Member for Planning & Regeneration or such other Cabinet Member as may be nominated by the Leader of the Council to determine any application under the Localism Act to list any building and/or land as an asset of community value"*.

Under this authority, the Business Unit Leader for Corporate Estates and Facilities approves the following proposal:-

#### Background

1. The Community Right to Bid was introduced by Part 5 of Chapter 2 of the Localism Act 2011, which requires the Council to maintain a list of land in its area that is of community value, which list is known as the Council's List of Assets of Community Value and the Act, and the Assets of Community Value (England) Regulations 2012 establishes the regime for nominating and determining whether land and buildings should be entered onto the Council's List of Assets of Community Value.
2. Section 88 of the Act sets out the qualifying criteria that must be satisfied in order to be listed as an Asset of Community Value ("ACV").
3. Section 88(1) concerns land that is in actual use at the time of the nomination and furthers community use, and provides as follows:  
"a building or other land in a local authority's area is land of community value if in the opinion of the authority:
  - (i) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
  - (ii) 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."
4. Section 88(2) concerns land that has in the recent past furthered community use and provides as follows:  
"a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority:
  - (i) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and
  - (ii) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community."
5. The statutory regime contains no definition of 'social wellbeing' or 'social interests' of the community. Section 88(6) of the Act expressly provides that 'social interests' include, in particular,



local authority is to decide what interests it considers falls within the phrase. Social wellbeing could easily be described as those aspects of life that society collectively agrees are important to a person's happiness, quality of life and welfare. Being able to socialise with others, whether through a common interest or not, would easily satisfy that description and a venue that facilitates such social communion could easily be seen to meet the social interests of the community.

6. The trigger for starting the listing process is the giving of a community nomination to the listing authority. A local authority has no power itself to list an ACV or to initiate the nomination process. There is no requirement that the owner be contacted by the nominator prior to the nomination and therefore, the first that the owner may become aware of a nomination is notification from the listing authority.
  7. Once a listing authority has received a community nomination, the listing authority has a duty to process the nomination within 8 weeks of receipt and must during that time determine whether the persons who have submitted the nomination qualify as a nominator and whether the nominated property meets the criteria for listing as an ACV. If the nominator meets the qualification criteria and the nominated property meets the criteria for listing, the listing authority must list the nominated property as an ACV.
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8. On 14 September 2020 Mid Sussex District Council ("**the Council**") received a completed community right to bid nomination form ("**the Nomination Form**") from The Haywards Heath Community CIC ("**the Nominating Body**") in respect of the property known as Clair Hall, Perrymount Road, Haywards Heath, West Sussex RH16 3DN ("**The Nominated Property**"). The Nominated Property comprises part of registered freehold title number WSX288106. The Registered Proprietor of the freehold title is Mid Sussex District Council of Oaklands, Oakland Road, Haywards Heath, West Sussex, RH16 1SS.
  9. The Act, the non-statutory advice provided by the Department for Communities and Local Government, regarding Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 No 2421 have been adhered to in determining whether the asset is a qualifying asset and the applicant a qualifying body to make such an application.
  10. If it is subsequently concluded that the Nominated Property is a qualifying asset within the Direct of Mid Sussex (not being within any excluded categories of property which cannot be nominated) and has been nominated by a qualifying body, Mid Sussex District Council, as the listing authority, must list the Nominated Property as an Asset of Community Value and inform the following that the property has been so listed (and if removed from the list): -
    - a) The freehold owner of the asset;
    - b) The successful community nominator of the asset;
    - c) Any leaseholders of the asset;
    - d) The Parish or Town Council within which the property is situated.
  11. In addition, if the land is registered, the Council must apply for a restriction at the Land Registry in form QQ.

#### **Representations in support of listing**

12. The Nominating Body has provided its representations in support of listing the Nominated Property in the Nomination Form.
13. Section B4 of the Nomination Form asks the Nominating Body to explain why the Nominated Property is of community value. It asks: does it currently further the social wellbeing or social interests of the local community, or has it done so in the past? If so, how?

*llw*

In response, the Nominating Body states: 'This building was specifically constructed as a community event venue for the people of Haywards Heath. It is a unique multi-purpose venue. Conveniently situated which accessible transport links and a car park it has served the community for many years. It plays host inter alia to music events, comedy nights, dance, private parties, conferencing'

14. Section B4 of the Nomination Form further asks the nominator to explain could the Nominated Land in future further the social wellbeing or social interests of the local community? If so, how?

The Nominating Body states: 'There are no other comparable replacement buildings within the heart of Haywards Heath. It should not be destroyed until viable alternatives which meet the needs of the community have been properly and openly explored. It could be run by a Meanwhile Lease in the interim or sold as a community asset if MSDC do not want it.'

15. Section B5 then asks the Nominating Body: how could the building or land be acquired and used in future?

The Nominating Body states: 'The funding could be raised by donation; crowd funding; fund raising activities. There are plenty of examples of such successful acquisitions. It could be run initially through a government form Meanwhile Lease, pending setting up a not for profit organisation to operate it. Again there are many available successful models.'

## Objections

16. The Nominated Property is currently registered at the Land Registry under registered freehold title number WSX288106. The registered proprietor of title number WSX288106 is Mid Sussex District Council. There are no other registered interests which affect the Nominated Property.

Correspondence was sent to the registered freehold proprietors on 14<sup>th</sup> September 2020 inviting them to make representations in response to the nomination of the Nominated Land by the Nominating Body. The Council's Senior Development Surveyor responded on behalf of the freehold proprietor by email correspondence on 14<sup>th</sup> October 2020. Their response is as follows: -

*'Mid Sussex District Council would wish to object to the above property being listed as an Asset of Community Value.'*

*The council considers that the property is obsolete in terms of its suitability, sufficiency and condition with regards to its specific use. The building is expensive to manage and maintain and has significant operational shortcomings.'*

## Conclusions

17. Community Nomination

The application was submitted by the Haywards Heath Community CIC. Section 89(1)(a) of the Localism Act 2011 provides that land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value in response to a community nomination.

Section 89 (2) of the Localism Act 2011 states that a "community nomination" means a nomination which - (a) nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and (b) is made... (iii) by a person that is a voluntary or community body with a local connection.

The Haywards Heath Community CIC is a community interest company ("CIC"). A CIC is a limited liability company, designed for social enterprises that want to use their profits and assets for the public good. A CIC has the specific aim of providing a benefit to a community and must use its income, assets and profits for the community it is formed to serve. The primary purpose of a CIC is





The Haywards Heath Community CIC is registered at Company House with company number 07506491. Its registered office is listed as being 4 Heath Square, Boltro Road, Haywards Heath, West Sussex, RH16 1BL. There are 5 officers listed in the Companies House entry for the Haywards Heath CIC, of which comprises four individuals for whom the registered address for correspondence is the same as that registered for the CIC, and one company ("Prism Group Limited"), for which the registered address is also the same as that entered for the CIC and which would itself appear to comprise of a number of companies with registered addresses of The Old Sawmill, Lindfield, Haywards Heath, RH16 1XT.

The objects of the CIC are set out in article 5 of the Articles of Association for the CIC and are stated therein as being: 'to promote local business, enterprise and cultural activities in Haywards Heath; to promote Haywards Heath as a place to live; to support community facilities and services.'

For the reasons set out above, the Nominating Body can therefore be considered to have a clear 'local connection' for the purposes of s.89 (2)(b)(iii) and the nomination can therefore be considered a 'community nomination' in accordance with the requirements in section 89(1) of that Act.

18. As this is deemed to be a 'community nomination', the first test for the Council to consider is whether, in its opinion, the nominated building or land has '...an actual current use of the building or other land that is not an ancillary use furthered the social wellbeing or interests of the local community' as per S88(1)(a) of the Localism Act 2011.

The Nominated Property was most recently run by Places Leisure Ltd on behalf of the registered proprietor under the terms of a service contract. The Places Leisure Ltd website stated that the property functioned primarily as a community centre and included a performance space, a studio, meeting rooms and a bar and food serving area within the premises. The Nominated Property was most recently used as a community centre. It was open to the general public, including to members of the local community, during opening hours – subject to bookings.

"Social interests" is defined in section 88(6) of the Act as including: (a) cultural interests; (b) recreational interests; and (c) sporting interests. It is reasonable to conclude therefore that the use of the Nominated Property as a community centre, for purposes of a performance space, studios, meetings and a bar and food serving area furthers the local community's recreational and cultural interests. It is not determined as to whether the use furthers the local community's sporting interests.

However, the Nominated Property closed in March 2020, due to restrictions relating to the Covid-19 pandemic. Mid Sussex District Council then resolved to permanently close the facility at a meeting of Cabinet of 14<sup>th</sup> September 2020. As such, the Nominated Property cannot be said to have 'an actual current use...' for the purposes of section 88(1)(a) of the Localism Act 2011

19. The second test is to decide, for the purposes of section 88(1)(b) of the Localism Act 2011, whether *'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'*.

As stated in paragraph 18 above, the Nominated Property has been permanently closed and therefore cannot be said to have a current primary (non-ancillary) use as a community centre.

To satisfy the second statutory test as regards the future use of the Nominated Property it has also to be realistic to think that there can *continue* to be a non-ancillary use of the property for the community benefit but it need not be the same as the current community use.

As there is not a current community use of the Nominated Property as a community centre (due to the permanent closure of the same), such use cannot be said to have a realistic prospect of continuing. The requirement is that a use which furthers the social wellbeing or social interests of the local community is likely to be continuing and that is sufficient to satisfy the future condition. (for



precedents, please see *Adams v Ashfield DC* CR/2017/0010; *Banner Homes Limited v St Albans City and District Council* [2018] EWCA Civ 1187 ).

20. Where the Nominated Property has failed the first and second tests, the Council must then consider the third test. This consideration is detailed in section 88 (2) of the Localism Act 2011, which states as follows:

...a building... in a local authority's area that is not... of community value as a result of [section 88] subsection (1) [as considered in paragraphs 18 and 19 of this report]... is land of community value if in the opinion of the local authority—

- (a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community; and
- (b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

The above provisions can be applied to the Nominated Property in this instance as follows: -

(a) 'Recent Use'

The Nominated Property closed in March 2020. For the reasons set out in paragraph 18 of this report, it is considered that - at the time of its closure - the Nominated Property had 'an actual current use... that is not an ancillary use [that] furthered the social wellbeing or interests of the local community'.

The key question is therefore whether such use is considered to have been 'in the recent past'. At the time of this report, the Nominated Property has, within the last 8 months, had a non-ancillary use which furthered the social wellbeing or interests of the local community.

By way of precedent for what constitutes 'recent use': in *Scott v Norfolk (DCCR/2014/0007)* – Judge Warren said that the phrase "in the recent past" was deliberately loose in contrast to the five years in the second condition and that it was not for him to undermine that by giving the phrase a meaning which is certain.

It is therefore up to the deciding authority in each instance to determine what constitutes use in the 'recent past' as a 'non-ancillary....'. Given its closure earlier this year, it is reasonable for the Council to conclude that the use of the Nominated Property within the past 8 months for non-ancillary purposes which furthered the social wellbeing or interests of the local community was a 'recent use' under s.88(2)(a).

(b) 'Realistic to think that there is a time in the next five years...'

In consideration of this point, it would be helpful to consider the guidance provided in *Christopher Cant – 'Assets of Community Value Guidance...' (2017)*, which states as follows: -

'when relying on community use in the recent past a prime battle issue will be whether there is a realistic prospect that there could be a future community use of the nominated property which is not an ancillary use. The test does not require the likely future use of the relevant building to be determined but rather to determine whether future community use is one of a number of realistic options for the building (*Worthy Developments Limited v Forest of Dean DC* CR/2014/0005 paras 18 and 19). The test is not whether such future use is wholly unrealistic but whether it is realistic to think that there could be such a relevant non-ancillary use in the next five years (*Judge Lane* at para. 26 in *General Conference of the New Church v Bristol CC* *supra*.) In *Evenden Estates v Brighton and Hove City Council* Judge Lane stated "that what is "realistic" may admit a number of



In light of the very recent closure of the Nominated Property, in addition to its use in the recent past for non-ancillary purposes which furthered the social wellbeing or interests of the local community, it is reasonable for the Council to conclude that there is a realistic prospect that it could again be used as such within the next five years, thereby meeting the requirement set out in s.88(2)(b).

21. The Nominated Land does not contain residential property and therefore does not fall within the exemptions contained in paragraph 1 of Schedule 1 to the Assets of Community Value (England) Regulations 2012 ("the 2012 Regs"). Regulation 3 of the 2012 Regs provides that a building or land specified in Schedule 1 is not land of community value (and therefore may not be listed).

#### Decision

22. For the reasons set out above, i.e. that the third test outlined in paragraph 20 of this report and specified in section 88(2)(a) and (b) of the Localism Act 2011 is passed, and notwithstanding that the facility has been permanently closed, the decision is given to list the property known as Clair Hall, Perrymount Road, Haywards Heath, West Sussex RH16 3DN on the list of Assets of Community Value held by Mid Sussex District Council.

**COPY OF THIS AUTHORITY TO BE PLACED ON THE PROPERTY FILE AND A COPY PROVIDED TO LEGAL WITH INSTRUCTIONS**

Peter Stuart, Head of  
Corporate Resources –  
Corporate Estates and  
Facilities

Signed



Cllr Norman Webster

I concur with the decision made by the Business Unit Leader – Corporate Estates and Facilities.

Signed



# Clair Hall

Mid Sussex District Council

Author: K. Jegede

Date: 16/11/2020



MID SUSSEX  
DISTRICT COUNCIL

