

Report of the Strategic Director of Corporate Services to the meeting of Keighley Area Committee to be held on 19th July 2018 at 6.00pm at Keighley Town Hall.

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Subject:

Nomination to list three assets as Assets of Community Value:

- 1. Land at the junction of Dale View and Beverley Rise (as specified in Appendix 1a),**
- 2. Land at Back Grove Rd (as specified in Appendix 1b), and**
- 3. Wheatley Lane former Public Convenience (Appendix 1c).**

Summary statement:

The Council has received nominations to list land at the junction of Dale View and Beverley Rise, land at Back Grove Rd and a former public convenience on Wheatley Lane, all three located in Ilkley, as Assets of Community Value under the Localism Act 2011.

This report considers whether the nomination and nominated asset meet the Asset of Community Value criteria set out in the Localism Act and contains a recommendation as to whether or not the nomination should be approved.

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**Portfolio: Regeneration, Planning and
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Overview & Scrutiny Area: Corporate

1. SUMMARY

1.1 The Council has received a nomination to list the following three assets, located in Ilkley, as Assets of Community Value under the Localism Act 2011:

- a. Land at the junction of Dale View and Beverley Rise (as specified in Appendix 1a),
- b. Land at Back Grove Rd (as specified in Appendix 1b), and
- c. Wheatley Lane former public convenience (as specified in Appendix 1c).

1.2 This report considers whether the nomination and nominated assets meet the Asset of Community Value criteria set out in the Localism Act and contains a recommendation as to whether or not the nomination should be approved.

2. BACKGROUND

2.1 The Community Right to Bid provisions of the Localism Act 2011 came into effect on 21st September 2012. The purpose of the provisions is to allow communities time to prepare bids for land and property assessed as being of benefit to the community when those assets come up for disposal.

3. OTHER CONSIDERATIONS

3.1 The Community Right to Bid

3.1.1 Local community groups and parish councils are able to nominate privately and publicly owned land and property for inclusion on a list of assets of community value. The list is maintained by CBMDC which is also responsible for managing the process for determining whether a nomination of a property as an asset of community value is successful. At its meeting of 6th November 2012 the Executive resolved that the determination of nominations be devolved to Area Committee.

3.1.2 The listing of land or property as an Asset of Community Value has the effect of preventing owners from disposing of their listed property without first notifying the Council of their intention to sell. The notification of intention to sell triggers a six week moratorium on disposal during which local community groups and parish councils are able to express an interest in bidding for the property. If no expressions of interest are received the owner is free to dispose of his property at the end of the six week period. If an expression of interest is received the initial six week moratorium extends to six months to allow community groups and parish councils to prepare to bid for the property or to negotiate with the property owner. At the end of the six month period the owner is able to sell the property to whoever they want and by whatever means they wish. If the property is not sold within 18 months of the notification of intention to sell the disposal process must start again. Once sold the property is removed from the list.

3.1.3 The Community Right to Bid provisions **do not**:

- Give community groups or parish councils a right of first refusal when listed land and buildings come up for sale.
- Give community groups or a parish council the right to purchase land and property listed as assets of community value at a reduced price i.e. less than market value.
- Compel a property owner to sell to a community group or parish council. Once the procedures set out in the Act are complied with property owners are free to sell their property to whomever they wish.
- Restrict how a property owner can use their property.

3.2 Definition of an Asset of Community Value

3.2.1 The Act provides that land or property falls within the definition of asset of community value where its current primary use furthers the social wellbeing or social interests of the local community, **and** where it is realistic to think that this use will continue. Social interests include culture, recreation and sport. A property will also qualify when its main use in the recent past meets the definition, **and** it is realistic to think that its use may again fall within the definition within the next five years (whether or not in the same way as before).

3.2.2 Social interests include a) cultural interests; b) recreational interests; c) sporting interests. Wellbeing is the things that people value in their life that contributes to them reaching their potential (economic, social or environmental).

3.2.3 The Act sets out details of certain types of land and property which are exempt from the Community Right to Bid provisions.

3.3 Who can nominate an asset to be listed

3.3.1 Nominations to list an asset as being of community value can be made by:

- A local voluntary or community group that is [incorporated](#) – this means it has a separate legal status from its members.
- A local voluntary or community group that is [not incorporated](#) but has at least 21 members who appear on the electoral roll within CBMDC or a neighboring authority.
- A parish council.
- Neighboring parish councils – if a parish council borders an unparished area it may nominate asset within that area.
- Community interest groups with a local connection which has one of the following structures:
 - a) A charity.
 - b) A community interest company.
 - c) A company limited by guarantee that is non-profit distributing.
 - d) An industrial provident society that is non-profit distributing.

For a local group to be able to nominate it must be able to demonstrate that its activities are wholly or partly concerned with the local authority area within which the asset is located or with a neighbouring authority (which shares a boundary with Bradford).

3.4 The Nomination

3.4.1 The nomination applications are included at Appendices 3a,3b and 3c.

3.4.2 Officers have assessed all three nominations. Please see 3.4.2a, 3.4.2b and 3.4.2c below.

3.4.2a Land at the junction of Dale View and Beverley Rise

Criteria	Finding	Comment	Criteria Met?
The nominator is eligible to nominate Assets of Community Value?	Yes	Ilkley Parish Council is an incorporated body.	Yes
Is the nominated asset exempt from listing?	No	N/a	Yes
The land and buildings are used (and in the past 5 years) to further the social wellbeing and social interests of the local community (as defined by the Localism Act 2011) and this use is not ancillary.	Yes	This asset forms essential green space within a built up residential area of Ilkley. All three sections of the green space are regularly used as children's play spaces and as dog walking areas. Ilkley Town Council also wants to draw the Committee's attention to planning application 18/01209/FUL (Change of use from adopted highway to private curtilage 5 Dale View Ilkley West Yorkshire LS29 9BP). There are over 15 objection comments to this land being changed to private curtilage.	Yes
It is realistic to think that the building or land will continue to be used in a way which will further the social well-	Yes	This asset is intended to be retained as essential green space for the	Yes

being and social interests of the community within the next 5 years?		foreseeable future.	
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3.4.2b Land at Back Grove Rd

Criteria	Finding	Comment	Criteria Met?
The nominator is eligible to nominate Assets of Community Value?	Yes	Ilkley Parish Council is an incorporated body.	Yes
Is the nominated asset exempt from listing?	No	N/a	Yes
The land and buildings are used (and in the past 5 years) to further the social wellbeing and social interests of the local community (as defined by the Localism Act 2011) and this use is not ancillary.	Yes	This asset forms essential green space within the conservation area of Ilkley town centre. It is regularly used as children's play space and as dog walking area.	Yes
It is realistic to think that the building or land will continue to be used in a way which will further the social wellbeing and social interests of the community within the next 5 years?	Yes	The Council's Parking Service is currently conducting a review of this area and looking at resurfacing the whole car park, reducing borders and potentially increasing the amount of available spaces. This will include conversion of this grassed area to a parking space. This work is expected to be done this financial year, but it does not prevent the asset being listed.	Yes

3.4.2c Wheatley Lane former Public Convenience

Criteria	Finding	Comment	Criteria Met?
The nominator is eligible to nominate Assets of Community Value?	Yes	Ilkley Parish Council is an incorporated body.	Yes
Is the nominated asset exempt from listing?	No	N/a	Yes

The land and buildings are used (and in the past 5 years) to further the social wellbeing and social interests of the local community (as defined by the Localism Act 2011) and this use is not ancillary.	No	This asset has not been in use as a public convenience for 5 years, therefore, it does not qualify for an ACV, see section 3.2.1.	No
It is realistic to think that the building or land will continue to be used in a way which will further the social wellbeing and social interests of the community within the next 5 years?	No	This asset does not qualify – see above.	No

3.4.3 Accordingly, Council’s Officers have assessed that the criteria for listing have been met for **land at the junction of Dale View and Beverley Rise** and **land at Back Grove Rd.** These nominated assets are, therefore, recommended for listing as Assets of Community Value.

3.4.4 The criteria for listing have not been met for **Wheatley Lane former public convenience.** This nominated asset is, therefore, not recommended for listing as Asset of Community Value.

3.5 Appeals & Listing

3.5.1 Property owners (but not occupiers) may appeal against the Council’s decision to list their property as an asset of community value. In the first instance the property owner should ask the Council to review its decision. If the Council upholds its decision to list, the owner may appeal to the First Tier Tribunal.

3.5.2 There is no provision within the Act for nominators to challenge a decision not to list a property or decision to remove a property from the list following a review. However, the Council will be required to provide nominators with reasons why their application is unsuccessful or why a property has been removed from the list.

3.5.3 As mentioned at 3.1.3 above, the listing of land or property as an Asset of Community Value does not prevent a land owner from changing the use of the listed asset. The Act provides that a listed asset can be removed from the list if the nature of the asset changes so that it is unrealistic to expect it to be used for social, sporting, environmental benefits in the near future. An example of substantial change would be the progression of development works.

3.5.4 The listing of an asset is not retrospective and has no effect on binding agreements for sale already in place at the date of listing.

4. FINANCIAL & RESOURCE APPRAISAL

4.1 None.

4.2 A property owner has a right to compensation for losses incurred as a result of listing.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 None

6. LEGAL APPRAISAL

6.1 Land or property may only be listed as an Asset of Community Value where it meets the criteria and definitions set out in the Localism Act 2011.

6.2 Property owners may appeal against the decision to list their property as an Asset of Community Value. In the first instance the decision to list the property will be subject to internal review within the council. If the council upholds the decision to list, the owner may appeal to the First Tier Tribunal.

6.3 Legal appraisal of **land at the junction of Dale View and Beverley Rise** is attached at Appendix 2.

6.4 Please note that the expected change of use of **land at back Grove Rd** resulting from the Parking Services review in itself does not prevent the nomination of this asset as an ACV¹.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

None

7.2 SUSTAINABILITY IMPLICATIONS

None

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

None

7.4 COMMUNITY SAFETY IMPLICATIONS

None

¹ See ACV Guidance of 01.08.2013, section 2.2.

7.5 HUMAN RIGHTS ACT

None

7.6 TRADE UNION

None

7.7 WARD IMPLICATIONS

None

8. NOT FOR PUBLICATION DOCUMENTS

None.

9. OPTIONS

- 9.1 **Option 1:** Accept the nomination of none, some or all of the following: **Land at the junction of Dale View and Beverley Rise, land at Back Grove Rd and Wheatley Lane former public convenience** on the grounds that it does meet the criteria and definition of an Asset of Community Value as set out in the Localism Act 2011.
- 9.2 **Option 2:** Reject the nomination of none, some or all of the following: **Land at the junction of Dale View and Beverley Rise, land at Back Grove Rd and Wheatley Lane former public convenience** on the grounds that it does not meet the criteria and definition of an Asset of Community Value as set out in the Localism Act 2011.

10. RECOMMENDATIONS

The following are the recommendations for the listing based on the criteria set out in the Localism Act 2011:

1. **Land at the junction of Dale View and Beverley Rise – TO LIST**
2. **Land at Back Grove Rd – TO LIST**
3. **Wheatley Lane former public convenience – NOT TO LIST**

11. APPENDICES

Appendix 1 A, B and C – Plans

Appendix 2 – Legal appraisal of land at the junction of Dale View and Beverley Rise

Appendix 3 A, B and C – Nomination forms

12. BACKGROUND DOCUMENTS

Report to the Executive meeting of 6th November 2012; The Localism Act 2011 – the Community Right to Bid.

Appendix 1a

Land at the junction of Dale View and Beverley Rise



Google street view – Land at the junction of Dale View and Beverley Rise



Appendix 1b

Back Grove Road Land

ACV 0067 - Back Grove Road Land



Scale at A4
1:500

Date: 21/03/2018

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Google street view – Back Grove Road Land



Appendix 1c

Wheatley Lane former Public Convenience



Google street view – **Wheatley Lane former public convenience**



Appendix 2

Legal appraisal of land at the junction of Dale View and Beverley Rise

THREE AREAS OF GRASS AS ADOPTED HIGHWAY AT THE JUNCTION OF WOODLANDS RISE, BEVERLEY RISE AND DALE VIEW, ILKLEY.

ADVICE WHETHER THE NOMINATION OF THE ABOVE LAND IS REGISTRERABLE AS AN ASSET OF COMMUNITY VALUE UNDER SECTION 88 OF THE LOCALISM ACT 2011 (THE “2011 Act”) AND THE IDENTITY OF THE STATUTORY OWNERS.

1. Background

From reading emails, checking documentation and obtaining background information from Katya Coldwell, Nigel Gillatt, Anisah Naz, Denise Mawbey and undertaking research, I understand that the Council has for some time adopted, under section 36 of the Highways 1980, the highway, footpaths and three significant grassed areas at the substantial junction of Woodland Rise, Beverley Rise and Dale View, Ilkley. Each of the grassed areas are abutted by footpaths and outside number 5 Dale View the grassed area has footpaths on all sides with a footpath also across it. Ilkley Parish Council has made an application to nominate all three grassed areas of the highway as an Asset of Community Value (ACV) under section 88 of the 2011 Act on the basis that the land forms essential green space within a built up residential area of Ilkley. As I understand it, all three grass areas are regularly used as children’s play spaces and dog walking areas. The present owners of no. 5 Dale View have made an application for first registration of that property, including the abutting grassed area, but the Land Registry has nevertheless excluded that land from registration and noted the Council’s interest as the relevant Highway Authority in respect of the surface. The owners of number 5 Dale view have also initiated an outstanding planning application 8/01209/FU in respect of that abutting grassed area (change of use from adopted highway to private curtilage) to which there are 15 objections.

2. Community Value

Under section 88 of the 2011 Act the criteria for listing is that a relevant Local Authority must consider whether the relevant land has Community Value on the basis that:

Either;

- i) The primary current use of the land furthers the social well-being or social interests (including cultural, recreational and sporting interests) of the local community, and
- ii) it is realistic to think that the land can continue to be used in a way that will further the social well-being or social interests of the local community (whether or not in the same way as previously).

Or

the land has previously been so used in the recent past and it is realistic to think that it will be used for the same purpose again within the next five years.

Many of the phrases used in the 2011 Act are, deliberately, in general and vague terms leaving it to the relevant local authorities to decide what phrases mean although there is now a number of useful judicial review decisions which can assist them. Regarding the factual matrix of the present case my view is that the three grassed areas are furthering, and also in the recent past have furthered, the social well-being or social interests of the local community. Notwithstanding that the

areas are part of the adopted highway, the nominated land areas are nevertheless on the face of it self-contained green open spaces with access for the public with no obvious direct access to, or nexus with, any particular residence. This view is based on the **following grounds**:

a) An important exclusion to consider is Regulation 3 and Schedule 1 of the ACV Regulations 2012 which stipulates that “Operational Land” as defined in section 263 of the Town and Country Planning Act 1990 (TCPA 1990) is deemed **not** to be of Community Value and therefore must not be listed as an ACV. However, it appears that section 263, being in part 11 of the TCPA 1990, is relevant only to Statutory Undertakers as defined in section 262 (1) of the TCPA 1990 meaning “persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator”. Highways are dealt with separately under part 10, and therefore this exclusion is not applicable in this case.

b) There is no comprehensive statutory definition of “furthering social well-being or social interest of the local community”. General factors which cause a use to be treated as a community use are not capable of scientific measurement and a more wide-ranging consideration of the circumstances is required. The case law confirms that there is a very low threshold applied and can include such factors as fostering community pride, stimulating daily conversations, forging friendships and where there are green spaces, additional benefits of air quality, visual amenity and contributions to biodiversity.

c) The case law (Firoka Limited) has also confirmed that the community use does not in fact have to be the primary use of the asset but instead must not be an “ancillary use” and that the approach that can be adopted by a local authority is to identify the community use and apply the following two-pronged test to determine whether that use is ancillary or non-ancillary:

- i) is the particular use significant (which does not require it to be the predominant use): and if it is then:
- ii) is it supportive of a non-community use of the asset?

A significant community use which is not supportive of a non-community use then will not be an ancillary use for these purposes. It seems clear, however, that in this case there is significant community use and it is arguable that it is on the face of it the only use of the land. The Council, as the Highway Authority, may have adopted the grassed areas for the purposes of securing visibility and safety for the public at a major junction and has a duty to maintain the grassed areas, but it does not “use” the land in the ordinary sense of that word. The land is essentially used by the public. Even if the original statutory function of the land could be considered a “use”, that use did not stop the community’s use being significant. The community’s use and enjoyment of the land could also not be supportive of the Council’s use of it since the Council’s statutory purpose of the land would be the same whether or not there was also any community use of it. In this case, therefore, the land appears to qualify for listing, particularly where the application relates to all three areas of grass at the junction. There would not necessarily be any community value generally for any other footpath, grass verge or highway and each case would need to be considered on its own particular factual matrix..

d) Regarding whether it is realistic to think that the land will be used for the same purpose again in the future, recent case law has considered the meaning of the word “realistic” as follows.

- i) The tribunal in Earl Percy’s case has held that any stated intention cannot be determinative of the question to be determined at 2.ii) above. “Realistic” does not mean that the event is more likely to happen than not, but rather it is only one of a number of possibilities. In the circumstances of the present case it is only a possibility that the

planning application relating to no. 5 would be successful. In any event even if that application were granted it could not be implemented unless a successful application was also made to the Highway Authority that the grassed area should become unadopted on the basis that it was no longer necessary to be adopted. In considering registering an ACV, the Council need not have to second guess the outcome of any pending application..

ii) In *Evenden Estates v Brighton and Hove CC (2015)*, a developer's planning application for a change of use had not yet been determined and it was held that the future of the relevant property was uncertain and the property could therefore qualify as an AVC application.

e). Section 4.2 and 5.1 of the ACV Guidance Notes and regulation 6 of the ACV Regulations 2012 confirms that a local authority should not refuse to accept a nomination on the grounds that a Community Body may be unable to acquire and manage the relevant asset in the future provided it is able to provide the following required information and whether it meets the definition of a "Voluntary Community Body" under section 89 of the 2011 Act and regulation 5 of the ACV Regulations 2012. For example, this will enable nominations by a local group formed to try and save an existing asset.

- a) a description of the nominated land.
 - b) any information the nominator has about the freeholders, leaseholders and current occupants of the land.
 - b) The reasons for nominating the asset, explaining why the nominator believes that the asset meets the definition in the 2011 Act.
 - c) The Nominator's eligibility to make the nomination.
- f) The fact of the adoption by the Council, as the Highway Authority, does not affect the subsoil and surface of the grassed areas being relevant Land under the 2011 Act in view of the definitions under section 108 of the 2011 Act and schedule 1 of the Interpretation Act 1978, which includes any interest or right in or over land.

3. Owners

The position of ownership of the grassed areas for the purposes of administering the 2011 Act provisions is that the owners are the freeholders or leaseholders (when granted had 25 years left to run) on such residential estates who abut a road. Ownership invariably extends to the mid point of the road and so long as the roads remain adopted the owners retain formal ownership of the subsoil subject to the statutory rights of the Highway Authority over the surface. I know this to be the case at no 5 Dale View and it can be reasonably assumed that this applies to the other owners abutting the relevant highway, namely at numbers 5,6,8 and 13 on the plan. In this case the Council is not a Statutory Owner notwithstanding the Land is adopted since the Council does not have an estate in Land and only has a statutory interest in the surface.

4. Conclusion

I conclude that the three grassed areas have a sufficient Community Value for the above reasons to be designated and registered as an ACV under the provisions of the 2011 Act and that, given the above legal authorities cited, the Council should at all times also be acting lawfully. If necessary this decision can be reviewed or appealed in the usual way.

Appendix 3