

# Report of the Strategic Director Corporate Resources to the meeting of Bradford West Area Committee to be held on 22<sup>nd</sup> January 2020 at 6pm at City Hall, Bradford

**V**

---

## Subject:

**NOMINATION TO LIST PROPERTY AS AN ASSET OF COMMUNITY VALUE - ASHWELL ALLOTMENTS**

## Summary statement:

The Council has received a nomination to list the land and property known as Ashwell Allotments as an Asset 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. Committee are asked to make a recommendation to the Director of Corporate Resources to approve the nomination or not.

---

**Joanne Hyde**  
Strategic Director, Corporate Resources

Report Contact: Nigel Gillatt  
Phone: (01274) 424224  
E-mail: [ACVTeam@bradford.gov.uk](mailto:ACVTeam@bradford.gov.uk)

**Portfolio:**  
Regeneration, Planning and Transport

**Overview & Scrutiny Area:**  
Corporate

## **1. SUMMARY**

- 1.1. The Council has received a nomination to list land known as Ashwell Allotments (previously known as St Barnabas Allotments) as an Asset of Community Value under the Localism Act 2011.
- 1.2. The nomination was made on 22nd October 2019. 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 the Director of Corporate Services should approve the Asset of Community Value nomination or not.

## **2. BACKGROUND**

- 2.1. The Community Right to Bid provisions of the Localism Act 2011 came into effect on 21<sup>st</sup> 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.
- 2.2. The Land was owned until 4th November 2019 by the Parochial Church Council of Gillington, Heaton and Manningham, at which time it was acquired by a Mr Saeed Mahmood the owner of the adjacent residential property 6 Emmfield Drive.
- 2.3. Mr Mahmood has served notice 3 months notice to quit on the remaining allotment holders who are challenging this and claim that 12 months notice to quit is required in relation to the grounds served.
- 2.4. Mr Mahmood who lives adjacent is initially planning to incorporate the land into his garden and is subsequently planning to build at least one house upon the site.
- 2.5. Mr Mahmood has submitted the letters attached dated 10<sup>th</sup> December 2019 and 7<sup>th</sup> January 2020 contained in Appendix 3 together with accompanying evidence to support his claim that the land should not be listed as an Asset of Community Value.

## **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 6<sup>th</sup> November 2012 the Executive resolved that Area Committee should recommend a determination of the nomination to the Director of Corporate Services who makes the decision.
- 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 a current non-ancillary use furthers the social wellbeing or social interests of the local community, **and** where it is realistic to think that such a use can continue, whether or not in the same way. Social interests include culture, recreation and sport. A property will also qualify when a non-ancillary 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 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 other parish council area it may nominate an 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 form is included at Appendix 2.

3.4.2 The nominator is eligible to nominate an Asset of Community Value. Although newly formed the Friends of Ashwell allotments are appropriately constituted and it has been checked that 21 persons are on the electoral roll within the District.

3.4.3 Officers have assessed the nomination and considered whether it meets the criteria set out in the Localism Act 2011. The assessment has been based on the contents of the nomination form and supporting documents, a site visit by the relevant officer and information supplied by the landowner.

3.4.4 The Nomination states that: 'the use of the asset furthers the social well-being and interests of the local community by: healthy eating, exercise, mental well-being, new methods of horticulture, contact with nature, sense of achievement, social inclusion, fostering lifelong friendships and contribution to a thriving community. Residents grow and eat their own fresh produce which also ensures that future generations will continue to have access also. The asset is a green space which adds to the diversity of land use in Heaton Community and is compatible with Policy EN1 of Bradford's Core Strategy relating to Protection and improvements in provision of Open Space and Recreation Facilities The demand for allotments in Heaton is considerable. There are other allotments provided by Bradford Council adjacent to Quarry Street with a waiting list comprising 23 applicants'.

3.4.5 The owners challenge to the listing of Ashwell Allotments is attached in Appendix 3 which contains redacted copies of the letters submitted to the Council. The basis of the main elements of the landowner's case that the land should not be listed are summarised as follows:

1. Possession has been taken of 3 plots that are now used in conjunction with his residential property adjacent.
2. 6 residences have direct access to the land (now 4), the access directly from their gardens means that the use is ancillary to the residential use.
3. The allotments are used for the benefit of the plot holders not the local community and access has been restricted. Inviting others on to the site could be construed as a breach of the terms of the allotment tenancies.
4. The plots have remained with the same tenants, some having more than 1 plot for at least 10 years and have not been available to others in the community.
5. There is evidence of anti-social behaviour on the plots and the plots have been neglected.
6. There are alternative allotments and amenities in the area.

7. The allotment use will not continue for 5 years as Notice to Quit has been served.
8. The land is wooded and not suitable for allotments.
9. That some of the allotment land now forms part of the residence or is connected with it.

3.4.6 The following comments are made upon the land owners rationale for not listing:

1. Possession has currently only been taken of 3 plots and site clearance commenced however it is contested whether the land is currently being used in conjunction with the landowners adjacent property as it is separated by a wall. Allotments are considered an agricultural use and a change to a residential garden use would require planning consent which has not been granted. It is considered that the First Tier Lands tribunal Case Crendain Developments and Ealing Council is a similar case to this application and applying that reasoning consider that the allotments and owners garden are two physically and functionally separate plots of land.
2. At the date of application which is considered the relevant date all of the allotment plots were let to 3<sup>rd</sup> parties. There are now 4 houses which currently have gates on to the land however the presence of a wall and gate delineates the area of garden and the area of allotment.
3. Allotments which can generally be considered for listing as assets of community value typically have restricted gated access inviting friends and acquaintance from the community on to the site to visit however would not normally constitute a breach of an allotments tenancy.
4. Although there has been a very low turnover of plots the they are let on typical short tenancies and the current tenants are receiving community benefit.
5. The tenancies upon 2 plots where anti-social behaviour seems to have been taking place have now been surrendered to the landowner.
6. It is irrelevant as to what other allotments and community amenities are in an area when considering whether an asset can be listed as an asset of community value.
7. The allotment use does not have to continue for 5 years the use is currently taking place, The Notice to Quit that has been served for residential development may be invalid as there is no planning consent in place, and planning a ground survey does not constitute evidence that development is to take place.
8. The land is being used as allotments. It is irrelevant that the owner considers allotment gardens with mature trees are not fit for purpose as the site is currently being used for allotments.
9. The sites are two functional and physical entities.

3.4.7 The key matters for consideration are:

Land that is part of a residence or is connected with it cannot generally be listed. It is however considered that part of the site is exempt from listing as although the allotments are owned by the adjacent residential owner occupier and he is possession of 3 of the 12 plots the remaining plots are let on allotment tenancies and in accordance with the Asset of Community Value (England) Regulations 2012 Schedule 1 paragraph 1 (5) (b) the land would be eligible to list but for that

residential use of the building. The allotments are not part of a residence just because they are in the same ownership. To be used as part of the garden rather than an allotment requires planning permission as it is a material change of use, no evidence of this has been provided. The allotments are still functionally and physically separate from the owners residential use in the same way as the Crendain case, so all of the site should be listed.

- 3.4.8 It is considered that the land is currently being used to further the social wellbeing and social interests of the local community (as defined by the Localism Act 2011) and that the criteria has been met in that the use of allotment gardens furthers the social wellbeing and social interests of the local community. Although several of the plots are let to adjacent home owners who have direct access on to the land it is not considered that this use is an ancillary use to the adjacent residential properties which are separated by a gated wall. The allotments could be let to anyone providing social well being for the local community, that the tenant happens to be an adjacent residential occupier is deemed to be immaterial.
- 3.4.9 Council's Officers have assessed that the criteria for listing of the site shown edged red in Appendix 1 has been met and it is recommended to the Director of Corporate Resources list Ashwell Allotments as an Asset of Community Value.
- 3.4.10 The land is currently being used as allotments so meets the criteria that it will be used for community benefit with the next 5 years. The allotment use is likely to continue as long as allotment tenancies are in place. Currently there is no planning consent for a change of use from allotments or for residential development. The assertion that the owner will not allow the use to continue is insufficient, see the Crendair First Tier Lands Tribunal Case.

### **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 request that an independent senior officer within the Council 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 stated 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 be used for social, sporting, environmental benefits in the near future.
- 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 A property owner in certain circumstances may have 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 and the Assets of Community Value Regulations (England) 2012.

6.2 Property owners may seek an internal review of a decision to add a property to the List of Assets of Community Value. If the decision is upheld the owners can appeal against the decision to list their property to the First Tier Tribunal.

#### **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

##### **7.5 HUMAN RIGHTS ACT**

None

##### **7.6 TRADE UNION**

None

##### **7.7 WARD IMPLICATIONS**

Ward Members have contacted and no comments have been received.

**7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS  
(for reports to Area Committees only)**

No specific implications

**7.9 IMPLICATIONS FOR CORPORATE PARENTING**

None

**7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT**

None

**8. NOT FOR PUBLICATION DOCUMENTS**

None

**9. OPTIONS**

9.1 **Option 1:** Recommend that the Director of Corporate Resources accept the nomination of the site Ashwell Allotments on the grounds that it meets the criteria and definition of an Asset of Community Value as set out in the Localism Act 2011.

9.2 **Option 2:** Recommend that the Director of Corporate Resources reject the nomination 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**

Recommended –

Option 1 - That the Director of Corporate Resources accept the nomination of the site Ashwell Allotments on the grounds that it meets the criteria and definition of an Asset of Community Value as set out in the Localism Act 2011.

**11. APPENDICES**

- Appendix 1 – Site Plan
- Appendix 2 – Nomination Form (redacted)
- Appendix 3 – Owners letters of challenge
- Appendix 4 – Owners supporting documentation (redacted)

**12. BACKGROUND DOCUMENTS**

None