

Report of the Strategic Director of Corporate Services to the meeting of Bradford South Area Committee to be held on 30th January 2020 at 5.00pm at City Hall, Bradford

Subject:

**Nomination to list property as an Asset of Community Value –
Land at Spen View Lane, Bierley, Bradford**

Summary statement:

**The Council has received a nomination to list an area of land at Spen View Lane
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 and contains a
recommendation as to whether or not the nomination should be approved.**

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**Portfolio:
Regeneration, Planning & Transport**

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**Overview & Scrutiny Area:
Corporate**

1. SUMMARY

- 1.1 The Council has received a nomination to list an area of land at Spen View Lane as an Asset of Community Value under the Localism Act 2011 which is shown edged and shaded red on the attached plan attached in Appendix 1.
- 1.2 The nomination was made on 17th November 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 or not the Director of Corporate Services should approve the Asset of Community Value nomination.

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.
- 2.2 Part of the site previously was subject to a planning application to develop it for housing, which was withdrawn.
- 2.3 It has been announced that another part of the site is being considered by the Council for the siting of a crematorium.

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 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 neighbouring authority.
- A parish council.
- Neighbouring parish councils – if a parish council borders another 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 as Appendix 2.

3.4.2 Council officers have assessed the nomination to consider whether it meets the criteria set out in the Localism Act 2011, as follows:

3.4.2.1 The nominator, The Neighbourhood Project CIC, is a local incorporated community interest company limited by guarantee which is eligible to nominate Assets of Community Value. A copy of the articles of association are attached in Appendix 3.

3.4.2.2 The current predominant use is as agricultural and pony grazing which is not exempt from being listed as an Asset of Community Value.

3.4.2.3 The nominator states: "These grassed fields further the social wellbeing of the community of Bierley by providing grounds which residents may walk on and may exercise their dogs on due to the public rights of way across the fields: one running from Spen View Lane down the side of Lockwood Barn towards the dismantled railway line and the other from Shetcliffe Lane opposite Shetcliffe Road and towards the dismantled railway line and old slate mine area. These public rights of way have been established for well over a century and appear on historic maps of Bierley. Exercising their 'right to roam' under the Countryside and Rights of Way Act 2000, many users of these fields regularly deviate from these public rights of way to walk and exercise their dogs generally across the fields. As this part of Bierley has now become built up with housing and roads, the fields provide a green escape for residents"

It is understood that the site has been used for farm land and more recently for the grazing of horses. The land is fenced with gated foot path access for the public footpaths which cross the site. The Countryside and Right of Way Act 2000 give a right to roam over certain specified classes of land. The site nominated is not one of these classes and there is no right to roam across the land. Deviating from footpaths and letting dogs run free is therefore considered a trespass.

The use for recreation is considered to be an ancillary use and is not the main use of the land. No evidence has been provided of the extent of the public use and there is no evidence that the community has maintained the land or enhanced its usability to further social wellbeing.

It is considered that the recreational use that has taken place has been unlawful and that this use has been ancillary to the primary use of the land and that the use of land does not therefore meet the requirements of an Asset of Community value.

3.4.2.4 It is considered that the current use does not meet the requirements to list and there is no evidence that this is likely to change within the next 5 years.

3.4.3 Accordingly, Council officers who have assessed that the criteria for listing these have not been met.

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

In certain circumstances, a property owner may have a right to compensation for losses incurred as a result of listing.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

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

None

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

None

8. NOT FOR PUBLICATION DOCUMENTS

None.

9. OPTIONS

- 9.1 **Option 1:** Recommend that the Director of Corporate Resources accept the nomination 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 that in accordance with Option 2 that the Director of Corporate Resources reject the nomination of the area of land at Spen View Lane to list it as an Asset of Community Value.

11. APPENDICES

- Appendix 1 - Plan
- Appendix 2 - Nomination Form (redacted)
- Appendix 3 – Articles of Association
- Appendix 4 – Memorandum of Association

12. BACKGROUND DOCUMENTS

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