

REF: ACV0098

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL

RECORD OF STRATEGIC DIRECTOR'S DECISION
FOR ASSETS OF COMMUNITY VALUE

Land / Property

Date of recommendation:	09/08/2022
Recommendation made by:	Ben Middleton
Decision maker:	Joanne Hyde – Strategic Director, Corporate Resources
Nominee:	Baildon Town Council, nomination dated 22/06/2022
Specific delegation:	Resolution of the Executive, 8 th September 2020.
Brief description of recommendation:	To list Land at Jenny Lane, Baildon, Shipley, BD17 6SH, referred to as the 'Woodland' as an Asset of Community Value on the grounds that the nomination meets the criteria and definition of an Asset of Community Value as set out in the Localism Act 2011.
Reports or parts of reports considered:	Recommended – To recommend that the nomination of the property known as Land at Jenny Lane, Baildon, Shipley, BD17 6SH, referred to as the 'Woodland' be approved.

Signed by the decision maker:



Name:

Joanne Hyde

Job Title:

Strategic Director, Corporate Resources

Date:

16/08/2022

Briefing Note

<p>Subject: Consider whether Land at Jenny Lane, Baildon, Shipley, BD17 6SH, referred to as ‘the Woodland’ should be added to the list of Assets of Community Value</p>	<p>Confidential: No</p>
	<p>Date: 9th August 2022</p>

1. Summary of main issues

- 1.1 In line with the legislation and regulations set out in the Localism Act 2011 and Assets of Community Value (England) Regulations 2012 this report considers the nomination to add Land at Jenny Lane, Baildon, Shipley, BD17 6SH, referred to as ‘the Woodland’ to the List of Assets of Community Value.
- 1.2 The Council has received a nomination from Baildon Town Council. They are eligible to nominate the property.
- 1.3 Officers conclude that the property does have a current use which furthers the social interests and social wellbeing of the local community and it is realistic to think that use can continue, therefore the property should be added to the List of Assets of Community Value.

2. Recommendations

- 2.1 The Strategic Director of Corporate Resources is recommended to add Land at Jenny Lane, Baildon, referred to as ‘the Woodland’ to the List of Assets of Community Value.

3. Purpose of this report

- 3.1 The purpose of this report is for the Strategic Director of Corporate Resources to consider whether Land at Jenny Lane, Baildon, Shipley, BD17 6SH, shown edged and hatched red on plan number ACV0098 should be included in the List of Assets of Community Value or whether it should be included on the List of Land Nominated by Unsuccessful Community Nominations in accordance with Part 5, Chapter 3 of the Localism Act 2011.

4. Background

- 4.1 Part 5 Chapter 3 of the Localism Act 2011 (the Act) details the legislation for Assets of Community Value and sets out the Community Right to Bid. The right came into force on 21st September 2012 and its purpose is to give communities a right to identify a property or land that is believed to further

their social interests or social wellbeing and gives them a fair chance to make a bid to purchase the property or land on the open market if the owner decides to sell. From the date the landowner informs the Council of their intention to sell, eligible community groups have a period of six weeks to confirm whether or not they wish to submit a bid to purchase the property or land. If they do inform the Council that they want to bid, the landowner is prevented from disposing of the property for a period of six months (from the date they originally informed the Council of their intention to sell) unless it is to a community organisation. The landowner is free to dispose of the property at the end of the six-month period to whomsoever they see fit.

- 4.2 Section 90 of the Act states if a local authority receives a “community nomination”, the authority must consider the nomination. The authority must accept the nomination if the land nominated is in the authority’s area and is of community value.
- 4.3 Only specified bodies with a local connection are able to submit nominations for property or land to be included in the List of Assets of Community Value:
- A Neighbourhood Forum;
 - A Parish Council;
 - An unincorporated body with 21 local people on the electoral roll that does not distribute any surplus it makes to its members;
 - A company limited by guarantee which does not distribute any surplus it makes to its members;
 - An industrial and provident society which does not distribute any surplus it makes to its members;
 - A community interest company.
- 4.4 The nominator must be able to demonstrate and satisfy all of the listing criteria as laid down in the legislation. Section 88(1) states that buildings or land with a current use is considered to be of community value, if, in the opinion of the authority, there is:
- a) 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;
 - 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.
- Section 88(2) states that land does not meet the criteria laid out in 88(1) is of community value if in the opinion of the 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.

4.5 It is important to note that if either of the criteria in Section 88(1) or (2) are met, then the Council must add the site to the List of Assets of Community Value.

5. Main Issues

5.1 This report has been based on an assessment of the nomination form received on 23rd June 2022, a site visit by the case officer, information provided by the owner's representative and the response received from a ward member.

5.2 Baildon Town Council is an elected authority under prevailing legislation and eligible to nominate land or buildings as Assets of Community Value as specified in regulation 5(1)(b) of the Assets of Community Value (England) Regulations 2012 (the Regulations) and is a parish council in respect of land in England in the parish council's area as specified in Section 89(2)(b)(i) of the Act.

5.3 Land at Jenny Lane, Baildon, Shipley, BD17 6SH referred to as 'the Woodland' is located in the Baildon Ward. The land is currently owned by the Roman Catholic (RC) Diocese of Leeds who purchased the freehold of the property in 1948.

5.4 The Portfolio Holder for Regeneration, Planning and Transport, ward councillors, the local Parish Council, the local ward officers and the owners have been made aware of the nomination. All three ward councillors are in support the nomination.

5.5 DLA Piper, who are solicitors acting on behalf of the owner, wrote to the Council on 1st August 2022 and raised objections to the nomination. The grounds for objection refer to Section 5 of 'The Assets of Community Value' Nomination form in which the nominator sets out the reasons for nomination. Baildon Town Council state that the Woodland is an area which furthers the social interests and social wellbeing of the community as 'this piece of land contains trees with TPO's on them, and is wooded with open boundaries. As a result, it is used by local children for games and adventures including the building of dens and by locals exercising their dogs'.

5.6 DLA Piper contend that this description 'fails to meet the criteria of an Asset of Community Value as described in the Localism Act 2011.

5.7 For a property to be added to The List of Assets of Community Value, the Local Authority must be of the view that a current non-ancillary use furthers the social interests and social wellbeing of the local community and that it is

realistic to think that it can continue to do so, or that there has been such a use in the recent past and that it is realistic to think it can be brought back into such a use, whether or not in the same way, within the next five years.

Does a current non-ancillary use further the social interests or social wellbeing of the local community?

- 5.8 The nominator has set out that the land contains trees with Tree Preservation Orders on them and is wooded with open boundaries. As a result, it is used by local children for games and adventures including the building of dens by locals exercising their dogs.
- 5.9 During the site visit the case officer noted no use at the time, but that the site was unprotected with open access from the pavement on Jenny Lane with clear indications that people had been on site due to the worn path and trampled grass.
- 5.10 DLA Piper state the nominators description of use fails to meet the definition of 'land of community value' for the following reasons:

5.10.1 *'The fact that trees on the Woodland land are covered by a Tree Preservation Order is irrelevant. The TPO regime is entirely separate from the Assets of Community Value regime, and the presence of a TPO is of no consequence in assessing whether land is of community value;'*

The Council agrees. The reference to trees being the subject to a Tree Preservation Order has no relevance to the nomination.

5.10.2 *'The Application fails to explain how any claimed use of the Woodland land furthers the social interests or social wellbeing of the local community, and instead simply states purported uses;'*

Baildon Town Council have stated that the Woodland land is used informally by walkers, dog walkers and children adventuring through the wooded area. A site visit by the case officer failed to provide any evidence to the contrary and consequently accept Baildon Town Councils stated view that the Woodland land is used for recreational purposes.

5.10.3 *'Reference to the Woodland land having 'open boundaries' is incorrectly presented. The Woodland Land forms only part of our client's land registered under title number WYK646089 and the boundaries of this wider area of land do feature fenced or walled boundaries;'*

A site survey revealed open public access to the wider site. The existing boundary on the Woodland frontage is open with no evidence

to suggest that measures are being undertaken to repair the broken down fence line. A footpath between the fence line of the residential properties and the Woodland land was visible from the roadside.

5.10.4 *'The map supporting the Application has been amended since the date of submission by agreement between the nominating body and the Council. We understand that land which has been removed from the Application is being used for residential purposes, albeit this assertion is made without prejudice to our Client's position that any such residential use of its land is unlawful. It is concerning that the nominating body could not correctly identify the extent of the land which it claims is being used by the community and undermines the credibility of use asserted within the Application. Please note that although we are not taking issue with the process followed for the purpose of this letter, we question the Council's ability to amend the map without requiring the Application to be resubmitted and treated as a fresh new nomination.'*

A site survey revealed that the nomination plan appeared to include residential property. Officers checked with the nominator that whether the boundary was correct. Given the small area of land taken out of the subject site officers are of the view that inclusion or exclusion of the land would affect the outcome of our assessment.

5.10.5 *'The land at Jenny Lane has been in our Client's ownership since 1948 and there has been a history of prolonged unlawful use and trespass. The Woodland Land is not actively maintained by our Client and has not been the subject of any Health & Safety assessment. Our Client has never allowed the local community to use the Woodland Land for any purpose and any use claimed has been without permission. Our Client is also aware that items have also been dumped onto the Woodland Land, creating hazards for people and wildlife. Damage to the land and trees has occurred as a result of unauthorised use and our Client is concerned that an Asset of Community Value listing would encourage access and potentially lead to further damage and deterioration to the Woodland Land. As owner of the Woodland Land, our Client reserves its right to commence trespass proceedings against anyone who enters upon the Woodland Land as access is expressly prohibited.'*

The Woodland land has 'a history of prolonged unlawful use and trespass'. The Woodland land is not actively maintained by the owners, and there are no warning signs regarding unlawful access to the Woodland land.

In respect of this objection, the Council have referred to relevant case law, *Banner Homes vs St Albans City and District Council Verulam Residents' Association* [2018] EWCA Civ 1187. In this case, the Court

of Appeal ruled that Banner could not assert that a field it owned could not become an Asset of Community Value just because it was used unlawfully.

The Court of Appeal heard that Banner had owned an undeveloped 4.83 hectares' field in St Albans since 1996, which is bisected by two public footpaths. The field had been used for informal recreation for more than 40 years and although Banner did not give express permission for this it was well aware of these uses, the court heard.

In March 2014 the council listed the field as an asset of community value, following a nomination by the residents' association, and six months later Banner fenced it off apart from the footpaths.

The main issue arising from this case was whether such unlawful use can constitute a qualifying use (or 'actual use') for the purpose of listing an asset as an asset of community value pursuant to section 88 of the 2011 Act." (The Localism Act 2011).

The case had already been through the First Tier Tribunal and Upper Tribunal.

The Court of Appeal concluded that the Upper Tribunal did not err in its construction of "actual use" in section 88 of the 2011 Act, the council was entitled to list the field as an asset of community value and the appeal was dismissed. Officers are of the view that this shows that land can be added to the List of Assets of Community Value despite any use being in the absence of the owner's permission

5.10.6 *'Separately, the description in Section 1 of the Application (nomination) refers to the land as 'ex allotments'. Our client is unclear as to what this relates. On the basis that reference to allotments does not make its way into Section 5 of the Application it is our view this is not relevant for assessing the community value of the community value of the Woodland land.'*

It is clear that the land has not been used as allotments for a prolonged period of time and is not considered relevant in the assessment of this nomination.

- 5.11 The nominator, which is the local town council, has stated that there are uses of the land which in their view further social interests or social wellbeing of the local community. The owner's representative has acknowledged that the land is used in their letter of objection where it states "The land at Jenny Lane has been in our Client's ownership since 1948 and there has been a history of prolonged unlawful use and trespass." Light activity, such as walking/dog walking, has been shown to be beneficial to health and wellbeing and provides more opportunity to meet new people while outdoors. Use by young

people for the informal play activities set out by the nominator shows the land used for recreational interest. Officers are of the view that these uses further social interest or social wellbeing. These are the only uses of the land and therefore considered non-ancillary.

- 5.12 Although pleasant enough, there is nothing to suggest that people would travel to visit this woodland. It is of limited size and adjacent to the local play area. It is therefore considered that it is the local community who use the land.
- 5.13 Officers are therefore of the view that there is a current non-ancillary use which furthers the social interests or social wellbeing of the local community.

Is it 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?

- 5.14 Nothing has been provided by the owner to suggest that there are any plans to change the woodland. The owner's representative has acknowledged that there is a prolonged history of use of the Woodland land and the nominator has stated that this use is by local people for walking/dog walking and by local young people for informal play activities. There is no evidence to suggest that this current local use may change and it is therefore realistic to think that there can continue to be non-ancillary use of the property which will further the social wellbeing or social interests of the local community.
- 5.15 The Woodland land at Jenny Lane was previously added to the List of Assets of Community Value and was removed on 28th June 2022 following the end of the statutory period for listing.
- 5.16 The nominator is eligible to make a nomination, and the Woodland land does have a current non ancillary use. It is also realistic to think that it can continue to have an eligible use which furthers the social wellbeing or social interests of the local community in the future. Therefore, the property can be added to the List of Assets of Community Value.
- 5.17 The criteria for adding a property to the List of Assets of Community Value as set out in section 88 (1) of the Localism Act 2011 is considered to have been met in this case and the property should be added to the List of Assets of Community Value.

6 Financial, HR, Communications issues (including value for money)

- 6.1 There are no financial, HR, communication or value for money issues other than in certain circumstances the owner of a listed property can claim compensation from the local authority.
- 6.2 Should an appeal be made to the First-Tier tribunal by the owner against a listing this can have an impact on costs and staff resources.

7 Other Implications

- 7.1 There are no equality & diversity, sustainability, greenhouse gas emissions, community safety, Human Rights Act or Trade Union implications.

8 Recommendations

- 8.1 The Strategic Director of Corporate Resources is recommended to add Land at Jenny Lane, Baildon, Shipley, BD17 6SH referred to as 'the Woodland', to the List of Assets of Community Value.

9 Background documents

- 9.1 ACV plan number AC0098
- 9.2 Application to Nominate Assets of Community Value – Land at Jenny Lane, Baildon, Shipley, BD17 6SH referred to as 'the Woodland'.

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