



DECISION NOTICE

SERVICE AREA:	GOVERNANCE AND PENSIONS
SUBJECT MATTER:	NOMINATION OF LAND AT GREAVES STREET AND CROSS STREET IN MOSSLEY AS AN ASSET OF COMMUNITY VALUE (REF CA17)
DECISION:	The nomination that land known as Greaves Street and Cross Street in Mossley BE ACCEPTED and the land be added to the Council's list Assets Community Value.
DECISION TAKER	Sandra Stewart
DESIGNATION OF DECISION TAKER(S):	Director of Governance and Pensions (Borough Solicitor)
DATE OF DECISION:	6 January 2018
REASON FOR DECISION:	<p>The Council has received a nomination for land at Greaves Street and Cross Street in Mossley to be included on its register of Assets of Community Value. Under the Localism Act 2011, the Council is required to consider nominations within 8 weeks from receipt of a valid nomination and must register the land or buildings as an ACV if, in its opinion –</p> <ul style="list-style-type: none"> (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 (1)). <p>If a building or other land in a local authority's area that is not land of community value as a result the above, the land is of community value if the Council is of the opinion that—</p> <ul style="list-style-type: none"> (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 (section 88 (2)). <p>On the information provided the Council is of the opinion that the land is land of community value and for that reason the land should be added to the Council list of Assets of Community Value.</p>
ALTERNATIVE OPTIONS REJECTED (if any):	To refuse the nomination and add the land to the Council's list of land nominated by unsuccessful community nominations. To do so would be contrary to the Localism Act 2011 and leave Council exposed to Judicial Review.
CONSULTEES:	The registered freehold owner of the property at the time of the nomination – Tameside Metropolitan Borough Council.

	The purchasers of the land bought at auction on 17 October 2017. The Ward Councillors for Mossley.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no immediate financial implications as a result of this report. If the land were to be listed as an ACV there is provision within the Act for the payment of compensation by the Council to an owner who has suffered loss as a result of listing land as an ACV.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	Under the Localism Act 2011 and the regulations made under it the Council must consider nominations received from qualifying bodies to add properties to its list of assets of community value. Where the property is within the Council's area and is of community value the Council is required to list the property, the effect of which will prevent the property being sold other than to a Community Interest Group for a period of between 6 weeks and 6 months depending on whether the Community Interest Group wishes to be treated as a bidder. If land is added to the list, the owner has a right to request the Council review its decision within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council does not accept a nomination there is no such right of review or appeal.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	Not Applicable
ACCESS INFORMATION: TO	The background papers relating to this report can be inspected by contacting the report writer, Daniel Howard / Corporate Lawyer by:  Telephone:0161 342 3194  e-mail: daniel.howard@tameside.gov.uk





Signed:

Date: 6 January 2018

Sandra Stewart –Director of Governance and Pensions (Borough Solicitor)

DECISION REPORT

SERVICE AREA:	GOVERNANCE AND PENSIONS
SUBJECT MATTER:	NOMINATION OF LAND AT GREAVES STREET AND CROSS STREET IN MOSSLEY AS AN ASSET OF COMMUNITY VALUE (REF CA17)
DATE OF DECISION:	6 January 2018
DECISION TAKER	Sandra Stewart – Executive Director, Governance and Pensions (Borough Solicitor)
REPORTING OFFICER:	Daniel Howard – Corporate Lawyer, Legal Services
REPORT SUMMARY:	The report acknowledges receipt of a nomination from Mossley Town Council for land at Greaves Street and Cross Street in Mossley to be included on the Council’s list of Assets of Community Value under the provisions of sections 87 to 108, chapter 3 of part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
RECOMMENDATIONS:	The nomination that land known as Greaves Street and Cross Street in Mossley BE ACCEPTED and the land be added to the Council’s list Assets Community Value.
JUSTIFICATION FOR DECISION:	<p>The Council has received a nomination for land at Greaves Street and Cross Street in Mossley to be included on its register of Assets of Community Value. Under the Localism Act 2011 the Council is required to consider nominations within 8 weeks from receipt of a valid nomination and must register the land or buildings as an ACV if, in its opinion –</p> <p>(c) 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</p> <p>(d) 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 (1)).</p> <p>If a building or other land in a local authority's area that is not land of community value as a result the above, the land is of community value if the Council is of the opinion that—</p> <p>(c) 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</p> <p>(d) 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 (section 88 (2)).</p> <p>On the information provided the Council is of the opinion that the land is land of community value and for that reason the land should be added to the Council list of Assets of Community Value.</p>

ALTERNATIVE OPTIONS REJECTED (if any):	<p>To refuse the nomination and add the land to the Council's list of land nominated by unsuccessful community nominations. To do so would be contrary to the Localism Act 2011.</p>
CONSULTEES:	<p>The registered freehold owner of the property at the time of the nomination – Tameside Metropolitan Borough Council.</p> <p>The purchasers of the land bought at auction on 17 October 2017.</p> <p>The Ward Councillors for Mossley.</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	<p>There are no immediate financial implications as a result of this report. If the land were to be listed as an ACV there is provision within the Act for the payment of compensation by the Council to an owner who has suffered loss as a result of listing land as an ACV.</p>
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	<p>Under the Localism Act 2011 and the regulations made under it the Council must consider nominations received from qualifying bodies to add properties to its list of assets of community value. Where the property is within the Council's area and is of community value the Council is required to list the property, the effect of which will prevent the property being sold other than to a Community Interest Group for a period of between 6 weeks and 6 months depending on whether the Community Interest Group wishes to be treated as a bidder. If land is added to the list, the owner has a right to request the Council review its decision within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council does not accept a nomination there is no such right of review or appeal.</p>
RISK MANAGEMENT:	<p>If the Council decides not to include the assets on its ACV list, the nominator has no formal right to review the Council's decision but may seek to have the decision reviewed by the courts through Judicial Review proceedings.</p>
LINKS TO COMMUNITY PLAN:	<p>Growing and encouraging local community groups to take responsibility for delivering some services in their local area helps to reduce dependency on public services and build community spirit and self-worth for those involved.</p>
ACCESS TO INFORMATION:	<p>The background papers relating to this report can be inspected by contacting the report writer, Daniel Howard / Corporate Lawyer by:</p> <p> Telephone: 0161 342 3194</p> <p> e-mail: daniel.howard@tameside.gov.uk</p>

1. BACKGROUND

- 1.1 The Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) provide a legal framework for listing Assets of Community Value.
- 1.2 The Act requires the Council to maintain a list of land in Tameside that is land of community to be known as a list of Assets of Community Value (ACV).
- 1.3 A building or land will be of community value if the council is of the opinion that its actual current use, which is not ancillary use, furthers the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be non-ancillary use which will further (whether in the same way or not) the social wellbeing or social interests of the local community (S88 (1) of the Act).
- 1.4 If land is not of community value by virtue of the above paragraph it will be if 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 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 (S88(2) of the Act).
- 1.5 Social interests include culture, recreation and sport.
- 1.6 The land can only be listed as an ACV in response to a ‘community nomination’. The Act provides that a community nomination includes a nomination by a person that is a voluntary or community body with a local connection to the land (S89(2))
- 1.7 Regulation 5 provides that a voluntary or community body includes, amongst other things Parish Council if the nomination is made in respect of land within the Parish Council’s own area.
- 1.8 If the Council receives a community nomination it must consider it and must accept the nomination if the land nominated is in Tameside and of community value. If the Council is required to accept the nomination then the land must be included on the Council’s ACV list.
- 1.9 The Council must decide within 8 weeks of receiving a community nomination whether land nominated should be included within the list.
- 1.10 Where land is included in the list the owner of that land can ask the Council to review its decision to list. The owner of the land can then appeal to the First-tier Tribunal against the Council’s decision on review. The nominator has no such right of review or appeal.
- 1.11 The owner of the land for ACV purposes will be the freehold owner where there is no lease for a term which, when granted, had at least 25 years or more to run. Where there is a leaseholder, that person will be the owner if they hold a lease, which when granted, had at least 25 years or more to run.
- 1.12 The effect of a property’s inclusion on the list will be to require the owner of the property to notify the Council when intending to dispose of a listed asset, so triggering a moratorium period. The moratorium operates so as to prevent certain proposed disposals of the land being made to anyone other than a Community Interest Group until several specified conditions are met. These conditions are:
 - (a) The owner has notified the council that he wishes to enter into a relevant disposal;
 - (b) A period of 6 weeks has then passed without the local authority receiving a written request from a Community Interest Group to be treated as a potential bidder for the

- land (the interim moratorium period) or, if such a request has been made, a total period of 6 months has passed (the full moratorium period); and
- (c) An 18 month 'protected period' starting with the date of the owner's notification to the local authority, has not ended.

1.13 A Community Interest Group is one of the following:

- (a) A parish council for the area in which the land is situated;
- (b) a charity;
- (c) a company limited by guarantee which does not distribute any surplus it makes to its members;
- (d) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or
- (e) a community interest company.

1.14 The owner is not compelled at any point to sell the asset to a Community Interest Group; rather he cannot sell it to anyone else within the moratorium period. The owner can sell the property at any price that he can obtain or not at all as the case maybe. There is no obligation whatsoever for the owner to negotiate or deal with the Community Interest Group.

1.15 Where a nomination is refused, the application and decision to refuse will be recorded on the Council's list of unsuccessful nominations.

2. NOMINATION

2.1 The Council must consider any community nomination it receives. A community nomination is one which is made by a person that is a voluntary or community body with a local connection to the land.

2.2 On 27 September 2017, the Council received a nomination from Mossley Town Council for land described as land at Greaves Street and Cross Street in Mossley to be included on the Council's ACV list.

2.3 Mossley Town Council is in fact a Town Parish Council. A nomination made by a Parish Council in respect of land within the Parish Council's own area is a genuine 'community nomination'. This nomination is at pages **A1 – A4** of the bundle.

3. CONSULTATION

3.1 Having received a community nomination the Council was required to take all practical steps to give the information that it is considering listing the land as an asset of community value to the owner of the land, the freeholder and leaseholder where they are not the owner of the land, and any lawful occupier of the land.

3.2 The freehold owner of the land at the time the nomination was received was in fact Tameside MBC. No leases have been granted on the land and there are no known tenancies, either formal or informal. Since the nomination was received, the land was sold at auction on 17 October 2017. The auction pack included a special condition bringing to the attention of prospective bidders that the Council was considering listing the land as an asset of community value. This is at page **A71** of the bundle. This complies with the Requirement of Regulation 5 of the Regulations.

3.3 A plan of the nominated land is at page **A139**.

3.4 The following links to Google Maps provide a view of the site from different angles:- The Car Park area viewed from Cross Street-



The grassed area from Cross Street:-



The land viewed from Stockport Road:-



The Land viewed from Greaves Street (near number 19):-



The Land viewed from Greaves Street:-



The Land viewed from Greaves Street (near No. 28)



Copies of these pages can be seen at **A5 to A10**.

- 3.5 Notice of the nomination was giving to the Council's Estates and Investment Management Partnership section and to the Council's Investment and Development section. This can be seen at **A142 – A143**.
- 3.6 Ward Councillors for Mossley (this being the ward in which the nominated land is situated) were notified of the nomination and invited to make comments. This notification is at **A140 – A141**.
- 3.7 Upon consideration of the nomination on 9 November 2017, the new joint purchasers of the land were advised that the Council was minded to accept the nomination and were asked to submit comments and observations ideally as soon as possible but in any event by Friday 8 December 2017. A copy of the letters dated 10 November 2017 are at pages **A155 - A156** of the bundle. No response has been received by the deadline stated. The nominator and ward Councillors were advised of this further consultation and that there would be a slight delay in considering the nomination. Copies of the correspondence are at pages **A157** and **A158-A159** of the bundle.

4. DETERMINATION OF THE NOMINATION

- 4.1 Under section 88 of the Act the Council must determine whether the nominated land is of community value. Section 88 says as follows:-
- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—
 - (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.
 - (2) For the purposes of this Chapter but subject to regulations under subsection (3), 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—
 - (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.
- 4.2 With regard to this legislation the Council can be of the opinion that the nominated land is land of community value. The reason for this is detailed in the following paragraphs.
- 4.3 The nomination states "*In the last five years the Greaves St site has history as a community space.*
Examples include:
- *Picnics on the Green*
 - *Use by dog walkers and the general public as informal open space*
 - *Children use the site for informal play particularly important because many of the houses in the area do not have gardens.*

Until recently the space had a public tennis court sited upon it. This was finally removed when recent works to the retaining wall were carried out.

The space previously had children's fixed play equipment sited upon it.

The space is 'greenfield' and has never been 'previously developed land' /private gardens and then public space”

4.4 The nomination also states:-

“Whilst the need to raise monies due to central government cuts to local authority funding is accepted, Mossley is already being overdeveloped with hundreds of new houses proposed as a result of redevelopment. It is considered that the town has reached its limit and- for the sake of relatively small sums of money valuable community spaces are being sacrificed.

Local residents are concerned that the town’s green spaces are being exploited due to the popularity of the town. The sale of this and other small amenity spaces in the town offers short term benefit but will result in a long term loss for existing and future residents of our town which cannot be reversed.

This 'little piece of land' is in fact well used and highly valued by the wider community and disposal of the site will erode the intensely strong community spirit which exists. The space offers respite and makes a positive contribution to people's mental health and wellbeing. It is a feature of the area and has been a contributing factor to residents in choosing a place to live and bring up their families and future generations in Mossley.

The Greaves Street land is on one of the best focal points in the town. It is one of the few places where isolated people and children can get away from traffic and noise. It is a place of calmness and tranquillity. It is safe and needs to be championed as a panoramic point of view for local people. It is a centrepiece for ‘Top’ Mossley.

Greaves Street is a powerful and potent part of the town’s history, culture and heritage.

Very significant amounts of time and effort have been put into the orchard below and this could be extended. The aim is for local people and visitors to benefit from this space. It would be more appropriate to retain the site as an important town centre oasis or ‘green lung’ rather than to exacerbate existing over development of the town by building on the site

Mossley Town Council fully supports the wishes of the local community to retain not only this but also other sites in the locality which are to be sold. As a valued community asset, local people overwhelmingly wish this site to be retained for use by the community. With the support of Mossley Town Council wherever possible, the local community is prepared to look after and maintain the site and safeguard it for future generations. Together with other similar spaces, the community will look after the sites in the hope of establishing a revitalised cultural and green quarter in this very special old mill town.”

4.5 The Council's Estates and Investment Management Partnership section has responded to the nomination stating the actual current use of the land is *“Part of the land is occupied as a free to use car park part is unoccupied and part used as an unauthorised pedestrian pathway”*. The Estates and Investment Management Partnership section also states there is no ancillary use of the land. The Council's Estates and Investment Management Partnership section is of the view that *“the current use of the land as part unoccupied and part used as a car park does not in [their] opinion further the social wellbeing or social interests of the community but that part of the site used as a footpath does”*. *“Use of part of the land as a footpath has furthered the social wellbeing of the local community in so much as that if it is taken away the public would have to take a longer route to travel from the South to the North of the site”*.

- 4.6 The Council's Estates and Investment Management Partnership section has made enquiries into the existence of the public tennis court and fixed play equipment. The play equipment is believed to have been removed prior to 2007. Works to the retaining wall is believed to have been undertaken in 2009, therefore the removal of the tennis courts as referred to in the nomination is likely to have taken place around that time. The response from the Council's Estates and Investment Management Partnership section can be seen at **A144 – A147**.
- 4.7 The Ward Councillors for Mossley are in support of the land being included in the Councils register of Assets of Community Value. Councillor Sharif has stated that the land is '*used by the community. The area is very condensed and busy as it is.*' The councillors are of the view that the current actual use of the land furthers the social wellbeing and social interests of the local community. They are also of the view that 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.
- 4.8 In particular the Councillors have indicated that they "*are supportive of the ACV for the land at Greaves St and Cross Street as it is used by the community.*" The response from Councillor Sharif states: "*Historically, there was a children's playground on Greaves Street so clearly there has been a perceived need there. That need is greater now and there needs to be a reassessment of Greaves Street as 'under utilised public assets/ surplus or unused assets'.*"
- 4.9 In response to the nomination of the car park area Councillor Sharif has responded:-
Removal of this car parking facility could result in serious road safety issues as it is off busy main road and junctions.
- *Nearby Road is used as a busy fast road*
 - *The car park is located approximately half way down this dangerous road thus exacerbating the danger of accidents in both directions.*
 - *There is a strong belief in the community that retention of this parking facility will continue to alleviate the numbers of cars fighting for already very limited parking space on nearby and adjacent streets involving indiscriminate parking and damage to pavements including blocking pedestrian access.*
 - *The community is extremely concerned at the prospect of more cars being forced to park on already full, narrow and busy streets.*
 - *There really is nowhere else to park for residents. The parking facility is not 'wasted, surplus or utilised' land.*
 - *Since the car park was created, car ownership has increased significantly, particularly over the last 30 years adding even further pressure. This car park is hugely important to residents.*
- 4.10 In response to the nomination of the grassed area Councillor Sharif has responded:-
- *The space near to the car park provides valuable amenity space*
 - *Some houses have no green gardens of their own and only limited outdoor space. This space provides those residents with a green 'lung' of fresh air away from the stresses and strains of being indoors. This aspect is particularly important for young families, the elderly and those not able to walk far.*
 - *In the event of the site being listed as a community asset, the Town Council and local Councillors will, wherever possible and subject to consideration of any detailed proposals for the site, work with and offer assistance to local residents in implementing future proposals for the site.*
 - *There has been widespread opposition throughout the locality to the proposal by Tameside MBC to sell the site by auction.*
 - *The garden adds significantly to their quality of life.*
- 4.11 The response from Councillor Sharif can be seen at **A148 – A154**.

5. LAND OF COMMUNITY VALUE BY VIRTUE OF S88(1) OF THE ACT

- 5.1 Land will be of community value if in the opinion of the Council its actual current use, which is not ancillary use, furthers the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be non-ancillary use which will further (whether in the same way or not) the social wellbeing or social interests of the local community (S88 (1) of the Act).
- 5.2 The Google Map images show the land is as described by the nominator. In its response to the nomination the Council accepts that part of the land is used as car park. The Council's response does not refute the nominator's claim that the landscaped area is used by children to play in and residents to sit in.
- 5.3 On the information provided the Council can be of the opinion that the actual current use of the land nominated is as a car park and as a local amenity area. Neither uses appear to be ancillary to any other actual use.
- 5.4 In respect of the car park it is clear from the First Tier Tribunal decision in the case of **C, S & D Trough v Shropshire Council & Anor (Localism Act 2011) [2015] UKFTT CR 2015 0002** that a car park can be an asset of community value, depending on who uses it and for what purpose. It is clear that the car park, being free, is very convenient to residents of Cross Street and the surrounding area. It is unlikely that this convenience is enough to further the social wellbeing or social interests of the local community. The nomination does not provide evidence in support of the wider use of the car park.
- 5.5 The representation from Councillor Sharif states the car park is more than just a convenience, it helps alleviate parking congestion, and the road safety issues that go with it. Councillor Sharif describes the nearby busy, fast and dangerous road.
- 5.6 It would appear clear that the car park is convenient to local residents. However it is likely that the benefits of the car park go beyond simple convenience, and that it's use by local residents. The car park would also benefit the local community by reducing the number of cars parked roadside which in turn would make the roads less congested and potentially safer. The people who use the car park are likely to be local residents and people visiting local residents. This can be said to further the social wellbeing of the area.
- 5.7 No information is given about future use of the land, other than the Council sold the land at auction on 17 October 2017 with completion due within 28 days. Whilst it is likely that the new owner will seek to redevelop the land, in the absence of immediate deliverable proposals it is not unreasonable to believe that the land in question cannot continue to further the social wellbeing or social interests of the local community.
- 5.8 For these reasons the Council can be satisfied that the land used as a car park at Cross Street is land of community value as defined by section 88(1) of the Act.
- 5.9 In respect of the land described as a community space, it is clear from the Google Map images that the area has been maintained in the past. The Council's Estates and Investment Management Partnership section has obtained confirmation from the Operations and Greenspace section within Environmental Services that the land has always been maintained by the Council and used by the community for informal recreation.
- 5.10 The nominator states that in an area where residents have picnics, walk their dogs and use the site as a general open space and that the area is used by children for informal play, which is particularly important because many of the houses in the area do not have gardens. Such use clearly furthers the social wellbeing or social interests of the local community, regardless of whether or not other such places existed nearby.

- 5.11 Again as no information is available about the immediate plans for the area it is not unrealistic to think that the community space will continue to be used in the same way which in turn will continue to further the social wellbeing or social interests of the local community.
- 5.12 The Council can therefore be of the opinion that the community land at Greeves Street, Mossley is land of community value as defined by S88 (1) of the Act.

6. LAND AS COMMUNITY VALUE BY VIRTUE OF S88(2) OF THE ACT

- 6.1 As the Council can be of the opinion that the land is land of community value as defined by s88 (1) of the Act it is not required to consider the second limb of S88. This states that if the Council was not satisfied that the land was of community value by s88(1) of the Act, the land could still be of community value if there is a time in the recent past when an actual use of the land that was not an ancillary use furthered the social wellbeing or interests of the local community, and 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 (S88(2) of the Act.)
- 6.2 However for the sake of completeness the Council could be of the opinion that the land could also be community land as defined by s88 (2). It would appear that for some time the land has been used as a car park and community land. This amounts to a use at a time in the recent past. For the reasons given at paragraph 5 if this report the Council can be of the opinion that this use was not ancillary use and it furthered the social wellbeing or interests of the local community. It is realistic to think at this time that the current use will continue.

7. PLANNING CONSIDERATIONS

- 7.1 It is noted that the nomination appears to be at least partly motivated by a desire to preclude development on the nominated asset. The First Tier Tribunal has held that it is irrelevant whether the nominator may be motivated by such a desire as such matters fall to be addressed through planning legislation rather than through the ACV legislation (**Idsall School v Shropshire Council [2015] UKFTT CR/2014/0016**).

8. PROCEDURE ON DETERMINATION THAT LAND IS NOT AN ACV

- 8.1 If a nomination is unsuccessful the land nominated will not be included on the Council's list of ACVs. The Council must give to the person who made the nomination written reasons for the Council's decision that the land could not be included in its ACV list. The Council must enter this nomination on its list of land nominated by unsuccessful community nominations. The only challenge to a decision not to include land on the Council's list of ACV's is by way of Judicial Review.

9. EFFECT OF INCLUSION ON THE LIST IF DETERMINED LAND IS AN ACV

- 9.1 The effect of the land's inclusion on the list is to place requirements on the owner should the owner want to dispose of the land. At the time of the nomination, the owner of the land at Greaves Street and Cross Street was in fact the Council. The land however was sold at auction on 17 October 2017 with completion taking place on 15 November 2017. Receipt of the nomination did not preclude the sale at auction. The auction pack advised bidders of the nomination and the implications that would be imposed if the Council accepted the nomination. The new owner has been consulted prior to determination of the nomination but has not responded at the date of this decision.

- 9.2 The owner will be required to notify the Council when intending to dispose of a listed asset, so triggering a moratorium period. The moratorium operates so as to prevent certain proposed disposals of the land being made to anyone other than a Community Interest Group until several specified conditions are met. These conditions are:
- (a) The owner has notified the council that he wishes to enter into a relevant disposal;
 - (b) A period of 6 weeks has then passed without the local authority receiving a written request from a community interest group to be treated as a potential bidder for the land (the interim moratorium period) or, if such a request has been made, a total period of 6 months has passed (the full moratorium period); and
 - (c) An 18 month 'protected period' starting with the date of the owner's notification to the local authority, has not ended.
- 9.3 A community interest group is one of the following;
- (a) A parish council for the area in which the land is situated;
 - (b) a charity;
 - (c) a company limited by guarantee which does not distribute any surplus it makes to its members;
 - (d) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or
 - (e) a community interest company.
- 9.4 Inclusion in the ACV list will not affect 'exempt disposals' as identified and listed in full in schedule 3 of the Assets of Community Value (England) Regulations 2012. Exempt disposals include:
- (a) A disposal pursuant to an order made by a court or by a tribunal;
 - (b) A disposal made pursuant to a separation agreement made between spouses or civil partners
 - (c) Any disposal made under, or for the purposes of, any statutory provision relating to incapacity
 - (d) A disposal— (a) to a particular person in pursuance of a requirement that it should be made to that person under a planning obligation entered into in accordance with section 106 of the Town and Country Planning Act 1990; or (b) made in pursuance of the exercise of a legally enforceable option to buy providing that the land was not listed when the agreement was entered into.
 - (e) A disposal to a former owner where the land was acquired via compulsory purchase.
 - (f) A Disposal in exercise of a power of sale of the land by a person who has that power by way of security for a debt.
 - (g) A disposal pursuant to insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986.
 - (h) A disposal of land to a person whose acquisition of the land is a statutory compulsory purchase.
 - (i) A grant of a tenancy of the land pursuant to the provisions of Part 4 of the Agricultural Holdings Act 1986.
- 9.5 The notification of an exempt disposal will not trigger a moratorium period or protected period.
- 9.6 Once the notice of a non-exempt disposal has been given, the land can be disposed of to a non community interest group in the following circumstances;
- (a) After six weeks if the Council has not received a written request from a community interest group asking to be treated as a potential bidder for the land (the interim moratorium period);
 - (b) If such notification is received, after 6 months (the full moratorium period). During the full moratorium period if the owner chooses to sell the land the sale can only be to a community interest.

9.7 The owner has an 18 month protected period from the date of giving notice of disposal. This means that if there is no full moratorium period triggered, or on the expiry of any moratorium period that is triggered, the owner can sell to whoever he wants within the 18 month period from when he first gave notice. On the expiry of that 18 month period if the land has not been sold, the owner must again give notice of intention to sell which then triggers the moratorium period again.

10. RIGHT TO APPEAL LISTING/REFUSAL TO LIST

10.1 The owner of the land at Greaves Street and Cross Street has the right to request a review of the Council's decision to list the property. Such a request must be made in writing within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council has carried out such a review, the owner may appeal to the First-Tier Tribunal against any decision within 28 days of the Council giving notification of the review decision.

10.2 The auction pack included a special condition bringing to the attention of prospective bidders that the Council was considering listing the land as an asset of community value. The purchasers of the property at auction were therefore on notice of the nomination. Both purchasers have separately been consulted prior to the determination of the nomination however such consultation was without prejudice to their statutory rights under the Act.

10.3 The nominator or owner has no formal right to appeal a decision to refuse a nomination. However as a decision of a public body any decision could be challenged by judicial review if the correct procedures have not been followed, or the decision made is either irrational or disproportionate.

11. COMPENSATION SHOULD DETERMINATION BE TO LIST LAND AS AN ACV

11.1 The ACV provisions have an impact on the right of property owners which potentially could include serious financial consequences. There is a compensation scheme for property owners to claim for costs or loss incurred as a result of complying with the ACV procedures required by the Act where that loss would be likely not to have been incurred if the land where not listed.

11.2 The Act doesn't prescribe all the circumstances where loss may be incurred but does give two examples of where loss may be incurred –

- (a) loss arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused by either of the moratorium periods ;
- (b) the owner incurs reasonable legal expenses in a successful appeal to the First-Tier Tribunal against the Council's decision either to list the land or refuse to pay compensation, or with respect to the amount of compensation offered or paid by the Council.

11.3 Any claim for compensation from the Council by the owner must be made in writing before the end of 13 weeks after the loss or expense was incurred or has finished being incurred.

11.4 The owner has the right to request a compensation review by the Council in response to a decision as to whether compensation is paid, and as to the amount of any compensation. Any such request must be made within 8 weeks by writing, starting with the date on which the Council gives written notification of its decision. Where the Council has carried out such a review, the owner may appeal to the First-Tier Tribunal against any decision.

12. RECOMMENDATIONS

12.1 As detailed at the front of the report.