

## EXECUTIVE DECISION NOTICE

<b>SERVICE AREA:</b>	<b>GOVERNANCE, RESOURCES AND PENSIONS</b>
<b>SUBJECT MATTER:</b>	<b>NOMINATION OF LAND AT EAST END OF FAIRFIELD MORAVIAN SETTLEMENT AS AN ASSET OF COMMUNITY VALUE (REF CA18)</b>
<b>DECISION:</b>	<p>The nomination for land at the east end of the Fairfield Moravian Settlement, Droylsden to be included on the Council's list of Assets of Community Value BE ACCEPTED and shown outlined black on the plan attached marked A.</p> <p>This excludes the land included in the application, which is the subject of a tenancy agreement for the purposes of private residential garden use, and identified as the land edged in green on the plan provided by the freehold owner of the land, the Moravian Union, with its letter of 8 March 2018 and shown at Page <b>A6 – A9</b> in the paginated bundle of documents appended hereto marked B.</p>
<b>DECISION TAKER</b>	Sandra Stewart
<b>DESIGNATION OF DECISION TAKER(S):</b>	Director Governance and Pensions (Borough Solicitor)
<b>DATE OF DECISION:</b>	29 May 2018
<b>REASON FOR DECISION:</b>	<p>The Council has received a nomination for land at the east end of the Fairfield Moravian Settlement, Droylsden 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>(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</p> <p>(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> <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>(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</p> <p>(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> <p>On the information provided the Council is of the opinion that the land, other than that part of the land, which is the subject of a tenancy agreement for the purposes of private residential garden use, is land of community value and for that reason the land should</p>

	be added to the Council's list of Assets of Community Value	
<b>ALTERNATIVE OPTIONS REJECTED (if any):</b>	<p>1. To refuse the nomination in totality 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> <p>2. To accept the nomination in totality and include all of the land on the Council's register of Community Assets. To do so would include on the register land connected with a residence. Such land cannot be of community value and therefore cannot be listed.</p>	
<b>CONSULTEES:</b>	<p>The Moravian Union (Incorporated) - The registered freehold owner of the land.</p> <p>Scout Association Trust Corporation – occupier of part of the land under a lease granted on 23 April 1970.</p> <p>Mr S Worrall and Mrs C Worrall – occupiers of part of the land under an annual tenancy agreement for the purposes of private residential garden use.</p> <p>The Ward Councillors for Droylsden – Cllr Susan Quinn, Cllr David Mills.</p>	
<b>FINANCIAL IMPLICATIONS:</b> <b>(Authorised by Borough Treasurer)</b>	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.	
<b>LEGAL IMPLICATIONS:</b> <b>(Authorised by Borough Solicitor)</b>	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.	
<b>CONFLICT OF INTEREST:</b>	None	
<b>DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:</b>	Not Applicable	
<b>ACCESS TO INFORMATION:</b>	<b>Appendix A</b>	<b>Plan of the Asset of Community value land at east end of Fairfield Moravian Settlement as an asset of community value (ref ca18).</b>
	<b>Appendix B</b>	<b>Bundle of documents referred to in report by page number.</b>
The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor by:		



Telephone:0161 342 4354



e-mail:Peter.mccaughley@tameside.gov.uk

Signed...

**Sandra Stewart –Director Resources and Pensions (Borough Solicitor)**

**Date: 29 May 2018**

## EXECUTIVE DECISION REPORT

<b>SERVICE AREA:</b>	<b>GOVERNANCE, RESOURCES AND PENSIONS</b>
<b>SUBJECT MATTER:</b>	<b>NOMINATION OF LAND AT EAST END OF FAIRFIELD MORAVIAN SETTLEMENT AS AN ASSET OF COMMUNITY VALUE (REF CA18)</b>
<b>DATE OF DECISION:</b>	29 May 2018
<b>DECISION TAKER</b>	Sandra Stewart – Director Governance and Pensions (Borough Solicitor)
<b>REPORTING OFFICER:</b>	Peter McCaughley – Principal Solicitor, Legal Services
<b>REPORT SUMMARY:</b>	The report acknowledges receipt of a nomination from the 413th Manchester (Fairfield Moravian) Scout Group for land at the east end of the Fairfield Moravian Settlement, Droylsden 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.
<b>RECOMMENDATIONS:</b>	<ol style="list-style-type: none"> <li>1. The nomination for land at the east end of the Fairfield Moravian Settlement, Droylsden to be included on the Council's list of Assets of Community Value BE ACCEPTED except that part of the land, which is the subject of a tenancy agreement for the purposes of private residential garden use and is identified as the land edged in green on the plan provided by the freehold owner of the land, the Moravian Union, with its letter of 8 March 2018, and the land, other than the excepted land, be included on the Council's ACV list.</li> <li>2. The excepted land be added to the Council's list of land nominated by unsuccessful community nominations.</li> </ol>
<b>JUSTIFICATION FOR DECISION:</b>	<p>The Council has received a nomination for land at the east end of the Fairfield Moravian Settlement, Droylsden 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> <ol style="list-style-type: none"> <li>(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</li> <li>(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)).</li> </ol> <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> <ol style="list-style-type: none"> <li>(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</li> <li>(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</li> </ol>

	<p>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>The Council can on the information provided form the opinion that the land, other than part of that land which is subject of a tenancy agreement for the purposes of private residential garden use, is land of community value and for that reason the land should be included on the Council's list of Assets of Community Value.</p>
<b>ALTERNATIVE OPTIONS REJECTED (if any):</b>	<ol style="list-style-type: none"> <li>1. To refuse the nomination in totality 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.</li> <li>2. To accept the nomination in totality and include all of the land on the Council's register of Community Assets. To do so would be to include on the register land connected with a residence. Such land cannot be of community value and therefore cannot be listed.</li> </ol>
<b>CONSULTEES:</b>	<p>The Moravian Union (Incorporated) - The registered freehold owner of the land.</p> <p>Scout Association Trust Corporation –occupier of part of the land under a lease granted on 23 April 1970.</p> <p>Mr S Worrall and Mrs C Worrall – occupiers of part of the land under an annual tenancy agreement for the purposes of private residential garden use.</p> <p>The Ward Councillors for Droylsden – Cllr Susan Quinn, Cllr David Mills.</p>
<b>FINANCIAL IMPLICATIONS:</b> <b>(Authorised by Borough Treasurer)</b>	<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>
<b>LEGAL IMPLICATIONS:</b> <b>(Authorised by Borough Solicitor)</b>	<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 ACV. 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 ACV list. Where the Council does not accept a nomination there is no such right of review or appeal.</p>
<b>RISK MANAGEMENT:</b>	<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>

<b>LINKS TO COMMUNITY PLAN:</b>	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.
<b>ACCESS TO INFORMATION:</b>	The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor by:  Telephone:0161 342 4354  e-mail:Peter.mccaughley@tameside.gov.uk

## 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 5 January 2018, the Council received a joint nomination from the 413<sup>th</sup> Manchester (Fairfield Moravian) Scout Group and Residents of Fairfield Moravian Settlement and Beyond for land described as the east end of Fairfield Moravian Settlement to be included on the Council's ACV list.

2.3 The 413<sup>th</sup> Manchester (Fairfield Moravian) Scout Group is a unit of the Scout Association and is a registered charity, number 521640 operating in the area of Tameside. A nomination made by a charity with a local connection is a genuine 'community nomination'.

2.4 Information was requested so that the Council could be satisfied that the trustees of the charity had resolved to make the nomination and that the Residents of Fairfield Moravian Settlement was a voluntary or community body.

2.5 This information was received on 29 January 2018. The Council was not satisfied on the information received that Residents of Fairfield Moravian Settlement was a voluntary or community body. However the information confirmed that the trustees of the charity had resolved to make the nomination. Therefore the Council was satisfied that the charity's nomination was a community nomination which stood to be considered by the Council. That nomination is at pages **A16 – A27** of the bundle.

### 3. CONSULTATION

- 3.1 Having received a community nomination the Council is required to take all reasonably practicable steps to give information to owners and lawful occupiers of the land that it is considering listing the land as an asset of community value
- 3.2 Land Registry inquiries identified the freehold owner of the land as The Moravian Union (Incorporated). That company was informed of the nomination in a letter dated 23 February 2018 and invited to make comments. That letter is at **A1 – A3**.
- 3.3 Solicitors for The Moravian Union responded on 8 March 2018 advising that part of the land was “*occupied by the scout group under a lease made . . . with the Scout Association Trust Corporation*”. The solicitors also advised that another part of the land was occupied by Mr. S Worrall and Mrs. C Worrall under a tenancy agreement for the purposes of private residential garden use. Attached to the letter was a plan identifying the areas occupied by the Scout Association Trust Corporation and Mr and Mrs Worrall. This letter and plan is at **A6 – A9**.
- 3.4 On receiving this information letters were sent by the Council on 13 March 2018 to the Scout Association Trust Corporation and to Mr. and Mrs. Worrall notifying them of that the Council was considering a nomination to list the land as an asset of community value and inviting their comments **A10 – A15**.
- 3.5 No response was received from the Scout Association Trust Corporation or Mr. and Mrs. Worrall.
- 3.6 As part of the Council’s own procedure Ward Councillors for Droylsden (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 **A4 – A5**.

### 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.*

## 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 With regard to this legislation the Council can be of the opinion all of the nominated land, other than the land occupied by Mr and Mrs Worrall, is land of community value. The reason for this is detailed in the following paragraphs.
- 5.3 The nomination identifies the land as being land "*to the east end of Fairfield Moravian Settlement*" and by reference to a plan provided with the nomination. It states the land is "*greenspace in a conservation area with many trees with TPO on them*". The nomination states the land is used by "*scout groups age range from 6 to 13 and also local schools. Members of the public walk through the site*".
- 5.4 At page **A23** of the bundle the nominator gives reasons why it considers the land to be an asset of community value, stating that the land has been used for the last 50 years by the 413<sup>th</sup> Scouts who meet on Monday, Tuesday Wednesday and Friday evenings. The land is also used by 7 other scout groups in the Tameside area on a regular basis, as well as by local schools who use the area in the summer for outdoor activities and people who use the area to walk their dogs and walk through towards the canal.
- 5.5 On 27 March pictures were sent to the Council on behalf of the nominator showing "*activities on the land by young people connected to the scouts and the local community.*" These **have been provided but are not for publication so I do not intend to rely on them.**
- 5.6 In respect of the area of land leased to the Scout Association, the Moravian Union's response of 8 March 2018 stated that as the land is only to be used by the scout group and is not open to any third party, it cannot be land of community value as it is only of value to the scout group and not the wider local community.
- 5.7 In respect of the land occupied by Mr and Mrs Worrall the Moravian Union states that this is residential land and therefore cannot be land of community value.
- 5.8 In respect of the remainder of the land the Moravian Union states that his land is often subject to various types of anti-social behaviour and vandalism and clearly does not further the social wellbeing or social interests of the local community, and therefore should not be listed as land of community value.

## 6. LAND LEASED TO THE SCOUT ASSOCIATION

- 6.1 It appears clear to the Council that the actual current use of the land leased to the Scout Association is for activities relating to the 413<sup>th</sup> Manchester (Fairfield Moravian) group and other scout groups. This is not an ancillary use.
- 6.2 The Moravian Union states that as the land is '*only of value to the scout group and not the wider local community*' it cannot be land of community value. The legislation does not make reference to '*the wider local community*'. Rather section 88(1)(a) of the Act says the use must further '*the social wellbeing or social interests of the local community*'. The fact that the land is not available to all sectors of the local community does prevent it qualifying as land of community of community value. It would seem obvious that the 413<sup>th</sup> Manchester (Fairfield Moravian) group includes adult volunteers and children from the local community. The very premise of the Scout Association is to help children and young adults develop skills including teamwork, time management, leadership, initiative, planning, communication, self-motivation,

cultural awareness and commitment. It would also therefore appear obvious that an active local scout group furthers both the social wellbeing and social interests of the local community.

- 6.3 The nominator states that 413<sup>th</sup> Manchester (Fairfield Moravian) group have been using the site for the last 50 years. The Scout Association has occupied the land under a lease since 1970. Solicitors for the Moravian Union states the Union has been discussing possible development of the land in the future. However there is no further information as to whether this will take place and if so when. There is no information to suggest that this lease is to end or that the 413<sup>th</sup> Manchester (Fairfield Moravian) group will not continue to use the land in the same way. It is likely that the lease and use of the land will continue for a reasonable time at least. It is therefore realistic to think this use of the land by 413<sup>th</sup> Manchester (Fairfield Moravian) group, which is not ancillary use, will continue, which will further the social wellbeing or social interests of the local community.
- 6.4 The Council can therefore be of the opinion that the land leased to the Scout Association and used by the 413<sup>th</sup> Manchester (Fairfield Moravian) group and other scout groups is land of community value as defined by S88(1) of the Act.

## **7. LAND LET TO MR AND MRS WORRAL FOR THE PURPOSE OF PRIVATE RESIDENTIAL USE**

- 7.1 Regulation 3 of the Assets of Community Value (England) Regulations 2012 provides that certain land is not land of community value and therefore cannot be listed. Schedule 1 to those Regulations identifies the land, which cannot be listed which includes a 'residence together with land connected with that residence (para 1(1)).
- 7.2 The Moravian Union identifies the land edged in green on the plan it provided as land occupied by Mr and Mrs Worrall under a tenancy agreement for the purposes of a private residential garden. Aerial photographs on google:  
<https://www.google.co.uk/maps/search/Love+Lane+Fairfield+Moravian+Settlement,+Fairfield+Square,+Droylsden,+Manchester/@53.4761925,2.1497284,124a.35y,90h,44.79t/data=!3m1!1e3>  
shows the land does indeed appear to be the garden of residential premises.
- 7.3 For these reasons it appears that the land is prevented by Regulation 3 and paragraph 1(1) to Schedule 1 of the Regulations from being land of community value as defined by S88(1) of the Act.

## **8 REMAINING LAND AT THE SITE**

- 8.1 The remaining land, which has been nominated and is not included in the lease to the Scout Association or the tenancy agreement with Mr and Mrs Worrall, appears to be woodland. The nominator states it is used by people to walk their dogs and walk through to towards the canal. From the nomination form and the pictures provided it would also appear that the wooded area is used by scout groups and local schools for outdoor activities.
- 8.2 The Moravian Union states a large part of the land in its ownership is often subject to types of anti-social behaviour and clearly does not further the social wellbeing or social interests of the local community.
- 8.3 It appears to the Council that the actual current use of the remaining land, which has been nominated is woodland. The use of it by children to play in and by people to walk in and walk their dogs, is not ancillary use, but is the way in which woodland is used. The Council can be of the opinion, from the information provided by the nominator, that the land is being used in this way. This does not appear to be denied or disputed by the Moravian Union. It is likely that such use is by both members of the local community and visitors to the area. The

Council can be of the opinion that the social wellbeing and social interests the local community are furthered by such use.

- 8.4 It is not clear from either the nomination or the response of the Moravian Union whether this land used by public by right or as of right. However even if the use of the land in the way described by the nominator is in fact trespassory use, this cannot be ignored by the Council. Trespassory use of land can in principle qualify as land of community value. (**Banner Homes Ltd v St Albans City and District Council [2016] UKUT 0232 (AAC)**)
- 8.5 As at 6.3 above, it is likely that this remaining land will continue to be used in the same way for a reasonable time at least. It is therefore realistic to think this use of the land, which is not ancillary use, will continue, which will further the social wellbeing or social interests of the local community.
- 8.6 The Council can therefore be of the opinion that this remaining land is land of community value as defined by S88(1) of the Act.

## **9 LAND AS COMMUNITY VALUE BY VIRTUE OF S88(2) OF THE ACT**

- 9.1 As the Council can be of the opinion that all of the nominated land, other than the land which is the subject of the tenancy agreement with Mr and Mrs Worrall, 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.)
- 9.2 However for the sake of completeness, the Council could be of the opinion that all of the nominated land, other than the land which is the subject of the tenancy agreement with Mr and Mrs Worrall, could also be community land as defined by s88(2). It would appear that the scout group has used the land leased to the Scout Association since 1970 to the present time. The remainder of the land appears to been used for a considerable period in excess of 5 years. This amounts to a use at a time in the recent past. For the reasons given at Part 6 and Part 8 of 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.

## **10 PLANNING CONSIDERATIONS**

- 10.1 It is noted that the nomination appears to be at least partly motivated by a desire to preclude development on the nominated asset, with the nominator making reference to the consequences if the land was 'lost' and to this being the only area of land that remains following 'developments in the vicinity'. 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**).
- 10.2 It should also be noted that a successful ACV application will also not of itself defeat a planning application.

## **11 PROCEDURE ON DETERMINATION THAT LAND IS NOT AN ACV**

11.1 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.

## **12 EFFECT OF INCLUSION ON THE LIST IF DETERMINED LAND IS AN ACV**

12.1 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.

12.2 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.

12.3 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.

12.4 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; or
- (i) A grant of a tenancy of the land pursuant to the provisions of Part 4 of the Agricultural Holdings Act 1986.

12.5 The notification of an exempt disposal will not trigger a moratorium period or protected period.

12.6 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); or
- (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.

12.7 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.

### **13 RIGHT TO APPEAL LISTING/REFUSAL TO LIST**

13.1 The owner of the land 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.

13.2 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.

### **14 COMPENSATION SHOULD DETERMINATION BE TO LIST LAND AS AN ACV**

14.1 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.

14.2 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 ; or

(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.

14.3 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.

14.4 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.

## **15 RECOMMENDATIONS**

15.1 As detailed at the front of the report.