

DECISION NOTICE

SERVICE AREA:	GOVERNANCE, RESOURCES AND PENSIONS
SUBJECT MATTER:	NOMINATION OF LAND AT TWO TREES, HAUGHTON GREEN, DENTON M34 7QL AS AN ASSET OF COMMUNITY VALUE (REF CA9)
DECISION:	Having considered the application and taken into account the Ward Councillors support of the nomination against the legal test it is DETERMINED that the nomination that land known as the High School and Playing Fields at Two Trees, Haughton Green, Denton M34 7QL be included on the Council's list of Assets of Community Value BE REJECTED and the nomination be added to the Council's list of land nominated by unsuccessful community nominations.
DECISION TAKER	Sandra Stewart
DESIGNATION OF DECISION TAKER(S):	Executive Director, Governance, Resources and Pensions (Borough Solicitor)
DATE OF DECISION:	21 June 2017
REASON FOR DECISION:	<p>The Council has received a nomination for land at Two Trees, Haughton Green, Denton M34 7QL 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>The Council is not, on the information provided, of the opinion that the land is land of community value and for that reason the land should not be added to the Council list of Assets of Community Value.</p>

ALTERNATIVE OPTIONS REJECTED (if any):	To accept the nomination and the land to the Council list of assets of community value. To do so would be contrary to the Localism Act 2011.
CONSULTEES:	The registered freehold owner of the property – Tameside Metropolitan Borough Council The Ward Councillors for Denton South - Cllr Mike Fowler, Cllr George Newton, Cllr Claire Reid who stated that: <i>The Denton South Councillors fully support the Denton South Neighbourhood Planning Forum's application to list the former Two Trees High School site as an Asset of Community Value on the following basis:</i> (a) <i>Over the course of several years the Denton South community have vehemently expressed their wish for access to the open space on the site that has previously been accessible. Furthermore, a number of sporting groups have expressed an interest in the use of the fields for social and community use.</i> (b) <i>Consequently, as we wish to represent the view of the community in the strongest terms, we fully support the application for this site to be listed as an ACV to provide local residents with the opportunity for more time to develop plans for the area.</i>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no 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. However the owner for ACV purposes of this land is the Council.
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 TO INFORMATION:	The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor

	<p>by:</p> <p> Telephone:0161 342 4354</p> <p> e-mail:Peter.mccaughley@tameside.gov.uk</p>
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Signed:

Date: 21 June 2017

Sandra Stewart – Executive Director, Governance, Resources and Pensions (Borough Solicitor)

DECISION REPORT

SERVICE AREA:	GOVERNANCE, RESOURCES AND PENSIONS
SUBJECT MATTER:	NOMINATION OF LAND AT TWO TREES, HAUGHTON GREEN, DENTON, M34 7QL AS AN ASSET OF COMMUNITY VALUE (REF: CA9)
DATE OF DECISION:	21 June 2017
DECISION TAKER	Sandra Stewart – Executive Director, Governance, Resources and Pensions (Borough Solicitor)
REPORTING OFFICER:	Peter McCaughley – Principal Solicitor, Legal Services
REPORT SUMMARY:	The report acknowledges receipt of a nomination from the Denton South Neighbourhood Planning Forum for land and a building at Two Trees, Haughton Green, Denton 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 for land and a building known as Two Trees Playing Field and School at Two Trees, Haughton Green, and Denton, M34 7QL to be included on the Council’s list of Assets of Community Value BE REJECTED and the nomination be added to the Council’s list of land nominated by unsuccessful community nominations.
JUSTIFICATION FOR DECISION:	<p>The Council has received a nomination for land Two Trees, Haughton Green, Denton 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)).

	The Council cannot, on the information provided, form the opinion that the land is land of community value and for that reason the land should not be included on the Council's list of Assets of Community Value.
ALTERNATIVE OPTIONS REJECTED (if any):	To accept the nomination and the land to the Council list of assets of community value. To do so would be contrary to the Localism Act 2011
CONSULTEES:	The registered freehold owner of the property – Tameside Metropolitan Borough Council The Ward Councillors for Denton South - Cllr George Newton, Cllr Claire Reid and Cllr Mike Fowler
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no 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. However the owner for ACV purposes of this land is the Council.
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 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.
RISK MANAGEMENT:	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.
LINKS TO COMMUNITY PLAN:	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.
ACCESS TO INFORMATION:	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 a body designated as a neighbourhood forum pursuant to Section 61F of the Town and Country Planning Act 1990.
- 1.8 Regulation 4 provides that such a body has a local connection if its activities are wholly or partly concerned with Tameside or a neighbouring area.
- 1.9 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 list of ACVs
- 1.10 The Council must decide within 8 weeks of receiving a community nomination whether land nominated should be included within the list.
- 1.11 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.
- 1.12 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 is the owner if they hold a lease, which when granted, had at least 25 years or more to run.
- 1.13 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 (i.e. a parish council, a

charity or a relevant incorporated body) 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.

1.14 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 13 April 2017, the Council received a nomination from the Denton South Neighbourhood Planning Forum Committee ("the Forum") that land at Two Trees, Haughton Green, Denton be included on the Council's ACV list. The asset identified in the nomination is the playing field and school building at Two Trees.

2.3 Tameside MBC's Planning Authority has confirmed that pursuant to section 61F of the Town and Country Planning Act 1990 it has designated the Forum as a neighbourhood forum for Denton South. It is clear that the Forum's activities are wholly concerned with the area of Tameside MBC. The Forum is a genuine voluntary or community body with local connection to the area. The nomination is therefore a genuine 'community nomination' and is at pages **A1 - A16** of the bundle. The Forum has asked that an email from the Chairman of Denton Town Football Club be included as part of its nomination. The email is at pages **A17 – A18**.

3. CONSULTATION

3.1 Having received a community nomination the Council was required to give notice of the application to any freehold and leasehold owner of the land and any lawful occupier of the land.

3.2 The freehold owner of the vast majority of the land is in fact Tameside MBC.

3.3 Tameside MBC has granted two leases in respect of two small parts of the land. The first is a lease dated 14 May 1980 between the Council and the North West Electricity Board. The Lease is for a term of 60 years from 24 July 1972 for a 20 square metre plot of land upon which is situated an electricity sub-station.

- 3.4 The second lease is dated 7 September 2009 between Tameside MBC and United Utilities for a term of 99 years for a 462 square metre plot of land upon which is situated a control building and pumping station.
- 3.5 The land demised by these leases is 'operational land' and used by statutory undertakers for the purpose of carrying on their undertaking. Regulation 3 and Schedule 1 to the Regulations provides that this land is not land of community value and may not be listed as an ACV. As this land cannot be listed the statutory undertakers have not been consulted.
- 3.6 A plan of the nominated land is at page **A19**. This plan shows the location of the pumping station at the South West corner of the red boundary and the Electricity Sub – Station adjacent to the South East corner of the red boundary.
- 3.7 Notice of the nomination was given by email 4 May 2017 to the Council's Estates and to the Council's Investment and Development Section. This email is at pages **A20 – A21**.
- 3.8 As part of the Council's own procedure notice was also given on the 7 June 2017 to the Ward Councillors for Denton South, this being the ward in which the nominated land is situated.

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:-

88 Land of community value

- (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 cannot be of the opinion that the nominated land and building at Two Trees is land of community value. The reason for this is detailed in the following paragraphs.

- 4.3 The Forum nomination states

The site composed Two Trees High School until its closure in 2012. Since that date – until 2016 – the site has been continually used for Teacher Training purposes, as council offices, and as a temporary home for Russell Scott Primary School during the refurbishment of its own site.

4.4 The nomination also states

It is our intention to see the Two Trees site developed for the local community to use as a centre of education with sports facilities and as a play area with a community hub Use of the land in the recent past has further the educational, recreational and sporting interests of the local community.

4.5 The email submitted by the Chairman to the Denton Town Football Club states.

Surely the wish for Denton Town Football Club and all community groups, is to have a recognised state of the art facility to enhance the health and well - being of the community of Denton and Haughton Green.

4.6 The email goes on to state that the football club is committed got the goal of creating a Haughton Green Sports Village on the site.

4.7 The Council, as owner of the land, has responded to the nomination. The response is at pages **A22 – A23** and identifies that the site originally comprised of Two Trees High School with associated playing fields. The field, pitches, tennis courts and hard play area were all used for by those attending the school for school related activities. There appears to have been some use of the sports hall by other groups for activities such as football and basketball. There is no record of the playing fields ever being approved by the Council for community use and all requests to do so have been refused.

4.8 In January 2013, the school relocated to new premises in January 2013 as part of the Building Schools for the Future Programme and is now the Denton Community High School. The DfE approved business case required the sale of the Two Trees site in order to use the capital receipt towards the cost of the new school. In order to maximise the receipt to pay for the new school it has been intended that the site would be sold for housing. The site remained vacant until Russell Scott Primary School temporarily occupied part of the premises from August 2013 to February 2015 whilst work was carried out on their building. The school used the rear playground and courts for school related activities such as PE. The playing fields were not used by the primary school during that period.

4.9 The school building remained vacant from February 2015 to June 2015 when part of the building was and continues to be used as office accommodation for Tameside Council employees following demolition of former council offices in Ashton. What was the sports hall is being used for storage. Parts of the external area are used for car parking by staff working at the building and people visiting the building on Council business. The remainder of the building is not used and is in poor condition. The playing fields are not used and are overgrown. The building and fields will continue to be used in this way until September 2018 when it is anticipated that staff at the building will relocate to the newly completed Council offices in Ashton.

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 actual current use of the land is as Council offices for Council employees. Some of the external area is used to provide parking space for Council employees and others visiting the site on Council business. The playing fields at the site are not used and are overgrown.

- 5.3 There is no other actual current use, ancillary or otherwise, of the land at Two Trees. Access to the land and building is restricted to those employed there or those attending on Council business. The land and building is not available to be used by members of the community or a class of members of the community. Therefore, the actual current use of the land cannot further the social wellbeing or social interests of the local community.
- 5.4 The Council cannot therefore be of the opinion that land and building at Two Trees is 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 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 There is no statutory definition of 'a time in the recent past' It is clear that in the past the actual use of the land and building at Two Trees has been as a school. This use was not ancillary use and ended in February 2015.
- 6.3 It appears that up until January 2013, there was some limited use of the sports hall by community groups for football and basket-ball. Whilst this limited use of the sports hall may have furthered the social wellbeing and interests of the local community, there has been no such use for at least 4 years 5 months. Given that this use was limited and the time that has passed since this use it is unlikely to be considered use at a time in the recent past. In addition the limited use by community groups of the building as a sporting venue must have been ancillary to the actual use of the building as a school.
- 6.4 It is possible that the use of a land and a building as a school could have furthered the social wellbeing and interest of the local community. It is likely that children from the Denton and Haughton and the wider community attended the school. A school is a place of academic learning, a place where children are able and encouraged to take part in extra-curricular activities such as sport, music and drama. All these things are likely to further the social wellbeing and interests of the local community.
- 6.5 However the building has not been used as a school since February 2015 and the playing fields have not been used at all since January 2013 at the latest. It has therefore been 2 years and 4 months since the building was used as a school and over 4 years since the playing fields were used. For the past two years the building and surrounding play-ground and courts have been used as Council offices and parking space for those working or visiting these offices.
- 6.6 It is therefore questionable that the use of the building and land as a school was use "*at a time in the recent past*".
- 6.7 Even if the use of the land and building as a school is deemed to have been use at '*time in the recent past*', it can only be of community value if '*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*'.
- 6.8 The nominator has stated that it is "*our intention to see the Two Trees Site developed for the local community to use as a centre of education with sports facilities and as a play area*"

and that the site is a “*key component of our developing neighbourhood plan for Denton South*”.

- 6.9 The email from Denton Town Football Club states that the Club’s commitment to these goals would be unstinting.
- 6.10 It is clear that the Forum has a genuine desire that the land at the site be used to further the educational, sporting, social well-being and recreational interests of the local community rather than for the building of houses. It is clear that such use would further the social wellbeing or social interests of the local community. However, whilst this may be the desire and hope of the Forum, there is no information provided with the nomination demonstrating that it is realistic to think that this (or any other use furthering social wellbeing and interests of the local community) will happen at a time in the next five years. No information is provided at all to demonstrate that it is realistic to think that the Forum’s hopes and wishes could come to fruition at a time within the next 5 years.
- 6.11 In addition to the absence of such information, the Council, as owner and person in control of the land, has responded through its Investment and Development Service that it is not 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. It has long been the intention that the land would be sold in order to meet the costs arising from the replacement school Denton Community College and this was set out in the DfE approved business case back in 2006. Given that the Council controls the site at Two Trees considerable weight must be given to this opinion.
- 6.12 It is therefore not possible for the Council to be of the opinion 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.

7. PLANNING CONSIDERATIONS

- 7.1 It is noted that the nomination identifies the Forum is concerned the site will be developed for extra housing and the adverse impact this would have on the local infrastructure and environment. The nomination makes reference to the Council’s ‘Health and Well-being Profile for Denton South’. The nomination is admirably clear and transparent in identifying that it is opposed to the development of the site for housing.
- 7.2 It is important to note however that whilst these concerns are genuine and relevant to any development of the site, ***they are not relevant in the context of whether or not to list a nominated asset.*** The First Tier Tribunal has held that concerns about the possible over-development of the area and the protection of wildlife are all matters which fall to be addressed in the context of planning law relating to development control, and they fall outside the ambit of the ACV provisions (**General Conference of the New Church v Bristol City Council [2015] UKFTT CR/2014/0011**).
- 7.3 The First Tier Tribunal has also held that similarly it is irrelevant whether the nominator may be motivated by a desire to preclude development on the nominated asset, as such matters again fall to be addressed through planning legislation rather than through the ACV legislation (**Idsall School v Shropshire Council [2015] UKFTT CR/2014/0016**). Moreover, a successful Community Asset nomination doesn’t prevent development.

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 list of ACVs. 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. The owner of the building and land at Two Trees is in fact the Council.

- 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 Inclusion in the list of ACVs 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— (i) 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 (ii) 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.

- 9.4 The notification of an exempt disposal will not trigger a moratorium period or protected period

- 9.5 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 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 group.
- 9.6 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 and building at Two Trees 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 As the owner is in fact the Council the prospect of the Council seeking to review its own decision or to appeal against its own review decision is unlikely.
- 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.
- 11.5 As the Council is the owner of the land at Two Trees, a claim for compensation would not be sustainable.

12. RECOMMENDATIONS

- 12.1 As detailed at the front of the report.