

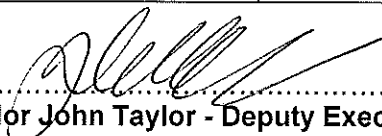


EXECUTIVE DECISION NOTICE

SERVICE AREA:	GOVERNANCE
SUBJECT MATTER:	ASSET OF COMMUNITY VALUE – LAND KNOWN AS MARKET PLACE BOUNDED BY STAMFORD STREET, MARKET STREET AND CHAPEL STREET – FORMERLY THE MOSSLEY MARKET GROUND AND NOW USED AS AN INFORMAL CAR PARK
DECISION:	<p>(1) That Land known as Market Place bounded by Stamford Street, Market Street and Chapel Street – formerly the Mossley Market Ground and now used as an informal car park as shown edged in red on the plan contained in appendix 1 be added to the Council's list of assets of community value.</p> <p>(2) That notice be given that the Council wishes to dispose of its interest in Mossley Market Ground.</p> <p>(3) That in the event that the land is not disposed of arrangements are made to formalise the parking provision.</p>
DECISION TAKER	Councillor John Taylor
DESIGNATION OF DECISION TAKER(S):	Deputy Executive Leader
DATE OF DECISION:	10 September 2014
REASON FOR DECISION:	<p>The Council has received an application to add the Mossley Market Ground to the register of assets of community value and it meets the criteria.</p> <p>The application was made following representations made to the Mossley Town Council that the site may be sold to generate income.</p>
ALTERNATIVE OPTIONS REJECTED (if any):	<p>Not registering the land, but since it meets the criteria for registration and the Council has no discretion, this is not appropriate and leave Council open to Judicial Review/claim for maladministration to Local Government Ombudsman.</p> <p>Not giving notice of disposal of the land. The Council could preserve the status quo however the asset currently requires ongoing maintenance. The disposal of the site would generate income and/or negate ongoing maintenance costs.</p>
CONSULTEES:	<p>Mossley Ward Councillors</p> <p>The Council will follow the statutory notification requirements required under the Localism Act 2011</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no immediate costs but any future costs relating to the marketing and disposal will be met from within the Corporate Landlord budget initially but will be offset from any future corporate capital receipt up to a maximum allowable of 4%.
LEGAL IMPLICATIONS:	Under the Localism Act 2011 and the regulations made under it



(Authorised by Borough Solicitor)	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 the nominating body for a period of between 6 weeks and 6 months depending on whether the body wishes to be treated as a bidder.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	Not Applicable
ACCESS TO INFORMATION:	<p>The register can be found on the Council's website at: http://www.tameside.gov.uk/assetscommunityvalue</p> <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>

Signed: 
Councillor John Taylor - Deputy Executive Leader

Date: 10 September 2014

EXECUTIVE DECISION REPORT

SERVICE AREA:	GOVERNANCE
SUBJECT MATTER:	ASSET OF COMMUNITY VALUE – LAND KNOWN AS MARKET PLACE BOUNDED BY STAMFORD STREET, MARKET STREET AND CHAPEL STREET – FORMERLY THE MOSSLEY MARKET GROUND AND NOW USED AS AN INFORMAL CAR PARK
DATE OF DECISION:	10 September 2014
DECISION TAKER	Councillor John Taylor
REPORTING OFFICER:	Sandra Stewart – Executive Director of Governance (Borough Solicitor)
REPORT SUMMARY:	The report acknowledges receipt of a nomination from Mossley Town Council to list Mossley Market Ground also known as 'Hem Place' off Market Street Mossley as an asset 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:	<ol style="list-style-type: none"> (1) That Land known as Market Place bounded by Stamford Street, Market Street and Chapel Street – formerly the Mossley Market Ground and now used as an informal car park as shown edged in red on the plan contained in appendix 1 be added to the Council's list of assets of community value. (2) That notice be given that the Council wishes to dispose of its interest in Mossley Market Ground. (3) That in the event that the land is not disposed of arrangements are made to formalise the parking provision.
JUSTIFICATION FOR DECISION:	<p>The Council has received an application to add the Mossley Market Ground to the register of assets of community value and it meets the criteria.</p> <p>The application was made following representations made to the Mossley Town Council that the site may be sold to generate income.</p>
ALTERNATIVE OPTIONS REJECTED (if any):	<p>Not registering the land, but since it meets the criteria for registration and the Council has no discretion, this is not appropriate and leave Council open to Judicial Review/claim for maladministration to Local Government Ombudsman.</p> <p>Not giving notice of disposal of the land. The Council could preserve the status quo however the asset currently requires ongoing maintenance. The disposal of the site would generate income and/or negate ongoing maintenance costs.</p>
CONSULTEES:	<p>Mossley Ward Councillors</p> <p>The Council will follow the statutory notification requirements required under the Localism Act 2011</p>

FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no immediate costs but any future costs relating to the marketing and disposal will be met from within the Corporate Landlord budget initially but will be offset from any future corporate capital receipt up to a maximum allowable of 4%.
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 the nominating body for a period of between 6 weeks and 6 months depending on whether the body wishes to be treated as a bidder.
RISK MANAGEMENT:	The listing of Council owned property as an asset of community value raises a number of risks. The Council is restricted to negotiating with community interest groups for a period of between 6 weeks and 6 months and as a result is prevented from openly marketing its property should it wish to dispose of an asset. Such a restriction may mean the Council holds on to property for longer than it might otherwise meaning it retains the usual property risks which attach to a real property such maintenance and repair.
LINKS TO COMMUNITY PLAN:	The significant reductions in funding that the Council receives means that as it reviews its on-going service provision it is increasingly looking towards the voluntary and community sector to help deliver services that it can no longer afford to do. 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 register can be found on the Council's website at: http://www.tameside.gov.uk/assetscommunityvalue 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

1 BACKGROUND

- 1.1 The Localism Act 2011 ("the Act") received Royal Assent on 15 November 2011. The provisions relating to assets of community value are contained within sections 87 to 108 of the Act and came into force in England on 21 September 2012. Since that time parish councils, community councils, and local voluntary and community organisations have been able to nominate local land or buildings to be included in the Councils list of community assets.
- 1.2 The Council has 8 weeks from receiving an application to decide whether a property must be listed, according to a number of criteria. A property will qualify where its current primary use furthers the social wellbeing or social interests of the local community, and where it is realistic to think that this use will continue. A property will also qualify when it has been in such use in the recent past, and this may realistically recur within the next five years (whether or not in the same use as before). Social interests include culture, recreation and sport.
- 1.3 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 during which community interest groups can apply to be treated as potential bidders.
- 1.4 The owner will be able to begin the sale process after an interim period of six weeks if no bidder has come forward; if a written intention to bid is received in that time then the full six month moratorium period will apply. The sale itself takes place under normal market conditions. An eighteen month protection period has also been created: if this expires before the property is sold the original notification process must start again.
- 1.5 The owner is not compelled at any point to sell the asset to the voluntary or community body – the law simply says that they cannot sell it to anyone else within the moratorium period.

2 SUMMARY

- 2.1 A nomination has been received on 18 July 2014, from Mossley Town Council to list Mossley Market Ground also known as 'Hem Place' off Market Street Mossley in the list of assets of community value. The site is shown edged red on the plan contained in **appendix 1**. The nomination is being treated as a qualifying nomination and therefore the Council is required to determine whether the asset should be listed.
- 2.2 The Mossley Market Ground is located in the Council's area and the previous and proposed use of the meets the test within the Act and regulations of land of community value so the Council is required to include it within its list of assets of community value.
- 2.3 The consequence of including the property on the list of assets of community value restricts the Councils ability to openly market it.

3 THE NOMINATION

- 3.1 On 18 July 2014 the Council received a nomination from the Mossley Town Council to list Mossley Market Ground also known as 'Hem Place' off Market Street Mossley in the list of assets of community value. The site is shown edged red on the plan contained in **appendix 1**. The Council has 8 weeks from receipt of the nomination to consider it and determine whether it should be listed or not.
- 3.2 Mossley Market Ground is a triangular piece of land located on Market Street / Chapel Street in Mossley. There has been no retail market at Mossley for some years, the Farmers Market

was the last market to trade on there and that finished approx 3 years ago. Since then the Council has not held any market on the ground.

- 3.3 Under the Act and regulations made under it there are a number of kinds of properties, which are not to be considered as assets of community value. The former Market Ground does not fall within any of the excluded kinds of asset. Under section 88 of the Act there is a two stage test which must be satisfied before an obligation to list arises.
- 3.4 The first test is that the building or other land is in the local authority's area. This is clearly the case for the Market Ground, which is clearly in Tameside.
- 3.5 The second test is that the building or other land is in the opinion of the local authority, of community value. Land is of community value where
 - (1) the actual current primary use of the asset furthers the social wellbeing or social interests of the local community, and it is realistic to think that it can continue or
 - (2) there was a time in the recent past when an actual primary use of the asset 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 it could again be used to further (whether or not in the same way as before) the social wellbeing or social interests of the local community. Social interests include culture, recreation and sport.
- 3.6 The nomination received from Mossley Town Council states that the Market Ground has been used as Car Parking, Community Use, Brass Band Contest venue, Various Market Events, Car Boot Sales and Site for Travelling Fairs.
- 3.7 Mossley Market Ground is likely to fall under limb 2 in paragraph 3.5 as a number of the former uses supported the social wellbeing and social interests of the area. These include the use as a place where community activities occur such as the Brass Band contest venue. It is realistic that such a use could potentially take place in the future.
- 3.8 Section 90 (3) of the Act says that the Council must accept the nomination if the land meets both tests. Mossley Market Ground meets both tests and therefore should be added to the list of assets of community value. A draft letter to Mossley Town Council is attached at **appendix 2** and a draft notice of listing is attached at **appendix 3**,

4 EFFECT OF INCLUSION ON THE LIST

- 4.1 The effect of the inclusion of Mossley Market Ground in the list of assets of community value means that the Council is unable to dispose of the land unless a number of conditions are all met.
- 4.2 The conditions are:
 - (1) We must notify the Mossley Town Council of our intention to dispose. This notification must also be recorded in the list of assets of community value and publicity must be given to the intention to dispose.
 - (2) If within 6 weeks a properly constituted community interest group express a wish to be treated as a bidder the Council will be unable sell it other than to the community interest group within a period of six months from the date of the notice of proposal to dispose.
- 4.3 If no one wants to be a bidder within six weeks from the disposal notice being given, or if a bidder does come forward but is unable to agree terms with the Council after six months then

the Council is free to market the property in the normal way for a period of 18 months from the initial date it gave notice.

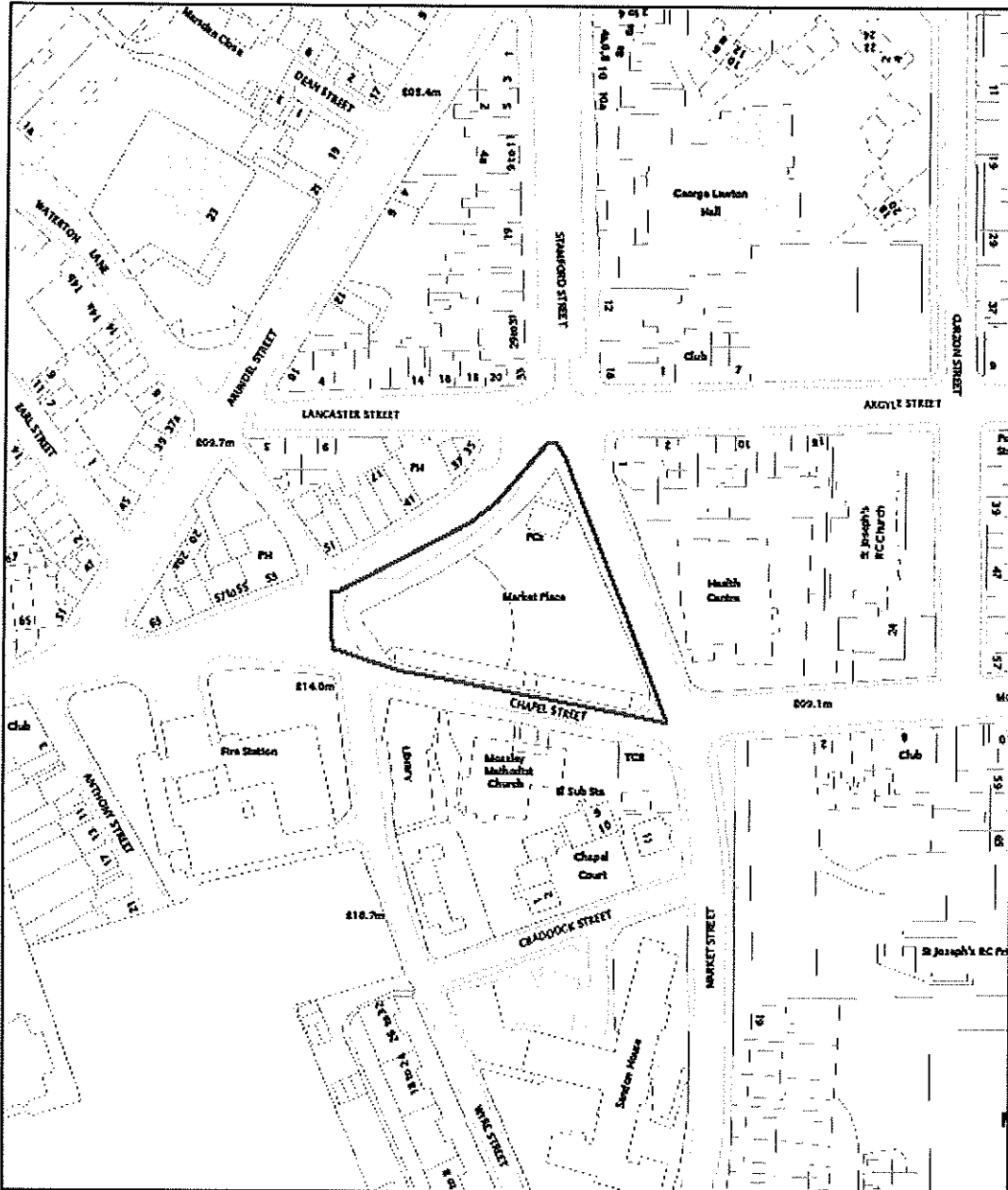
- 4.4 The Council could therefore be unable to dispose of the Market Ground for up to 6 months and therefore retain liability for its maintenance until the property can be sold. The Government's Impact Assessment for the Act recognises that lack of capacity and expertise and access to finance are considerable hurdles, even where awareness and knowledge of the opportunities are present, so there is a risk that a negotiated sale may not occur.
- 4.5 As a result of the nomination and subsequent registration as an asset of community value the Council has an opportunity to engage with the voluntary and community sector and other bodies to assist in the delivery of public services and facilities. It is therefore proposed that notice should be given now in order to facilitate the disposal. A draft notice of proposal to dispose is at **appendix 4** of the report

5 RECOMMENDATIONS

- (1) As stated at the front of this report.

APPENDIX 1

Market Place Mossley



1:1,250

SD9702SW

Plan prepared by BM Bowden 21/2/2014

Tameside
Metropolitan Borough



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Ordnance Survey 100022697

Exhibits & Asset Management Unit
Council Offices
Warrington Road
Ashton-under-Lyne
OL8 9XL

APPENDIX 2

Further to my letter dated 14 August 2014, I am pleased to inform you that on [] your community nomination was successful and the property has been included on the Council's list of assets of community value. Please find enclosed the notice of listing.

In accordance with Council Policy and pursuant to section 97(3) of the Localism Act 2011, I can confirm that on 9 August 2014, in making the decision to list Mossley Market Ground as a community asset it also determined to dispose of the property as a consequence of your application. As a result, the following moratorium periods will apply:-

Interim moratorium period	-	[Six weeks from the date of the decision]
Full moratorium period	-	[Six months from receipt of an expression to be treated as a bidder]
Protected period		[18 months from the date of decision/receipt of notice of intention to sell]

Further guidance and information is available from the Department for Communities and Local Government at <http://communityrights.communities.gov.uk/what-are-community-rights/community-right-to-bid/>

Next steps

I thought it might be helpful to set out what happens next.

1. There is an initial period of six weeks which starts today. If a community interest group wishes to register their interest as a potential bidder for the site then they need to let us know, in writing, during the next six weeks. This can be a letter or email but it must state the full name and status of the group.
2. If a qualifying group does register as a bidder then the Council will not dispose of the land until at least six months from today. The Council's surveyors will be happy to negotiate with that party during that six month period.
3. After the six month period runs out then the Council will be is legally entitled to dispose of the site in any way it chooses.
4. It is likely that the Council will actively market the property for disposal during this period. This is so that the Council can make the final decision with the benefit of complete information.

You will appreciate that the Council cannot give you legal advice about this if you have any other query then please let me know and I will do my best to help. If you need legal advice then you will need to obtain it from your own solicitors.

APPENDIX 3

TAMESIDE METROPOLITAN BOROUGH COUNCIL NOTICE OF LISTING UNDER SECTION 90 OF THE LOCALISM ACT 2011 ("the Act")

On [] the Council accepted a nomination for inclusion of the Property in its list of assets of community value. In accordance with section 91(2) of the Act the consequence of such listing will prevent to Owner from disposing of the Property otherwise in accordance with the provisions of the Act.

The Owner of the land included in the list may ask the Council to review its decision to include the land in the list by writing to the undersigned at the address below within 8 weeks of this notice.

The Property

Mossley Market Ground, the a triangular piece of land located on Market Street / Chapel Street Mossley as shown edged in red on the plan

Dated []

Sandra Stewart, Borough Solicitor, Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL.

APPENDIX 4

TAMESIDE METROPOLITAN BOROUGH COUNCIL NOTICE OF INTENDED DISPOSAL – LOCALISM ACT 2011

NOTICE is hereby given that on [] the Council received notice from the Owner of the Property that it proposes to enter into a relevant disposal. Pursuant to section 97 of the Localism Act 2011 the following moratorium periods will apply:-

Interim moratorium period - [Six weeks from the date of the decision]
Full moratorium period - [Six months from receipt of an expression to be treated as a bidder]
Protected period [18 months from the date of decision/receipt of notice of intention to sell]

Any Community Interest Group wishing to be treated as a potential bidder in relation to the Property must make a written request to the undersigned before the end of the interim moratorium period.

SCHEDULE ("the Property")

Mossley Market Ground, the a triangular piece of land located on Market Street / Chapel Street Mossley as shown edged in red on the plan

Dated []

Sandra Stewart, Borough Solicitor, Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL.