

**DECISION NOTICE**

**THE LOCALISM ACT 2011 SECTION 88**

**DECISION ON THE NOMINATION OF AN ASSET OF COMMUNITY VALUE**

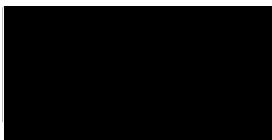
**FOXLEASE, CLAY HILL, LYNDHURST SO43 7DE**

I, Alan Bethune, Strategic Director Corporate Resources & Transformation, and Section 151 Officer of the District Council of New Forest, pursuant to delegated powers, have considered an application made by 'Friends of Foxlease' to nominate Foxlease, Clay Hill, Lyndhurst SO43 7DE as an asset of community value. Having considered the application I have decided that the application should be accepted for the following reasons:

In the opinion of the local authority, the actual current use of the Property or other land that is not an 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 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.

It therefore meets the criteria set out in the Localism Act 2011 to be eligible for listing with the following provision: Two residential properties within the estate, namely "The Link" and "The Lodge" do not appear to satisfy the conditions of the Act and are therefore excluded from the listing.

Signed: ...



Alan Bethune  
Strategic Director Corporate Resources & Transformation, and Section 151 Officer

Dated: ...15<sup>TH</sup> August 2023

# **REPORT TO STRATEGIC DIRECTOR CORPORATE RESOURCES & TRANSFORMATION**

## **Application to nominate Foxlease, Clay Hill, Lyndhurst SO43 7DE as an asset of community value**

### **1. INTRODUCTION**

- 1.1 This report relates to an application made to the Council by Friends of Foxlease (“the Nominator”) to nominate Foxlease, Clay Hill, Lyndhurst SO43 7DE (“the Property”) as an asset of community value (“the Application”). The report reviews the Application, the criteria against which a decision must be made, the result of consultations and makes recommendations.

A copy of the Application is annexed to this report.

### **2. BACKGROUND**

- 2.1 The Application to nominate the Property as an asset of community value (‘ACV’) is made pursuant to the Community Right to Bid, arising out of the Localism Act 2011 (“the Act”). Under the Act, the Council must make a decision on the Application before 24 August 2023 which is 8 weeks from receipt of the nomination. If the Council accepts that the Application meets the criteria set down in the Act, the Property must be added to the Council’s published list of ACV, registered as a local land charge and registered against the freehold title to the Property.
- 2.2 If the Property is listed as an ACV, the owners must notify the Council if they wish to dispose of the Property. The Council would notify community interest groups of the proposal. If such a group expresses an interest in the Property, a moratorium period of 6 months on the sale is imposed to allow the community interest group to prepare a bid and raise finance.
- 2.3 However, if there is a sale of the land on which a business is carried on, together with a sale of that business as a going concern e.g. still operating as a hotel/pub, then that disposal is exempt and is not affected by the moratorium requirements (section 95(5)(f) of the Act).

### **3. THE APPLICATION**

- 3.1 The Application was made by the Nominator and was received by the Council on 29 June 2023 (although it is dated 1 June 2023). The Council is the proper decision-making authority to determine the Application and delegations have been granted to the Strategic Director to make a decision on the matter. The Application is valid under the criteria laid down by the Act and the Property is not within one of the exceptions laid down in the Act.
- 3.2 The Nominator is entitled to make an application to list the Property as an ACV under s89(2)(b)(iii) Localism Act 2011.
- 3.3 The Application makes reference to the Owner as being ‘The Guide Association (Girlguiding UK)’ (“the Owner”) which is also the Occupier. The Owner is a registered charity.

- 3.4 Land Registry entries show that the Property is currently owned freehold by the Owner since first registration on 1 July 2019. However, there is a very long history to the Property referring to freehold and leasehold parts with leases cited in a 1922 conveyance (one of the parties being Lieutenant General Sir Robert Stephenson Smyth Baden Powell) going back to 1661. The Land Registry records state that, on first registration, it was not possible to distinguish between all the historic freehold and leasehold parts of the land.
- 3.5 The Application asserts that the current use “...is an activity centre and meeting venue for youth groups, community support groups, community interest groups, senior groups, and visitors to the area from both locally and internationally.” It goes on to say that it has “...been in continuous use for many of these community groups for over 100 years (with some predating the Guide Association ownership)”.
- 3.6 When asked whether the current and main use is likely to continue, the Nominator asserts that it will and states that the Property will do so “By providing a safe space for community groups and people to gather, to meet, to learn, to recreate, and to rest [which] is the quintessential definition of supporting the social health and welfare of a community and that is exactly what is Foxlease’s function”. The continuing and varied use of the Property is also referred to in 3.10 below (see re: ‘Schedule of Events’).
- 3.7 The Nominator explains that although the Property “...is not used as a residence, some members of staff are allowed to stay on site for extended periods of time if their primary residence is not practically commutable...[and]...There is a small, remotely attached property that is rented out to a long term tenant by The Guide Association but historically, these buildings are only places for employees when needed for temporary housing as their job may require and not a primary function of the property”; and “The one marked “Link” (there are actually two houses there) highlighted in green, have historically been available to house senior staff members (Managers) but I’m told Girlguiding may be renting one on a longer term basis”
- 3.8 The Nominator was asked for further information about the buildings referred to in paragraph 3.7 above. In response, the Nominator explained that “...the two properties are ancillary properties within the estate and they are within the boundary of the plan...the one marked “Lodge”...is available...[for]...activity-qualified instructors who are ‘on call’ to run sessions as needed.” In response to a request for further information, the Nominator carried out research and explained that “In 1983/84, the old buildings (Lodge and Link) were torn down and replaced with the current buildings. At that time, Link was designated as the home of the Guider in Charge of Foxlease who would later retitled as Foxlease Manager when Girlguiding assumed a corporate management style. This is information from one of the employees who was on hand when the Guider in Charge moved into the new Link cottage”. This all of the information received from the Nominator in respect of these residential properties on the Property.
- 3.9 In the section where further information is requested to persuade the Council that the asset is of community value, the Nominator says that it should be given status “...so that in the event of a sale, Friends of Foxlease can work with other groups to find a way to save the site as an activity centre. We believe we have a viable plan to ensure a sustainable income that allows continued access by and for the community if the property is granted the ACV status”.
- 3.10 Attached to the Application is a ‘Schedule of Events’ for 2023/24 which lists 16 events from the end of May-December 2023 inclusive and a further 16 for January-August 2024 inclusive. These include events for Brownies, Guides, Rangers, leader training,

Heritage Week, Christmas events, International Women's Day, 'Easter Family Fun Day', a 'Summer Olympics Camp' and the Duke of Edinburgh scheme (Schedule attached).

- 3.11 The Nominator is an unincorporated body comprising more than 21 local individuals who are on the Electoral Register for the District. A copy of the body's constitution is attached to the Application. The Nominator is not profit making and any surplus is wholly applied to activities in support of the aims of the association. The Nominator is therefore entitled to make an application to list the Property as an ACV.

#### **4. THE OWNER'S COMMENTS**

- 4.1 The Owner has responded to the Council's notification of nomination by letter of 31 July 2023, objecting on the following bases:

- (i) The Owner is a registered charity and so the Property is a charity asset which must be managed in accordance with the charity's governing document and relevant charity commission guidance;
- (ii) Given (i), if a decision is to dispose of the Property, the Owner must comply with the legal requirements of the Charities Act 2011, namely, by obtaining a report from a designated advisor and to ensure that terms of disposal are the best for the charity. Restrictions may negatively impact the sale and/or the market value of the Property;
- (iii) The Property includes a number of residential properties that should be excluded from any determination as they have no bearing on the wider current usage of the site.

- 4.2 When asked to provide details about the residential properties referred to, the Owner provided a plan ("the Owner's plan") of the Property and marked those properties in green (Owner's plan attached) which shows 'The Link' and 'The Lodge'. As there is no readily available evidence about the properties referred to, the Owner was asked for further information such as who used them and in what capacity in relation to Foxlease. At the time of submission of this report, nothing further had been received from the Owner and so this is all of the information the Council has from the Owner on the residential properties referred to and it must be considered in conjunction with the information provided by the Nominator in paragraphs 3.7-3.8 above.

#### **5. LEGAL POWER AND DELEGATIONS**

- 5.1 The Council must consider the nomination and decide whether to list the Property as an ACV.
- 5.2 The Council has put in place delegated powers for a Strategic Director or Chief Planning Officer to make the decision in consultation with relevant heads of service and portfolio holder(s).
- 5.3 The legal criteria to make the decision are laid down in the Act and supporting regulations. The Council must decide whether the Property is of community value.
- 5.4 The Property is of community value if, in the opinion of the local authority 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 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. "Social interests" include cultural interests, recreational interests and sporting interests.

- 5.5 In the event of the Council deciding to list the Property as an ACV, the Owner can appeal against that decision, firstly to the Chief Executive and ultimately to the court (the First Tier Tribunal). The Owner is able to claim compensation for those losses and expenses which were unlikely to have been incurred in relation to the Property had it not been listed. This can include delays in entering into a binding agreement to sell the land which is caused by relevant disposals being prohibited by the regulations.

## 6. CONSULTATIONS

- 6.1 A number of consultations have been made as summarised below.
- 6.2 The Owner was informed of the Application and invited to provide comments. It has objected to the Application as explained in section 4.1 above. There are no separate occupiers or leaseholders in the Property.
- 6.3 Lyndhurst Parish Council was notified of the Application but did not respond.
- 6.4 The Strategic Directors of Housing, Communities and Governance; and of Place Operations & Sustainability, respectively, were informed of the Application. The former said that she had no comments to make, while the latter did not make any comment.
- 6.5 The Service Manager for Estates & Valuations, was notified of the Application and had no further comments to make.
- 6.6 Portfolio Holder for Planning, Regeneration & Infrastructure Cllr Dan Poole said that *"...I am pleased to see that Friends of Foxlease are doing all they can to ensure young people from around the country are able to continue to use this unique venue. I am in support of this initiative and wish them all the best in their endeavours"*. Portfolio Holder for Partnering and Wellbeing, Cllr Geoffrey Blunden said, *"I fully support the ACV nomination for Foxlease by the "Friends of Foxlease". This unique Georgian Manor house set in beautiful grounds offering such a wide range community facilities for all is a great asset to the New Forest"*.
- 6.7 Cllr Hilary Brand, as the Ward Member, supported the nomination saying that the Property *"...Foxlease has been for many years and still is a huge part of the Lyndhurst and surrounding areas social and recreational facilities. It provides a home for the local Girlguiding and Brownie Groups, and many other local community groups and wider groups across the whole of the New Forest and beyond. Foxlease provides day facilities and residential facilities where young and old can come together in a safe space to meet, learn new skills, and participate in a range of sporting and fun activities. If Foxlease was to be sold it is likely that it would not continue as a community venture and would therefore be a huge loss to the local community. I therefore fully support the Nomination for it to become an Asset of Community Value."*

- 6.8 The Council has received nearly 50 statements of support from members of the public and especially from people who are connected to the Guides as current and past members and also leaders who still take parties to the Property. Some of the supporting contributors are local and some are from much farther afield, one saying that they had brought children from Abu Dhabi to camp there. One explained that it represents a destination for local schools including special needs schools. Another said his Trefoil Guild had used the house and residential accommodation annually for 24 years. One supporter who is a Guide and Brownie leader is also an historic building consultant and says that it was the first training centre for Guides worldwide.
- 6.9 A large proportion of the supporting contributors said that while they were at or visiting the Property, they visited and patronised shops in Lyndhurst. Others went beyond the immediate locality and visited other towns in the New Forest such as Brockenhurst, Lyminster and Beaulieu and also went into the Forest itself.
- 6.10 A submission from New Forest Heritage Trust states that 50,000 users pass through Foxlease every year and also refers to local Guide groups who regularly use it including Lyndhurst, Lyminster, Milford on Sea, Brockenhurst and Sway.
- 6.11 Other buildings on the Property were identified on the website as these are accommodation buildings listed with the 14 campsites on the Property which can be booked with varying price lists depending on the types of party. They are marketed as being used in conjunction with the Property's facilities. These buildings are the Princess Margaret Lodge (sleeps 37/7 bedrooms, fully equipped kitchens), Princess Mary House (sleeps 66/28 bedrooms, ensuite bathrooms, meals served in restaurant), The Barn (sleeps 28/4 bedrooms, fully equipped kitchens) and The Coach House (sleeps 38/10 bedrooms, ensuite and meals served in restaurant on 1<sup>st</sup> floor, fully equipped kitchen ground floor).
- 6.12 Under the Assets of Community Value (England) Regulations 2023 ("the Regulations") Schedule 1 - "*Land which is not of community value and therefore may not be listed*", it excludes the listing of "*a residence, together with land connected with that residence*". This definition can include any building used primarily or partly as a residence, whether sometimes left unoccupied, whether it is let or partly let as a holiday dwelling, as a hotel or "*otherwise principally used for letting or licensing accommodation to paying occupants...*" (the Regulations, Schedule 1, para 2(b)(i)-(iii)). On first reading, this would appear to preclude the accommodation buildings mentioned in paragraph 6.11 above.
- 6.13 However, the DCLG Guidance – "Community Right to Bid: Non-statutory advice note for local authorities - Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Regulations 2012", states that "*There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat*". Similarly, in the "Explanatory Memorandum to the Assets of Community Value (England) Regulations 2012. No 2421", it states that "*The Government recognises that some assets of importance to communities, such as pubs or community centres, may have integral accommodation tied to the site's main function. **The policy objective is that such assets should be capable of being listed so long as the main purpose of the building or land meets the***"

**definition of community value; hence the exclusion from listing for residences does not apply in such cases**” (emphasis added). The accommodation buildings do appear to exist purely to further the use of the Property which is the focus of this Application.

- 6.14 Further, in reference to Wellington Pub Company v Royal Borough of Kensington and Chelsea [2015] CR/2015/007, the textbook “Assets of Community Value – Law and Practice” by Simon Adamyk (2017) states at para 4.162 *“In essence, what Wellington has done is to give effect to the requirements that the residential accommodation must be ‘integral’ and that it must be ‘tied to the site’s main function”*.
- 6.15 The primary purpose of the buildings appears to only be accommodation. However, if they were not there, it would presumably reduce the accessibility for those parties that travel to the location for more than one day as, staying at nearby hotels, B&B etc may not be a viable option (due to numbers of people and/or cost) and/or perhaps would reduce the full involvement in the location. Also, the accommodation is more of a hostel accommodation and so would not be comparable to a hotel. There is no suggestion that the accommodation blocks are anything but part of the grounds of Foxlease nor is there any indication that they are demarcated as separate to the grounds. It is not unreasonable to assume that the accommodation blocks are integral to Foxlease for the reasons stated above. They are listed alongside the campsites under the website heading of ‘Foxlease Accommodation’. They are clearly offered as an alternative to camping whilst remaining on Foxlease as part of the experience and appear to have a *‘physical and functional relationship with the rest of [the nominated property]’*. [see text in italics at 4.120 of Adamyk] and *“...furthers the social wellbeing or social interests of the local community”* as required in the Act (s88(1)(a)).
- 6.16 Therefore, taking into account those requirements, it seems reasonable to view the accommodation blocks as being part of the Property when assessing the nomination for ACV status.
- 6.17 When considering the same formula for the properties ‘The Link’ and ‘The Lodge’ however, and taking into account the relative lack of evidence to hand, and the exact type of residential occupation not being clear (see the Nominator’s comments in paragraph 3.7 above), it is not so clear that they satisfy either the requirements of the commentary above and/or the Act, namely section 88(a) *“an actual current use of the building or other land that is not an ancillary use [that] furthers the social wellbeing or social interests of the local community”*. Therefore these will not be considered part of the Property in terms of considering the nomination for ACV status.

## 7. CONCLUSION

- 7.1 The only objections received are those from the Owner in its letter of 31 July 2023. It raised three objections, two of which comprise of problems due to the Owner being a charity and the Property being a charity asset, namely that (i) such an asset *“...must be managed in accordance with the charity’s governing documents and relevant charity commission guidance”*; and (ii) that if the Property were to be disposed, the Owner would have to *“...obtain and consider a report from a designated advisor and that any terms obtained are the best that can be obtained for Girlguiding as a charity”*

and that any restrictions placed on the property “...*may negatively impact the sale of the Property; and the market value of the Property*”.

- 7.2 The third objection is due to the Owner’s assertion that there are “...*a number of...residential properties [which] have no bearing on the current wider usage of the site, and should in our view be excluded from any determination*”.
- 7.3 The Act stipulates that “*The authority **must accept** the nomination if the land nominated is (a) in the authority’s area; and (b) is of community value*” (section 90(3)) – emphasis added. In making the decision as to whether the land is to be listed as an ACV, there is no flexibility to take into account whether accepting the nomination might lead to adverse administrative or financial ramifications for the Owner.
- 7.4 The internet website for the Property refers to itself as “*Set in 65 acres...we have everything from a beautiful Georgian manor house to a huge choice of high-adrenaline activities.*” One of the allocated website sections is to ‘The Friends of Foxlease’ i.e. the Nominator, and entitles it as playing “...*a vital role in the ongoing success of the site*” and explains how the Nominator supports “...*in various ways, such as fundraising for specific projects, volunteering in the Foxlease shop, gardening and helping to run special events.*” It gives details about becoming a member and/or becoming a volunteer. Another section of the website refers to its centenary saying, “*Did you know that on 2 June 1922, the Foxlease house and estate were officially opened after being gifted to Girlguiding?*”
- 7.5 As regards the respective individual properties on the Property mentioned, it appears appropriate to consider them in two separate parts, namely the ‘accommodation properties’ (i.e. those listed as “Accommodation” on the website (Princess Margaret Lodge, Princess Mary House, the Barn and the Coach House) and then ‘residential properties’ (The Link and The Lodge). As explained in paragraph 6.16 these should be considered as part of the Property in terms of the ACV nomination, but the residential properties will not, as explained in paragraph 6.17.
- 7.6 It seems reasonable to conclude, in the absence of any comments to the contrary, that the current evidence to hand strongly suggests that the Property is an asset of community value in the sense of being supported by the local community.
- 7.7 So, when read in conjunction with the information set out in section 3 above, the Application indicates the Property does fulfil the criteria for listing summarised in paragraph 5.4 above.
- 7.8 On balance, the Application appears to meet the legal criteria set out in the Localism Act 2011 for the Council to accept the nomination, for the reasons explained above.
- 7.9 However, on the basis that they do not appear to satisfy the conditions of the Act and Regulations, the residential properties - The Link and The Lodge - should not be considered as part of the Property for the purposes of ACV status.
- 7.10 This obviously raises the issue of whether it is possible to list part of a property and not all of it. Simon Adamyk (“Assets of Community Value – Law and Practice”) specifically addresses this point and notes that “*This possibility is not dealt with expressly in the Act or the Regulations*” (his paragraph 4.99) but goes on to state that “*The point has arisen in a number of cases before the First-tier Tribunal. The Tribunal has not directly ruled that part listing is permissible, but it has stated obiter that it concludes that it is and a number of its other decisions assume (without expressly considering the point) that it is*” (his paragraph 4.100). Adamyk similarly advocates that this is possible and that “...*the local authority does have power to list part (rather than necessarily all) of*



*the nominated asset*" (his paragraph 4.113). The way that that the Owner's plan depicts the residential properties and the land connected to it (which suggests boundaries around them and which was followed by the Owner when identifying them on the attached Owner's plan in green) indicates that identifying that 'non-qualifying' land which falls outside the ACV listing will be relatively uncomplicated.

## 8. RECOMMENDATION

8.1 It is recommended that you as Strategic Director Corporate Resources & Transformation, and Section 151 Officer, of the Council decide this Application pursuant to delegated powers as follows:

- (1) In the opinion of the local authority, the 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 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. It does therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

<b>For Further Information Contact:</b>	<b>Background Papers:</b>
Richard Davies Solicitor Tel: [REDACTED] E-mail: [REDACTED]	<ul style="list-style-type: none"> <li>- Application by 'Friends of Foxlease', together with Constitution</li> <li>- Letter from Owner (31.7.23)</li> <li>- Email from Owner together with marked plan submitted by the Owner (7.8.23)</li> </ul>