

**DECISION NOTICE**

**THE LOCALISM ACT 2011 Section 88**

**Decision on the nomination of Testwood Working Men's Club, Salisbury Road, Totton  
SO40 3LQ as an asset of community value.**

I, Colin Read, Executive Head of Service of The District Council of New Forest, pursuant to delegated powers, have considered an application made by The Friends of Testwood to nominate Testwood Working Men's Club, Salisbury Road, Totton SO40 3LQ 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.

Signed 

Colin Read

Executive Head of Service

Dated: 16/1/19

## **REPORT TO COLIN READ**

### **Application to nominate Testwood Working Men's Club, Salisbury Road, Totton SO40 3LQ as an asset of community value**

#### **1.0 INTRODUCTION**

- 1.1 This report relates to an application ("the Application") made to the Council by The Friends Of Testwood Club to nominate The Testwood Club, Salisbury Road, Totton SO40 3LQ ("the Property") as an asset of community value. The report reviews the Application, the criteria against which a decision has to be made, the result of consultations and makes recommendations.

A copy of the Application is annexed to this report.

#### **2.0 BACKGROUND**

- 2.1 The Application to nominate Testwood Working Men's Club, Salisbury Road, Totton SO40 3LQ as an asset of community value is made pursuant to the Community Right to Bid, arising out of the Localism Act 2011 ("the Act"). If the Council accepts that the nomination meets the criteria set down in the Act, the Property must be added to the Council's published list of assets of community value, registered as a local land charge and registered against the freehold title to the Property.
- 2.2 If the Property is listed as an asset of community value, 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. Note however that if the Owner wishes to sell the club business as going concern, the moratorium on sale provisions of the right to bid are not engaged.

#### **3.0 THE APPLICATION**

- 3.1 The Application was made by The Friends of Testwood Club and was received by the Council on 29 November 2018. The Council is the proper decision making authority to determine the Application and delegations have been granted to the Executive Head of Service 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 Property is currently owned freehold by Geoffrey Wyeth, Roger Marlow and Ray Goulding as Trustees of Testwood Working Men's Club. The Property was until recently used as a social club.
- 3.4 The applicant provided details about the use of the Property by the local community in the statement accompanying the Application with further evidence provided through a link to the facebook group for the club. The applicant says the Property is used as a social club and it is important to the social well-being of the local community. In particular the applicant asserts:
- The club has been running for the last 70 years approximately and has been used for "social wellbeing, cultural, recreational and sporting interest activities".

- There is no other social club in the Totton area that offers a wide selection of activities and entertainment for all members of the community.
- The club has a “diverse membership and welcome all including women, BME people, disabled people, LGBT people, families and people on low incomes regardless of their status or age”.
- If the club is not saved there will be loss of “valuable facilities and communities will lose their soul”. The applicant makes a generic comment to support this by stating that in bigger cities tight knit communities have fallen apart due to withdrawal of community hubs and facilities.

3.5 In addition, the applicant makes a number of more generic assertions in support of the nomination:

- The nomination says that the applicant does not believe that the site has been included in the local plan for Totton
- The nomination asserts that due to the increase in housing in the Totton area there is need to ensure that sufficient social facilities are available to cater for the increase in population. It is further stated that without the facilities “people will not venture outside their homes and ‘community spirit’ will be lost as a result”.

#### **4.0 THE OWNERS COMMENTS**

4.1 The Owners of The Testwood Club have been asked to comment on the nomination and no representations were received although the Chairman of the club Mr Harris had indicated through a phone call that he would contact the Council.

#### **5.0 LEGAL POWER AND DELEGATIONS**

5.1 The Council must consider the nomination and decide whether to list the Property as an asset of community value.

5.2 The Council has put in place delegated powers for an Executive Head of Service to make the decision in consultation with the Head of Legal Services, 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 land 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 asset of community value, 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 loss and expense in relation to the Property which would be likely not to be incurred if the Property had 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.

## **6.0 CONSULTATIONS**

- 6.1 A number of consultations have been made as summarised below.
- 6.2 The Owner was informed of the Application as described in section 4 above.
- 6.3 The Head of Planning stated that there were no comments from planning policy perspective.
- 6.4 The Head of Leisure did not make any comments on the nomination.
- 6.5 Local members Cllr Davis and Cllr Coombes commented that although in principle they would support some kind of small community building to remain on this site, they would not support it if it stopped social housing or affordable homes being built in the area. Cllr Davis and Cllr Coombes also stated that they did not want the Club members who invested money into the club to lose out as a result of the nomination.

## **7.0 CONCLUSION**

- 7.1 The reasons given by the nominating body set out in section 3 indicate the Property does fulfil the criteria for listing summarised in paragraph 5.4 above.
- 7.2 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 in this report.

## **8.0 RECOMMENDATION**

- 8.1 It is recommended that you as an Executive Head of Service 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.

For Further Information Contact:

Background Papers:

Prosper Mwedzi  
Assistant Solicitor  
Tel: 023 80285588  
E-mail:  
prosper.mwedzi@nfdc.gov.uk

Completed Application  
Localism Act 2011

## APPENDIX

### Nomination by Friends of Testwood Club

1. Land may be included in a list of assets of community value only in response to a “community nomination” See Section 89(1)(a) Localism Act 2011 (“the Act”). In this case, for a nomination to be valid it must be made “by a person that is a voluntary or community body with a local connection”. See Section 89(2)(b)(iii).
2. Voluntary or community bodies are defined in Regulation 5(1) The Assets of Community Value (England) Regulations 2012 (The Regulations”) as meaning:
  - a. A body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990(1)
  - b. A parish council;
  - c. An unincorporated body
    - i. Whose members include at least 21 individuals, and
    - ii. Which does not distribute any surplus it makes to its members;
  - d. A charity;
  - e. A company limited by guarantee which does not distribute any surplus it makes to its members;
  - f. An industrial and provident society which does not distribute any surplus it makes to its members;
  - g. A community interest company.
3. “Local Connection” is defined in Regulation 4 of the Regulations. In the context of this case, for a body to have a local connection with land in the New Forest, its activities must be wholly or partly concerned with the New Forest or with the area of a neighbouring authority. See Regulation 4(1)(a).
4. There is an additional condition for those unincorporated bodies within Reg 5(1)(c), (e) and (f) i.e. unincorporated bodies, companies limited by guarantee and industrial and provident societies. Any surplus which they make must be applied at least in part for the benefit of the New Forest area or that of a neighbouring authority. See Reg 4 (1) (b).
5. There local authority must be satisfied that statutory conditions set out under section 88(1) of the Localism Act 2011 have been satisfied and these conditions are:
  - i. the land or building is currently being actually used to further the social wellbeing or social interests of the local community (“community use”) and this use is not an ancillary use;
  - ii. it is realistic to think that there can continue to be use of the land or building which is not ancillary and which will further community use. This future community use is not limited to the current use and so an entirely different community use can be proposed and will suffice.
6. “Local Community” there is neither a statutory definition or guidance on what constitutes local community. This matter was considered in *Pullan v Leeds City Council* CR/2015/0011 at para. 10 where it was considered that “it will usually be a question of fact as to what the “local community” comprises in any particular case”. This does not necessarily equate to the area of the local authority and the words should be given their natural meaning.

7. "Social Wellbeing" or "Social Interest" the statutory regime contains no definition of "social wellbeing or social interest of the community" save that "social interests" include in particular cultural, recreational and sporting interests (section 88(6) of the Act). This was considered to be deliberate in *Pullan v Leeds City Council* as each local authority is to decide what interests it considers falls within the phrases. New Forest District Council would therefore have to consider the activities which are undertaken at Testwood Club and decide if these fall within the phrases.
8. As a guidance, some local authorities have used the following elements as a checklist for deciding on social wellbeing:
  - (i) Community cohesion – does it bring groups together?
  - (ii) Equality and social inclusion – does it contribute to promoting equality for any groups with protected characteristics or people vulnerable to socio-economic disadvantage
  - (iii) Wellbeing and health – does it provide services/activities/opportunities improving the wellbeing or health of people or help maximise wellbeing of people belonging to vulnerable groups or have long term conditions or enable people to build on their skills, strengths, aspirations and networks so they can make improvements to their own and others wellbeing and health.
  - (iv) Decent neighbourhood standards – does it contribute to maintaining or improving clean and tidy streets; well maintained parks and green spaces; well lit streets; well maintained roads and pavements; safer neighbourhoods; access to appropriate childcare where it is needed; household recycling facilities.
  - (v) A working city - does it contribute to local job creation or engagement; development of local business; reinvesting profits in local area; investment in education or training; promoting fair trade.
  - (vi) Uniqueness of asset – is it unique or do other assets in the same area make a similar contribution.
9. "Realistic Continuation of Community Use" to satisfy the second statutory test as regard the future use of the nominated asset it has to be realistic to think that there can continue to be a non-ancillary use of the asset for the community benefit, however, it need not be the same as the current community use.

An argument that the anticipated community activity needs to be commercially viable or have a foreseeable long-term viability was raised but rejected in *Gullivers Bowls Club v Rother DC* CR/2013/0009. It was accepted that financial problems can be overcome if there is a strong sense of local community especially if it has engaged with the particular property and has available to it credible advisers with experience of community projects.



# New Forest

DISTRICT COUNCIL

## Community Right to Bid

### Assets of Community Value Nomination form

#### Part A - About the group making the nomination

##### A1. Organisation's name and address

Name of organisation

**The Friends of Testwood Club (aka TFTC)**

Address including post code

**c/o 4 Birchglade, Totton, SO40 2GP**

##### A2. Contact details

Name

**Dave Hills**

Position in organisation

**Organiser**

Address including postcode

████████████████████

Daytime telephone number

██████████

Email address

[REDACTED]

Fax number

None

### A3. Type of organisation

| Description   | Please tick all that apply | Registration number (if applicable) |
|---|----------------------------|-------------------------------------|
| Town or Parish council  |                            |                                     |
| Body designated as a neighbourhood forum under the Town and Country Planning Act  |                            |                                     |
| Unincorporated bodies with at least 21 individual members and which does not distribute any surplus it makes to its members | ✓                          |                                     |
| Charity   |                            |                                     |
| Company limited by guarantee which does not distribute any surplus it makes to its members                                  |                            |                                     |
| Industrial and provident society which does not distribute any surplus it makes to its members                              |                            |                                     |
| Community interest company  |                            |                                     |
| Other – please detail   |                            |                                     |

### A4. Local Connection

For groups other than town and parish councils, please confirm and provide evidence (see A7) that the group is wholly or partly concerned with the area covered by New forest District Council or a neighbouring local authority area

**The group is concerned with the Totton area. Please see the group constitution for details.**



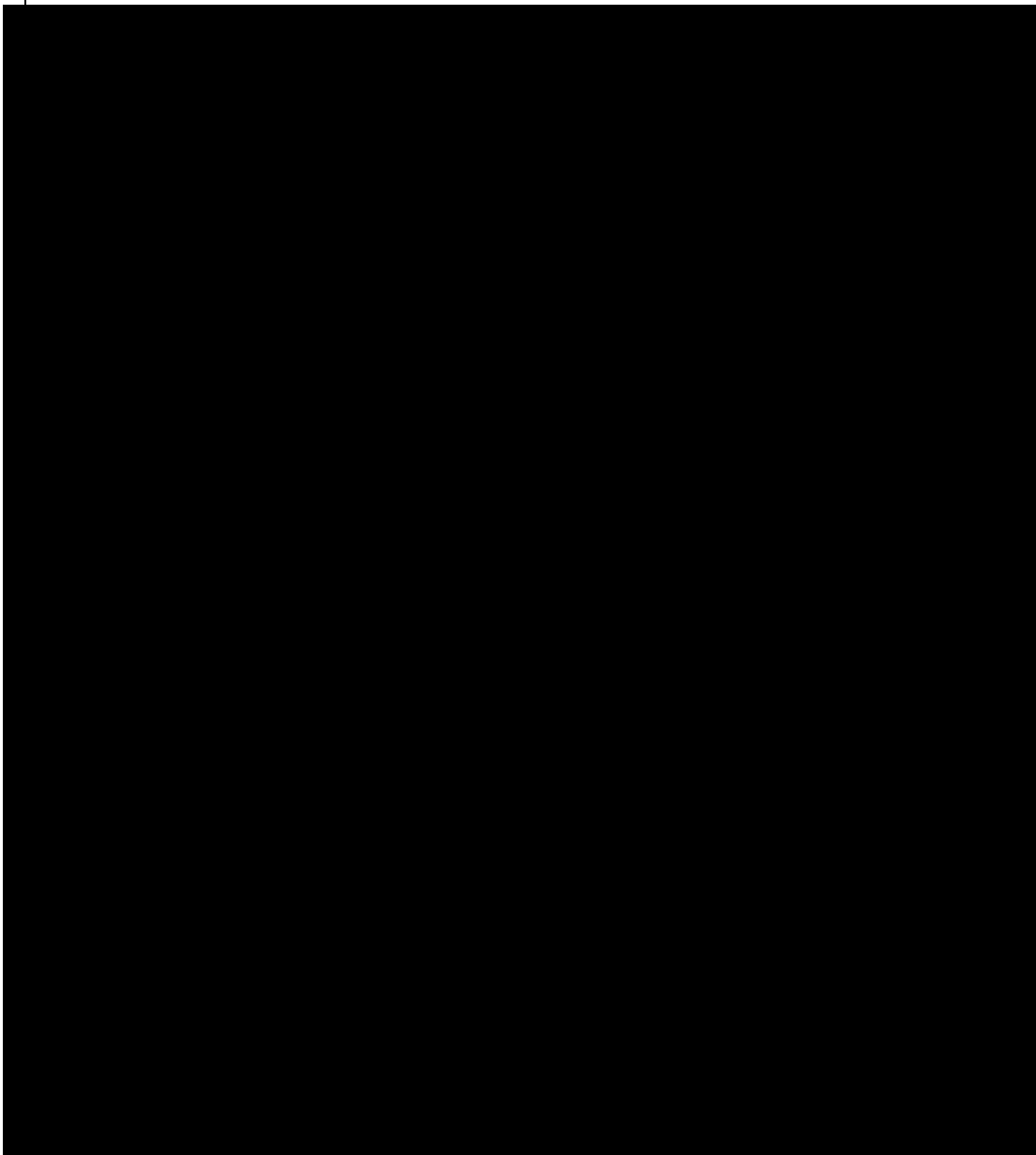
**A5. Distribution of surplus funds**

For groups other than town and parish councils, please confirm and provide evidence (see A7) that any surplus made by the group is wholly or partly applied for the benefit of the area covered by New Forest District Council or a neighbouring local authority area

**There will be no surplus funds from the group. Please see group constitution for details.**

**A6. Membership of unincorporated bodies**

For unincorporated bodies please confirm that at least 21 members are included on New Forest District Council's register of electors and provide their names and addresses below



*(There are additional supporters willing to put their names to this ACV application, but they live in Southampton, ie. outside the NFDC area.)*

## A7. Your organisation

| Please provide a copy of the following as relevant to your organisation | Please tick documents provided |
|---|--------------------------------|
| Memorandum of Association   |                                |
| Articles of Association   |                                |
| Companies House return  |                                |
| Trust Deed  |                                |
| Constitution / Terms of reference                                       | ✓                              |
| Standing Orders   |                                |
| Interest Statement for Community Interest Company                       |                                |

## Part B - About the asset being nomination for inclusion in the list of assets of community value

### B1. Name and address of asset being nominated

|                                    |
|------------------------------------|
| Name<br>Testwood Working Mens Club |
|------------------------------------|

|   |
|---|
| Address including post code<br><br>110-112 Salisbury Road<br>Totton<br>SO40 3LQ |
|---|

### B2. Maps and drawings

|  |
|--|
| <p>Please provide information which helps to clarify the exact location and extent of the asset being nominated. This could include:</p> <ul style="list-style-type: none"><li>• Where the land is registered, the Land Registry Title Information document and map with boundaries clearly marked in red (less than one month old). Provision of Land Registry information is not essential but it may help us to reach a decision on the nomination more quickly.</li><li>• a written description with ordinance survey location, and explaining where the boundaries lie, the approximate size and location of any building/s on the land and details of any roads bordering the site</li></ul> |
|--|

- a drawing or sketch map with boundaries clearly marked in red – websites which might help you in plotting boundaries include: <http://maps.google.co.uk/>

**Land Registry number: HP753523**



### B3. Current use of asset

What is the current main use of the asset?

The asset is currently used as a Social Club.

Do you consider that the current and main use of the asset furthers the social wellbeing or cultural, recreational or sporting interests of the local community and is likely to continue?

|     |                                     |    |                          |
|-----|-------------------------------------|----|--------------------------|
| Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
|-----|-------------------------------------|----|--------------------------|

If yes, please explain how it does so and produce supporting evidence, e.g. what groups and people use the nominated asset and what events take place there, including any letters of support from groups or person using the asset (and why it is considered that that will continue). If not, go to B4

The club is used for:

Socialising  
Live music  
Live entertainment  
Hosting of Charity events (Example: Forest Park school)  
Bingo  
Quizzes  
Discos  
Dancing  
Dance lessons (Example: Line dancing)  
Sporting/exercise activities (Example: Clubbercise)  
Darts/Pool/Snooker  
Free children's parties  
Parties (Example: Birthdays, NYE, Christmas, Fancy dress)  
Celebrations (Example: Wedding receptions)  
Multicultural events (Example: Thai festival)  
Sci fi conventions (Example: GoGeek events)  
School events (Example: Oakfield school)

Evidence for the above can be viewed on the club's own facebook page:  
<https://www.facebook.com/groups/testwoodclub/>

Printed copies can be provided for all of the above, on request.

It is anticipated that this range of events would continue, more than likely expanded, under new management.

Over what period is this main use of the asset anticipated to continue?

**The club has been running for the last 70 years approximately. I do not see any reason why, with effective management in place, that it could not continue indefinitely.**

Does the local community have legal and authorised use of the land or property?

**It is a social club, currently governed by CIU rules. Members of the public/community can join the club or can enter on payment of a nominal fee (£2). Charity events, children's parties etc. are usually free and also open to the community. It is a family friendly and inclusive club.**

#### **B4. Questions for assets not currently used for community benefit**

If the main use of the asset does not currently further the social wellbeing or cultural, recreational or sporting interests of the local community, did it do so at some stage in the recent past?

N/A

Yes

No

Please provide details of how the asset was used in the past and dates of this usage including any supporting evidence

**The asset has been used for social wellbeing, cultural, recreational, and sporting interest activities for around the last 70 years.**

How do you anticipate that the asset would return to furthering the social wellbeing or cultural, recreational or sporting interests of the local community?

**Any club/organisation taking on the premises would continue to offer a range of social wellbeing, cultural, recreational and sporting activities.**

When do you consider that the asset could realistically return to furthering the social wellbeing or cultural, recreational or sporting interests of the local community (please include timescales)?

**Within 6 – 12 months would be realistic.**

**B5. Optional information to help us consider the nomination** (it is not essential to answer these questions but they reflect part of the criteria we which will be used to consider the nomination. Any information you can supply will help to speed up this process.

Is the asset used wholly or partly as a residence? Please provide details.

**No.**

Is the asset covered by the Caravan Sites and Control of Development Act 1960? Please provide details.

**No.**

Is the asset defined as operational land under section 263 of the Town and Country Planning Act 1990, owned by statutory undertakers such as utility companies? Please provide details.

**No.**

#### **B6. Further information**

Please provide any further information to support why you feel that New Forest District Council should conclude that the asset is of 'community value'


**Testwood Club has been part of the community for approximately 70 years. It is a much-loved hub of the community and whilst it is a CIU members club it delivers many activities for the surrounding wider community. There is no other Social Club in the Totton area that offers such a wide selection of activities and entertainment for all members of the community. They have a diverse membership and welcome all including women, BME people, disabled people, LGBTQ people, families and people on low incomes regardless of their status or age.**

**With the increase in housing in the Totton area we need to ensure that sufficient social facilities are available to cater for the increase in population. Without these, people will not venture outside their homes and 'community spirit' will be lost as a result.**

**If we don't make an effort to save places like Testwood Club then we will lose valuable facilities and communities will lose their soul. Evidence for this can be seen in larger cities where tight knit communities have fallen apart due to withdrawal of community hubs and facilities.**

**The site does not appear to have been included in the local plan for Totton.**


**B7. Owner and occupier details (Please provide all information available to you)**

|  | Name   | Address   | Please delete as appropriate |
|--|--|---|------------------------------|
| Owner/s  | <br>Trustees of<br>Testwood Working<br>Men's Club | care of 150<br>Testwood Lane,<br>Totton,<br>Southampton,<br>Hampshire SO40<br>3LR | Current                      |
| Lawful occupiers                                     | Testwood Working<br>Men's Cub  | 110-112 Salisbury<br>Road, Totton SO40<br>3LQ                                     | Current                      |
| Holder/s of freehold<br>estate (if not the<br>owner) |  |   | Not applicable               |
| Holder/s of any<br>leasehold estate                  |  |   | Not applicable               |

By signing your name here (if submitting by post) or typing it (if submitting electronically) you are confirming that the contents of this form are correct, to the best of your knowledge.

Name  
Dave Hills

Title  
Mr

Signature  


Date  
28<sup>th</sup> November 2018

**Please send your completed form to:**

**Community Right to Bid,  
Legal Services Manager  
New Forest District Council  
Appletree Court  
Beaulieu Road  
Lyndhurst  
SO43 7PA**

**Email: [andrew.kinghorn@nfdc.gov.uk](mailto:andrew.kinghorn@nfdc.gov.uk)**

**The Council may disclose your name and address to other parties in order to ensure procedural fairness, taking into account the purpose of establishing, exercising or defending legal rights or in response to a Freedom of Information request.**

**PRIVACY:**

**The above is acceptable to me, the signatory. However, this clause does not mention names/addresses of members of "TFTC" nor supporters of thus ACV application, so they are excluded. Their details should not be disclosed without prior agreement with the individuals concerned, unless otherwise permitted under UK law.**