

TESTWOOD WORKING MEN'S CLUB REVIEW OF LISTING AS AN ASSET OF COMMUNITY VALUE SECTION 92 OF THE LOCALISM ACT 2011

1.0 INTRODUCTION

- 1.1 The Localism Act 2011 ("the Act") gives local groups a right to nominate a building or land for listing by the local authority as an Asset of Community Value ("ACV"). The Act is supplemented by the Assets of Community Value (England) Regulations 2012 ("the Regulations"). An asset can be listed if a principal ("non-ancillary") use of the asset furthers or has recently furthered the local community's social wellbeing or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future.
- 1.2 The Testwood Club, Salisbury Road, Totton, SO40 3LQ ("the property") was nominated as an Asset of Community Value by The Friends of Testwood Club ("the nominators"). On 16 November 2018 Colin Read, the Council's Executive Head of Operations, acting under delegated powers from the Council, decided to list the property as an ACV pursuant to Section 88 of the Act.
- 1.3 The owners of the property, through their representatives Sturt & Co Limited, have requested a review by written representations of the Council's decision to list the property as an ACV.
- 1.4 I, in my capacity as the Council's Chief Executive will undertake the review. I have not been involved in the original decision and I have delegated authority from the Council to determine such matters.

2.0 BACKGROUND

- 2.1 On 29 November 2018, the Council received an application from the nominators to nominate the property as an ACV. A copy of the nomination is attached at **Document 1**.
- 2.2 The owners, Geoffrey Wyeth, Roger Marlow and Ray Goulding as Trustees of Testwood Working Men's Club, are the freehold owners of the property. The owners advise that the former social club is currently not in use.
- 2.3 The owners were invited, on 4 December 2018, to make comments prior to the decision to list the property and no comments were received. A copy of the letter inviting their comments is attached at **Document 5, 6 and 7**.
- 2.4 The report which was prepared for the Executive Head of Operations when he decided to accept the nomination for listing is attached at **Document 9**.
- 2.5 The decision to list the property as an ACV was made on 16 November 2018. A copy of the decision notice is attached as part of **Document 9**.
- 2.6 On 12 March 2019, the owners submitted a request for a review of the decision to list the property as an ACV. It has been agreed between the owners and the Council that the review be conducted by written representations.

- 2.7 Sturt & Co Limited, who are acting for the owners, submitted written representations which were received by the Council on 22 March 2019. The representations are attached as **Documents 24**. The nominators were asked to provide their comments on the representations made by the owners and they did so on 26 March 2019. These comments are attached as **Document 28**.
- 2.8 Finally, the owners were asked to provide their final comments on the remarks made by the nominators. The owner's response was given on 29 March 2019 and is attached as **Document 29**.

3.0 SUMMARY OF RELEVANT LEGISLATION

- 3.1 In accordance with the Act, an asset is of community value if, in the opinion of the local authority, an actual current use of the building that is not an ancillary use furthers the social wellbeing or social interests of the local community. Also, it should be realistic to think that there can continue to be non-ancillary use of the building which will further (whether or not in the same way) the social wellbeing or social interests of the local community (Section 88 of the Act). "Social interests" include cultural interests, recreational interests and sporting interests (section 88(6) (b) of the Act).
- 3.2 The land can also be nominated as land of community value which has furthered the social wellbeing or social interests of the local community in the recent past and it is realistic to consider that it will do so again during the next five years.
- 3.3 Neither the Act nor the Regulations give an express definition of what use "furthers the social wellbeing or social interests of the local community". It is for the local authority to decide depending on all the circumstances of a particular case. Examples of possible uses could include a village shop, pub, community centre or allotments.
- 3.4 If the Council is satisfied that the nomination is valid and the nominated asset is land of community value, then the Council must add the land to a list of assets of community value in accordance with section 90 of the Act.
- 3.5 The owner is entitled to seek a review of the decision pursuant to Section 92 of the Act provided the request is made within 8 weeks of notification of the decision. The request for the review was made within this time limit and is valid.

4.0 SUMMARY OF THE REVIEW

- 4.1 The review will consider a number of matters, set out in headings A – C below.

A. Is the property within the local authority's area?

- 4.2 The Council can only list assets of community value in its area. There is no dispute that the property is within the area of New Forest District Council.

B. Is the Nomination valid?

- 4.3 The Council was satisfied that the original nomination was valid. The owner has questioned the validity of the nomination for the reasons set out in summary at paragraph 1.2 of Sturt & Co letter dated 11 February 2019. The contents of this letter have been summarised below:-

- (a) The nomination was incorrectly served on the owners and those parties who have an interest in the site. The nominators did not have the requisite number

of members (21) in their club to be allowed to make such a nomination. Thus, the listing is null and void.

- (b) The nomination included insufficient evidence to entitle the Council to conclude that the site is an Asset Community Value.
- (c) The Council has a clear conflict of interest in making this intervention as their Estates and Valuation Team have requested to buy the site for residential development.
- (d) The Testwood Working Mens Club has shut down permanently at this location and there is no current use which would further the well-being or social interests of the local community. The community activities that once took place have all relocated to other venues.
- (e) The use of the club has declined materially over the last decade and there are now significant works required to bring the building into operational repair. Due to this there is no realistic prospect of the continuation of any community use in the future.
- (f) The local community has excellent access to other facilities in the area including the comprehensive services in Totton and a myriad of other sites and buildings. These are being used on a regular basis and there is no evidence that residents are lacking in access to community facilities.

C. Is the property of community value?

- 4.4 The test for determining whether an asset is an ACV is set out at section 3 above.
- 4.5 The Council accepted that the property should be listed as an ACV in accordance with this statutory test and the reasons for this decision are included in the report to the Executive Head of Service (**Document 29**).

5.0 DECISION

Service of Documents

- 5.1 I consider that the nomination papers were served correctly on the owners at the time using information obtained through a search of records held at Land Registry as evidenced in Official Copies dated 4 December 2018 at 11:07.03 (**Document 3 and 4**). The evidence available to me also shows that a further search was carried out at Land Registry prior to sending the decision to list the ACV and the details held at Land Registry were still the same as evidenced in Official Copies of the dated 17 January 2019 at 14:10:38 (**Document 10**).

Insufficient Members

- 5.2 I have reviewed the list of members of the nominators which appears in the application form nominating the asset and 33 members are listed (**Document 1**). The listing was, therefore, supported by enough members so as to meet requirements under Regulation 5(1) (c) of the Regulations

Conflict of Interest

- 5.3 I consider that although the Council's Estates & Valuation department's interest in purchasing the property could give rise to a potential of conflict, I am of the view that there is no actual conflict. The department's interest in acquiring the property did not, in any way, influence the listing process.

- 5.4 The Council's Executive Head of Operations, the original decision maker, confirms that he did not have knowledge of plans by the Estates and Valuation department to purchase the property at the time that he made the decision.
- 5.5 In relation to the current review, I can also confirm that I have had no involvement with or knowledge of plans of the Estates and Valuation department to offer to acquire the property. This information has come to my knowledge through this review process only.

Classification as an Asset of Community Value

- 5.6 One of the issues in this review is whether the property is an ACV pursuant to section 88 of the Act, as described in section 3 and 4 of this report. A nominated property must be listed as an ACV if the actual current use of the property, which is not ancillary, furthers the local community's social wellbeing or social interests (which includes cultural, sporting or recreational interests) and is likely to do so in the future.
- 5.7 The Local Authority must make its listing decision based on local context and all the circumstances and it is not mandatory to list any asset that is nominated for listing. When considering whether a nominated asset furthers the local community's wellbeing, the Local Authority should consider the use of the asset and the role it plays within the local community. The information provided with the listing application stated that the use was current and included activities such as (but not limited to) live music, hosting of charity events, quizzes, sporting activities and dance lessons as evidence of use. This, in the absence of evidence to the contrary, supported the listing of the property as an ACV.
- 5.8 I am satisfied that the original listing decision was supported with sufficient evidence to show that the property provided a wide range of facilities and activities which cater for a wide variety of interests, ages and social groups and encourages social interaction across social groups and generations. These activities, when taken together, were more than capable of demonstrating that the property furthered the social wellbeing and social interests of the local community. However, in light of the evidence now provided by the owners which indicates that there is no current use as the club is closed, the requirements of section 88 (1) (a) of the Act are no longer satisfied.

Realistic Prospect of Continued Use

- 5.9 The owners have supplied evidence that the property would require costly substantial renovation works as detailed at Paragraph 4.8 of owner's submissions (**Document 24**). It is stated that the works required include the removal of asbestos and renovations to make the property energy efficient. They state that it is likely that it may be economical to replace the whole building. Other issues identified include the fact that the property is not fully compliant with requirements under the Equality Act 2010 in terms of disabled access and toilet facilities.
- 5.10 The owners have also indicated that the land that the property is located on has been identified by private and public sector organisations as being suitable for housing which has resulted in a number of financial proposals for housing redevelopment. The Council accepts that in light of this new information, it does not appear realistic to think that there can continue to be non-ancillary use of the property which will further (whether or not in the same way) the social wellbeing or social interests of the local community as required by section 88 of the Act.

5.11 I have considered section 88 (2) of the Act and observed that although there is evidence of use in the recent past, I am satisfied 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. The reasons for arriving at this conclusion are as set out in Paragraphs 5.7 - 5.10 above.

Other Issues

5.12 I have noted the fact that the nominators no longer wish to have the property listed as an ACV and I have also considered the representations in relation to other facilities being available in Totton which are capable of catering for the same activities as were provided at Testwood Club. I do not consider these issues to be relevant factors under the Act and the Regulations.

6.0 REVIEW CONCLUSION

6.1 I am satisfied, that based on the new evidence supplied by the owners, it is not realistic to think that there can continue to be non-ancillary use of the property which will further (whether or not in the same way) the social wellbeing or social interests of the local community. The Council's original decision is, therefore, reviewed to the effect that the property should be removed from the list of assets of community value.

B JACKSON

ACV Review: Mr B Jackson, Chief Executive NFDC

Date: 7 May 2019

Signed B JACKSON

List of documents attached to this report

Document No.	Description	Page
1.	Application Form by Friends of Testwood (unredacted)	1-10
2.	Constitution for Friends of Testwood	11-12
3.	Land Registry Title Plan HP753523	13-14
4.	Land Registry Property Registry HP753523	15-18
5.	Letter to G Wyeth dated 4 December 2018	19-20
6.	Letter to R Marlow dated 4 December 2018	21-22
7.	Letter to R Goulding dated 4 December 2018	23-24
8.	Internal emails dated 4 December 2018	25-28
9.	Report to Colin Read	29-34
10.	Land Registry property Register HP753523	35-38
11.	Letter to G Wyeth (Testwood Working Men's Club) dated 17 January 2019	39-42
12.	Letter to R Marlow (Testwood Working Men's Club) dated 17 January 2019	43-46
13.	Letter to R Goulding (Testwood Working Men's Club) dated 17 January 2019	47-50
14.	Letter to A Kinghorn dated 6 March 2019	51-52
15.	Letter to Sturt & Company Ltd dated 12 March 2019	53-54
16.	Email from Sturt & Co Ltd dated 12 March 2019	55-56
17.	Letter to Sturt & Co Ltd dated 13 March 2019	57-58
18.	Internal email dated 14 March 2019	59-60
19.	Email from Sturt & Co Ltd dated 14 March 2019	61-62
20.	Letter to The Friends of Testwood dated 14 March 2019	63-66
21.	Letter to P Mwedzi dated 19 March 2019	67-68
22.	Letter to Sturt & Co Ltd dated 22 March 2019	69-70
23.	Letter to Sturt & Co Ltd dated 22 March 2019	71-72
24.	Sturt & Co Ltd Appeal of ACV Nomination	73-110
25.	Letter written "wrong address"	111-112
26.	External email dated 25 March 2019	113-114
27.	Internal emails dated 25 March 2019	115-120
28.	External email dated 26 March 2019	121-122
29.	Letter to P Mwedzi dated 28 March 2019	123-124
30.	Email to Sturt & Co Ltd dated 29 March 2019	125-126
31.	Letter to P Mwedzi dated 29 March 2019	127-128
32.	Letter to P Mwedzi dated 8 April 2019	129-130