

DECISION NOTICE

THE LOCALISM ACT 2011 SECTION 88

Decision on the nomination of an asset of community value

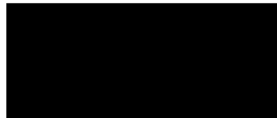
ST FRANCIS CHURCH, LANGLEY SO45 1XU

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 'Blackwell Bushcraft CIC' to nominate St Francis Church, Langley SO45 1XU as an asset of community value. Having considered the application I have decided that the application should not be accepted for the following reasons:

In the opinion of the local authority, the actual current use of the Property does not further the social wellbeing or social interests of the local community, and it is not realistic to think that there can 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 does not meet the criteria set out in the Localism Act 2011 and so is not eligible for listing.

Signed: ..



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

Dated: 11/04/2024

REPORT TO ALAN BETHUNE

APPLICATION TO NOMINATE ST FRANCIS CHURCH, LANGLEY SO45 1XU AS AN ASSET OF COMMUNITY VALUE

1. INTRODUCTION

- 1.1 This report relates to an application made to the Council by 'Blackwell Bushcraft CIC' ("the Nominator") to nominate St Francis Church, Langley SO45 1XU ("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 12 April 2024 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 16 February 2024. 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 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 as explained in 3.14 and 3.15 below.
- 3.3 The Application lists both the owner and also occupier as "Not known".
- 3.4 On its own investigation into Land Registry records, the Council obtained the title register entry which shows that Winchester Diocesan Board of Finance is the title absolute freehold owner of the Property ("the Owner") and which Property, in the

Land Registry Records, is called Church of St Francis, Blackfield. The Land Registry plan shows the Property includes building and land and this matches the same building and land as in the plan submitted with the Application.

- 3.5 The Application states at section B3 'Current use of asset' that there is '*No usage as currently closed*'. The Nominator states that it does not consider that the current and main use of the asset furthers the social wellbeing or cultural, recreational or sporting interests of the local community.
- 3.6 At section B4, the Nominator asserts that 'at some stage in the recent past' the asset did further the social wellbeing or cultural, recreational or sporting interests of the local community. It goes on to say "*Various community events can be evidenced via <https://fawleychurch.org.uk/st-francis-church-2/>*". This led to a 'wordpress.com' website for "St Francis Church | All Saints Church Fawley". The page then allowed access to a shared website (with 'All Saints' and 'the Good Shepherd') and on which, on the St Francis page it stated "*The people of Langley and West Common are served by St Francis Church, West Common*" and went on to say in bold type "***Please note that St Frances [sic] Church is currently closed on safety grounds. Further information will follow***". In the section under 'News' it provided several 'Pew Sheet' attachments for 'The Parish of Fawley' on 6th and 27th November 2022, 15th, 22nd and 29th January 2023 and 16th July 2023, and which appear to be a type of newsletter for church events, mainly for All Saints (St Francis is mentioned for Holy Communion on 9th November 2022, 18th January, and 30th November 2023 and a Fish & Chip Lunch and Beetle Drive for Missions & Charities on 12 November 2022).
- 3.7 Under 'Headlines', an attachment for 'Christmas Services & Events' gave a list of 2023 Christmas events at All Saints Church and also Jubilee Hall (the latter located at 'The Square' Fawley SO45 1DD). There was no mention of St Francis. Under a drop-down box of 'News & Information', it referred back to the Pew Sheets Library. Otherwise, there did not appear to be any evidence of community events at the Property, other than those which are directly church related.
- 3.8 In the Pew Sheet of 22nd January 2023, it refers to the reason for the church closure where it states:
- "We have made the difficult decision this week to close St Francis Church on health and safety grounds, following consultation with the Assistant Archdeacon. The ceiling has been assessed as dangerous following one of the tiles coming away and falling recently. In addition, several roof leaks have been identified following the recent heavy rain. The PCC will begin discussions on Monday about the best way forward with regards to the maintenance of our buildings and the considerable financial implications. Your prayers would be appreciated. Revd Alison, Lawrence and Chris (Churchwardens)"
- 3.9 When asked in the application form "How do you anticipate the asset would return to furthering the social wellbeing or cultural, recreational or sporting interests of the local community?" the Nominator says "*Given the opportunity I would ensure the community is consulted on what events they would like to see and could facilitate these happening*".
- 3.10 In the next box, the application form asks "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)?" In response the Nominator says "*If I was informed of the current safety situation regarding the roof I*

could make an estimation but I do not know this information so cannot give a timescale.”

- 3.11 Therefore for the section of the application form where the Nominator has been asked to provide evidence of any community value that has existed previously or can exist in the future, there is none provided.
- 3.12 In section B5 the Nominator has stated that the asset is “Wholly” used as a residence. No further information was provided on this point and so an email was sent by the Council to the Nominator on 14th March 2024 requesting details of the residence. By email of 21st March 2024, the Nominator explained that this was a mistake and that there is no one resident at the Property.
- 3.13 In the section B6 where the Nominator is asked to provide any further information in support of why the Council should conclude that the asset is of ‘community value’, the Nominator states *“This building is fantastically placed as no other community building exists in that area. The hall would be a great asset to local residents that cannot easily reach the next village over. Being placed amongst the heart of the residential area it has easy access for people who do not drive or wish to lower emissions by walking to the hall. It has great facilities and can be utilised as a community booster and combat loneliness via events.”* This appears to argue the potential of the Property to become community value rather than with any explanation or detail of how it is, or how it was, or how it will be of community value. Furthermore, there is no evidence provided that suggests the church has, prior to its closure, been used as anything other than a church or for church related matters. Also, there is no indication that, when or if it opens again, it will be used as anything other than a church.
- 3.14 The Nominator has provided its certificate of incorporation as a Community Interest Company. The Nominator’s Director, who completed the application, gave an address in Hythe, and a website search of the Nominator indicates an address in Chapel Lane, Southampton and describes its location as being on the *“very door step of the East of the New Forest”*. The website also states that it has several sites, including Brockenhurst.
- 3.15 In order to comply with the Regulations, 4(1) a body must have a ‘local connection’ which is shown if:
(a) the body’s activities are wholly or partly concerned-
(i) with the local authority’s areas, or
(ii) with a neighbouring authority’s area;

and to comply with Regulation 5, “a voluntary or community body” includes

(g) a community interest company.

The Nominator is therefore entitled to make an application to list the Property as an ACV.

4. THE OWNER’S COMMENTS

- 4.1 In response to the Council’s notification of nomination dated 14th March 2024, the Owner sent an email of 27th March 2024 with a letter of even date. In that letter the Owner outlined its objection to the nomination on the following bases:

(i) The Property has been closed since January 2023 due to “*health and safety issues which arose due to the poor condition of the building fabric*” and subsequently the Fawley Parochial Church Council closed the Church and disposed of the freehold interest due to “*the very high cost of repairs required to the building and the severe financial pressures the Parish is facing. Funds from the disposal of St Francis would used [sic] to support the maintenance of the other two remaining churches in the parish.*” Those churches are All Saints and The Good Shepherd.

(ii) Carter Jonas LLP, estate agents and property consultants, were instructed in February 2024 to market the property and interest has been shown by a number of parties including, in particular, two religious groups and an offer is expected (marketing details were attached to the Owner’s letter). If successful with an offer, acceptance to such a group “*will ensure the building continues as a community asset*”. In the marketing details, it states that “*It is understood that asbestos is located within the property...*”

(iii) “*Any delay in the sale process of St Francis Church due to a listing will have a significant impact on the parish finances*”.

4.2 The cause and extent of the health and safety problems and ‘poor condition of the building fabric’ has not been provided in detail (save as to the mention of asbestos) and so there is no indication of the steps needed to make the Property safe and useable. However, in deciding whether land qualifies as an ACV as described in 5.4 below, those concerns mentioned above in 4.1 at (i), whilst certainly significant, would not necessarily be an automatic reason to prevent a local authority from listing the Property as an asset of community value.

4.3 Similarly, neither the fact that the Property is being marketed for disposal, nor that adverse effects would result for parish finances if there were a delay in disposal of the Property, are reasons to prevent the Council from listing the Property as an asset of community value.

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 and which comments are listed and explained at 4 above.
- 6.3 Langley Parish Council was notified of the Application but did not respond.
- 6.4 The Service Manager for Legal and Democratic Services was informed of the Application but did not respond.
- 6.5 The Strategic Director of Place Operations & Sustainability and Assistant Director for Housing respectively, were informed of the Application, but neither responded.
- 6.6 The Service Manager for Estates & Valuations, was notified of the Application and confirmed that he had no specific comments to make.
- 6.7 Portfolio Holder for Planning, Regeneration & Infrastructure Cllr Dan Poole said that *"...I am very supportive of this campaign to retain a building for the use of the community in Langley. They are correct in their observation that the village would be left without one. The Parish of Fawley is sprawling and rural in nature in its southern villages. I therefore both support and commend residents for their efforts to retain this facility."*
- 6.8 Portfolio Holder for Environment and Sustainability, Cllr Geoffrey Blunden stated that *"I support the application"*.
- 6.9 Cllr Alan Alvey and Cllr Matthew Hartman, as the Ward Members, were notified of the nomination but neither provided specific comment on it.
- 6.10 An objection was also received on 28th March 2024 from [REDACTED], the Churchwarden on behalf of Fawley Parochial Church Council who objects for the following reasons:
- (i) *"It was only treated as an asset by very few of the community when it was actually open as a church, with a hall available for hire"*.
 - (ii) The use of the Property has not been missed since it closed in January 2023 and that the worshippers have gone to the other two churches and *"we have also accommodated the few hall hirers in another church"*.
 - (iii) Delay of the Property sale will be to the detriment of the *"already fragile finances"* and would in turn impact on the ability to serve the community from the other two churches.
 - (iv) *"The setting up of another community centre would almost certainly have a detrimental effect on others in the area, who are not running to capacity"*.

(v) The nomination is suspected of being a delaying tactic as “...*the main fear people have is that the building will be acquired by a developer, and social housing will be built blighting peoples' property values*”.

- 6.11 Mr [REDACTED] further explains that the preference would be to sell to another church “...*and preserve the Christian spirit in Langley. A concern is that interested purchasers at this stage may well be lost, and the building will deteriorate further whilst still our responsibility*”.
- 6.12 As a postscript, Mr [REDACTED] says that Fawley PCC owns “*the building*” and that Winchester Diocese holds it as trustees on behalf of the PCC.
- 6.13 In the reference text, “**Assets of Community Value: Law and Practice**” (Simon Adamyk – 2017) it states at 4.32 (p105) that “*The use of a building as a place of religion, such as a church, arguably does not fall within the scope of the uses which further ‘the social wellbeing or [social] interests of the local community’*”, see First Tier Tribunal *General Conference of the New Church v Bristol City Council* [2015]UKFTT. In that case, the Church was closed due to reduced congregation. The Tribunal did not accept that religious use fell within s88(1) or (2) even under 88(6). Whilst persuasive, this decision was not of definitive authority though.
- 6.14 Prior to its closure, on the little evidence there is to hand, it appears that the primary use of the Property was for religious purposes. Also, there doesn’t appear to be any substantive evidence of non-ancillary use which furthers the social interests as required under the Act. Furthermore, as mentioned above at 3.8-3.10 and 3.13, there is no suggestion in the Application or the church website, that on re-opening that there are plans for the Property to be something other than a church. As mentioned at 4.1 above, the Owner is hoping that a religious group will make a successful offer which will ensure that “*the building continues as a community asset*”. There is no evidence to suggest that the Owner is using the term ‘community asset’ as described in the Act.
- 6.15 Section 88(1) of the Act states that:
- “...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 ancillary use** furthers the social wellbeing or social interests of the local community, **and**
- (b) it is realistic to think there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) social wellbeing or social interests of local community” [emphasis added]
- 6.16 In the Application there is no substantive evidence provided to support the assertion that the Property has in the past, currently, or in the future, is going to be used in such a way that will further social wellbeing or social interests of the local community, especially as whatever use is suggested in the past appears to be ancillary to its use as a church.

7. CONCLUSION

- 7.1 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 that accepting the nomination might lead to adverse administrative or financial consequences for the Owner.

- 7.2 As stated at 6.13 above, “arguably” the use of a church for religious purposes does not satisfy the requirements of the Act to be of community value and there is persuasive case law which supports this. Added to that is the fact that there is no substantive evidence provided in the Application to support the assertion that it is realistic to think there can be non-ancillary use of the Property that will comply with the requirements of s88(1)(b). Similarly, in “Assets of Community Value Guide” (Christopher Cant – 6th Edition, 2017, pp51-52), the text refers to the decision of Judge Lane in the same case of *General Conference of the New Church v Bristol City Council* (CR/2014/013) where it was found that ‘*In consequence “the reality was that the church was still a church; not a community or social centre”. In consequence the uses were ancillary and the church should not have been listed*’. Cant refers further to the same decision and that Judge Lane stated ‘*that although a formal business plan was not required the proposals did need to be realistic and in that case the suggested proposed use was “entirely speculative” (para 29). There was no evidence to suggest that there was a real interest in the proposed community use*’ (Cant, *ibid* p78).
- 7.3 So, when read in conjunction with the information set out in section 3 above, the Application indicates the Property does not fulfil the criteria for listing summarized in paragraph 5.4 above.
- 7.4 Therefore, the Application does not appear to meet the legal criteria set out in the Localism Act 2011 for the Council to accept the nomination, for the reasons explained above.

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 does not further the social wellbeing or social interests of the local community, and it is not realistic to think that there can 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 not therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

For Further Information Contact:

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Background Papers:

- Application by ‘Blackwell Bushcraft CIC’, 16 February 2024, together with Memorandum and Certificate of Incorporation
- Email from Owner, 27 March 2024
- Email from Fawley PCC, 28 March 2024