

DECISION NOTICE

THE LOCALISM ACT 2011 SECTION 88

Decision on the nomination of an asset of community value

MARTIN'S CORNER FOOTBRIDGE, MARTIN'S ROAD SO42 [FULL POSTCODE NOT KNOWN]

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 Brockenhurst Parish Council to nominate Martin's Corner Footbridge, Martin's Road, Brockenhurst SO42 (the full postcode is not ascertainable) 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 September 2024

REPORT TO ALAN BETHUNE

APPLICATION TO NOMINATE MARTIN'S CORNER FOOTBRIDGE, MARTIN'S ROAD SO42 [FULL POSTCODE NOT KNOWN] AS AN ASSET OF COMMUNITY VALUE

1. INTRODUCTION

- 1.1 This report relates to an application made to the Council by Brockenhurst Parish Council to nominate Martin's Corner Footbridge, Martin's Road, Brockenhurst SO42 (the full postcode has not been provided nor is it ascertainable) ("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 16 September 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 owner 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 22 July 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 the local parish council. A copy of the body's Model Standing Orders as adopted by the Nominator was not attached to the Application and so this was requested by email on 3 September 2024 to which the Nominator provided the Standing Orders by email the same day. The Nominator is included in the definition of those bodies which may make a 'community nomination' (as defined in section

89(2)(b)(i) of the Act). The Nominator is entitled to make an application to list the Property as an ACV.

- 3.3 The Application lists the 'owner' as "*Unknown but maintained by HCC [Hampshire County Council]*" and when describing the 'occupier', states "*The bridge is located on Forestry England land Crown Land*".
- 3.4 As the Application describes the location of the Property without a postcode, the Council asked whether it would be possible to provide this in its email dated 30 July 2024. Although the Nominator responded to other questions, it did not – or presumably was not able – to provide this information. Without this information, the Council was unable to satisfactorily interrogate the Land Registry records to establish whether there was any record of ownership.
- 3.5 In the Application at section B3 'Current use of asset', it says that the Property is a "*Footbridge, used by residents, dog walkers and livestock*" and that "*A bridge has been in this location for well over 100 years. It provides a valuable way for the livestock to safely cross the ditch to further grazing land and is well used by locals and dog walkers.*" It also states that "*There are many supporters for this bridge to remain in place*" but does not offer any evidence in support of this last assertion. In the same section, when asked over what period the main use of the asset will continue the Application says that "*There are no plans to remove the bridge and hopes that it will remain at this location for many years to come*".
- 3.6 When asked in the same section of the Application form as to whether the local community have legal and authorised use of the land or property, the Application replies "*It is located in the open forest on Forestry England and Crown Land*". Although this does not actually answer the question, this issue is addressed in paragraph 4.2 below in reference to the correspondence received from Forestry England.
- 3.7 In 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 that "*In 2021 Hampshire County Council announced that Martin's Corner Footbridge would be removed. A bridge has been at that location for over 100 years. The bridge has been maintained by HCC for many years but with no legal requirement to continue to do so they plan to remove the bridge. There is no evidence of who is the legal owners of the bridge and therefore it has been difficult to agree who should make the final decision regards the bridge, other than to say that someone needs to be responsible for inspections and maintenance*".
- 3.8 At the same section in the Application, the Nominator embeds a link to an article from the Advertiser and Times dated 12 August 2021 which is headed "*Brockenhurst Parish Council in Forestry England talks to take over running of popular Martins Lane footbridge*" and which refers to the Nominator being in talks which may lead to it taking over ownership of the footbridge. It goes on to say that "*There had been some confusion since HCC claimed the bridge was on land owned by FE, which insisted it did not build it and had not been maintaining it. Some historical records say the bridge belonged to the council. Asked about the situation, HCC...revealed 'Brockenhurst Parish Council have expressed a wish to take over responsibility for the [Property] and they are currently in discussion with FE regarding an access licence. We are assisting in this process and, once concluded, our bridge engineers will do a handover inspection with parish representatives.'*" The report continued, saying that an FE spokesperson confirmed discussions were ongoing with the Nominator and HCC, the latter of which was the licence holder and also maintained

the bridge at the time of the article. It also said that Parish council chair Pete Wales confirmed the Parish Council's interest in taking ownership of the bridge.

- 3.9 As there was no information in the Application as to which exact HCC department and office was dealing with the matter, the Council emailed the Nominator on 16 August 2024 seeking this. The Nominator replied by email of 28 August 2024 confirming which officer at HCC had dealt with the issue previously. The Council then emailed that officer on 2 September 2024 requesting any further comments. A response was received from the HCC Project Engineer – Structures Client, on 4 September 2024 to say that HCC had been maintaining the structure “...*but it transpires it is located on land not owned by HCC. Our legal team advise me that HCC do not need to respond to this nomination. I forwarded to Forestry England for their comment.*”
- 3.10 In its email of 28 August 2024 referred to above at 3.9, the Nominator also went on to add that it believed a bridge to have been in the same “vicinity” for over 130 years and “...*this particular footbridge in existence for over 80 years*”. The Property is “...*approached by six footpaths, four from the east and two from the west, so that both tourists and residents from Butts Lawn, Waters Green, Lyndhurst Road and Balmer Lawn Road areas are all able to access it, for not only Water Copse and the open forest but most importantly the village allotments.*” The email goes on to explain that if the Property were to be removed, it “...*would potentially mean that residents and tourists would use Meerut Road itself*” and suggests that that route is less safe.
- 3.11 On the point of removal of the Property, it is noticeable that, although section B3 of the Application states “*There are no plans to remove the bridge and hopes that it will remain at this location for many years to come*”, the Application later says at B6 “*The bridge has been maintained by HCC for many years but with no legal requirement to continue to do so they plan to remove the bridge.*”(emphasis added).
- 3.12 The same email from the Nominator dated 28 August 2024 also says that HCC does not intend to continue inspection and maintenance but “...*have however agreed to repair and improve the bridge provided that the Parish Council completes future maintenance. The Parish Council has agreed subject to adoption under the Localism Act 2011 by placing the footbridge on the List of Assets of Community Value*”. (emphasis added)
- 3.13 The text in emphasis in 3.11 above suggests a misunderstanding of the purpose and reaches of the ACV scheme, as ACV status does not confer any ownership or maintenance rights on the Nominator, nor does it mean that the Nominator ‘adopts’ the nominated land. This is addressed further in section 7 below.

4. THE OWNER’S COMMENTS

- 4.1 As explained above, the bridge does not appear to be owned by any party. On the basis of the description by the Nominator and evidence in the Application, the Council wrote to HCC as ‘Occupier’ to notify it of the nomination, by letter of 16 August 2024. The Council received an email automatic response from HCC Highways, thanking it for the ‘enquiry’ and providing a reference number, saying the aimed response time to provide an initial assessment was within two weeks.

- 4.2 The Council then also received a letter from Forestry England dated 23 August 2024 (presumably after having been notified by HCC as mentioned above at 3.9). It highlighted the fact that “...*there are no public rights of way on the Crown Lands of the New Forest. Instead, the Law of Property Act 1925 applies, granting the public permission to walk and ride horses anywhere on the New Forest – a permission that still applies today.*” It also explained that it “...[does] *not fully understand why this requires the bridge to be listed as a community asset, nor the benefits or ramifications to either party*”. It also requested an extension of time in which to investigate the matter but of course this is not in the Council’s gift to provide, but a deadline stipulated in the relevant legislation.

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 As no ‘Owner’ could be identified, the Council wrote to HCC as ‘Occupier’, on the basis that it maintains the Property. The details of correspondence with HCC are set out at 3.9 above.
- 6.3 Although the Council had not written to Forestry England, it has written by letter of 23 August 2024, stating that it would want to investigate the matter and did not “...*fully understand why this requires the bridge to be listed as a community asset, nor the benefits or ramifications to either party*”.

- 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 the Strategic Director Housing & Communities respectively, were informed of the Application. The former responded and had no comment to make, whilst the latter did not respond.
- 6.6 The Service Manager for Estates & Valuations was notified of the Application but did not respond.
- 6.7 Portfolio Holder for Community, Safety and Wellbeing Cllr Dan Poole said that “.../ *am very happy to support their application to nominate Martin’s Road Footbridge, Brockenhurst, as an Asset of Community Value.*”
- 6.8 Portfolio Holder for Environment and Sustainability, Cllr Geoffrey Blunden did not respond to the notification.
- 6.9 Cllr Adam Parker, as the Ward Member, was notified of the nomination and responded to say “*I consider this bridge to be of enormous community value and support the Parish Council's nomination wholeheartedly. Indeed, before my election, I was one of many residents in the village who emailed Hampshire County Councillor Keith Mans protesting its mooted removal in 2021, and vividly recall the social media outcry and press coverage. Its use most certainly furthers social and physical well-being in the community, and I am certain that many residents rely on it every day. This has my 100% support.*”

7. CONCLUSION

- 7.1 In light of the apparent basis of the nomination, it might assist to explain the intentions of the ACV scheme. The scheme is also known as ‘The Community right to Bid’ and, as explained in a reference text on the subject, “Assets of Community Value Guide” (6^h Edition; 2017) by Christopher Cant, “...it is...a right to bid [with the potential therefore to buy] leaving the landowner free to proceed with a disposal as the owner wishes. If a community group is interested a moratorium is imposed to allow the bid by a community group to be organised but the group has no ability to compel the owner to negotiate”. (text in square brackets added)
- 7.2 There are two important departures from the basis of the ACV scheme in the circumstances of the current Application. There is no ‘owner’ of the Property as such; and there is therefore no possibility of a sale which would give the opportunity for the Nominator – or other community body - to bid for the Property.
- 7.3 Also, when considering the basis of the Application, the Nominator at B3 explains that, other than allowing livestock to cross (which does not appear to be an intended factor when assessing ‘community value’) it is also “...well used by locals and dog walkers.” The Nominator’s email of 28 August 2024, referred to at section 3 above, also refers to the fact that “...it is approached” by a number of footpaths as a reason why it is of community value. However, there is no evidence to show that were the bridge not there that neither the footpaths, nor the expanse of that section of the forest could not continue to be used by the same people. This may not be convenient, but the Property’s presence does not seem to ‘further the social wellbeing or social interests of the local community’ as intended by the Act (see paragraph 5.4 above).

- 7.4 From the Nominator's submissions and arguments, it seems that the Application is predicated on the assumption that ACV status would lead to the Property being 'adopted' by the Nominator and therefore to a form of quasi-ownership. As set out at 3.12 above, the Nominator says HCC has already agreed to pass maintenance responsibility to the Nominator on the basis that the Nominator performs those duties of inspection and maintenance. The Nominator says it is willing to assume this responsibility "...subject to adoption under the Localism Act 2011 by placing the footbridge on the List of Assets of Community Value" (the Nominator's email of 28 August 2024). However, as explained at 7.1 above, the ACV scheme is not intended to function that way and powers of maintenance or inspection are not integral to the assessment of whether land should be listed as an ACV. Assumption of maintenance responsibilities is in no way linked to ACV listing.
- 7.5 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. 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 Brockenhurst Parish Council dated 22 July 2024 and email dated 28 August 2024
- Brockenhurst Parish Council Model Standing Orders (Sept 2019).
- Letter from Forestry England dated 23 August 2024