

## **DECISION NOTICE**

### **THE LOCALISM ACT 2011 SECTION 88**

#### **Decision on the nomination of an asset of community value**

##### **Pennington County Infants School, 1A Priestlands Road, Pennington, Lymington SO41 8HX**

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 Lymington & Pennington Town Council, nominating Pennington County Infants School, 1A Priestlands Road, Pennington, Lymington SO41 8HX 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, whilst the actual current use of the Property does further the social wellbeing or social interests of the local community, it is not 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 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: 03/03/2025

## **REPORT TO ALAN BETHUNE**

### **APPLICATION TO NOMINATE PENNINGTON COUNTY INFANTS SCHOOL, 1A PRIESTLANDS ROAD, PENNINGTON, LYMINGTON SO41 8HX AS AN ASSET OF COMMUNITY VALUE**

#### **1. INTRODUCTION**

- 1.1 This report relates to an application made to the Council by Lyminster & Pennington Town Council (“the Nominator”) to nominate Pennington County Infants’ School, 1A Priestlands Rd, Pennington, Lyminster SO41 8HX (“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 6 March 2025 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 9 January 2025. 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 town council. A copy of the body’s Model Standing Orders as adopted by the Nominator was attached to the Application. 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 'Hampshire County Council' ("HCC") and the 'Lawful occupiers' as 'Pennington County Infants' School' ("PCIS").
- 3.4 The Nominator provided a plan with red lined boundaries on request and also explained that, whilst the Land Registry showed no record for the Property (indicating that the land is not registered), ownership could be ascertained by carrying out a GIS search which showed HCC as the owner. As can be seen in section 4 below, HCC has also confirmed its ownership of the Property in its correspondence with the Council by email of 7 February 2025. A substantive response was then provided by HCC by letter of 13 February 2025, which is attached.
- 3.5 The basis of the Application is that the Nominator seeks ACV status for the Property as HCC intends to amalgamate the Infants' School and Junior School ie the *"Function [of the Infants' school] to transfer to adjacent school building so building surplus to HCC requirements"* (section B3).
- 3.6 Section B3 also states that the Property is not currently used for community benefit and at section B4 states that it was an asset used for community benefit in the recent past. As the Council's investigation showed that the Property is still being used as an infants' school and that the amalgamated school does not open until 1 January 2026 (see further information in section 6 below), an explanation of this apparent anomaly was requested from the Nominator.
- 3.7 By email of 27 February 2025, the Nominator explained:  
*"I think the confusion stems from the fact that the County Council is currently consulting on its plans for the future and is not sure what its future use might be. Its use as an infant school is obviously a community benefit but at the time of writing the form, HCC had not made it clear when the closure might be and it was considered that this could be/likely to be imminent given HCC's dire financial situation. Therefore, I erred on the side of caution on considering its current use. If I need to change the entry of B3 to state yes, in its current use it serves the community, then I am happy to do so. The confusion stemmed from the lack of information from HCC as to its future from the point of announcement."* It was confirmed to the Nominator that, as the position had now been explained in supporting correspondence, there was no need to amend the Application form.

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

- 4.1 The Council wrote to HCC by letter of 21 January 2025 to notify it of the nomination and seeking confirmation of whether HCC is owner of the Property.
- 4.2 The Council received an email from Kirsty Rees, Senior Estates Surveyor of HCC dated 7 February 2025, confirming HCC's ownership of the Property and, following an exchange of emails, an extension of time was allowed to HCC ("the Owner") to formally respond to the notification.
- 4.3 The Owner then responded by letter dated 13 February 2025 explaining the stages of the ongoing consultation for the proposed amalgamation of Pennington Infant School and Pennington Junior School as follows:
- HCC undertook a consultation on the amalgamation from the 18<sup>th</sup> October – 22 November 2024.
  - Consultation results discussed with the Executive Lead Member for Children's Services on 12 February 2025 with a recommendation to move to a formal consultation via a Public Notice.

- Post publication of the Public Notice there will be a 5-week period in which representations can be made.

4.4 The letter goes on to say that until the final decision is made after this consultation period, and decisions made on the site's use, the Owner considers that "...*this [ACV] application is premature and could hinder and delay the potential use of the site for other educational uses in the future. The two schools currently share amenities at the school and HCC ownership is of both the Junior School and Infant School sites.*"

## **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 investigations into ownership and then subsequent conclusion of HCC's ownership of the Property are set out in 4 above.

6.3 PCIS was informed of the Application as "Occupier" of the Property but did not respond.

6.4 The Assistant Director for Governance (Monitoring Officer) 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 but 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 Safety & Wellbeing (including ACVs) Cllr Dan Poole was notified but did not respond.
- 6.8 Cllr Jack Davies, as one of the Ward Members (with Cllr Colm McCarthy), was notified of the nomination and responded to say, *"I'll reiterate that I'm in full support of the ACV application but both Colm and I are on the town council which unanimously proposed it so it's a bit of a moot point."* Cllr McCarthy did not respond.

## 7. CONCLUSION

- 7.1 Before proceeding with conclusions on the evidence above, a reminder concerning the purpose of the ACV scheme might assist. As explained in section 2 above, if land is listed as an ACV and the owner wishes to dispose of (ie sell) the property, such a disposal will, with certain exceptions, engage the moratorium provisions as set out in the Act (section 95) and would involve notification of community interest groups.
- 7.2 At the time of writing, PCIS is still operating as an infants' school and will continue to do so, presumably until late 2025, as the PCIS's website is confirming that new starters will begin in September 2025 and the Owner's Public Notice on PCIS's website dated 21 February 2025, states that *"...the newly created primary school opens on 1 January 2026"* (para 5 of the Public Notice, attached).
- 7.3 Section 88(1) of the Act provides a 2-stage test, and states that land is of community value *"if in the opinion of the authority-*
- (a) 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** [emphasis added]*
  - (b) 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"*

The fact that the school serves the community by providing education to its infants, would be persuasive in arguing compliance with s88(1)(a).

- 7.4 However, the next stage would be to consider s88(1)(b) and which poses a difficulty. This is because the use of the Property will cease to be that of an infants' school toward the end of 2025 and that change appears to be supported by the school itself. The Public Notice explains that the reason for the change of function of the Property is *"...following a request from the headteachers and the governing bodies of both schools"* (para 2) and that the new amalgamated school would then be *"sufficient to meet local demand"* (para 4). It also refers to an estimate of £100,000 to adapt the junior school building in order to house both schools. This amalgamation appears to definitely be proceeding and it therefore does not seem to be realistic to think that the Property will continue to be used as an infants' school.
- 7.5 Now one must consider whether there could be a *"... 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"*. Currently there is no way of knowing to what purpose the Property will be put following full amalgamation of the schools in January 2026. The Public Notice states *"Within four weeks from the date of*

*publication of these proposals [ie 4 weeks from 21 February 2025], any person may make comments on the proposal...*" (para 7) (the Owner's letter of 13 February 2025 states that there will be a 5-week period in which representations can be made).

- 7.6 Also, the Owner's letter dated 13 February 2025 states "*It is only after this [consultation] period that a final decision will be made in relation to this consultation*". Therefore, the consultation period is ongoing and so presumably the Owner has not yet received all representations.
- 7.7 In the Application, when the Nominator is asked how it anticipates the asset could be returned to furthering the social wellbeing or cultural, recreational or sporting interests of the local community, it states that the Property – or more specifically the "*school building...[which is]...surplus to HCC requirements*" (section B3) "*Needs to be retained in capacity of furthering education and social wellbeing of young people in the community eg youth services or youth centre*" (section B4). This suggests that the Application for ACV status is in order to protect the building so that it can be used for something to benefit the community. The examples of youth services or youth centre are suggested but there does not appear to be any current plan within the Application for the building's use, nor does there appear to be any obvious community driven plans proposed, although of course such a proposal could be advanced during the ongoing consultation period.
- 7.8 Also, in returning to the relevant s88(1)(b) of the Act, any community value of the Property must be "non-ancillary". Whilst this term has not been defined in any of the relevant statutory provisions, the reference text "Assets of Community Value – Law and Practice" (2017 edition - Simon Adamyk) states that "*...in the absence of a definition [of ancillary use], it seems reasonable to conclude that the term is being used in its usual sense, that is to say, as referring to a use which is supplementary or subordinate to some other (primary) use.*" (4.47; p111)
- 7.9 On that basis, and in light of the reasonable assumption that the school will no longer be used as an infants' school, the examples given in the Application ie furthering education or youth services, whilst laudable, would appear to be either speculative and/or ancillary to the primary use as a school.
- 7.10 Even in the case that the Owner ultimately decides to use the Property for the purposes of a school (the Owner does refer to possible "*educational uses in the future*" at 4.4 above), the provisions in the Asset of Community Value Regulations 2012 - which support and supplement the application of the provisions of the Act - state at Regulation 13(2) that the moratorium provisions "*...[do] not apply to a relevant disposal of land listed in the cases set out in Schedule 3 [of the Regulations]*". This Schedule 3 includes, at part 14(a), land held for the purposes of "*...a school as defined in section 4 of the Education Act 1996*", which definition includes the school, the subject of this Application.
- 7.11 Therefore, in that scenario depicted in 7.10 above, even if the Property were to be listed as an ACV, the Owner would not be compelled to notify the Council of the intention to dispose of the land, and there would be no trigger to notify community interest groups in any event.

## **8. IN SUMMARY**

- 8.1 Whilst the current use of the Property is of community value, there is no dispute that that use will definitely stop in 2025 when the infants' school is moved to the larger amalgamated school premises. Furthermore, once that use comes to an end, there

is no current realistic likelihood of the Property being used for purposes that form part of the primary use as an infants' school ie there is no non-ancillary use as required in s88(2)(b) of the Act.

- 8.3 If a subsequent disposal of the Property is for it to be used for the purposes of a school, such a disposal would be exempt from the moratorium provisions which are described in 2 above.
- 8.4 Consequently, when the Application is considered with the evidence and information referred to above, this indicates that the Property does not fulfil the criteria for listing summarised in paragraph 5.4 above. Therefore, for the reasons explained, the Application does not appear to meet the legal criteria set out in the Localism Act 2011 for the Council to accept the nomination.

## **9. RECOMMENDATION**

- 9.1 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, whilst the actual current use of the building or other land does further the social wellbeing or social interests of the local community, it is not 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 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 Lymington & Pennington Town Council dated 9 January 2025 and email dated 27 February 2025
- Lymington & Pennington Town Council Model Standing Orders (Revised 2023)
- Letter from Hampshire County Council dated 13 February 2025
- HCC Public Notice – ‘Amalgamation of Pennington Infant School and Pennington Church of England Junior School’