

|                               |           |                             |           |
|-------------------------------|-----------|-----------------------------|-----------|
| <b>Key Decision Required:</b> | <b>No</b> | <b>In the Forward Plan:</b> | <b>No</b> |
|-------------------------------|-----------|-----------------------------|-----------|

## CABINET

23 JANUARY 2015

### WELL-BEING AND PARTNERSHIPS PORTFOLIO HOLDER

**A.10     DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: BRUNSWICK HOUSE ALLOTMENTS, MISTLEY**  
 (Report prepared by Andy White and Gill Burden)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To determine whether Brunswick House Allotments meet the criteria set out in the Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) following its nomination as an Asset of Community Value by Mistley Parish Council.

##### **EXECUTIVE SUMMARY**

A valid nomination to register an asset of community value has been received from Mistley Parish Council in respect of Brunswick House Allotments, Mistley, Manningtree, Essex, CO11 1HS as shown identified in the plan included within Appendix A.

If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in Section 88 of the Localism Act 2011 and The Assets of Community Value Regulations 2012.

The Government’s non statutory guidance defines an asset of community value as: “Building or other land whose main (i.e. “non-ancillary”) use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future”. The Report provides an assessment of the nomination.

The Cabinet should consider the content of the nomination against the statutory criteria and determine whether the asset should be included within the Council’s List of Assets of Community Value.

Taking the evidence provided into account it is recommended that the building nominated does meet the criteria set out Section 88 of the Localism Act 2011 (as shown in sections 1 and 2 of the table above). Accordingly it is recommended that the criteria are met and that the building should be listed as an Asset of Community Value.

##### **RECOMMENDATION(S)**

**That Cabinet consider the Nomination and determine whether the nominated asset meets the definition of an asset of community value as set out in section 88 of the Localism Act 2011. Officers recommend that the asset meets the criteria set out in section 88 of the Localism Act 2011 and should be added to the list of Assets of Community Value.**

#### **PART 2 – IMPLICATIONS OF THE DECISION**

##### **DELIVERING PRIORITIES**

Assets of Community Value exist in a range of forms and functions. Individual properties may contribute in different ways across the spectrum of Council priorities.

## **FINANCE, OTHER RESOURCES AND RISK**

### **Finance and other resources**

There are circumstances where the Council may be required to pay compensation. It is hard to quantify this risk and it is therefore not proposed to make a specific allocation. The Advice Note issued by Department of Communities and Local Government (“DCLG”) states that if compensation exceeds £20,000 in any one financial year support can be requested through their burdens funding scheme.

### **Risk**

There is always some risk that the decision in relation to the nomination will be controversial whether it is listed or not.

## **LEGAL**

If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in Section 88 of the Localism Act 2011:

- (1) 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 an ancillary use furthers the social wellbeing or social interests of the local community, and;
  - (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.

Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

Under Schedule 2 of the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, the determination of an appeal against any decision made by or on behalf of the authority can be made by the Executive or another Committee. It is considered that as Cabinet will be the decision maker of the outcome of the nomination, any review received should be considered and referred to the Community Leadership and Partnerships Overview and Scrutiny Committee, which already includes within its terms of reference review of Cabinet decisions.

The Assets of Community Value (England) Regulations 2012 (“the Regulations”) provide procedural detail to give effect to the assets of community value scheme. A report earlier on this agenda set out a proposed procedure for dealing with the nomination of Assets of Community Value in accordance with the Regulations. Consideration of the nomination has been delayed by the drafting of the procedure. However Officers have adhered to the draft procedure insofar as possible and it is now proposed that Cabinet considers the nomination in accordance with the procedure.

## **OTHER IMPLICATIONS**

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

Assets of Community Value exist in a range of forms and functions. Individual properties may contribute in different ways across the spectrum of implications. The Act and Regulations are intended to increase public engagement.

### **Area or Ward Affected**

Manningtree, Mistley, Little Bentley and Tendring.

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

The Act and Regulations, also collectively known and described as Community Right to Bid place a duty on local authorities in England and Wales to maintain a list of land in their areas that is land of community value as nominated by the local community.

The local authority must consider only if the nominated asset meets the criteria set out in Section 88 Localism Act 2011 in that it is satisfied:

- (a) the actual use, not an ancillary one, that furthers social wellbeing or social interest of the local community and
- (b) that there can continue to be a non-ancillary use, which will further the social well-being or social interests of the local community.

The Council must maintain:

- A list of assets that are held to be of community value, and;
- A list of assets identified in unsuccessful nominations.

If land or buildings are placed on the list of assets of community value:

- They remain on the list for five years;
- They are subject to a local land charge;
- If the owner wishes to sell (some exemptions apply) the asset they must notify the Council;
- The Council must notify the nominator and publicise the potential sale;
- All community groups have a six week window to register their intent to bid for the asset;
- If no registration of intent is received the owner may then sell the asset as they see fit (subject to any normal legal processes);
- If intent is registered community groups are then allowed a further 20 weeks (strictly 6 months from the date of the owner's notice) to raise money, reach agreement or otherwise bid for the asset;
- The owner may sell to a community group at any time but is never obliged to do so;
- If no community bid is made or accepted within the six months the owner may then sell the asset as they see fit;
- No further bid or moratorium can be made for a period of 18 months from the owner's notice; and
- If the owner suffers financial loss as a result of the imposition of either moratorium the Council must compensate the owner.

The provisions of the community right to bid does not:

- Restrict who the owner of a listed asset can sell their property to, nor at what price;
- Confer a right of first refusal to community interest groups;
- Enable a community group to trigger disposal of a site; or
- Place any restriction on what an owner can do with their property, once listed, if it remains in their ownership.

Only the owner of the land has the right to seek a review of the decision to include any land on the list in accordance with Section 92 of the Localism Act 2011. This must be done in writing within 8 weeks of the written notice of inclusion of the land in the list. The table below, based on guidance produced by the Public Law Partnership sets out an overview of what the Act and Regulations intend to constitute as an Asset of Community Value”.

| Nature of use  | Social use was/is |           |             |         |        |
|--|-------------------|-----------|-------------|---------|--------|
|  | Never             | Long Past | Recent Past | Present | Future |
| The Act intends to apply to Land and Buildings Where:  |                   |           |             |         |        |
| (1) The main use of the land or building <b>further the social wellbeing or social interests of the local community</b> at the present time AND it is realistic to think that this can continue into the near future (even if the type of social use or benefit might change)*                 |                   |           |             | ✓       | ✓      |
| (2) The main use of the land or building <b>furthered the social wellbeing or social interests of the local community</b> in the recent past AND it is realistic to think that this could again happen <b>in the next five years</b> (even if the type of social use or benefit might change)# |                   |           | ✓           |         | ✓      |
| The Act does not intend to apply to land where:  |                   |           |             |         |        |
| (3) The main use of the land or <b>building furthered the social wellbeing or social interest of the local community some years ago</b> but is not presently in use for a social purpose   |                   | ✓         |             |         |        |
| (4) The land or building has <b>not recently been, and is not currently, in use for a primarily social purpose.</b>  | ✓                 |           |             |         |        |
| (5) The land or building has been <b>empty or derelict</b> for many years and remains so today.  | As applicable     |           |             |         |        |

In their Guidance Public Law Partnership provide some helpful interpretation of these terms:

\*This could apply to a broader set of activities and not just cultural, recreational and sport interests as provided by the Act. Working with local communities it could include: any land or building where the main purpose is for the provision of public services for education, health and wellbeing or community safety e.g. nurseries, schools, children’s centres, health centres, surgeries, hospitals, day care centres, and residential care homes. Sport, recreation & culture e.g. parks and open green spaces, sports and leisure centres, libraries, theatres, museums and heritage sites, cinemas, swimming pools. Community services e.g. community centres, youth centres, and public toilets. Any economic use which also provides important local social benefits e.g. village shops, pubs, markets.

#What does it mean “realistic to think that this can continue into the near future”? For the use which is **currently ongoing**, the working assumption should be that the present use can continue into the future, unless the local authority is able to identify evidence that is unlikely to be the case. In other words where the asset is presently in social use there should be a **presumption of continued viability**, unless clear evidence suggests otherwise. For a **social use which has lapsed** and needs to be re-established the local authority will need to take a view on the realism of re-establishing this. A new approach can help to re-establish services that were previously not viable.

## **CURRENT POSITION**

The Nomination Form has been submitted by Mistley Parish Council (attached at Appendix A) and contains in Part B4 and B5 reasons why the nominator considers that the land is of community value and how the land could be acquired and used in the future. The Nomination states that the land was until recently cultivated and maintained as allotments and had been so for 27 years until the current owners of the land gave the allotment users, collectively known as the Mistley Allotment and Leisure Gardener Association notice to quit in December 2013. The Mistley Allotment and Leisure Gardener Association is made up of local residents, many of them pensioners who have enjoyed use of the allotment site for many years and have established themselves as part of the local community. The position of the allotments is such that local residents can easily walk to the site from their homes nearby. The Nomination states that should the land come up for sale the Association would like the opportunity to bid for the allotment site and have indicated they would raise the necessary funds.

The land has until recently furthered the social wellbeing and interests of the local community and the main use of this land could continue to do so in the future.

In accordance with the Regulations the landowner has been notified of the nomination and they have not made representation.

The Council is required to consider only whether the asset meets the criteria set out in the Section 88 of the Act. However, if Officers receive a representation prior to the meeting of Cabinet it will be provided at the meeting for consideration.

Taking the above into account it is recommended that the area of land nominated does meet the criteria set out in Section 88 of the Localism Act 2011 (as shown in sections 1 and 2 of the table above). Accordingly it is recommended that the criteria are met and that the land should be listed as an Asset of Community Value.

## **BACKGROUND PAPERS FOR THE DECISION**

Non-statutory advice note for local authorities produced by DCLG Community Right to Bid – October 2012

## **APPENDICES**

**Appendix A – Nomination Form (Redacted)**



**LOCALISM ACT 2011**

**THE COMMUNITY RIGHT TO BID**

**NOMINATION FORM**

**A: You and your organisation**

|   |
|---|
| Your Name   |
| Your Organisation (full official name) Mistley Parish Council   |
| Your position in the organisation   |
| Organisation address (including postcode)<br>52 Harwich Road<br>Mistley<br>Manningtree<br>Essex<br>CO11 1LL |
| Daytime telephone no  |
| Email address   |
| How and when can we contact you?<br>By e-mail – Monday to Friday  |

\*other correspondence address or preferred way or time for us to contact you

**Type of organisation**

| Description                      | Put a cross <b>X</b> against all those that apply | Registration number of charity and/or company (if applicable) |
|----------------------------------|---|---|
| Neighbourhood forum              |   |   |
| Parish Council                   | <b>X</b>  |   |
| Charity                          |   |   |
| Community interest company       |   |   |
| Unincorporated body              |   |   |
| Company limited by guarantee     |   |   |
| Industrial and provident society |   |   |

What are the main aims and activities of your organisation?

Mistley Parish Council is made up of eleven councillors, led by a Chairman elected annually, who meet approximately every six weeks. A Finance Committee meets on an ad hoc basis. A Planning Committee meets every four weeks to consider and comment on each planning application to the District Council. Mistley Parish Council is also involved with the District Council in the formulation of a new 15-year Local Development Plan. There are also other Working Parties which meet to consider individual subjects, such as for the Cemetery (jointly owned with Manningtree Town Council) and Allotments.

The Council's main aims and activities are:

- (1) Decision-making — deciding which activities to support, where money should be spent, what services should be delivered and what policies should be implemented.
- (2) Monitoring – making sure that the Parish Council's decisions lead to efficient and effective services by keeping an eye on how well things are working.
- (3) Getting involved locally – as local representatives, councillors have responsibilities towards their parishioners and local organisations.

Mistley Parish Council provide, maintain or contribute to the following services:

- (i) Allotments – Mistley Parish Council currently leases one piece of land which it sub-lets to allotment tenants.
- (ii) Recreation Ground – Mistley Parish Council owns and maintains a large recreation ground consisting of about 50 acres including an ancient wood. There are football and rugby pitches, a Trim Trail, and a children's play area.
- (iii) Village Hall – Mistley Parish Council owns a modern Village Hall which has just been extensively renovated following serious fire damage. The management of the Hall is the responsibility of a Management Committee.
- (iv) Street Lighting – over 100 street lights are provided for footway lighting. The maintenance of these is contracted out to a Lighting Company.
- (v) Open Spaces – a number of open spaces maintained by Mistley Parish Council including greenswards and verges where grass cutting is carried out.
- (vi) Cemetery – is provided for use by the residents of the parish and Manningtree. Mistley Parish Council maintains this facility but its management has been contracted out to a local Funeral Director.
- (vii) Police Community Support Officers – Mistley Parish Council in collaboration with Manningtree and Lawford Councils cover half the cost of employing two PCSOs who work exclusively in the three parishes' area. A Liaison Committee meets at approximately two- month interval to discuss the deployment of the PCSOs with the Police. However, owing to a recent policy change by Essex Police, this arrangement will be terminating at the end of this current financial year.

**A8 Your organisation's rules**

Please send us a copy of the relevant type of document for your organisation, and put a cross in

X

|  |   |
|--|---|
| <b>the next column to indicate which one this is</b>   |   |
| Memorandum and Articles of Association (for a company) |   |
| Trust Deed (for a trust)                               |   |
| Constitution and/or rules (for other organisations)    | X |



**Part B: About the land or building(s) you are nominating**

**B1 Description and address**

|  |
|--|
| What it is (eg. pub, local shop)<br>Land (Land Registry Title Number – EX732672)   |
| Name of premises (eg. Royal Oak / Littletown stores)<br>Land known locally as "Brunswick House Allotments"   |
| Address including postcode (if known)<br>Land lying to the south of Harwich Road, Mistley, Manningtree, Essex CO11 1HS<br>(Ordnance Survey Map Reference – TM1231SW) |

**B2 Sketch plan**

Please include (here or on a separate sheet) a sketch plan of the land. This should show:-

- The boundaries of the land that you are nominating
- The approximate size and position of any building(s) on the land.
- Any roads bordering the site.

Please refer to the copy of the current title plan – Title Number: **EX73672** and Ordnance Survey Map Reference: **TM1231SW**. The scale is **1:2500**.

Land Registry  
Current title plan

Title number EX732672  
Ordnance Survey map reference TM1231SW  
Scale 1:2500  
Administrative area ESSEX : TENDRING



This is a copy of the title plan on 20 MAR 2012 at 13:37:19. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the title plan. An official copy of the title plan is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

The Land Registry endeavours to maintain high quality and scale accuracy of title plan images. The quality and accuracy of any print will depend on your printer, your computer and its print settings. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

This title is dealt with by Land Registry, Peterborough Office.

**B3 Owners and others with an interest in the building or land**

*You should supply the following information, if possible. If any information is not known to you, please say so.*

|   | <b>Name(s)</b> | <b>Address(es)</b> |
|---|----------------|--------------------|
| Names of all current occupants of the land  |                | Same as B1.        |
| Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)                          |                |                    |
| Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor) |                |                    |

**B4 Why you think the building or land is of community value**

*Note that the following are not able to be assets of community value:-*

- *A building wholly used as a residence, together with land "connected with" that residence. This means adjoining land in the same ownership. Land is treated as adjoining if it is separated only by a road, railway, river or canal.*
- *A caravan site.*
- *Operational land. This is generally land belonging to the former utilities and other statutory operators.*

Does it currently further the social wellbeing or social interests\* of the local community, or has it done so in the recent past? If so, how?

The land previously formed part of an estate of a Lunatic Asylum called Brunswick House, the building of which was located in Harwich Road, Mistley. For many years, this land had been used by residents of the Asylum as occupational therapy to cultivate vegetables, fruit and flowers. The Asylum eventually closed, but on 4 December 1986, the then North East Thames Regional Health Authority entered into a seven-year lease with Mistley Parish Council, for the parcels of land shown on the plan described as "(1)" and "(2)", but known locally as the "Brunswick House Allotments". The land including the "Brunswick House Allotments" was eventually sold by the Department for Health by auction in 2004. Mistley Parish Council continued to pay rent for these parcels of land until 4 December 2013, when the current owners notice to quit expired. These parcels of land have been cultivated and maintained as allotments continuously by local parishioners for nearly 27 years. The land is situated in a central position for the Parish with most of its users being able to walk with tools etc., to the site including many pensioners. This site is of significant value to the community.

Could it in future further the social wellbeing or social interests\* of the local community? If so, how? (This could be different from its current or past use.)

\*These could be cultural, recreational and/or sporting interests, so please say which one(s) apply.

**B5 How could the building or land be acquired and used in future?**

*If it is listed as an asset of community value, community interest groups (not just limited to your organisation) will get the opportunity to bid for it if it comes up for sale. Please set out how you think such a group could fund the purchase of the building or land, and how they could run it for the benefit of the community.*

The Mistley Allotment and Leisure Gardener Association, which consists of the majority of allotment holders, would like the opportunity to bid for part of the land for allotments, if it comes up for sale. Mistley Allotment and Leisure Gardener Association has indicated that it could raise funding to purchase part of the land.

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**Section C: Submitting this nomination**

**C1 What to include**

- The rules of your organisation (question A8).
- Your sketch plan (question B2).

**C2 Signature**

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

Signature

**C3 Where to send this form**

You can submit this

- **By post to:**  
on Sea Esse
- **By email to:**

Thorpe Road Weeley Clacton