

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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## CABINET

14 JUNE 2019

### REPORT OF CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER

**A.5 REVIEW OF THE REGISTRATION OF AN ASSET OF COMMUNITY VALUE: ARDLEIGH HALL LEISURE AND SQUASH CLUB**  
(Report prepared by Andy White and Gill Burden)

#### PART 1 – KEY INFORMATION

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

To review the listing of Ardleigh Hall Leisure and Squash Club under the Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) following a request for review by Ardleigh Hall LLP the owner of the Ardleigh Hall Squash Club which is registered with title number EX489331 at HM Land Registry.

##### **EXECUTIVE SUMMARY**

In January 2015 a valid nomination to register an asset of community value was received from Ardleigh Parish Council in respect of Ardleigh Hall Leisure and Squash Club Dedham Road Ardleigh Colchester Essex CO7 7LG.

In February 2015 Cabinet resolved to add Ardleigh Hall Squash and Leisure Club to the list of Assets of Community Value, having taken into account the evidence provided that the site met the criteria set out in Section 88 of the Act.

On 1<sup>st</sup> February 2018 planning application 16/00878/FUL was granted for the demolition of all existing buildings forming Ardleigh Hall Leisure and Squash Club and construction of 7 No. 4 bedroom detached houses and associated garages (the properties) and diversion of existing footpath public right of way.

The properties are nearing completion and the owner wishes to sell the properties but the sale would trigger a moratorium period because of the Asset of Community Value Listing attached to the site and previous buildings which have now been demolished by the owner. The owner has requested a review of the listing asking that their land is removed from the Asset of Community Value List.

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

**That Cabinet -**

- (a) Notes the change in circumstances at the former Ardleigh Hall Squash and Leisure Club since its decision in January 2015;**
- (b) Agrees that it is not realistic that the original land nominated including the buildings subsequently demolished will further the social wellbeing or social interests of the local community in the future; and**
- (c) Subsequently concludes that the criteria required in Section 88 Localism Act 2011 is no longer satisfied and that the land should be removed from 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. Particularly here the new dwellings which are being built following the grant of planning permission will contribute to delivering a quality living environment and local regeneration.

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

### **Finance and other resources**

There are circumstances where the Council may be required to pay compensation as set out in the Regulations – particularly Regulation 14. The key criteria in this case would be any loss incurred by the owner as a result of delayed sales caused by the listing. It is hard to quantify the level of risk and it is therefore not proposed to make a specific allocation. The Advice Note issued by Department of Communities and (“DCLG”) states that if compensation exceeds £20,000 in any one financial year support can be requested through their burdens funding scheme although that funding scheme may have limited funds remaining.

### **Risk**

There is always some risk that the decision in relation to the listing will be controversial but having reviewed the evidence submitted by the owner the Council has concluded that it is appropriate to review the listing as requested having regard to Section 92 of the Act and Schedule 2 of the Regulations.

## **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.

Section 91 of the Act allows for entries to be removed from the register and if a decision is made to do so, reasons must be given and notices given.

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 Overview and Scrutiny Committee, which already includes within its terms of reference review of Cabinet decisions. Referral to the Overview and Scrutiny Committee is only relevant when a review is requested at the time of original nomination, if Cabinet wishes to review its own decision following a change in circumstances; it is free to do so.

The Regulations provide procedural detail to give effect to the assets of community value scheme and the recommendations to Cabinet have been following consideration of the Act and the Regulations.

## 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**

Ardleigh and Little Bromley

## 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 wellbeing 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;
- 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”.

Section 91 of the Act allows for entries to be removed from the register and if a decision is made to do so, reasons must be given and notices given.

The Act intends to apply to Land and Buildings Where:

1. The main use of the land or building **furthers the social wellbeing or social interests of the local community** 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), or;
2. The main use of the land or building **furthered the social wellbeing or social interests of the local community** in the recent past AND it is realistic to think that this could again happen **in the next five years** (even if the type of social use or benefit might change).

The Act does not intend to apply to land where:

1. The main use of the land or **building furthered the social wellbeing or social interest of the local community some years ago** but is not presently in use for a social purpose, or;
2. The land or building has **not recently been, and is not currently, in use for a primarily social purpose**, or;
3. The land or building has been **empty or derelict** for many years and remains so today.

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**

In January 2015 a valid nomination to register an asset of community value was received from Ardleigh Parish Council in respect of Ardleigh Hall Leisure and Squash Club Dedham Colchester Essex CO7 7LG.

The Nomination stated that the building had until recently (at that time January 2015) been operating as a leisure and squash club and in addition it included a swimming pool used by local primary schools as well as a Dance Studio and School. The Council was required to consider only whether the asset met the criteria set out in Section 88 of the Act and taking into account the above it was recommended to Cabinet and agreed that the building met the criteria and should be listed as an Asset of Community Value in February 2015.

On 1<sup>st</sup> February 2018 planning application 16/00878/FUL was granted for the demolition of the buildings and construction of 7 No. 4 bedroom detached houses and associated garages and the diversion of an existing footpath public right of way. There was no requirement for s106 contribution as this application was for less than 10 properties.

The above properties are nearing completion and the owners have set out their reasons for seeking removal of the property from the list of Assets of Community Value as follows:

1. The property was previously used as a squash club when it was designated as an asset of community value. The property is no longer a squash club;
2. The property cannot be considered as asset of community value because its existing use falls outside the definition of 'an asset of community value' as set out by section 88 of the Localism Act 2011 (i.e. because the property use is no longer for the furtherance of social wellbeing and it is unrealistic to think that the property will be used as a squash club in the future);
3. The property has not been used as a squash club for some time;
4. Planning permission was granted by the local authority for the demolition on the squash club and the construction of seven residential properties in its place;
5. The squash club has been demolished, which was completed prior to the end of 2018, and;
6. The seven new residential properties are currently under construction and nearing completion.

It is understood the swimming pool and dance studio, referred to in the initial application for listing, have also been demolished in accordance with the planning permission.

Taking account of the above it would be unrealistic to assume that the area could return to its previous use therefore it is recommended that the criteria for the listing are no longer met and that the land should be removed from the list of Assets of Community Value.

## **BACKGROUND PAPERS FOR THE DECISION**

None

## **APPENDICES**

None