

Key Decision Required:	No	In the Forward Plan:	Yes
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CABINET

23 APRIL 2021

REPORT OF THE PORTFOLIO HOLDER FOR PARTNERSHIPS

A.5 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: ALLOTMENTS, WIVENHOE ROAD, ALRESFORD, COLCHESTER, ESSEX CO7 8AQ

(Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
To determine whether the allotments Wivenhoe Road Alresford meet the criteria set out in the Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) following their nomination as an Asset of Community Value by Alresford Parish Council. No other criteria are pertinent.

EXECUTIVE SUMMARY
<p>A valid nomination to register an asset of community value has been received for the allotments as shown identified in the plan included within Appendix A.</p> <p>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.</p> <p>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.</p> <p>The Cabinet should consider the content of the nomination against the statutory criteria (and no other factors) and determine whether the asset should be included within the Council’s List of Assets of Community Value.</p> <p>Taking the evidence provided into account it is recommended that the land nominated does meet the criteria set out Section 88 of the Localism Act 2011. Accordingly it is recommended that the criteria are met and that the land should be listed as an Asset of Community Value.</p>

RECOMMENDATION(S)
That Cabinet determines that the allotments at Wivenhoe Road, Alresford, COLCHESTER, Essex CO7 8AQ meet the definition of an Asset of Community Value as set out in Section 88 of the Localism Act 2011 and that the asset be added to the Council’s 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.

Risk

The nominating body are the current occupiers of the allotment site with a lease granted from Tendring District Council which runs until February 2025. 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. An earlier report on this subject set out a proposed procedure for dealing with the nomination of Assets of Community Value in accordance with the Regulations and Officers have adhered to the procedure and it is now proposed that Cabinet considers the nomination in accordance with the procedure.

OTHER IMPLICATIONS

Relevant Ward = Alresford and Elmstead Market

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;
- 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”.

The Act intends to apply to Land and Buildings Where:

1. The main use of the land or building **furtheres 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

The Nomination Form has been submitted by Alresford Parish Council (attached at Appendix A), and contains at B4 and B5 reasons why the nominators consider that the land is of community value and how the land could be acquired and used in the future.

The nomination states that the allotments provide a social space for residents to grow their own vegetables/fruit as well as benefitting their individual mental health and social wellbeing.

In accordance with the Regulations the landowner (TDC) has been notified and been given a period of time to make representation.

It is recommended that the land does meet the criteria set out in Section 88 (2) (a) of the Act:

there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community

The Nomination request is being sought with the stated intention of continuing the current use and activities which further the social wellbeing and interests of the local community.

Taking the above into account it is recommended that the matter for consideration is whether the building nominated does meet the criteria set out in Section 88 (2) (b) of the Localism Act 2011, specifically:

it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

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 Redacted
Your Organisation (full official name) Alresford Parish Council
Your position in the organisation Parish Clerk & Proper Officer
Organisation address (including postcode) The Pavilion Ford Lane Alresford Essex CO7 8AT
Daytime telephone no. 01206 615117
Email address alresfordpc@outlook.com
How and when can we contact you?*
Via email – anytime Via telephone – Tuesday/Wednesday/Thursday 9.30am-2.30pm

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

Type of organisation

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

Unincorporated bodies only:

In the case of an unincorporated body, at least 21 of its members must be registered to vote in the Tendring District or an adjoining authority. If relevant, please confirm the number of such members. If they are registered to vote in the area of a neighbouring local authority, rather than in Tendring, please confirm which area that is.

N/A

Local connection

Your organisation must have a local connection, which means that its activities are wholly or partly concerned with the administrative area of Tendring District Council or a neighbouring local authority. Please explain what your organisation's local connection is.

The connection is that we are the parish council for the village of Alresford, Essex.

A6 Distribution of surplus funds (certain types of organisation only)

If your organisation is an unincorporated body, a company limited by guarantee, or an industrial and provident society, its rules must provide that surplus funds are not distributed to members, but are applied wholly or partly for the benefit of the local area (ie. within the administrative area of Tendring or a neighbouring local authority). If relevant, please confirm that this is the case, and specifically which area this applies to.

N/A

A7 More about your organisation

What are the main aims and activities of your organisation?

AIMS

- To provide effective, efficient, and accountable local government for the parish, enabling residents to be involved in the life of the community and its future development.
- To be a strong voice for residents and local businesses, working to improve the overall village area both built and natural, while preserving the uniqueness of heritage areas

OBJECTIVES

- To understand and communicate the views, needs and aspirations of residents and businesses to statutory and non-governmental bodies as required
- Increase public involvement in the community through ensuring the parish council and its activities are open, transparent, and accountable to residents.
- Support local business and economic activity in the village
- Work with the District Council to provide safe, healthy, and timely opportunities for recreation, leisure, and education, and to provide, improve and maintain play equipment, allotments, and public recreation spaces
- To support the work of village voluntary organizations through grants and practical support
- Respond to planning applications and other statutory consultations on time, ensuring that recommendations made to the District Council adhere to the village plan, any statutory regulations, and the interests of the community.
- Promote, within our community, activities which support the principles of environmental sustainability and an ethical society, working with residents to keep public places clean and safe.
- Ensure that Councillors and Staff have access to high quality training and development opportunities and that they meet all required standards, for example working towards achieving Parish “General Power of Competence” status

Please send us a copy of the relevant type of document for your organisation, and put a cross in the next column to indicate which one this is	X
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

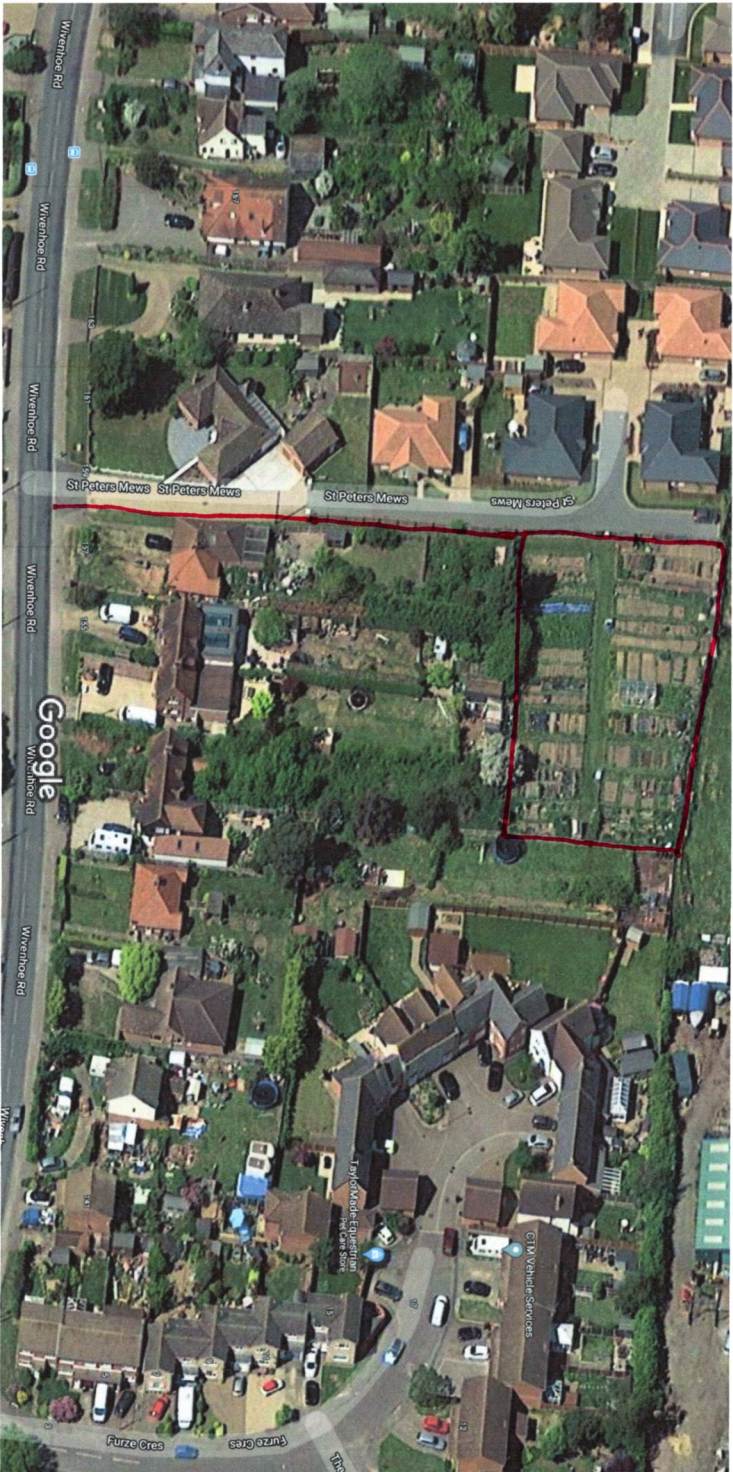
What it is (eg. pub, local shop) Allotments
Name of premises (eg. Royal Oak / Littletown stores) Wivenhoe Road Allotments
Address including postcode (if known) Wivenhoe Road, Alresford, Essex, CO7 8AQ

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.

See below picture for details. There are 3 sheds on site and 1 polytunnel (removable structures). There are currently 18 allotment plots on this land.



Imagery ©2021 Bluesky, CNES / Airbus, Getmapping plc, Intoterra Ltd & Bluesky, Maxar Technologies, Map data ©2021

— = Allotment access + boundary.

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.

	Name(s)	Address(es)
Names of all current occupants of the land	Tendring District Council	Town Hall, Station Road, Clacton-On-Sea, Essex, CO15 1SE
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor)	Tendring District Council	Town Hall, Station Road, Clacton-On-Sea, Essex, CO15 1SE
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)	Alresford Parish Council	The Pavilion, Ford Lane, Alresford, Essex, CO7 8AT

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?

Yes it does. The allotments provide a social space for residents to grow their own vegetables/fruit, as well as benefiting their individual mental health and social wellbeing which is so important especially in these current times.

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.)

For as long as we hold the lease it will provide social wellbeing and a social interest for those who use it.

**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 parish council have access to many different funding streams and would be able to apply for grant funding to help with the purchase.

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 REDACTED
