

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

8 OCTOBER 2021

REPORT OF THE PORTFOLIO HOLDER FOR PARTNERSHIPS

A.3 DETERMINATION OF A NOMINATION TO REGISTER AN ASSET OF COMMUNITY VALUE: IMPERIAL HALL, 75 POLE BARN LANE, FRINTON-ON-SEA, ESSEX CO13 9NQ

(Report prepared by Andy White and Gill Burden)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
To determine whether Imperial Hall 75 Pole Barn Lane Frinton on Sea Essex CO13 9NQ meets 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 Frinton and Walton Heritage Trust (FWHT). No other criteria are pertinent.

EXECUTIVE SUMMARY
<p>A valid nomination to register an asset of community value has been received for Imperial Hall 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 not recommended that the land nominated meets the criteria set out Section 88 of the Localism Act 2011 and should not be listed as an Asset of Community Value.</p>

RECOMMENDATION(S)
That Cabinet determines that Imperial Hall 75 Pole Barn Lane Frinton on Sea Essex CO13 9NQ does not meet the definition of an Asset of Community Value, as set out in Section 88 of the Localism Act 2011 and

that the asset should not 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.

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

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 / Environment and Carbon Neutrality.

Area or Ward Affected

Frinton

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”.

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 Frinton and Walton Heritage Trust (FWHT), and contains in Appendix A 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. In addition FWHT have appointed Richard Max and Co Solicitors to make further representation in addition to the Nomination form the contents of which have been noted and are also attached at Appendix B.

The nomination states that the building was built in 1927 as a theatre and meeting hall and was actively delivering productions up until the outbreak of the Second World War in 1939. Between 1939 and 1946 the building was used for military purposes and when the war finished the building was not handed back to the community having been requisitioned by the Army.

By 1962 the building was being used as a furniture store and depository and when offered to the community in the early 70’s much interest was shown in returning it to its former use but this did not come to fruition. The building was then purchased by Prykes Commercial Removals who remain the current owners using it for furniture storage.

In accordance with the Regulations the owners were notified and representation has been received attached at Appendix C from Solicitors acting on behalf of the late owner who sadly passed away the week the Nomination was received. It was considered appropriate to grant a longer period of time for representation to be made.

It is recommended that the land does not 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

In order for land or a building to be considered to have community value it must (among other things) have previously been used for the purposes of furthering the social wellbeing or interests of the local community in the "recent past" and it must also be realistic to think that it will be used for the same purpose again in the next five years (*section 88, LA 2011*).

The Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government) provides the following comment on the meaning of "recent past":

"With regard to 'recent past', our current view is that we will leave it to the local authority to decide, since 'recent' might be viewed differently in different circumstances. For example, 'recent' might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter."

Having taken into account the contents of the nomination, solicitors representation from both owners and nominators we do not consider the site meets the section 88 definition of an asset of community value.

The site is not currently being used for community purposes but could still meet the definition if it had the relevant use in the 'recent past' which as a purpose built theatre and meeting hall it would no doubt have had. It is therefore the meaning of 'recent past' whilst not prescribed under the act must be interpreted.

- the building has been used as a furniture depository for the past 50 years and has not been used as a theatre since 1939.
- Noted that as the LA 2011 does not establish a specific period in regard to the test of "recent past", the council has to consider what amounts to a reasonable period and in excess of 80 years is not considered a reasonable period.

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)

**Appendix B - Additional representation from Solicitor representing the
Nominating body**

Appendix C – Representation from Solicitor representing owners
Appendix D - Article from 5th January 1928 submitted by Solicitors
representing Nominating Body

LOCALISM ACT 2011

THE COMMUNITY RIGHT TO BID

NOMINATION FORM

A: You and your organisation

Your Name Redacted
Your Organisation (full official name) Frinton and Walton Heritage Trust
Your position in the organisation Vice-Chair
Organisation address (including postcode) Crossing Cottage Station Approach Frinton-on-Sea Essex CO13 9JT
Daytime telephone no. 01255 852993
Email address secretary@fwheritage.co.uk
How and when can we contact you?*
You may contact me at any time. Alternative Email address: Redacted

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

Type of organisation

Description	Put a cross \times against all those that apply	Registration number of charity and/or company (if applicable)
Neighbourhood forum		
Parish Council		
Charity	X	289885
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 Frinton and Walton Heritage Trust ("FWHT") is a charitable heritage organisation with about 300 members and run entirely by volunteers.

FWHT is responsible for three museums in Frinton-on-Sea and Walton-on-the-Naze and a restored historic lifeboat.

FWHT also maintains an archive with information on the history of both the built environment, people and life within the old boundary of Frinton & Walton Urban District Council, i.e. Frinton, Walton, the villages of Kirby and Great Holland.

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?

1. To secure the preservation, protection, development and improvement of features of historic or public interest to benefit the area covering the towns of Frinton-on-Sea, Walton-on-the-Naze and the neighbouring villages of Great Holland, Kirby Cross and Kirby-le-Soken;
2. to educate the public in the geography, history, natural history and architecture of the area of benefit, to give information, hold meetings, lectures and exhibitions; and
3. to promote high standards of planning and architecture in or affecting the area.

A8 Your organisation's rules

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*
	<i>*Copy of present constitution and draft of new CIO constitution enclosed</i>

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

B1 Description and address

What it is (eg. pub, local shop)

Currently a furniture repository and self-storage facility owned and operated by Pyrkes Commercial Removers Ltd.

Formerly a purpose-built theatre and meeting hall, built in 1927 to the design of well-known local architects Messrs. Tomkins, Homer and Ley for local businessman and coal merchant, Mr. Ernest Moy of Westpoint, Second Avenue, Frinton-on-Sea. (Ref: Planning Application D/UFr Pb1/836 – 1927, Essex Records Office).

Name of premises (eg. Royal Oak / Littletown stores)

The Imperial Hall

Address including postcode (if known)

75 Pole Barn Lane, Frinton on Sea, Essex, CO13 9NQ

B2 Sketch plan

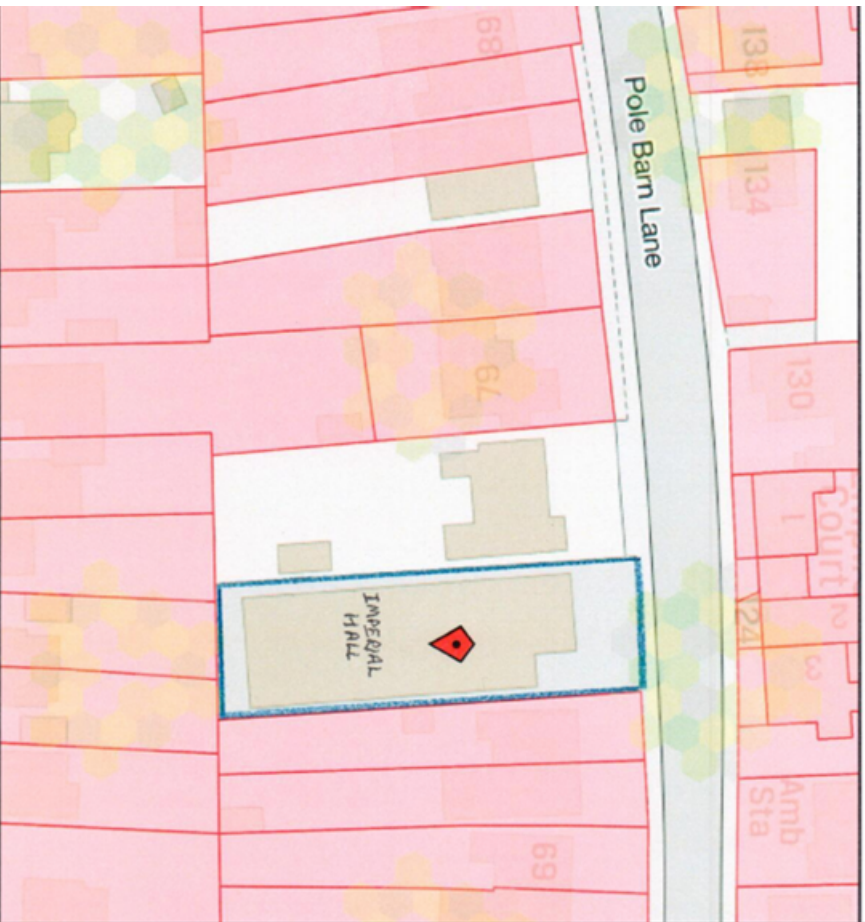
Please include (here or on a separate sheet) a sketch plan of the land. This should show:-

- 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.

Sketch plan attached as a separate sheet. The land is shown edged blue.

**To the left (looking at the land from Pole Barn Lane):
Semi-detached houses; Yellowleaf, 71 and Treecote, 73.**

**To the right (looking at the land from Pole Barn Lane):
Bungalow; The Roost, 77, built in 1922 by the noted local author, Redacted.**



2 16 20m

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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	Pyrkes Commercial Removers Ltd	Same as B1. Also at: 3 Tudor Close, Jaywick, Clacton on Sea, CO15 2PL
Names and current or last known addresses of all those owning the freehold of the land (ie. owner, head landlord, head lessor) * <i>* the Property is unregistered at HMLR</i>	T.R. Paxon Esq Ms. J. Gillings	Same as B1 pyrketransport1@btconnect.com Same as B1 Also at: Willows 326 London Road Clacton Essex CO16 9QZ jane.essex@btconnect.com
Names and current or last known addresses of all those having a leasehold interest in the land (ie. tenant, intermediate landlord, intermediate lessor)	Believed no leasehold interest	

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 Imperial Hall was built in 1927 as a theatre and meeting hall. At that time, it was the only public hall available to the community of Frinton apart from various ‘tin’ church halls. The Parish Church Hall was not built until 1933 and the McGrigor Hall, for The Women’s Institute, not until 1934.

The Imperial Hall hosted many events, political meetings.

The Frinton Summer Theatre, one of the very few surviving repertory theatres in the country, started there in 1934. There is a comprehensive detailed list of theatre productions held in the Hall up to the outbreak of the Second World War on 3rd September 1939 in Frinton Summer Theatre’s new history book, “80 Glorious Years”.

The website <http://cinematreasures.org/theaters/44153> notes the use of the Hall also as a cinema from 1928 to at least 1936. It details that there was a twenty foot deep stage and the Hall is reputed to still have its original sprung floor for dancing.

From 1939 to 1946, the building was used for military purposes whilst Frinton was closed to all but essential personnel being in the coastal exclusion zone. The town was re-opened in 1946 allowing the population to return to their homes. However, the Imperial Hall was not returned to community use following its requisition by the Army.

By 1962, the Imperial Hall was being used as a Furniture Store and Depository by Mummery & Harris Limited, the famous furniture store in Connaught Avenue whose 1936 iconic modernist building still graces the shopping street. In about 1972 the building was offered to the wider community of Frinton and its surrounding conurbations. Many residents and organisations wanted the building to be returned to community use. However, this did not happen and instead the building was sold to Mr. Terry Paxon of Pyrkes Commercial Removals who have used the building for furniture storage and for parking at least two of their removal lorries on the forecourt since that date.

The fact that The Imperial Hall was last used for community use some time ago in no way prevents Tendring District Council listing it as an Asset of Community Value (“ACV”).

Para 1 of “Assets of Community Value – Policy Statement” Government Guidance states that:

“With regard to “recent past”, our current view is that we will leave it to the local authority to decide, since “recent” might be viewed differently in different circumstances. For example, “recent” might be taken as a longer period for

instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter."

Here is an actual example of a building referred to in the Guidance that intended for public use taken out of such use for military purposes.

In these circumstances FWHT believes that Tendring District Council will be well within its powers to take a view that "recent past" covers the period since the Imperial Hall was last used for community use and for it be listed as an ACV.

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.)

Looking to the future, the FWHT sees the Imperial Hall as a much-needed Arts and Heritage Centre. The FWHT needs more space to house and display its ever-growing archive and artefacts and there are no plots of land available to build a new venue within Frinton.

In addition, there are limited resources for local clubs and societies to hold meetings and events within the town of Frinton-on-Sea and the surrounding villages.

Community buildings are a finite resource within Frinton on Sea. Apart from the WI Hall; various sporting and social clubs (which are membership based) and a number of Churches and Schools, there are no other community properties available. There are no performing arts centres. The current FWHT premises at Station Cottage are too small.

The Imperial Hall is the last possible property "within the gates" of Frinton on Sea that could be returned to community use especially as the population of the Tendring area continues to grow.

The Imperial Hall is well located to serve local schools. The Hall is easily accessible on foot or by bicycle rather than car and within easy access to the railway station and buses.

FWHT sees the possibility of listing the Imperial Hall as an ACV as a hugely important step and respectfully asks the Council not to miss this vital opportunity.

**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.

If the Imperial Hall was to be listed as an ACV by the Council, funds could be raised in a number of ways:

- **Public subscription;**
- **Individual donor(s);**
- **Legacies or bequests;**
- **Lottery funding.**

If put into use as a combined Arts and Heritage Centre, the Hall might be available:

- **For art and other exhibitions;**
- **As a local history resource for the FWHT;**
- **For theatrical productions - the Hall might become the home again of The Frinton Summer Theatre;**
- **As a cinema;**
- **As meeting space for local organisations;**
- **As a concert hall; or**
- **As a combined Arts and Heritage centre.**

[NB Both the FWHT and the Frinton Summer Theatre charities have community outreach programmes].

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 on behalf of the Frinton and Walton Heritage Trust



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Our Ref: RM 2 August 2021

Gill Burden
Economic Growth Officer
Tendring District Council
Regeneration and Inward Investment
Town Hall
Station Road
Clacton on Sea
ESSEX
CO15 1SE By email to: gburden@tendringdc.gov.uk

Dear Ms Burden

Localism Act 2011 – Community Right to Bid - Nomination as an Asset of Community Value

Imperial Hall, 75 Pole Barn Lane, Frinton on Sea, Essex, CO13 9NQ (the “Imperial Hall”)

Frinton and Walton Heritage Trust (“FWHT”) and Frinton Summer Theatre Ltd (“FST”)

We are instructed by the FWHT and the FST.

The FWHT made an application to nominate the Imperial Hall as an Asset of Community Value with the support of the FST.

The application was duly made on the Nomination Form available on the website of Tendring District Council (the “Council”) on 9 May 2021 and was acknowledged as valid by the Council.

The application was to have been considered by the Cabinet of the Council at its meeting in July.

In the event objections were received from the owners of the Imperial Hall and preparation of the Officer’s report to Cabinet and the Cabinet’s consideration of the matter has been delayed until September.

We were invited by the Council to contact the solicitors for the owners. We did so, but they did not wish to discuss matters with us.

Interested parties have been invited to make any further submissions to the Council by mid-August which will be taken into account by the Council's **officers** when they prepare their report to Cabinet.

This letter constitutes the further submissions made on behalf of the FWHT and the FST.

Statutory Framework

The statutory basis for Assets of Community Value is set out in Chapter 3 of the Localism Act 2011 (the "2011 Act").

This is supplemented by the Assets of Community Value (England) Regulations 2012 (the "2012 Regulations").

Section 87 of the 2011 Act provides that a local authority must maintain a list of land in its area that is land of community value.

Section 88 of the 2011 Act sets out the meaning of land of community value:

(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the local 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.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

(a) 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, and

(b) 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.

(3) The appropriate authority may by regulations—

(a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular) —

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

- (c) the nature of any estate or interest in any of the land or in other land;
- (d) any use to which any of the land or other land has been, is being or could be put;
- (e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—
 - (i) any of the land or other land, or
 - (ii) any of the matters within paragraphs (a) to (d);
 - (f) any price, or value for any purpose, of any of the land or other land.

(6) In this section—

“legislation” means —

- (a) an Act, or
- (b) a Measure or Act of the National Assembly for Wales;

“social interests” includes (in particular) each of the following —

- (a) cultural interests;
- (b) recreational interests;
- (c) sporting interests;

“statutory provision” means a provision of —

- (a) legislation, or
- (b) an instrument made under legislation.

The tests that must be satisfied in the case of the Imperial Hall (which is not in “*actual current* [community] *use*”) if it is to be included by the Council in its list, are set out in Section 88(2) (a) and (b) of the 2011 Act, if in the opinion of the local authority:

(a) 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; and

(b) 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. [**our emphasis**]

It is important to note at the outset, therefore, that the relevant tests do not include any consideration as to the *length* of the period of actual use that took place in the recent past – merely that the Imperial Hall had, at some time in the recent past, been used to further the social wellbeing of the interests of the local community.

We address the two tests below and will submit that that they are clearly satisfied.

Government Guidance

Government Guidance may be found in:

- Assets of Community Value – Policy Statement issued by the DCLG in September 2011 (the “2011 Policy Statement”) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/6069/1987150.pdf; and

- Community Right to Bid: Non-statutory advice note for local authorities published in October 2012 (the “2012 Non-statutory Advice Note”) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/14880/Community Right to Bid - Non-statutory advice note for local authorities.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/14880/Community_Right_to_Bid_-_Non-statutory_advice_note_for_local_authorities.pdf)

The 2011 Policy Statement explains the Government’s thinking on the meaning of “recent past” at para 1:

“With regard to “recent past”, our current view is that we will leave it to the local authority to decide, since “recent” might be viewed differently in different circumstances. For example, “recent” might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter.”

The 2012 Non-statutory Advice Note states at Para 3.5 (b) that:

“Section 88(2) of the Act extends this definition [ie the definition contained in Section 88(1)] 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.”

What is meant by “recent past” under Section 88 of the 2011 Act?

“Recent past” is not defined in the legislation or paragraph 225 of the explanatory memorandum to the 2011 Act which deals with Section 88.

It is addressed in the 2011 Policy Statement which explicitly states that the concept is for the Council to determine.

There is flexibility in making this determination as the 2011 Policy Statement also says that:

“recent” might be viewed differently in different circumstances.”

In the case of *R (Edgar) v Bournemouth Borough Council* (unreported, October 2013) it was held that provided the local authority can demonstrate that it took all relevant matters into consideration when considering what constituted the “recent past” and gave proper and reasonable reasons, the Court would be reluctant to interfere with the authority’s decision.

In the case of *Sandhu v South Oxfordshire District Council* CR/2019/0008 <https://www.bailii.org/uk/cases/UKFTT/GRC/2020/CR-2019-0008.html> Upper Tribunal Judge O’Connor found that:

15. The term “in the recent past” (found in section 88(2)(a)) is not defined in the 2011 Act or in the Regulations. In setting out the ‘future condition’ (section 88(2)(b)) Parliament chose to provide for a definite period of five years, whereas in legislating the ‘past condition’ (section 88(2)(a)) Parliament was deliberately imprecise, choosing to restrict the operation of that provision to relevant events falling within the “the recent past”. It is not for the Tribunal to bring precision to the ‘past condition’ when Parliament has deliberately chosen to use imprecise language. What constitutes the recent past is a flexible concept and must depend upon all the circumstances of a particular case.

Judge O'Connor repeated his conclusions on this point in *Roffe v West Berkshire Council* CR/2019/0100 [<https://www.bailii.org/uk/cases/UKFTT/GRC/2021/CR-2019-0010.html>] paras 24-25].

As “*recent past*” is a flexible concept, the Council may determine what it means depending on the circumstances of the case. We examine these circumstances below.

The particular circumstances concerning the Imperial Hall

The Imperial Hall was originally built and used as a theatre and meeting hall in 1927. It was used as a theatre and meeting hall (and possibly as a cinema as well) until at least 1936.

In 1939 the Imperial Hall was requisitioned by the Army and was used for military purposes until 1946.

Between 1946 and 1962 the use of the Imperial Hall is unclear but by 1962 it was being used as a furniture repository and has been used as such ever since.

This is a purpose built theatre which is reputed still to retain many features which would enable it to be returned to theatrical and community use – for example, the sprung floor and proscenium arch as well as the entrance lobby.

In the 2012 Guidance the specific example of where the “*recent past*” can be a longer period is where property was taken over by the military:

“For example, “recent” might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building.”

The Council is not restricted by the “*ten or twenty year*” period mentioned in the 2012 Guidance – it is free to determine what it thinks should be the relevant period in respect of the Imperial Hall based on the circumstances of the case.

Military requisition as a result of WW2 is what occurred in the case of the Imperial Hall. We suggest that one of the reasons the taking of land by the military is given as an example in the 2012 Guidance is that the effect of taking land in this manner is both draconian and unusual. In this case, the disruption of the war caused a community asset to be stripped out of community use; after the war there were neither the resources nor the impetus to restore the Imperial Hall to its former use – not only was the opportunity missed, but it simply could not be taken at that point. The demise of the Imperial Hall for community use can be distinguished by these particular circumstances and “*recent past*” can be interpreted accordingly.

Purpose-built theatres are scarce in the UK – so scarce that the Theatres Trust is not only tasked with protecting them but also the law has recently been changed to ensure that the Trust is consulted whenever a former theatre is to be redeveloped.

Because the Imperial Hall:

- was taken out of community use as a result of military requisition during WW2;
- was used prior to the war as a theatre and that is one of the scarce remaining examples of such purpose-built buildings which still exists in England and Wales;

- remains substantially in the form in which it was constructed; and
- could easily be returned to theatrical use (having been used only as a furniture repository since it was last used as a theatre)

means that the Council is entitled to determine that the concept of the "*recent past*" is extendable to before the beginning of World War 2.

A number of other theatres in England and Wales have been listed as Assets of Community Value – for example, the Granville Theatre in Thanet; the Derby Hippodrome and the Streatham Hill Theatre in Lambeth. One might observe that the general public in England has been watching theatrical performances in purpose built theatres since Shakespearean times; when considered in those terms, the period in question in the current case is clearly recent.

The two tests

These are met because:

1. There was a time in the recent past (namely, before the Second World War) when the actual main use of the Imperial Hall (that was not an ancillary use) as a theatre, meeting hall and cinema furthered the wellbeing or interests of the local community of Frinton on Sea and beyond; and
2. It is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Imperial Hall (for example, for use as a public meeting hall by the FWHT and/or a theatre by the FST) that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community of Frinton on Sea and beyond.

Submission

We respectfully submit that the Council may, with confidence, grant this application and list the Imperial Hall as an Asset of Community Value; and the FWHT and FST would urge it to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read "Richard Max", with a long horizontal line underneath it.

RICHARD MAX

**cc FWHT
FST**

**Re: Imperial Hall, 75 Pole Barn Lane,
Frinton on Sea, Essex, CO13 9NQ**

Representations

Against the inclusion of the above property in the List of Assets
of Community Value

Jane Gillings and the Executors of the late Terence Paxon on
behalf of the legal owners of the property.

Pleass Thomson & Company
Rosemary Chambers
91/93 Rosemary Road West
Clacton on Sea
Essex
CO15 1EP

Tel: 01255 221133

The property has been nominated for inclusion in Tendring District Council's list of assets of community value under Part 5, Chapter 3 of the Localism Act 2011. The criteria for land to be of community value are delineated in sections 88 of that Act, specifically subsections (1) and (2). The property fails to meet the criteria in either of these subsections as demonstrated below.

(1)

The property in question is currently used as the warehouse of Pyrke Transport Ltd and Pyrke Commercial Removers Ltd. There is consequently no current use of the land which is not an ancillary use which furthers the social wellbeing or social interests of the local community, meaning the property is not land of community value under subsection (1) of section 88.

(2)

As for subsection (2)(a), the property has not been used as a theatre since the 1950s and has served no purpose which furthered social wellbeing or social interests since then, or in the recent past under any practicable interpretation of the term. The property is not land of community value under subsection (2)(a) therefore.

As for subsection (2)(b), it is not realistic to think that at any point within the next 5 years the property can further any social wellbeing or social interests of the local community. Subsection (6) provides social interests are to include cultural, recreational and sporting interests.

- The building is not suitable for any sporting purpose.
- The building is too small by modern standards to be used for the purpose of theatre or cinema as it once was.
- The building is located on a residential street, situated closely between two private residences, meaning most cultural or recreational purposes will be impossible without nuisance.
- There is very limited parking at the property and no room for development, meaning any public frequency of the property would result in considerable grievance for residents of Pole Barn Lane from congestion and intrusive parking.
- As a result, it is in no way realistic to think the property can be used for anything except small private business within the next 5 years, or significantly longer.

The property is therefore not land of community value under subsection 2(b).

The property fails to meet the criteria set out in section 88 of the Localism Act 2011 and should therefore not be listed as an asset of community value.

A.3 Appendix D

Please find attached a copy of an article from the 5 January 1928 edition of Kinematograph Weekly concerning the Imperial Hall, Pole Barn Lane – this confirms the capacity (400); accommodation and the sprung maple floor. It was designed and used as an “adaptable” community building.