

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

22 JANUARY 2018

PORTFOLIO HOLDER FOR HEALTH AND EDUCATION

**A.5 REVIEW OF THE REGISTRATION OF 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 review the listing of the Brunswick House Allotments under the Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) following a request for review by the owner.

EXECUTIVE SUMMARY

In 2014 a valid nomination to register an asset of community value was received from Mistley Parish Council in respect of Brunswick House Allotments, Mistley, Manningtree, Essex, CO11 1HS.

In January 2015 Cabinet resolved to add the land to the list of Assets of Community Value, having taken into account the evidence provided that the land nominated met the criteria set out Section 88 of the Localism Act 2011.

On 01 December 2015 planning application 15/01787/FULL was validated, for 25 bungalows.

On 21 August 2017 the Council entered into a s106 planning agreement with the owners of the land pursuant to that application, including:

1. The transfer of one dwelling as affordable housing
2. The setting out and transfer of revised allotments
3. The creation and transfer of public open space

On 07 September 2017 the Council granted planning permission for 25 bungalows subject to some conditions.

The owner wishes to sell the development land but cannot because of the Asset of Community Value Listing. The owner has requested a review due to the provisions of the Section 106 agreement.

RECOMMENDATION(S)

That Cabinet

- (a) Notes the change in circumstances at Brunswick House Allotments since its decision in January 2005, including Mistley Parish Council’s approval of the removal of the Asset of Community Value listing and consequently agrees to undertake a review;**
- (b) agrees that following the obligations of the Section 106 planning agreement, including a provision to transfer revised allotments, it is not realistic that the original land nominated will further the social wellbeing or social interests of the local community in the future; and**
- (c) Subsequently, 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

Aspects so the site and proposals contribute to various corporate priorities:

- Promote healthier lifestyles and living
- Deliver a quality living environment
- Local regeneration
- First rate leisure facilities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There are circumstances where the Council may be required to pay compensation. The key criteria in this case would be any cost incurred by the owner as a result of delayed sale caused by the listing. 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 listing will be controversial whether it is listed or not. In addition, in the specific circumstances of this case a section 106 agreement is in place which actually requires the provision of new allotments which is preferable to the protection of the Localism Act which is, in extremis, limited to delaying sales of land.

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 notice 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 and

Partnerships 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 Assets of Community Value (England) Regulations 2012 (“the Regulations”) provide procedural detail to give effect to the assets of community value scheme.

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.

Ongoing recreation and allotment provision is likely to have a positive impact on health inequality

Ongoing recreation provision is likely to provide diversionary activity that will have an ameliorating impact on crime and disorder.

The Parish Council has been invited to comment upon the proposed review.

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”.

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 notice given.

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 furthered 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)*				✓	✓
(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:					
(3) 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		✓			
(4) The land or building has not recently been, and is not currently, in use for	✓				

a primarily social purpose.					
(5) The land or building has been empty or derelict 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

In 2014 a valid nomination to register an asset of community value was received from Mistley Parish Council in respect of Brunswick House Allotments, Mistley, Manningtree, Essex, CO11 1HS.

The Nomination stated that the land was until recently [in relation to the nomination] 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.

In January 2015 Cabinet resolved, having taken into account the evidence provided that the land nominated, shown edged and dotted pale blue on the plan appended at Appendix A, does meet the criteria set out Section 88 of the Localism Act 2011, to add it to the list of Assets of Community Value.

On 01 December 2015 planning application 15/01787/FULL was validated, for 25 bungalows. The application includes residential use on the area hatched red on the plan together with an access road (partly) shown hatched black on the plan.

On 21 August 2017 the Council entered into a s106 planning agreement with the owners of the land pursuant to that application, providing for the following obligations :

1. The transfer of one dwelling as affordable housing

2. The setting out and transfer of revised allotments in two phases as shown hatched green and hatched yellow on the plan

3. The creation and transfer of public open space, shown with the green grass symbols on the plan

On 07 September 2017 the Council granted planning permission for 25 bungalows subject to some condition and including the s106 agreement.

The owner wishes to sell the land to a developer who will be bound by the s106 agreement but cannot do so without triggering a moratorium of at least six weeks because of the Asset of Community Value Listing. The owner has requested a review.

The Council is required to consider only whether the asset meets the criteria set out in the Section 88 of the Act.

Officers have written to Mistley Parish Council seeking their comments on the proposed review. The Clerk to the Parish Council has confirmed that it does not oppose the removal of the listing, in the light of the obligations contained within the s106 planning agreement. If Officers receive any further 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:

“(2) The main use of the land or building furthered the social wellbeing or social interests of the local community in the recent past...”

However, in the light of the planning permission and the s106 agreement officers consider that it is not “...realistic to think that this could again happen” (as shown in sections 1 and 2 of the table above).

Accordingly it is recommended that the criteria for 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

Appendix A – Location Plan