

	<h2>Community Leadership Committee</h2> <h3>7 September 2016</h3>
<p style="text-align: right;">Title</p>	<p>Community Right to Bid: Nomination of the Bull Theatre, 68 High Street, High Barnet, EN5 5SJ</p>
<p style="text-align: right;">Report of</p>	<p>Susie Kemp, Director of Strategy, Innovation and Customer Services</p>
<p style="text-align: right;">Wards</p>	<p>High Barnet</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>Yes</p> <p>This decision is urgent because there is an 8 week statutory timescale to respond to Community Right to Bid nominations, starting from the date the council receives the nomination. This nomination for the Bull Theatre was accepted on 15 August 2016, making the deadline for a decision 10 October 2016.</p>
<p style="text-align: right;">Key</p>	<p>No</p>
<p style="text-align: right;">Enclosures</p>	<p>Appendix A: Plan of nominated asset</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Hannah Chillingworth, Strategy Officer hannah.chillingworth@barnet.gov.uk, 020 8359 3598)</p>

<h2>Summary</h2>
<p>The Localism Act 2011 (“the Act”) (as supplemented by the Assets of Community Value (England) Regulations 2012 (“the Regulations”) introduced the Community Right to Bid (“the Right”), a new right for qualifying local bodies to nominate buildings or pieces of land that they believe contribute to the social wellbeing or social interests of their local communities, to be listed as an Asset of Community Value (an “ACV”) on a register of Assets of Community Value (“the Register”) managed by the local authority.</p>
<p>Where land is listed as an ACV, if the owner subsequently wishes to make a ‘relevant disposal’ (to sell the freehold estate in the asset with vacant possession or the grant or</p>

assignment of a qualifying lease, being one originally granted for a minimum 25 year term) they must notify the local authority in writing. This triggers an interim moratorium period of six weeks, during which time the nominating body, or any other qualifying community interest group can register interest in putting together a bid for the asset. If a community group registers interest within this interim period, this triggers a full moratorium period of six months, during which time the owner may not make a relevant disposal of the asset, except to a community group. The moratorium allows community groups the time to develop a proposal and raise the required capital to enable it to bid for the asset when it comes onto the open market at the end of that period. The owner is under no obligation to accept a bid from a community group and can sell the property on whatever terms and to whomsoever they wish once the six month moratorium is over. No further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the local authority of its wishing to sell).

In order to decide whether to list an asset as an ACV, the Regulations provide that the council must consider whether the nominator has supplied evidence that the nomination comes from a body eligible to make the community nomination, as defined in the legislation; and if that is established whether the nomination demonstrates that the current main use of the nominated asset contributes to the social wellbeing and 'cultural, recreational or sporting interests' of the local community, and it is realistic to think it will continue to do so. Alternatively, if in the opinion of the council, there was a time in the recent past that the main use of the nominated asset furthered the social wellbeing or interests of the local community, and that it is realistic to think that during the next five years there could be a main use of the nominated asset (whether or not the same community use as before) that will further the social wellbeing or social interests of the local community, the council must list the asset.

A nomination has been received to list the Bull Theatre, 68 High Street, High Barnet, EN5 5SJ, (High Barnet ward) as an ACV. **This report recommends that the asset is listed as an Asset of Community Value and is added to the council's Register of Assets of Community Value.**

The Localism Act 2011 provides that in order to be eligible, the nomination must be made by a community organisation or group which qualifies under the Act to make the nomination. The nomination for the Bull Theatre came from an unincorporated group consisting of 21 residents living in the High Barnet area. In order for an unincorporated body to be eligible, it must consist of at least 21 members on the electoral roll in Barnet or a neighbouring borough and not distribute any surplus to its members.

A list of the 21 members of the nominating body and their addresses was provided with this application and it was stated in the application that the group does not engage in financial activity or generate any income, therefore there is no surplus that could be distributed to members and that statutory criterion is not therefore, engaged. The list of members has been confirmed by Electoral Services as registered to vote in the borough. **Therefore, the nomination comes from an eligible nominating body.**

Eligible nominating bodies must be able to satisfy the mandatory local connection criteria. In the case of an unincorporated group, these criteria are: that the group's activities are concerned with the local area; and any surplus is applied wholly or partly for the benefit of Barnet or a neighbouring borough. The nominating body's members are all resident in the High Barnet area and have come together for the purpose of listing a well-used asset in

High Barnet that they believe benefits the local community therefore, as a newly formed group, it is reasonable to say that the group's activities are concerned with the London Borough of Barnet. As before, the surplus criterion does not apply as it is stated in the nomination form that this group does not make a surplus. **The mandatory local connection test is therefore satisfied. The nomination therefore meets the criteria of a community nomination and falls to be considered against the statutory criteria for listing.**

The nomination describes a range of activities that currently take place at the Bull Theatre, supported by a brochure of events and a link to the Bull Theatre's web page. Such activities include dance and drama classes which can be said to contribute to the 'cultural, recreational, and sporting' interests of the local community. The Bull Theatre can therefore be said to **further the social interests and social wellbeing of the local community.** The nomination outlines that the asset provides activities that cannot be readily replicated elsewhere in the local area and that the current occupier is keen for the facility to be maintained, however, if the asset were to be sold, the nomination outlines intent to seek to continue this community provision in the facility under alternative management. There are no known plans to dispose of the asset and Estates and Finance colleagues have been consulted in relation to this nomination with the result that **it is realistic to think that the asset will continue to further the social interests and social wellbeing of the local community.**

The nomination therefore comes from an eligible nominating body with a valid local connection and satisfies the statutory criteria set out in the Localism Act 2011 for a building or land to be listed as an Asset of Community Value.

Recommendations

That the Committee decide to list the Bull Theatre as an Asset of Community value and that it is added to the council's Register of Assets of Community Value based on the statutory tests and eligibility criteria outlined in the Localism Act 2011 and the evidence provided with the nomination.

1. WHY THIS REPORT IS NEEDED

The Community Right to Bid

- 1.1 The Localism Act 2011 ("the Act") introduced a new right for groups of local people to nominate buildings or pieces of land which contribute to the 'social wellbeing or social interests' of their local communities to be listed as an asset of community value ("ACV") on a register of Assets of Community Value ("the Register"), which the local authority is required to maintain.
- 1.2 Nominations can apply to public or private assets, although certain kinds of asset (such as residential homes) are exempt.

- 1.3 The Act defines social interests as ‘including cultural, recreational, and sporting interests’.
- 1.4 The Act provides that land in a local authority's area which is of community value may be included by a local authority in its Register only:
 - (a) in response to a community nomination, or
 - (b) where permitted by regulations made by the appropriate authority.
- 1.5 In England a community nomination can be made by a parish council or by a voluntary or community body with a local connection as defined in the Assets of Community Value Regulations 2012 (“the Regulations”).
- 1.6 The statutory tests which the council must apply when assessing a nomination are:
 - a) That the nomination is a community nomination made by a community or voluntary organisation or group which qualifies under the Act to make the nomination
 - b) (i) the actual current use of the building or land that is a non-ancillary use furthers the social wellbeing or cultural, recreational or sporting interests of the local community; and it is realistic to think that there can continue to be a non-ancillary use of the building or other land which will continue to further the social wellbeing or cultural, recreational or sporting interests of the local community; **OR**
(ii) where the main use does not currently have such a community benefit, in the “recent past” it did have and the council considers it realistic that it would be able to have such a use in the next 5 years.
- 1.7 Where criterion (a) and (b) of the above is met, the council must list the land or building on its Register.
- 1.8 If the council lists the nominated land, a restriction is placed on the title to the land if the land is registered. If the owner wishes to make a relevant disposal the owner is legally obliged to notify the council (if the asset is not owned by the council). The council will then inform the nominating group which signals the start of an interim moratorium period of six weeks where the nominating group or any other eligible community group may register an interest in bidding for the asset and the asset can only be sold during the interim moratorium period to a community group. If during the six weeks a local community group expresses an interest in acquiring the asset, then a full moratorium is triggered and any relevant disposal is delayed for a six month period. This is designed to give the community group the opportunity to make a bid for the asset.

- 1.9 The owner is under no obligation to accept the community group's bid over any other bid. There is no 'right of first refusal' for the community group, only the right to trigger the moratorium. The owner is free to work with other potential buyers and stimulate the wider market during the moratorium and at the end of the moratorium period can sell to any party.
- 1.10 If an asset is listed as an ACV, the asset owner has the right to appeal against this, initially through the council's internal review process and subsequently through an appeal to the First Tier Tribunal.
- 1.11 If an asset is not listed, the council must communicate its reasoning to the nominating group but the nominating group has no right to appeal against the decision. However, a nominating group can apply for a judicial review of the local authority's decision.

Nomination of the Bull Theatre

- 1.12 The Bull Theatre, 68 High Street, High Barnet, EN5 5SJ, has been nominated as an ACV by an unincorporated group of 21 residents living in the High Barnet area.
- 1.13 The asset is currently owned by the council and is occupied by 'Dare to Dream Performers'. The lawful occupier has been notified that this nomination is under consideration.
- 1.14 The nominating group considers that the main current non-ancillary use of the asset furthers social wellbeing and social interests of the community and has community value on the grounds that:
- The asset is used as a theatre school in the daytime
 - There are a range of activities in the evenings and weekends which are attended by considerable numbers, including:
 - Professional performances
 - Dance classes
 - Amateur drama
 - Drama classes for adults with learning difficulties
 - Local radio broadcasts
 - Community meetings, including the Barnet Borough Arts Council, the Police, Barnet Residents' Association, and the organising committee for Barnet Christmas Fayre.
 - Local schools also use the venue for their events
 - The 'Dare to Dream Performers' charity manages the building which runs outreach activities for children and schools.
 - It is available for use for any community group wishing to use it and is socially inclusive, with activities for the elderly, the disabled, and children.
- 1.15 Alongside this anecdotal evidence, a link to the Bull Theatre's community web page and a brochure of activities was provided.

Application of statutory tests as set out in the Localism Act 2011

Eligibility of nominating group

- 1.16 The nomination has been made by an unincorporated body; a status which qualifies to make nominations under the Act provided that a number of conditions are met:
- An unincorporated group must comprise of at least 21 local members who appear on the electoral register in either Barnet or a neighbouring borough;
 - Any surplus that is made must not be distributed to any members of the group;
 - The nominating group must demonstrate its “local connection”:
 - the body’s activities must be wholly or partly concerned with the local authority’s area or with a neighbouring authority’s area; and
 - any surplus made must be wholly or partly applied for the benefit of the local authority’s area or a neighbouring authority’s area
- 1.17 The nominating group provided with their nomination a list of 21 members and their addresses, which has been verified by the Electoral Team as 21 members registered to vote in Barnet.
- 1.18 The nominating body does not engage in financial activities or generate income; therefore the prohibition of distributing a surplus to members is not engaged.
- 1.19 The nominating body is composed of a group of people who live in the High Barnet area who came together for the purpose of this nomination. Given that this is a new group, and this is their only current activity, this is deemed sufficient evidence that the nominating body’s activities are concerned with the London Borough of Barnet,, satisfying the first criterion of the mandatory local connection.
- 1.20 As the nominating body does not make a surplus, the second criterion of the local connection test is not engaged. Considering this, the local connection criteria have been fulfilled.
- 1.21 Criterion (a) of the statutory tests set out in paragraph 1.6 above has therefore been met.

Main use of asset furthers social wellbeing or social interests of community

- 1.22 The activities listed at 1.14 can be considered to be part of the non-ancillary use, because the building consists of a theatre and studio, therefore activities

relating to drama and dance are the core uses of the building. These activities fall within the scope of 'cultural, recreational, and sporting interests', and a link to the community web page on the Bull Theatre's web site and a copy of a brochure of activities held at the Bull Theatre is deemed sufficient evidence to support this.

1.23 The nomination form asks the nominating body to describe why they believe that it is realistic that the main use of the nominated asset will continue to further social wellbeing and interests in the future. The nomination describes that the nominating body and current occupier are keen for the facility to be maintained and that should the building cease to operate as a theatre they would seek for it to be used as a community-run arts centre, thus maintaining this provision. The nomination also outlines that there is little provision elsewhere in the local area for the activities held at the Bull Theatre. Estates and Finance colleagues have been consulted regarding this nomination and there are no known plans to dispose of the asset or to suggest the asset will cease operating in its current form. Taking this into account and considering that it is filling a gap in the market and that the current occupier intends to continue this provision, it is realistic to think that the main use of the asset will continue to further the social interests and social wellbeing of the local community in the future.

1.24 Taken together, paragraphs 1.22 and 1.23 demonstrate that criterion (b) of the statutory tests outlined in paragraph 1.6 above have been met.

2. REASONS FOR RECOMMENDATION

2.1 The nomination of the Bull Theatre meets the statutory tests established by the Localism Act 2011 and the Regulations to be considered an Asset of Community Value. The recommendation is, therefore, that the Committee list the Bull Theatre as an Asset of Community Value and that it be added to the council's Register of Assets of Community Value.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 The Community Leadership Committee could decide not to list the Bull Theatre as an ACV, but based on the evidence supplied with the nomination and the statutory criteria set out in the Localism Act 2011, it is judged that the nomination satisfies the criteria to be listed as an ACV. If the Committee is in agreement with this opinion as to the fulfilment of the statutory criteria, the council must list the nominated asset as an ACV.

3.2 An owner has the right to appeal if they feel that their asset has been wrongly listed.

3.3 Unsuccessful nominations are eligible for re-nomination.

4. POST DECISION IMPLEMENTATION

4.1 The Bull Theatre will be recorded on the Register of Assets of Community Value for a maximum period of five years. Both the nominating group and the lawful occupier of the property will be informed, in writing, of the outcome.

4.2 A restriction will be entered on the Land Registry and the asset will be added to the Local Land Charges Register.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Community Right to Bid process contributes to the 2015-2020 Corporate Plan's objective to develop a new relationship with residents that enables them to be independent and resilient and to take on greater responsibility for their local areas by fulfilling one of the rights granted to local communities under the Localism Act 2011.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 There are no resource implications associated with this decision.

5.3 Social Value

5.3.1 There are no social value considerations as this decision does not relate to a service contract.

5.4 Legal and Constitutional References

5.4.1 The Localism Act 2011 obligates the council to list assets nominated by local community groups as Assets of Community Value if these are deemed to pass the statutory tests set out in the Act.

5.4.2 Under the council's Constitution (Responsibility for Functions – Annex A) the responsibilities of the Community Leadership Committee include:

- To receive nominations and determine applications for buildings / land to be listed as an Asset of Community Value (Community Right to Bid) when there is no scheduled meeting of the full Committee which falls within the eight week statutory deadline for determining applications.

5.5 Risk Management

5.5.1 There are no risks associated with the decision to list the Bull Theatre as an ACV.

5.6 Equalities and Diversity

5.6.1 No negative differential impact on people with any characteristic protected under the Equality Act 2010 has been identified with regard to this nomination.

5.7 Consultation and Engagement

5.7.1 A draft amendment to the council's Community Right to Bid policy was carried out between 11 February and 24 March 2014. The results of that consultation were set out in a report taken to the Community Leadership Committee on 25 June 2014 and the council's guidance on the Community Right to Bid amended following agreement of that report.

5.8 Insight

5.8.1 No specific insight data has been used to inform the decision required.

6. BACKGROUND PAPERS

6.1 Community Right to Bid: Consultation and recent developments (Community Leadership Committee, 25 June 2014)
<http://barnet.moderngov.co.uk/documents/s15687/Community%20Right%20to%20Bid%20Report.pdf>.