

	<p style="text-align: center;"><b>Community Leadership Committee</b> <b>9 September 2015</b></p>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Nomination of Church End Library as an Asset of Community Value</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Director of Strategy and Communications</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>Finchley Church End</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: right;"><b>Urgent</b></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. The nomination for Church End Library was received on 17 July, making the deadline for a response 11 September 2015.</p>
<p style="text-align: right;"><b>Key</b></p>	<p>No</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>Plan of nominated asset</p>
<p style="text-align: right;"><b>Officer Contact Details</b></p>	<p>Dion Watts, Strategy Officer, Strategy Unit (<a href="mailto:dion.watts@barnet.gov.uk">dion.watts@barnet.gov.uk</a>, 020 8359 2001)</p>

## Summary

The Localism Act 2011 (“the Act”) introduced the Community Right to Bid (“the Right”), a new right for local people to nominate buildings or pieces of land that they believe contribute to the social interests or wellbeing of their local communities to be listed on a register of Assets of Community Value (“ACVs”), managed by the local authority.

The Right applies to public and private property, although there are a number of exceptions under the legislation, including private residences.

Where land is listed as an ACV, if an owner of a listed asset subsequently wishes to dispose of it, there will be a period of time during which the asset cannot be sold or a qualifying lease granted or assigned (a qualifying lease is a lease originally granted for a 25

year term). This period is known as a moratorium and would ultimately be for a period of six months. The moratorium is intended to allow community groups the time to develop a proposal and raise the required capital 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 the community group and can sell the property to whomever they wish once the six month moratorium is over.

The Act provides that the Council must consider whether the main use of the nominated asset contributes to the social wellbeing or cultural, recreational or sporting interests of the local community, and whether it is realistic to think it will continue to do this (whether or not the use remains exactly the same).

A nomination has been received to list Church End Library as an ACV and this report asks the Committee to make a decision on this nomination.

Even though libraries may generally be considered “community assets”, this report considers that Church End Library fails to pass the statutory tests set by the Localism Act 2011 to be considered an ACV and should therefore not be listed by the Council. This is on the basis that the library service is to be transferred to a new site at Gateway House, sometime around 2017/18 according to current plans, and a decision about the future use of the Church End site has yet to be made. The Council currently has no plans to operate a library service on the site and its future use is otherwise uncertain; so there is no realistic basis on which to think that its main use will continue to contribute to the social wellbeing or cultural, recreational or sporting interests of the local community.

## **Recommendations**

**That the Committee does not list Church End Library as an Asset of Community Value on the basis that the library service is to be transferred to a new site and, until a decision on the future of the current site is taken, there can be no realistic basis on which to think that its main use will continue to further the social interests or social wellbeing of the local community (whether or not in the same way as it does now).**

### **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 on a register of Assets of Community Value (“ACVs”), 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 private homes) are exempt.
- 1.3 The Act provides that the Council must consider whether the main use of the nominated asset does contribute to the social interests or wellbeing of the local community, and whether it is realistic to think it will continue to do this (whether or not the use remains exactly the same).

- 1.4 The Act defines social interests as ‘including cultural, recreational, and sporting interests’. There is no further definition.
- 1.5 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 of ACVs only:
  - (a) in response to a community nomination, or
  - (b) where permitted by regulations made by the appropriate authority.
- 1.6 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”).
- 1.7 The statutory tests which the Council must apply when assessing a nomination are:
  - (i) Its main use furthers the social wellbeing or cultural, recreational or sporting interests of the local community; and it is realistic to think that the main use 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 likely that it would be able to have such a use in the next 5 years.
  - (iii) 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.
- 1.8 Where either criterion i) or ii), and criterion iii) of the above is met, the Council must list the land or building on its register of Assets of Community Value.
- 1.9 If the Council lists the nominated land, a restriction is placed on the land if the land is registered. If the owner wishes to sell the asset or to lease it for more than 25 years, then 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 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. If during the six weeks a local community group expresses an interest in taking on the asset and continuing its community use, then a full moratorium is triggered and the sale is delayed for a six month period. This is designed to give the community group the opportunity to raise funds to try to purchase the asset at market value.
- 1.10 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 request the moratorium. The owner is free to work with other potential buyers and stimulate the wider market during the moratorium.

- 1.11 While the Act and Regulations do not state whether or not ACVs are material considerations in a planning context, the Government's non-statutory advice note on ACVs advises that this is at the discretion of the local authority. The advice note states, as follows:

the provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

(Community Right to Bid: Non-statutory advice note for local authorities, October 2012).

Barnet's planning procedures already take account of the social and community use of land or buildings when a planning application comes forward. Where an application in relation to an Asset of Community Value is being considered, the listing will be one of the considerations which can be taken into account by the relevant planning committee who can determine the appropriate weighting to be given to the listing.

- 1.12 The Act therefore has little or no impact unless an asset is being put up for sale or long term lease and local feeling about it is strong enough that local people have a constituted group in place to put in a proposal to buy it. Even if all these conditions are in place, the limitation is only the six-month delay, after which the owner can sell the asset to whomever they wish.
- 1.13 If an asset is listed, 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.
- 1.14 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.

### **Recent policy developments**

- 1.15 The Government is currently reviewing the Right. The review is on-going and there is no closing date as it is not a formal consultation. Government will be talking to a small number of stakeholders, including a sample of local authorities where moratoria have been triggered, community groups, and property owners associations through August and September 2015. The Council is contributing to the review as an interested party.
- 1.16 A Communities and Local Government Select Committee report published on 3 February 2015 recommended that the review of the Right should increase the moratorium on sale or lease of an ACV to nine months, as well as creating statutory obligations for ACV status to be considered as a material consideration in planning matters. These recommendations have not yet been accepted by the Government but will feed into the review.

## **Nomination of Church End Library**

- 1.17 The Finchley Society, a local charity registered as number 266403, has nominated the Church End Library building as an Asset of Community Value. The nomination states:

The Library is adjacent to the Parish Church of St. Mary-at-Finchley and its graveyard. It is located within the Church End Finchley Conservation Area.

The enclosed plan sets out the boundaries (cross-hatched area) and address of the nominated asset.

- 1.18 Church End Library is owned by the Council.
- 1.19 The nominating group considers the principal current use of the building to be one that furthers the social interests and wellbeing of the local community on the grounds that it provides:
- a lending library service;
  - a reference section;
  - an area for private study.

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

- 1.20 The nomination comes from an eligible group and all relevant information has been provided. It therefore meets criterion (iii) of the statutory tests set out in paragraph 1.7 above.
- 1.21 A library service is currently operating out of the nominated asset so its principal use can be said to further the social interests and wellbeing of the local community for the reasons provided by the nominating group in paragraph 1.19 above. However, the Council has announced its plans to relocate the library service to a new site at Gateway House and that this is currently anticipated to happen sometime around 2017/18. The nominating group are aware of the plan and make reference to it in their nomination.
- 1.22 The nomination states that the nominating group does not think that the building will continue to offer the services described in paragraph 1.19, on which their nomination is based, on account of the relocation plans. It suggests that the building might instead become a centre for exhibitions, meetings of local groups such as theirs, an archive store, or a museum. There are currently no plans to use the building for any of these purposes and no formal proposals have been submitted to the Council regarding its future use.
- 1.23 There are currently no other proposals to operate a library service at the Church End site beyond 2017/18 and a decision regarding its future use has yet to be made by the Council. The decision will be taken by the Assets, Regeneration and Growth (ARG) Committee when the library service vacates the property.

- 1.24 In the absence of any evidence regarding what use the Council might make of the site in future, other than that there are currently no plans for it to continue as a library beyond 2017/18, there is no realistic basis on which to think that its main use will continue to contribute to social interests and wellbeing in the same or a different way than it does now. Therefore, the nomination does not pass statutory test (i) set out in paragraph 1.7 above.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Church End Library does not pass the statutory tests set by the Localism Act 2011 to be considered an Asset of Community Value, for the reasons set out in paragraphs 1.20 – 1.25. The recommendation is, therefore, that the Committee does not list Church End Library as an Asset of Community Value.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The Council could decide to list Church End Library as an Asset of Community Value, but this is judged to be inconsistent with the terms of the Localism Act 2011, as there must be sufficient evidence that a nominated asset has a realistic prospect of continuing to further the social interests and wellbeing of the local community through its main use.
- 3.2 An owner has the right to appeal if they feel that their asset has been wrongly listed. This is not relevant in this case as the asset is owned by the Council.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 Church End Library will be recorded on the Register of Assets of Community Value as an unsuccessful nomination, and the nominating group informed, in writing, of the outcome.

## **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.
- 5.1.2 There are no implications relating to the Health and Wellbeing Strategy and its stated priorities.
- 5.1.3 There are no implications relating to the future health and wellbeing needs of the local population as identified in Barnet's Joint Strategic Needs Assessment.

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

- 5.2.1 A decision not to list the asset will have no impact on resources as it is owned by the Council. If the Council were to list this as an Asset of Community Value, and subsequently wished to sell it (or lease it for 25 years or more), the Council would be required to inform the Finchley Society and also to publicise the intended sale in the neighborhood of Church End Library. Community groups (including but not limited to the Finchley Society) would initially have 6 weeks in which to declare in writing their intention to bid to purchase the asset at market value. If one or more community groups declared an intention to bid, a 6 month moratorium period from the date the Council gave notice of their intention to sell would be triggered, during which the asset could only be sold to a community group.

## **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:
- Grants to Voluntary Sector within the remit of the Committee
  - Registration and Nationality Services
  - Emergency Planning
  - Civic events
  - To maintain good community relations with Barnet's diverse communities ensuring that all communities have the opportunity to participate fully in the Borough's affairs.
  - To approve any non-statutory plan or strategy within the remit of the Committee that is not reserved to Full Council or Policy and Resources.

## **5.5 Risk Management**

- 5.5.1 There are no risks associated with the decision not to list Church End Library as an Asset of Community Value.

## **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.

- 5.7.2 More specifically, the nominating group has been engaged in dialogue as part of the process of administering the nomination, and given opportunities to submit evidence to support their claim.

## 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>.