



Community Leadership Committee 15 October 2015

Title	Nomination of land to the rear of 71 Holden Road as an Asset of Community Value
Report of	Director of Strategy and Communications
Wards	Totteridge
Status	Public
Urgent	<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 land to the rear of 71 Holden Road was received on 4th September 2015, making the deadline for a response 30th October 2015.</p>
Key	No
Enclosures	Plan of nominated asset
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Summary

The Localism Act 2011 introduced the Community Right to Bid (“CRTB”), 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.

CRTB 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 the owner subsequently wishes to make a ‘relevant disposal’ (to sell the asset or grant a qualifying lease, which is one originally granted for a

25 year term) they must notify the local authority. This triggers an interim moratorium period of six weeks, during which time a community group can register interest in putting together a bid for the asset. If a community group registers interest, 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 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 a community group and can sell the property to whomever they wish once the six month moratorium is over.

In order to decide whether to list an asset as an ACV, the Act provides that the Council must consider whether the current or recent main use of the nominated asset contributes to the social wellbeing or social interests (defined as '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 land to the rear of 71 Holden Road (Brookdene) as an ACV and this report asks the Community Leadership Committee to make a decision on this nomination.

This report considers whether the nomination received establishes that the main use of Brookdene contributes to the social wellbeing or interests of the community. The nomination puts forward two main arguments as to why Brookdene is valuable to the community: 1) it states that a significant number of people use the land for recreational purposes; and 2) it is an area of unspoilt nature which is important for conservation and part of which has been designated Metropolitan Open Land.

The importance of Brookdene for conservation does not of itself establish that the land's main use contributes to the social wellbeing or cultural, recreational or sporting interests of the local community. Therefore, the decision should be based on evidence of actual use of the land to further social wellbeing or cultural, recreational or sporting interests of the community. The nomination states that despite difficulties in accessing the land, a significant number of people from the local community (at least 300) are accessing and using Brookdene for recreational purposes, through organised events by community groups and casual regular use by individuals. Taken at face value, statements to this effect in the nomination **do establish that there is some use of the land for recreational purposes**, but the Committee must decide whether the nomination has established that this is the **main** use of the land. Some factors are particularly relevant:

- Taken at face value, the statement that 300 people use the land regularly for recreational purposes may be considered to establish that volume and frequency of recreational use is enough to establish that this is the main use.
- On this point, it should be noted that in a separate decision the Council is considering with regard to land to the rear of 71 Holden Road, the initial assessment of Council officers was that: 'The land is landlocked and not capable of being accessed for maintenance or the public except by fording the brook, which is not practical'. However, the Council consulted on that separate decision and received 63 representations from members of the public, many of which state that people can and do access the land and cross the brook. The nomination acknowledges that there are some difficulties with access, but states that people can and do access the

land and provides some examples of where this has happened. Therefore on balance, it would be appropriate for the Committee to decide that difficulties with accessing the land should not undermine the statement in the nomination that at least 300 people use the land for recreational purposes.

- The nomination makes reference to the 63 representations in response to consultation on a separate decision referred to above. The Committee may want to consider that these representations afford some evidence to support the statement that local people regularly use the land for recreational purposes. A small number of the representations received state that the writer regularly or has recently visited Brookdene him/herself; and many more of the representations received assert that Brookdene is used by many residents.

On the basis of the information provided in the nomination, there is a degree of subjectivity involved in deciding whether the nomination establishes that the main use contributes to the social wellbeing or social interests of the community, and as such meets the statutory test for listing as an ACV. **On balance, it would be appropriate for the Committee to decide that the nomination establishes that the main use of the land contributes to the social wellbeing or social interests of the community.**

Additionally, **it is realistic to expect that use of the land for social wellbeing and social interests of the community will continue.** The nomination establishes the community's interest in continuing to use Brookdene for sporting and recreational purposes. The Council is currently considering the possibility of disposing of the land to a developer and a decision on this will be taken at full Council on 20th October. This is also a relevant consideration in establishing whether it is realistic to expect that use of the land will continue to further social wellbeing and interests of the community. The proposed development that is under discussion would not exclude the public from Brookdene and therefore the fact that this possibility is being discussed does not throw into doubt that the current uses of the land will continue.

Recommendations

The nomination establishes that there is some use of the land that furthers social wellbeing and social interests of the community, but whether or not the nomination establishes that this is the main use is less certain and comes down to a judgment on what level of use constitutes main use. On balance it is recommended that, on the basis of the information provided when judged against the criteria of the Localism Act 2011, it would be appropriate for the Committee to list the nominated land to the rear of 71 Holden Road as an Asset of Community Value and add the nomination to the Council's Register.

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 in order to decide whether to list a nominated asset as an ACV, the Council must consider whether the main use of the asset contributes 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 Land to the Rear of 71 Holden Road (Brookdene)

- 1.17 The Greenacre Project, an unincorporated group with 21 members that are on the electoral register in Barnet or neighbouring Boroughs, has nominated land to the rear of 71 Holden Road. The nomination states:

'Land to the rear of 71 Holden Rd' is an area of un-spoilt Public Open Space that adjoins Dollis Brook. It is roughly 0.7 of an acre and is situated on the east bank of Dollis Brook opposite the Old Finchleas Sports Ground near the confluence with Folly Brook. It is known locally as the Brookdene Nature Reserve. It is publicly owned and part of the site is designated Metropolitan Open Land (MOL) and a Site of Interest for Nature Conservation (SINC).'

The enclosed plan sets out the boundaries of the nominated asset.

- 1.18 Land to the rear of 71 Holden Road is currently owned by the Council.
- 1.19 On 15th December 2014, the Assets, Growth and Regeneration Committee (ARG) considered whether to declare land to the rear of 71 Holden Road surplus to the Council's requirements and to grant a two year option call to an interested developer to purchase the land on a 150 year lease, subject to planning and a tree maintenance plan. This was recently considered again by ARG Committee on 7th September 2015 following further public consultation and the decision was referred to full Council. Full Council will take a decision on this on 20th October 2015. Consideration of the Community Right to Bid nomination for the same piece of land is separate from that decision making process.
- 1.20 The nominating group considers that the main current use of the land furthers social wellbeing and interests of the community on the grounds that:
- At least 300 individuals access and use Brookdene for sporting and recreational activities including walking, running, walking pets and engaging with nature.
 - Organised events by local community groups have happened at the site, including a recent visit by Greenacre Walks with 60 people.
 - The land is important for nature conservation and parts of it are designated as Metropolitan Open Land (MOL) and Site of Interest for Nature Conservation (SINC).

- 1.21 The nominating group considers that it is realistic to believe that Brookdene will continue to be used to further social wellbeing and interests of the community on the grounds that:
- There is interest from local community groups, including The Greenacre Project, in organising activities and events at the site.
 - In the Council's recent consultation on the decision outlined in paragraph 1.19, 63 members of the public registered opposition to the proposed disposal to a private developer, setting out their interest in continuing to use the land as it is currently used.

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

An eligible nomination

- 1.22 The nomination comes from an eligible group. Electoral registration in Barnet or a neighbouring Borough has been verified for 21 members of The Greenacre Project. All relevant information has been provided with the nomination. It therefore meets criterion (iii) of the statutory tests set out in paragraph 1.7 above.

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

- 1.23 The argument put forward in the nomination that the land is important for nature conservation does not in itself establish that the main use of the land is for social wellbeing or social interests of the community. That parts of the land are designated as MOL means that they are afforded protection against development under relevant planning laws. The decision on whether to list Brookdene as an ACV should be based on whether the nomination establishes that the main use of the land furthers the social wellbeing or interests of the community.
- 1.24 The nomination states that at least 300 people use the land for recreational purposes (walking, running, walking pets and engaging with nature). It also states that there was a recent visit to Brookdene by a local community group, Greenacre Walks, which 60 people participated in. Whilst there is no way to corroborate this, taken at face value, these statements establish that there is some use of Brookdene that furthers the social wellbeing and social interests of the community.
- 1.25 The Committee must consider whether the nomination establishes that the main use of the land furthers the social wellbeing and social interests of the community. A number of considerations are relevant:
- Taken at face value, the statement that 300 people use the land regularly for recreational purposes may be considered to establish that volume and frequency of recreational use is enough to establish that this is the main use.
 - On this point, it should be noted that in a separate decision the Council is considering with regard to land to the rear of 71 Holden Road (outlined at paragraph 1.19), the initial assessment of Council officers was that: 'The land is landlocked and not capable of being accessed for maintenance or

the public except by fording the brook, which is not practical'. However, the Council consulted on that separate decision and received 63 representations from members of the public, many of which state that people can and do access the land and cross the brook. The nomination acknowledges that there are some difficulties with access, but states that people can access the land and provides some examples of where this has happened, including for a wheelchair user. Therefore on balance, it would be appropriate for the Committee to decide that difficulties with accessing the land should not undermine the statement in the nomination that at least 300 people use the land for recreational purposes.

- The nomination makes reference to the 63 representations in response to consultation on the decision outlined at paragraph 1.19 referred to above. The Committee may want to consider that these representations afford some evidence to support the statement that local people regularly use the land for recreational purposes. A small number of the representations received state that the writer regularly or has recently visited Brookdene him/herself; and many more of the representations received assert that Brookdene is used by many residents.

- 1.26 The legislation sets a broad and loose definition of 'social wellbeing and social interests' and the activities outlined in the nomination clearly fall within the definition of 'cultural, recreational, and sporting interests'. The key question is whether the nomination has provided sufficient evidence that these activities constitute the main rather than ancillary use of Brookdene. Although there is no way to prove the nomination's assertion that 300 people regularly use Brookdene, on balance, it would be possible to argue – based on the evidence provided – that the nomination does meet this part of the statutory criteria for an asset to be listed as an Asset of Community Value.
- 1.27 In relation to establishing that the main use of Brookdene is likely to continue to contribute to the social wellbeing and social interests of the community, the nomination sets out a number of The Greenacre Project's plans to develop volunteering activities at the site and points to the possibilities for a range of local groups interested in nature to hold activities at Brookdene. The nomination also points to the 63 representations received by the Council in response to its consultation on the proposed disposal of the land, as evidence of interest in continuing to use Brookdene as it is currently being used. This establishes demand from the community for continuing to use the land for recreational and sporting activities, which supports the argument that it is realistic to think the land will continue to be used to further social wellbeing and interests of the community.
- 1.28 The Community Leadership Committee decided on 9th September 2015 not to list Church End Library as an Asset of Community Value on the basis that plans to transfer the library service to a new site, and lack of concrete plans for the future use of the existing site, meant there could be no certainty that the main use of the site would continue to further social interests and social wellbeing of the community. This precedent does not apply to Brookdene, because the proposed plans for development that Full Council will consider on 20th October 2015 would not exclude the public from the land. Therefore the

possibility of development does not make it unrealistic to think use of the land will continue to further social wellbeing and interests of the community.

- 1.29 Taken together, points 1.24-1.28 establish that it would be appropriate for the Committee to decide that criterion (i) of the statutory tests set out in paragraph 1.7 above have been met. However, there is a degree of subjectivity involved in the decision on whether this criteria has been met in full, and whether to list as an ACV.

2. REASONS FOR RECOMMENDATIONS

- 2.1 On balance, it may be considered that the nomination for land to the rear of 71 Holden Road meets the statutory tests established by the Localism Act 2011 to be considered an Asset of Community Value, for the reasons set out in paragraphs 1.22-1.29. The recommendation is, therefore, that it would be appropriate for the Committee to decide to list land to the rear of 71 Holden Road as an Asset of Community Value.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Council could decide not to list land to the rear of 71 Holden Road as an ACV, but on balance it is judged that based on the nomination received and the statutory criteria set out in the Localism Act 2011 have been, it would be appropriate for the Council to decide to list the land as an ACV. If the Committee is in agreement with this judgment, 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. The Council is the owner in this case and therefore this does not apply.

4. POST DECISION IMPLEMENTATION

- 4.1 Land to the rear of 71 Holden Road will be recorded on the Register of Assets of Community Value as an ACV, 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.

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

5.2.1 Under the proposal to dispose of the land to the rear of 71 Holden Road by granting a 150 year lease, the Council would receive £500k disposable income. Listing the asset as an ACV does not mean this cannot be realised. If under the process set out in the Localism Act 2011, a community group registers an interest in putting together a bid for the land, this means the Council cannot sell to anyone but a community group for a period of six months, but does not oblige the Council to accept a bid from a community group. The Council would be free to sell the land to any party at the end of the moratorium period.

5.2.2 The nominated land is not currently supporting any service area in terms of income or ongoing revenue costs.

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 to list land to the rear of 71 Holden Road 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.

5.7.2 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 Assets, Growth and Regeneration Committee, 15th December 2014: Land to the rear of 71 Holden Road:

<http://barnet.moderngov.co.uk/documents/s19829/ARG%20Public%20Report%2071%20Holden%20Road%20-%20Publish.pdf>

6.2 Assets, Growth and Regeneration Committee, 7th September 2015: Land to the rear of 71 Holden Road:

<http://barnet.moderngov.co.uk/documents/s25543/71%20Holden%20Road.pdf>

6.3 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>.

6.4 Community Leadership Committee, 9 September 2015, Item 12: (Nomination of Church End Library as an Asset of Community Value)

<http://barnet.moderngov.co.uk/documents/s25611/Community%20Leadership%20Committee%20Nomination%20of%20Church%20End%20Library%20as%20an%20ACV.pdf>