

	<p>Community Leadership & Libraries Sub - Committee 19th December 2018</p>
<p style="text-align: right;">Title</p>	<p>Community Right to Bid: Greensquare, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG</p>
<p style="text-align: right;">Report of</p>	<p>Councillor Reuben Thompstone, Chairman</p>
<p style="text-align: right;">Wards</p>	<p>Finchley Church End</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>Yes - there is an 8-week statutory timescale to respond to Community Right to Bid nominations, starting from the date the Council receives the nomination.</p> <p>The nomination for Greensquare was received on 12th November 2018, making the deadline for a decision 4th January 2019.</p>
<p style="text-align: right;">Key</p>	<p>No</p>
<p style="text-align: right;">Enclosures</p>	<p>Plan of nominated asset</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Danusia Brzezicka, Strategy Officer, Community Participation (danusia.brzezicka@barnet.gov.uk 020 8359 3211)</p>

Summary

The Localism Act 2011 (“the Act”) introduced the Community Right to Bid (“CRTB”). Under section 87 of the Act the Council must maintain a list of land of community value in its area. A building or other land is of community value if in the Council’s opinion there is an actual current use of the building or other land, and 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.

It is a 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.

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 the nominating group, or any other 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. However, if the asset is not disposed of within 18 months from the commencement of the interim moratorium period, then the moratorium period is re-triggered (12 months from the end date of the first moratorium period).

In order to decide whether to list an asset as an ACV, the Act provides that the Council must consider whether the nomination has come from a group eligible to make a nomination, as defined in the legislation; and 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 so in the next 5 years (whether or not the use remains exactly the same).

A nomination has been received from Mrs Suzanne Fitzgerald on behalf of the Greensquare Residents Association to relist **Greensquare, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG** (Finchley Church End ward) as an Asset of Community Value. This asset was originally listed on 13 December 2013 and the five-year listing will expire on 13 December 2018. **This report recommends that the asset is listed as an Asset of Community Value.**

The nomination is an eligible nomination. The Localism Act 2011 and the Assets of Community Value Regulations (“ACV Regulations”) 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 Greensquare Residents Association is an unincorporated organisation and has evidenced membership of 82 members and of which at least 21 are on the electoral register of the London Borough Barnet. Furthermore, they have provided some financial information which shows there does not appear to be any surplus profit distributed to its members. Consequently, they are eligible to make a nomination under regulation 5 (1)c of the ACV Regulations.

The nomination does meet the criteria of furthering the social wellbeing or social interest of the community.

The nomination describes uses that further social interest, that the local residents have used over the past 112 years for community engagement. The land offers a hidden green space bound by residential roads. It has been noted that a wide range of social activities take place on this land for sports, commemorating special occasions, scout and beaver field trips and it

was used for community allotments as part of the Dig for Britain campaign. It continues to provide the local residents with blackberries, apples and other fruit. Open green spaces such as Greensquare allows for a wide range of recreational interests for the local community and residents, so it is reasonable to think that **the main use of the asset furthers the social wellbeing and social interests of the community**. There are currently no known plans to sell this land, and the nomination states it is popular locally and has regular local residents using this space, suggesting continued viability and demand. **It is realistic to think that use of the asset will continue to contribute to the social wellbeing and social interests of the community.**

Evidence was requested to verify the above-mentioned activities and this was provided by the nominating group. The nominator provided evidence that the local community had used the space from 4 May 2015 up to 22 November 2018 as evidenced in Appendix 1B showing community sports, picnic, berry picking and dog walking. Taken together, it was deemed that there is sufficient evidence to meet the statutory requirements as the main use of the asset contributes to the social interests or wellbeing of the local community that it is realistic to think that there can continue to be use of the building and land which will further (whether or not in the same way) the social wellbeing or social interests of the local community

Recommendations

That the Committee agree that Greensquare, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG should be listed as an Asset of Community Value and added to the Council's Register, based on the statutory criteria set out in the Localism Act 2011, and the evidence provided in 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 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 and at the end of the moratorium period can sell to any party. However, if the asset is not disposed of within 18 months from the commencement of the interim moratorium period, then the moratorium period is re-triggered (12 months from the end date of the first moratorium period).

- 1.11 If an asset is relisted 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.
- 1.12 If an asset is not relisted, 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

- 1.13 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. The Council has contributed to the review as an interested party.
- 1.14 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 Greensquare, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG

- 1.15 The Greensquare Resident Association, an established group has nominated Greenspace, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG. The enclosed plan sets out the boundaries of the nominated asset. The area incorporates a bowling club house, a bowling green and open green space.
- 1.16 Greensquare, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG is currently owned by Higgins Homes. The freeholder has been notified that this re-nomination is currently under consideration.
- 1.17 The nominating group considers that the main current use of the land furthers social wellbeing and interests of the community on the grounds that:
- The land is currently made up of a bowling club house, bowling green and open green field with trees, shrubs, blackberry bushes and various fruit trees. It is accessible by gates from the adjoining gardens and by pathways from Tangle Tree Close and Dudley Road.
 - The land is an oasis of calm and tranquillity in an area deficient of open spaces. It is situated in an area deficient in open space at local park level and is therefore irreplaceable.
 - The land has been enjoyed by the local and wider community for all types of recreational use over the past 112 years.
 - The land in title number AGL88313 was subject to a recreational lease which was created in 1910 for a period of 99 years. That lease entitled all local residents of the area, the right to use the land for all types of recreational use.

- The land has been used to enable the local residents to undertake: Sporting activities including football, tai chi, cricket and tennis. Social activities including: Barbeques, firework displays. Community gatherings including the Queen's Silver, Gold and Diamond Jubilee events and scout and beaver field trips. General outdoor pursuits including: Tree climbing, dog walking, children's parties & games, bat and bird watching, nature observation, snowman building and snowball fights.
- Since 1922, the West Finchley Bowling Club occupied the northern part of the land as a bowling green and club house. On 2nd September 2017, the landowner, Higgins Homes terminated the lease against the wishes of the club members and is now advertising this building for community use.
- The land comprised in title number AGL90336 has throughout the same period been used for recreational and amenity use. During and after the WWII the land was used for community allotments as part of the Dig for Britain Campaign. It continues to provide access for blackberries, apples, crab apples, pears and damsons.
- The land is used by children for den-making; tree climbing; bird and bat watching; nature observation; walking; dog walking; tree swings and general recreation. Successive generations have discovered and used the area. The land has been a treasured focal point for the local community, actively used and maintained.
- The culturally diverse neighbourhood has always been well represented at social events, as families meet to spend their leisure and social time together in the field.
- The nominated land is of community value; it furthers the health, wellbeing and social cohesion of the local community and has done so for the past 112 years.
- Two planning inspectors have recently recognised the amenity value of the land to local residents. The land provides: 1. Exercise opportunities, particularly for local children, older people, people with disabilities and carers 2. Play opportunities outdoors for children; 3. Social interaction opportunities helping to reduce isolation and improve social cohesion, particularly for children, older people, people with disabilities and carers; 4. Visual amenity - successive planning inspectors have acknowledged the visual amenity value of the land.

Evidence provided to support the application can be found in Appendix C.

1.18 There are no known plans to sell the land.

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

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

- 1.19 The legislation sets a broad and loose definition of 'social wellbeing and social interests'. The activities listed at paragraph 1.17 are sufficient to demonstrate that a number of uses of the land fall within the definition of 'cultural, recreational, and sporting interests'.
- 1.20 Use of the nominated asset consisting of the land between Briarfield Avenue and Rosemary Avenue comprises of a bowling club and green space. Both have contributed to the social wellbeing and social interests of the community.

Even though the bowling club is now vacant, the building is currently being marketed for the use as a bowling club or other D2 community use. These may be considered the main rather than ancillary use because both the bowling club and the open green space by nature exist to provide cultural, recreational and sporting interests to the community and it may be assumed the activities listed at paragraph 1.17 are the main activities carried out on the land.

- 1.21 There are no known plans to sell the land. However, there have been unsuccessful planning applications due to the evidence of continued community demand and viability. This is noted in the planning application submitted 1 March 2017 to demolish the bowling club and erect 8 dwellings which was rejected on 7 August 2017. This means it is realistic to think the main use of the asset will continue to further social wellbeing and social interest of the community.
- 1.22 There is acknowledgment that the land is owned by Higgins Homes and that the local residents have made use private land for community activities. The landowner, Higgins Homes is aware of such community activity on their land. In Appendix 1A (First Tier Tribunal) and 1D (Banner Homes Ltd vs St Albans District) the matter of trespassing has been taken into account. It states that any actual use that the residents have been using the land, even if the use has been unlawful, does not prevent the land from qualifying as actual use.
- 1.23 Taken together, points 1.19 - 1.22 establish that criterion (i) of the statutory tests set out in paragraph 1.7 above have been met. The main use of the building and land further the social wellbeing or social interests of the community and it is realistic to expect that it will continue to do so.

The nomination is eligible

- 1.24 The Greensquare Resident Association has made its nomination as an established unincorporated body with 82 local residents and has at least 21 members who are on the electoral register (a status which qualifies to make nominations) under s 5 (1) c of the ACV Regulations

2. REASONS FOR RECOMMENDATIONS

- 2.1 The nomination of Greenspace, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG meets the statutory tests established by the Localism Act 2011 to be considered an Asset of Community Value. The recommendation is, therefore, that the Committee lists the Greenspace as an Asset of Community Value.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Community Leadership & Libraries Committee could decide not to relist Greenspace, the Land between Briarfield Avenue and Rosemary Avenue accessed From Tangle Tree Close, N3 2LG as an ACV, but on balance it is judged that the nomination provides sufficient evidence that the statutory

criteria set out in the Localism Act 2011 have been met. If the Committee is in agreement with this judgment, the Council must relist the nominated asset as an ACV.

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

4. POST DECISION IMPLEMENTATION

- 4.1 Greenspace will be recorded on the Register of Assets of Community Value as an ACV. Both the nominating group and the owner of the property will be 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 The asset does not belong to the Council and therefore there are no financial implications to 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. The ACV regulations set out the procedure to be followed in assessing a nomination.
- 5.4.2 Under the Council's Constitution (Article 7 Committees, Forums Working Groups and Partnerships, section 7.5) 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).
- 5.4.3 When there is no scheduled meeting of the full Committee which falls within the eight-week statutory deadline for determining applications the Community Leadership Sub-Committee receives the nominations and determines the applications.

5.5 Risk Management

5.5.1 There are no risks associated with the decision to relist the Greenspace 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.

5.6.2 Under section 149 of the Equality Act 2010, the council and all other organisations exercising public functions must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race, religion or belief; and sex and sexual orientation. The broad purpose of this duty is to integrate considerations of equality into daily business and keep them under review in decision making; the design of policies; and the delivery of services.

5.7 Corporate Parenting

5.7.1 As a Local Authority, we have responsibility for the children in care and care leavers within our borough. Corporate Parenting is about offering at least the same standards of care as would a 'reasonable parent' and ensuring that the decisions we make as a Council do not affect this cohort negatively. This report does not provide any implications for Barnet's children in care.

5.8 Consultation and Engagement

5.8.1 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.

5.8.2 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.

5.9 Insight

5.9.1 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>.

- 6.2 Refused planning application to develop new housing on site occupied by the West Finchley Bowling Club, 17/1290/FUL, Decision: 7 August 2017:
<https://publicaccess.barnet.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OM5AVYJIFOA00>

Appendix 1 – Supporting evidence

A - Previous relisting of site and the decision taken at First Tier Tribunal to support nomination as an ACV, ref: CR/2014/0006:

<https://www.casemine.com/judgement/uk/5b2897ee2c94e06b9e19de56>

B - Photographic evidence of community use from 4 May 2015 – 22 November 2018:

<https://photos.google.com/share/AF1QipNUaJehXKvRWB7k7WpoJSV6NAIBHJXfQL3HpXgiCJMnIFK3Kx9PmaDayX8r1ZRNJw?key=NHhWS2dZY2hOV1FtY3R5TDN6NjVfLUNCay1ReUpn>

Examples:





C - Banner Homes Ltd vs St Albans District decision on 23rd May 2018 regarding community use of land which could be deemed unlawful, although known of by landowner:

<https://www.casemine.com/judgement/uk/5b2897ee2c94e06b9e19de12>

D - Ariel view of Greenspace and the surrounding roads.



E - Registry plan of the site

F- Current advertisement of Bowling Club let



WEST FINCHLEY BOWLING CLUB TO LET
DUDLEY ROAD, FINCHLEY, LONDON N3 2QR
£30,000 PER ANNUM

Suitable for similar D2 uses e.g. leisure, assembly - D1 community hall, gym, music hall, etc. subject to necessary consents.

