

Committee:	Assets of Community Value Sub-Committee	Date:	14 December 2017
Title:	Nomination of Chalky Meadow (Land east of The Mead) Thaxted as an asset of community value		
Portfolio Holder:	Cllr Susan Barker		
Report Author	Sarah Nicholas, Senior Planning Officer, 01799 510454	Key decision:	No

Summary

1. The Localism Act 2011 introduces a concept of an 'Asset of Community Value'. Section 87 of the Localism Act places a duty of Local Authorities to 'maintain a list of land in its area that is land of community value'.
2. An Asset is of community value if (in the opinion of the local authority) either:
 - an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
 - 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.

or

 - there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social interests of the local community, and
 - it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
3. The Act states that "social interest" "includes (in particular) each of the following – (a) cultural interest, (b) recreation interest and (c) sporting interests.
4. Assets of community value are buildings or land which involve the physical use by the community and include for example a village shop, pub, community centre, allotment or recreation ground.
5. Thaxted Parish Council has nominated land east of The Mead (known locally as Chalky Meadow) as an asset of community value. The nomination was first considered by Cabinet on 30 November 2017 but it was decided to defer the decision to allow further consideration of the evidence of whether the nomination should be accepted.
6. The purpose of this report is to enable members to determine:
 - a) Whether this is a valid nomination

- b) Whether the use of the building (current or recent past) furthers the social welling or interests of the community.
- c) Whether it is realistic to think that in the next 5 years the building could be used to further the social wellbeing or interests of the community.

In considering these questions, members need to consider principal, rather than ancillary, uses of the building.

- 7. If members conclude that the answers to all these questions are “yes”, the building must be included in the list of assets of community value. If the answer to any question is “no”, the building cannot be listed as an asset of community value.

Recommendations

- 8. That members determine whether to list land known as ‘Chalky Meadow’ (land east of The Mead), Thaxted as an asset of community value, having considered the statutory criteria.

Financial Implications

- 9. There are direct financial implications arising at this stage which relate to the formal process of identifying and contacting asset owners and, if relevant, registering an asset as a Land Charge. These costs can be met from existing budget and staff resources.
- 10. There is also an unquantifiable financial risk to the Council, if there was a claim for compensation. This needs to be kept under review and at an appropriate time consideration should be given to establishing a contingency reserve to mitigate the risk to the Council’s budget. However, the potential liability should not be taken into account in deciding whether or not this is an asset of community value.

Background Papers

- 11. There are no background papers to this report. The nomination and representations made on behalf of the owner and others are published with this report.

Impact

- 12.

Communication/Consultation	In line with paragraph 8 of The Assets of Community Value (England) Regulations 2012 the Council have taken all practicable
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	steps to give information that it is considering listing the land to the owner of the land, freeholder and occupant. This has taken the form of letters.
Community Safety	No impact.
Equalities	The duty will affect all equally.
Health and Safety	No impact.
Human Rights/Legal Implications	Pursuant to s.19 Human Rights Act 1998 the Secretary of State has certified that in his opinion the Localism Act is compatible with the Convention rights.
Sustainability	If the land is included on the list of Community Assets it will form a Land Charge.
Ward-specific impacts	Thaxted and the Eastons
Workforce/Workplace	No impact

Situation

a. Is this a valid nomination?

13. Nomination for listing as an asset of community value may only be made by a parish council or by a qualifying community body. In both cases, the nominating body must have a local connection.

14. The nomination has been made by the Parish Council and the nominated property is within its area.

15. A valid nomination must also include:

- A description of the nominated land including its proposed boundaries.
- Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
- The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.

The nomination submitted by the Parish Council includes this information.

16. The nomination is therefore valid and the Council is under a duty to decide whether or not it qualifies to be listed.

b. Is there an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, or is there a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social interests of the local community?

17. The Parish Council's nomination form, representations by members of the public and by the owner are published with this report and members should study them carefully. However, there are some points that members should bear carefully in mind:

- A number of the points made in support of the nomination are aspirational, in that they appear to offer support for the creation of an asset. Future possibilities may be relevant in considering whether it is realistic to think that a qualifying use will continue. However, in order to be eligible for listing, there needs to be a current qualifying use, or a qualifying use in the recent past. Future possibilities are not, in themselves, enough.
- A qualifying use needs to further the social wellbeing or social interests of the local community. There is a lot of evidence of biodiversity on the land but this, in itself, is not a use that will further the social wellbeing or social interests of the local community. However, use as a local amenity for taking the air, recreation, dog walking etc. may, depending on the facts, amount to a qualifying use. The nature of the flora and fauna may potentially enhance the social wellbeing or social interests of local residents engaging in such a use by making it a more pleasurable or educational experience.
- There is apprehension, in some of the representations, about the prospect of future development. The legislation is about preserving community assets and not about preventing development, although status as an asset of community value may be a material planning consideration. Members should focus on the statutory tests, and not on wider concerns about development, which would be addressed through the planning system.
- Essex Wildlife Trust wrote to say that it *"would very much support the local community in Thaxted in their wish to create a 'nature reserve' to protect the land off Guelphs Lane, Thaxted."* The purpose of the ACV legislation is not to create nature reserves or to protect land.

18. There is mixed evidence about current use of the land. Cllr John Freeman states:

"This site has been used by many residents over the last 25 years for dog walking and general recreation."

Mr Cockerell states:

"The land is currently freely available to the local residents to do with as they want and has the explicit permission of Essex County Council to do so."

On the other hand, the "bioblitz" which is incorporated into the nomination focuses on biodiversity rather than current or recent qualifying uses and there is no further

information in the nomination about actual or recent uses that further the social wellbeing or social interests of the local community. The document submitted by Helen Payne in support of the nomination suggests a reduction in community use:

“Up until recently, (approximately 5 years ago when the Mill View development on the end of Wedow Rd began), the site was frequently used by walkers, children and nature enthusiasts. The building development effectively cut off the through way that was being used and rendered it relatively inaccessible.”

However, this might be taken as evidence of a qualifying use “in the recent past”. The Department for Communities and Local Government has offered this general guidance:

“With regard to ‘recent past’, our current view is that we will leave it to the local authority to decide, since ‘recent’ might be viewed differently in different circumstances. For example, ‘recent’ might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter.”

A common benchmark is a period of five years but this is not statutory and members have discretion, provided they exercise it reasonably.

Essex County Council, which owns the land, states that:

“The use of the land remains that of additional vacant land for the proposed Primary School. The land is not a public open space and there is no permissive right to use or access the land, other than along the footpath running through the land.”

19. The nature of access to the site has been raised by Essex County Council and has also been mentioned in representations. ECC maintain that there is permissive access only for use of the path through the land. The photograph of the sign submitted by Mr Cockerell does not indicate the extent of the permission and he interprets this more widely. However, the point is not important. Land is eligible for listing as an asset of community value if it meets the statutory criteria. The courts have refused to add a criterion that use must be lawful, whilst making the point that it would be difficult to establish that some unlawful uses (e.g. raves) would further the social wellbeing or social interests of the local community.

c. Is it 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. OR

Is it realistic to think that in the next 5 years the use of the building could further the social wellbeing or interests of the community.

20. As the report emphasises, these questions only fall to be considered if members are satisfied that there is a current or recent qualifying use.

21. In this context, “realistic” means “more than fanciful”. There does not need to be evidence of a business plan, or detailed proposals for maintaining a use that

meets the criteria. But suggestions for future community use need to be more than nebulous. There should, at least, be evidence of an appetite amongst the local community for a proposed future community use.

22. Representations for the local community, supported by Essex Wildlife Trust, suggest that there is significant appetite to develop the land as a wildlife site or nature reserve. The “bioblitz” report speaks of establishing “a working group to identify clear aims and actions that will protect and enhance the site for both wildlife and community engagement.
23. Essex County Council purchased the site for the development of a school. However, in its representations, it has not indicated that work to build a school is scheduled for the near future. Plans for educational provision are subject to change and, if they did, it is not fanciful to think that a County Council might be sympathetic to the aspirations set out in the nomination and representations.

Conclusions

24. The report sets out the three key questions that members need to ask. Of these, officers suggest that the less challenging are those regarding the validity of the nomination and future use. The evidence of a current or recent qualifying use is less clear and members should consider this aspect very carefully.

Risk Analysis

25.

Risk	Likelihood	Impact	Mitigating actions
The nominating body or the owner is unhappy with the decision reached.	High risk that one of the bodies will be unhappy with the decision.	The owner has rights of internal review and appeal and can claim for compensation. The nominating body does not have rights of review or appeal. If it felt the Council had acted unlawfully, it could seek to challenge by way of judicial review.	Carefully scrutinise submissions for inclusion on the Asset List so as to ensure only those which comply with the criteria are included.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.