

<b>Committee:</b>	Assets of Community Value Sub-Committee	<b>Date:</b>	24 January 2018
<b>Title:</b>	Nomination of Andrewsfield Airfield, Stebbing and Great Saling as an asset of community value		
<b>Portfolio Holder:</b>	Cllr Susan Barker		
<b>Report Author</b>	Interim head of Legal Services	<b>Key decision:</b>	No

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## 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. If a valid nomination is submitted and the land or buildings meet the criteria set out in paragraph 2, the land/buildings must be included in the list of assets of community value. If the answer to any question is "no", the land/buildings cannot be listed as an asset of community value.

## Recommendations

6. That members determine whether to list Andrewsfield Airfield as an asset of community value.

## Financial Implications

7. 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.
8. 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

9. There are no background papers. The Parish Council's nomination is attached to this report.

## Impact

- 10.

Communication/Consultation	In line with paragraph 8 of The Assets of Community Value (England) Regulations 2012 the Council have taken all practicable 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	No impact.
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	No direct or relevant impact.
Ward-specific impacts	Felsted and Stebbing

Workforce/Workplace	No impact
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## Situation

This is a complex application. The key issues which members need to consider are set out below.

### a. Is this a valid nomination?

11. 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.
12. The nomination has been made by the Great Saling Parish Council to both Braintree District Council and Uttlesford District Council. The premises are located within the parishes of Great Saling, Braintree District and Stebbing Parish, Uttlesford District.
13. A parish council has a local connection with land in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area. (Assets of Community Value (England) Regulations 2012 regulation 4(2)(a))
14. Section 102 of the Localism Act 2011 states that if different parts of any land are in different local authority areas, the local authorities concerned must cooperate with each other in carrying out functions under this Chapter in relation to any land or any part of it. There is no guidance on the form co-operation should take or on what happens if two authorities reach different conclusions.
15. Braintree District Council are determining the nomination in accordance with their agreed practice. The decision is intended to be made by an officer panel on 29 January.
16. 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.

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

### b. Is the land "operational"?

18. The Assets of Community Value Regulations 2012 prohibit the Council from listing “operational land” as defined in section 263, Town and Country Planning Act, 1990. The definition in the 1990 Act cross-refers to other legislation and it is not wholly clear whether this is operational land. On the basis of available information, the officer view is that it is not operational land. No representations have been received from the owners to this effect. If it emerges that this is operational land, it cannot be listed.

**c. Is there an actual current use of the building/land, not an ancillary use, which 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?**

19. The site is currently operational as a licensed airfield. According to the website (<http://andrewsfield.com/about-andrewsfield/>) a wide range of flying courses are offered. Hangarage is sometimes available; aircraft parking is available. There is a clubhouse with licensed bar and restaurant, fully equipped briefing rooms, pilot shop and offices. The club is open 7 days a week from 9:00am during the summer and from 8:30am during the winter.

20. The parish council support their nomination by stating that *Resident of Great Saling use the facilities at the airfield ie the pub and the café as a social place to meet as Great Saling doesn't have a public house anymore. The Salings and surrounding area sees a lot of cycling and bike tours and the airfield is often a welcome stop off point for these visitors.*

*Andrewsfield is a very popular and valuable local community amenity and Open space. It is very well used by the local residents, as well as attracting visitors from far and wide. It is used by walkers and cyclists, as well as by pilots who come from all around the country to fly over our attractive North Essex countryside. The bar at Andrewsfield is not only a popular local meeting place, esp for residents of Great Saling and Bardfield Saling who have no pub or bar in their villages, but also a meeting place for rambling and cycling groups. The airfield itself is well used by pilots from local towns and villages and is CAA Licensed for both Private and Commercial pilot training. It is in a category of airfield which accounts for ONLY 10% of all active airports in the UK. Andrewsfield is not only a leisure airport but plays a vital role in commercial pilot training, revalidation/licence renewal and forms a vital link in the network of small training fields in the UK. There is already a shortage of pilots in what is a rapidly expanding industry. It cannot make any sense to close down an important pilot training centre which is a source of local employment and is additive to the overall UK economy.*

*Andrewsfield has a major place in WWII aviation history, being the first “Type A” USAF airbase built during WWII. When the USAF vacated the base, the RAF took it back and it remained an active airforce base until the end of WWII. Andrewsfield is an unscheduled monument to WWII, with people still making the pilgrimage to visit it, even from the US. Andrewsfield was named in honour of US Lt. Gen. Frank Andrews who was killed in action in 1943 – he was due to succeed Gen Eisenhower but was killed before that could happen. After the closure of Andrewsfield in Essex at the end of WWII, an Air Force base named Pyles Field*

*at Camp Springs, Maryland, near Washington, DC was renamed in honour of Lt Gen Andrews. This is the airfield where Airforce One, the US President's plane, is stationed.*

*Andrewsfield is also part of the UK Met Office weather station network.*

*We feel that Andrewsfield has a very high value to the community since it is a very special and important place – both for the local community and for the families of those who fought in WWII.*

21. The nomination identifies three separate uses:

- Airfield;
- Open Space; and
- Clubhouse

22. As mentioned, the Committee needs to be satisfied that there is an actual current use of the nominated land/buildings (a) that is not an ancillary use and (b) that furthers the social wellbeing or social interests of the local community.

23. In determining whether a use is ancillary, it is necessary to look at the overall picture to ascertain whether the community use is a significant use in its own right in the context of the particular property and not subsidiary to another major use. All the circumstances will need to be looked at including the history of the building and the nature of the connection with the local community.

24. In determining whether use of land furthers the social wellbeing or social interests of the local community, members can take a broad view but there needs to be some sort of social benefit to the community. The legislation defines "social interests" to include cultural interests, recreational interests and sporting interests, which could typically include ACVs of the following type:

- A community building, such as a village hall.
- A building or land of local historical value.
- A public house.
- A sports ground.
- A local park.
- A playing field.

This is not, however, an exclusive list and other uses may qualify.

### **Airfield use**

25. Is the airfield use ancillary? It is a significant use in its own right and is not subsidiary to another major use. It is not an ancillary use.

26. Does the airfield use further the social wellbeing or social interests of the local community? The nomination sets out the reasons why the Parish Council believe that the airfield use furthers the social wellbeing and/or social interests of the local community. Members need to take care to distinguish elements in the submission that relate to the statutory criteria and those that do not. Only uses relevant to the

local community should be considered. Visitor usage or historic interest will not, of itself, justify nomination as an asset of community value. There needs to be a link with the social wellbeing and/or social interests of the local community.

### **Open space use**

27. There is very little detail in the nomination about the open space use. It states:

*Andrewsfield is a very popular and valuable local community amenity and Open space. It is very well used by the local residents, as well as attracting visitors from far and wide. It is used by walkers and cyclists, as well as by pilots who come from all around the country to fly over our attractive North Essex countryside.*

28. Without more information it is difficult to determine whether this is a significant use in its own right or whether it is ancillary to the main airfield use. Members need to be satisfied that the use is not ancillary before a nomination based on open space use can be accepted.

29. Does the open space use further the social wellbeing or social interests of the local community? If it is well used for this purpose by the local community and is not an ancillary use, then it could well meet this test.

### **Clubhouse use**

30. The nomination states:

*Resident of Great Saling use the facilities at the airfield ie the pub and the café as a social place to meet as Great Saling doesn't have a public house anymore.... The bar at Andrewsfield is not only a popular local meeting place, esp for residents of Great Saling and Bardfield Saling who have no pub or bar in their villages, but also a meeting place for rambling and cycling groups.*

31. Is the clubhouse use ancillary? If the clubhouse served only those using the airfield for aviation purposes, it might be seen as ancillary. However, the nomination supports a view that it is a main use in its own right. The website for the clubhouse states:

*Andrewsfield Millibar serves great home cooked food every day, Open 8:30am – 9pm. Breakfast is served until 12, Lunch until 3pm.*

*With a range of options for Breakfast, Snacks, Main meals, Desserts, Drinks or even a roast dinner, kick back and enjoy the view.*

*The Millibar is able to cater to groups or special events and regularly plays host to local gatherings and club activities.*

*No matter the time of year, the Millibar makes for an excellent fuel-stop for budding pilots, enthusiasts or those just passing through.*

*We always do our best to accommodate special requests – just get in touch! For group bookings, requests or to book in advance please phone Peter on 07923 981900.*

This strongly suggests that the clubhouse (or “Millibar”) is a significant use in its own right, akin to a local pub.

32. Does the clubhouse use further the social wellbeing or social interests of the local community? Local pubs typically meet this test. The website indicates that it fulfils a social function. The nomination states that it is the only local facility of this nature and is well used. This suggests that the clubhouse use meets the test.

**d. Is it realistic to think that there can continue to 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.**

33. If Panel members conclude that the land nominated meets the tests set out above, it can only accept the nomination if it decides that it is realistic to think that a non-ancillary use of the site and buildings could continue to further the social wellbeing or interests of the community. In this context, “realistic” means “more than fanciful”.

34. The parish council state in their nomination form that the residents of the village would look to purchasing the land and buildings and carry on using the airfield as it is.

35. There is also no evidence to suggest that it is not realistic to think that the use could continue for the foreseeable future. There are planning issues potentially affecting the site. But the planning position is not sufficiently clear to allow members to conclude that it is not realistic to think that the use will continue.

**e. What happens if members conclude that the clubhouse use qualifies for ACV listing but that the airfield and/or open space use does not?**

36. If members conclude that the clubhouse is an asset of community value, they need to consider whether all of the land identified in the nomination should be listed. The nomination includes the airfield. If the listing is made only on the basis of the clubhouse use, members should only list the building and land with which it has a functional and physical relationship. If members conclude that there is not a functional and physical relationship between the clubhouse and all of the land nominated, but are unclear as to the extent of the land which should be included in the listing, an option would be to reject the application to and invite the Parish Council to resubmit, based on the clubhouse use, with a revised plan.

**Representations**

37. No representations have been received to date. However, Braintree DC initially received this nomination and has taken the lead on contacting owners. Under Braintree’s procedure, representations from owners are not called for at this stage. Owners have a statutory right to ask for a review of a decision to list an ACV. At this stage they can make representations and can request an oral hearing.

## Conclusions

38. This is a particularly complex application. Members need to consider the issues raised in this report and to reach a conclusion at the meeting. Officers will be in attendance

## Risk Analysis

39.

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.