

<b>Committee:</b>	Cabinet	<b>Date:</b>
<b>Title:</b>	POW Camp 116, Hatfield Heath: Nomination as an Asset of Community Value	Wednesday, 4 April 2018
<b>Portfolio Holder:</b>	Cllr Susan Barker	
<b>Report Author:</b>	Simon Pugh, Assistant Director - Governance and Legal spugh@uttlesford.gov.uk	<b>Key decision:</b> N

## 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 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 use by the community and include for example a village shop, pub, community centre, allotment or recreation ground.

- 5) The Council have received a request from Hatfield Heath Parish Council to include the site of a former prisoner of war camp in the parish, The purpose of this report is to enable members to determine:
- a) Whether the nomination is valid;
  - b) Whether, currently or in the recent past, the use of the land furthers or furthered the social wellbeing or social interests of the local community. ;
  - c) Whether it is realistic to think that (a) a current qualifying use will continue or whether, (b) if there has been a recent qualifying use, there could be 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. In considering these questions, members need to consider principal, rather than ancillary, uses of the building.

If members conclude that the answers to these questions are “yes”, the building should be included in the list of assets of community value.

### **Recommendation**

- 6) That the nomination to list POW Camp 116, Hatfield Heath is rejected on the basis that, the nomination does not identify a current qualifying community use of the land or a qualifying community use in the recent past.

### **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 to this report. The application and representations received are appended to the report.

## Impact

10)

Communication/Consultation	<ul style="list-style-type: none"><li>▪ 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.</li></ul>
Community Safety	<ul style="list-style-type: none"><li>▪ No impact.</li></ul>
Equalities	<ul style="list-style-type: none"><li>▪ The duty will affect all equally.</li></ul>
Health and Safety	<ul style="list-style-type: none"><li>▪ No impact.</li></ul>
Human Rights/Legal Implications	<ul style="list-style-type: none"><li>▪ 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.</li></ul>
Sustainability	<ul style="list-style-type: none"><li>▪ If the land is included on the list of Community Assets it will form a Land Charge.</li></ul>
Ward-specific impacts	<ul style="list-style-type: none"><li>▪ Hatfield Heath</li></ul>
Workforce/Workplace	<ul style="list-style-type: none"><li>▪ No impact</li></ul>

## Situation

### a. Is this a valid nomination?

11) S89 of the Act states that land in a local authority area which is of community value may be included in its list of assets of community value only in response to a “community nomination”, or where permitted by regulation made by the Secretary of State. A community nomination means a nomination by a parish council in respect of land in the parish council’s area or “by a person that is a voluntary or community body with a local connection”. The nomination is being made by Hatfield Heath Parish Council. The nominated land is within its area. It is therefore a “community nomination”.

12) A nomination must also include:

- a) A description of the nominated land including its proposed boundaries.
- b) Any information the nominator has about the freeholders, leaseholders and current occupants of the site.

- c) The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
- d) The nominator's eligibility to make the nomination.

It meets these requirements and it is therefore a valid nomination under S89(2)(i).

**b. Does the use of the building (current or recent past) further the social wellbeing or social interests of the local community?**

- 13) Appendix 1 sets out the history of the site and the uses to which it has been put. The nomination says that, prior to a sale of the land in 2009, there had been regular visits by various schools, the History Society, villagers and members of the public. A subsequent email in support (from Ivan Cooper) of the nomination states that a Governor from Hatfield Heath Community Primary School has taken groups from the school for visits over the last 4 years. However a second email (from David Parish) describes strict restrictions on access.
- 14) The test refers to the "local community". It is for the Council to decide what the "relevant community" is in this context. The officers suggest that residents of the Parish should be treated as the local community for this application.
- 15) There is no statutory definition of uses that further the social wellbeing or social interests of the local community. Runnymede BC approaches "social wellbeing" as meaning "those aspects of life that society collectively agrees are important for a person's happiness, quality of life and welfare". Basildon DC states that "social wellbeing" means "things that people value in their life that contribute to their reaching their potential (economic, social or environmental)". The benefit must be for the community and not individuals. An approach taken by Waveney DC was that an asset will promote social wellbeing if it provides for interaction between people, the formation or strengthening of friendships and social networks, particularly within an identifiable community, and supports a sense of local identity, and serves to counter negative factors such as loneliness and social isolation.
- 16) A nomination which is prompted by a desire to retain land or a building which is considered to enhance the character of the local area is not sufficient by itself to show a community benefit. The focus should be on the use to which the building is put rather than the physical appearance of the building which should be dealt with exclusively by building and planning law. Similarly, a desire to preserve a site of historical interest is not enough in itself to justify designation – there needs to be a qualifying community use.
- 17) If members conclude that the use described in the nomination amounts to a qualifying community use, they need to decide whether the use is current or took place in the "recent past". There is no statutory definition for "recent past". DCLG guidance states:

*"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."*

18) The information before members is that there was access to the land for the community up to 2009, although the extent of this access is unclear – the nomination refers to “regular visits” by schools, the History Society, villagers and other members of the public. Although there is a statement in one of the emails in support of the nomination that the local school has visited the site more recently, access to the site as a community asset has clearly been slight at best.

19) The view of officers is that there is no current qualifying use of the site. If there was a qualifying use, it ceased in 2009. It is for members to decide whether a use ceasing in 2009 is “recent” but officers doubt that, in common sense terms, it should be described as recent.

**c. Is it realistic to think that in the future the use of the building could further the social wellbeing or interests of the community.**

20) If members consider that there is a current “community use” of the land, they need to ask whether:

*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*

21) If members consider that there has been a “community use” in the recent past, they need to ask whether:

*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*

22) In considering this question, the test is whether it is “realistic” to think that the use of the building could further the social wellbeing or interests of the community. It is not a balance of probabilities test – realistic means “more than fanciful”. The use does not have to be the same as that which took place within the recent past.

23) Appendix 1 sets out the evidence submitted by Hatfield Heath Parish Council as to how the community would seek to acquire the land so that the current uses can continue or increase.

24) There is a current planning application to build 26 houses on the site. If it was inevitable or highly likely that a planning consent will be implemented in such a way that precludes future qualifying community use, then members should reject the nomination. However, at this stage, the application has not been approved. There are still the possibilities that consent may not be granted and, if granted, may not be implemented. At this stage, the officer advice is that the

nomination should not be rejected on the basis of the existence of the planning application.

## Representations

- 25) Two emails in support of the nomination are appended to this report. Any representations received after publication of the report will be reported to Members at the meeting.

## Conclusion

- 26) A valid nomination has been made to the Council.
- 27) Members need to consider whether the evidence provided shows that use of the land, current or in the recent past, furthers the social wellbeing or social interests of the community.
- 28) If Members are satisfied that there is a qualifying “community use”, they need to consider whether it is realistic to think that the property can continue to be used in a manner that furthers the social wellbeing and interests of the local community.
- 29) Consideration of these issues will lead the Cabinet to determine whether the property listed in Appendix 1 should be included in the list of assets of community value.

## Risk Analysis

30)

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. A new nomination	Carefully scrutinise submissions for inclusion on the Asset List so as to ensure only those which comply with the criteria are included.

		<p>can be made with additional information.</p> <p>If it felt the Council had acted unlawfully, it could seek to challenge by way of judicial review.</p>	
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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