



EXECUTIVE DECISION NOTICE

SERVICE AREA:	GOVERNANCE, RESOURCES AND PENSIONS
SUBJECT MATTER:	NOMINATION OF GRAZING FIELDS AT LAND ON WINDSOR PARK, DENTON AS AN ASSET OF COMMUNITY VALUE
DECISION:	That the nomination to add grazing fields on land on Windsor Park, Denton (and more particularly shown on the plan set out at page A5 to Appendix 1 to the report) to the Council's list of assets of community value be REJECTED and the nomination be added to the Council's list of land nominated by unsuccessful community nominations
DECISION TAKER	Sandra Stewart
DESIGNATION OF DECISION TAKER(S):	Executive Director, Governance, Resources and Pensions (Borough Solicitor)
DATE OF DECISION:	12 April 2017
REASON FOR DECISION:	<p>The Council has received a nomination to add grazing fields on land on Windsor Park in Denton to its register of assets of community value. Under the Localism Act 2011 the Council is required to consider nominations within 8 weeks from receipt of a valid nomination and must register the land or buildings as an Asset of Community Value if, in its opinion –</p> <ul style="list-style-type: none"> (a) 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 (b) 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 (section 88(1)). <p>If a building or other land in a local authority's area that is not land of community value as a result the above, the land is of community value if the Council is of the opinion that—</p> <ul style="list-style-type: none"> (a) 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 (b) 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 (section 88(2)). <p>The Council is not, on the information provided, of the opinion that the land is land of community value and for that reason the land should not be added to the Council list of assets of community value.</p>
ALTERNATIVE OPTIONS REJECTED (if any):	To accept the nomination and the land to the Council list of assets of community value.

	To do so would be contrary to the Localism Act 2011.
CONSULTEES:	<p>The registered freehold owner of the property – Tameside Metropolitan Borough Council Senior Estates Manager, Asset and Investment Partnership Management, Place, Tameside MBC – Ian Coulson</p> <p>The Registered leasehold owner of the property Ms Karen Carmichael.</p> <p>Adele Hopwood, Manchester, identified as current occupier by the nominator</p> <p>The Ward Councillors - Cllr Brenda Warrington, Cllr Michael Smith, Cllr Dawson Lane</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no direct financial implications as a result of this report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	Under the Localism Act 2011 and the regulations made under it the Council must consider nominations received from qualifying bodies to add properties to its list of assets of community value. Where the property is within the Council's area and is of community value the Council is required to list the property, the effect of which will prevent the property being sold other than to the nominating body for a period of between 6 weeks and 6 months depending on whether the body wishes to be treated as a bidder. If land is added to the list, the owner has a right to request the Council review its decision within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council does not accept a nomination there is no such right of review or appeal.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	Not Applicable
ACCESS TO INFORMATION:	<p>The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor by:</p> <p> Telephone: 0161 342 4354</p> <p> e-mail: Peter.mccaughley@tameside.gov.uk</p>



Signed..... Date: 12 April 2017
Sandra Stewart – Executive Director, Governance, Resources and Pensions (Borough Solicitor)

EXECUTIVE DECISION REPORT

SERVICE AREA:	GOVERNANCE, RESOURCES AND PENSIONS
SUBJECT MATTER:	NOMINATION OF GRAZING FIELDS AT LAND ON WINDSOR PARK, DENTON AS AN ASSET OF COMMUNITY VALUE
DATE OF DECISION:	12 April 2017
DECISION TAKER	Sandra Stewart – Executive Director, Governance, Resources and Pensions (Borough Solicitor)
REPORTING OFFICER:	Peter McCaughley – Principal Solicitor, Legal Services
REPORT SUMMARY:	The report acknowledges receipt of a nomination from the Dane Bank Green Space Committee, a voluntary organisation to list grazing fields on land on Windsor Park in Denton as an asset of community value under the provisions of sections 87 to 108, chapter 3 of part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
RECOMMENDATIONS:	That the nomination to add grazing fields on land on Windsor Park, Denton to the Council's list of assets of community value BE REJECTED and the nomination be added to the Council's list of land nominated by unsuccessful community nominations.
JUSTIFICATION FOR DECISION:	<p>The Council has received a nomination to add grazing fields on land on Windsor Park in Denton to its register of assets of community value. Under the Localism Act 2011 the Council is required to consider nominations within 8 weeks from receipt of a valid nomination and must register the land or buildings as an Asset of Community Value if, in its opinion –</p> <ul style="list-style-type: none"> (c) 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 (d) 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 (section 88(1)) <p>If a building or other land in a local authority's area that is not land of community value as a result the above, the land is of community value if the Council is of the opinion that—</p> <ul style="list-style-type: none"> (c) 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 (d) 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 (section 88(2)) <p>The Council is not, on the information provided, of the opinion that the land is land of community value and for that reason the land should not be added to the Council list of assets of community</p>

	value.
ALTERNATIVE OPTIONS REJECTED (if any):	<p>To accept the nomination and the land to the Council list of assets of community value.</p> <p>To do so would be contrary to the Localism Act 2011.</p>
CONSULTEES:	<p>The registered freehold owner of the property – Tameside Metropolitan Borough Council Senior Estates Manager, Asset and Investment Partnership Management, Place, Tameside MBC – Ian Coulson</p> <p>The Registered leasehold owner of the property Ms Karen Carmichael.</p> <p>Adele Hopwood, Manchester, identified as current occupier by the nominator</p> <p>The Ward Councillors - Cllr Brenda Warrington, Cllr Michael Smith, Cllr Dawson Lane</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	<p>There are no financial implications as a result of this report. If the land were to be listed as an Asset of Community Value there is provision within the act for the payment of compensation by the Council to an owner who has suffered loss as a result of listing land as an asset of community value. However the owner for Asset of Community Value purposes of this land is the Council.</p>
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	<p>Under the Localism Act 2011 and the regulations made under it the Council must consider nominations received from qualifying bodies to add properties to its list of assets of community value. Where the property is within the Council's area and is of community value the Council is required to list the property, the effect of which will prevent the property being sold other than to the nominating body for a period of between 6 weeks and 6 months depending on whether the body wishes to be treated as a bidder. If land is added to the list, the owner has a right to request the Council review its decision within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council does not accept a nomination there is no such right of review or appeal.</p>
RISK MANAGEMENT:	<p>If the Council decides not to list assets on its register of assets of community value, the nominator has no formal right to review the Council's decision but may seek to have the decision reviewed by the courts through judicial review proceedings.</p>
LINKS TO COMMUNITY PLAN:	<p>Growing and encouraging local community groups to take responsibility for delivering some services in their local area helps to reduce dependency on public services and build community spirit and self-worth for those involved.</p>
ACCESS TO INFORMATION:	<p>The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor by:</p> <p> Telephone: 0161 342 4354</p> <p> e-mail: Peter.mccaughley@tameside.gov.uk</p>

1. BACKGROUND

- 1.1 The Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 provide a legal framework for listing Assets of Community Value.
- 1.2 The Act requires the Council to maintain a list of land in Tameside that is land of community to be known as a list of assets of community value.
- 1.3 A building or land will be of community value if the Council is of the opinion that its actual current use, which is not 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, which will further (whether in the same way or not) the social wellbeing or social interests of the local community (S88(1) of the Act).
- 1.4 If land is not of community value by virtue of the above paragraph it will be if 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 (S88(2) of the Act).
- 1.5 Social interests include culture, recreation and sport.
- 1.6 The land can only be listed as an Asset of Community Value in response to a ‘community nomination’. The Act provides that a community nomination includes a nomination by a person that is a voluntary or community body with a local connection to the land (S89(2))
- 1.7 Regulation 5 provides that a voluntary or community body includes, amongst other things, an unincorporated body whose members include at least 21 individuals, and, which does not distribute any surplus to its members.
- 1.8 Regulation 4 provides that a body has a local connection if its activities are wholly or partly concerned with Tameside or a neighbouring area and if any surplus it makes is wholly or partly applied for the benefit of Tameside or a neighbouring area.
- 1.9 If the Council receives a community nomination it must consider it and must accept the nomination if the land nominated is in Tameside and of community value. If the Council is required to accept the nomination then the land must be included on the Council’s list of Assets of Community Value
- 1.10 The Council must decide within 8 weeks of receiving a community nomination whether land nominated should be included within the list.
- 1.11 Where land is included in the list the owner of that land can ask the Council to review its decision to list. The owner of the land can then appeal to the First-tier Tribunal against the Council’s decision on review. The nominator has no such right of review or appeal.
- 1.12 The owner of the land for Asset of Community Value purposes will be the freehold owner where there is no lease for a term which, when granted, had at least 25 years or more to run. Where there is a leaseholder that person will be the owner if they hold a lease, which when granted, had at least 25 years or more to run.
- 1.13 The effect of a property’s inclusion on the list will be to require the owner of the property to notify the Council when intending to dispose of a listed asset, so triggering a moratorium period. The moratorium operates so as to prevent certain proposed disposals of the land being made until several specified conditions are met. These conditions are:

- (a) The owner has notified the council that he wishes to enter into a relevant disposal;
- (b) A period of 6 weeks has then passed without the local authority receiving a written request from a community interest group to be treated as a potential bidder for the land (the interim moratorium period) or, if such a request has been made, a total period of 6 months has passed (the full moratorium period); and
- (c) An 18 month 'protected period' starting with the date of the owner's notification to the local authority, has not ended.

1.14 The owner is not compelled at any point to sell the asset to the voluntary or community body; rather he cannot sell it to anyone else within the moratorium period. The owner can sell the property at any price that he can obtain or not at all as the case maybe. There is no obligation whatsoever for the owner to negotiate or deal with the voluntary or community body.

1.15 Where a nomination is refused, the application and decision to refuse will be recorded on the Council's list of unsuccessful nominations.

2. NOMINATION

2.1 On 22 September 2016, the Council received four nominations from the Dane Bank Green Space Committee to add land on Windsor Park in Denton to the Council's list of assets of community value. One of the nominations related to land described as Grazing Fields on Windsor Park just off Windsor Road, Denton. A copy of that nomination is set out at **pages A1 to A5 of Appendix 1**. The other three nominations related to land at Denton West Cricket Club, Denton West End Football Club and Dane Bank Angling Club, all on Windsor Park, Denton and have been dealt with separately.

2.2 It was necessary to determine whether Dane Bank Green Space Committee was a genuine voluntary or community body with local connection to the area as defined by the Act and the Regulations. On 30 September 2016, Legal Services wrote to the Committee to advise of the criteria that was required to be met for the Committee to be such a body and requesting evidence to confirm that it was a voluntary or community body. A copy of the Committee's constitution, was sought in order to establish whether the Committee was a voluntary or community body as prescribed by the Act and Regulations.

2.3 The Co-Chair to the Committee responded on 25 October 2016 with a copy of a signed constitution stating that this had been adopted by the members of the Committee. However, it was not possible to determine from this document whether the Committee was in fact a voluntary or community body as prescribed by the Act and Regulations. Accordingly, a copy of the minutes of the general meeting at which the constitution was adopted was sought the following day in order to ascertain how many members there were and whether the constitution had been properly adopted.

2.4 The Co-Chair to the Committee provided the minutes on 28 October 2016. Nevertheless, the minutes did not contain sufficient information to allow the Council to be satisfied that the Committee's constitution had been properly adopted to make it a voluntary or community body as prescribed by the Act and Regulations. Consequently, on 3 November 2016, the Co-Chair was advised of the concerns stating that the Council couldn't be satisfied at this point the nomination was in fact a community nomination.

2.5 Further correspondence dated 23 November and 7 December passed between the Co-Chair and the Council's legal services. In addition there was a telephone conversation on 5 December 2016 with the view to clarifying matters. On 16 December 2016, the Council received sufficient information from Dane Bank Green Space Committee to be able to be satisfied that the Committee was in fact a voluntary or community body by virtue of being an unincorporated body whose members numbered at least 21 individuals and which did not

distribute any surplus it made to its members. The information received on that date consisted of an adopted constitution document, details of 26 Committee members and minutes of a Special General Meeting which recorded attendance by all members of the Committee who voted unanimously in favour of adopting the constitution. The constitution of the Committee is at **pages A6 to A9 of Appendix 1**.

- 2.6 The Dane Bank Green Space Committee was advised in writing on 23 December 2017 that their nomination had now been accepted and would be considered in accordance with the applicable legislation as it met criteria 5(1)(c) set out in Assets of Community Value (England) Regulations 2012 and the nomination was treated as being a valid 'community nomination' with effect from 16 December 2016.
- 2.7 The Council had 8 weeks from 16 December 2016 to consider the nomination and determine whether the land to which it referred should be listed or not.

3. CONSULTATION

- 3.1 Having received a community nomination, the Council was required to give notice of the application to any freehold and leasehold owner of the land and any lawful occupier of the land. The freehold owner of the land is in fact Tameside MBC. An email was sent on 21 December 2016 to the Council's Estates Service. The purpose of that email was twofold; to request information so that any leaseholder and/or occupier of the land could be identified and to invite comments on the nomination. Information was received back on the same day that there was one lease, which covered not only the land which was the subject of this nomination, but also the land which was the subject of the other three nominations. The holder of this lease was identified as a Karen Carmichael.
- 3.2 On 9 January 2017, following the 2 week Christmas closure period a letter was sent by Legal Services to the leaseholder, Ms. Carmichael advising her of the nomination and inviting comments within 28 days. A similar letter was sent on the same day to Ms. A Hopwood, this being the person identified in the nomination as the occupier of the grazing fields. This letter was sent to the address provided in the nomination made by the Dane Bank Green Space Committee.
- 3.3 On 26 January 2017, comments were received by Legal Services from the Council's Estates Service regarding this and the other three nominations. The content of that email conflicted with the information previously provided on 21 December, which had identified Ms. Carmichael as the sole leaseholder for all of the land subject to the four nominations. The email received on 26 January 2017 now suggested that there was no lease in place regarding the Angling Club and suggested that Ms. Carmichael was not the leaseholder for land relating to two of the other nominations (Denton West Cricket Club and Denton West End Football Club). The email dated 24 January 2017 received by the Officer on 26 January 2017 is **at page A10 of Appendix 1**.
- 3.4 On 3 February 2017, a letter was received by Legal Services, from Ms. Carmichael with representations on all four nominations. Ms. Carmichael's letter is at **at pages A11 to A13 of Appendix 1**.
- 3.5 From this letter it became evident that the details provided to Legal Services regarding the ownership and occupation details of the land, which was the subject of all of the nominations had been inaccurate. On further inquiries by the Officer the correct identities of all those who were required to be consulted with in regards to this and the other nominations was established. Therefore the persons with a potential interest in the land are identified in the following table:

Application Land on Windsor Park	Registered Owner	Occupier	Date letter sent	Representation received
Grazing Fields	Ms Karen Carmichael (Registered Leasehold owner – Lease of 21 years granted on 1 August 2003 by TMBC		9 January 2017	Yes page A11 to A13 of Appendix 1 refers
	TMBC (Registered Freehold owner)		Consultation undertaken by email on 21 December 2016	Yes page A10 of Appendix 1 refers
		The Occupier c/o Ms A Hopwood as identified in the nomination	9 January 2017	No

- 3.2 For Asset of Community Value purposes the owner of the land would appear to be the Council. Section 107 of the Act provides that the owner of the land is the person in whom the freehold estate in the land is vested, but not if there is a qualifying leasehold estate in the land. A qualifying freehold estate means an estate by virtue of a lease of the land for a term which, when granted, had at least 25 years or more to run. The lease granted to MS Carmichael when granted was for a period of 21 years. Therefore for Asset of Community Value purposes the owner of the land will be the Council.
- 3.6 In respect of two of the other nominations (Denton West Cricket Club and Denton West End Football Club) it became clear that full consultation had not taken place as the correct lease holders had not been identified. In those matters a letter of consultation was issued to the respective leaseholders on 9 February 2017 by Legal Services requesting that they supply any comments or observations they may have in connection with the applications within 14 days.
- 3.6 The Co-Chair to the Dane Bank Green Space Committee was advised by letter sent by email on 9 February 2017, by the Legal Services that owing to this administrative error there would be a delay in considering the 4 nominations to allow proper consultation to take place in respect of the Denton West Cricket Club and Denton West End Football Club nominations. That letter concluded by apologising for the delays caused. The letter stated the Council intended to consider the nominations within 4 weeks of the date of 9 February i.e. by 9 March 2017. That letter is set out at **page A14 of Appendix 1**.
- 3.7 Regulation 7 of the Regulations states that within 8 weeks of receiving a nomination the Council must decide whether land should be included in the list of Assets of Community Value. This timescale has not been adhered to due to the error in identifying the correct leaseholders of the land which was the subject of two of the nominations. Unfortunately there have been further delays beyond even 9 March 2017. This was due to the Council being in the process of reviewing its procedure for dealing with nominations. This review was required as it had become apparent that the existing procedure was no longer appropriate when dealing with nominations and reviews of listing decisions.
- 3.8 The Regulations and Localism Act 2011 are silent on the consequences of failing to deal with a nomination within the 8 week time scale. The Council understands that whilst such a delay

is not acceptable it does not impose a bar on the Council considering the nomination. Indeed if the Council did refuse to consider the nomination following its own delay, it would be escaping its obligations under the 2011 Act and the 2012 Regulations, which cannot have been the intention of Parliament or of the Secretary of State when making the legislation. Moreover, the delay other than inconvenience has not caused any prejudice to the applicant. The purpose of the Community Value Act is to give a community group a window of opportunity (6 months) so that they are able to get the necessary funds together to purchase an asset before it is sold. As the land/premises are not currently for sale then the applicant has not lost anything by the delay.

4. DETERMINATION OF THE NOMINATION

4.1 Under section 88 of the Act the Council must determine whether the nominated land is of community value. Section 88 says as follows:-

88 Land of community value

(1) *For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—*

- (a) *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*
- (b) *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.*

(2) *For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—*

- (a) *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*
- (b) *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 appropriate authority may by regulations—*

- (a) *provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;*
- (b) *provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.*

(4) *A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.*

(5) *In relation to any land, those matters include (in particular)—*

- (a) *the owner of any estate or interest in any of the land or in other land;*
- (b) *any occupier of any of the land or of other land;*
- (c) *the nature of any estate or interest in any of the land or in other land;*
- (d) *any use to which any of the land or other land has been, is being or could be put;*

- (e) *statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—*
 - (i) *any of the land or other land, or*
 - (ii) *any of the matters within paragraphs (a) to (d);*
- (e) *any price, or value for any purpose, of any of the land or other land.*

- (6) *In this section—*
 - “legislation” means—*
 - (a) *an Act, or*
 - (b) *a Measure or Act of the National Assembly for Wales;*
 - “social interests” includes (in particular) each of the following—*
 - (a) *cultural interests;*
 - (b) *recreational interests;*
 - (c) *sporting interests;*
 - “statutory provision” means a provision of—*
 - (a) *legislation, or*
 - (b) *an instrument made under legislation.*

- 4.2 Information has been provided by the nominator to satisfy the Council that this is a genuine community nomination. Dane Bank Green Space Committee is an unincorporated body with at least 21 members. There is no power provided for by the Committee’s constitution for any surplus to be distributed to its members. It is clear from the Committee’s constitution that its activities relate to the open land between Windsor Road and Thornley Lane known as Dane Bank Green Space in Denton, Tameside and that any funds it raises will be used for that aim. It is therefore apparent that the Committee is active within the borough of Tameside and is using some or all of any surplus to that end, demonstrating a local connection.
- 4.3 The nomination states *“the land has been used as a grazing paddock for horses stabled at the local community horse stables.”* The nomination also states *‘the land has been used for many years as a grazing paddock for horses that are stabled locally. There is no other suitable available facility within the area’.*
- 4.4 The nomination was accompanied by an aerial view of Windsor Park on which an area identified as the grazing field is highlighted.
- 4.5 This was the only information provided by the nominator in respect of the grazing fields.
- 4.6 The person named as occupier of the fields on the nomination using the details provided by the nominator, has not responded despite to the letter sent to her on 9 January. No websites have been located relating to the grazing fields or the adjacent stables and riding school referred to by Ms Carmichael in her letter.
- 4.7 The Council, as Freehold owner of the land, commented on the nomination in an email of 24 January 2017 sent by a manager of the Council’s Investment and Development Section that in respect of the grazing fields ‘grazing horses is not an activity, which is made widely available to the community. It appears to benefit only a small number of people and does not improve the social well being and interest of the local community – I would argue that use is not broad or inclusive across the community. This response is set out at **page A10 of Appendix 1.**
- 4.8 Ms Carmichael, the Leasehold owner of the land, commented in her letter dated 18 January set out at **page A12 of Appendix 1** that the fields were in private ownership and there was no general access to the public other than in association with their use of the adjacent stables and riding school. She went on to state that there was no general right for the local community to use the land for their general own interests.

- 4.9 She went on to say that the current planning use of the land is agricultural and such a use could not be one which furthers the social wellbeing or social interests of the community and any use of the land other than for grazing horses is incidental to the primary agricultural use. She also stated there was no evidence the past actual use had furthered social interests or social wellbeing of the community.
- 4.10 Her full comments can be seen in her letter at set out at **page A11 to A13 of Appendix 1**.
- 4.11 In short Ms Carmichael did not believe the land was land of community value.
- 4.12 Very limited information has been provided by the nominator in regard to the grazing fields.
- 4.13 Land will be of community value if in the opinion of the Council its actual current use, which is not 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 which will further (whether in the same way or not) the social wellbeing or social interests of the local community (S88(1) of the Act).
- 4.14 Even if the land identified as grazing fields is designated as agricultural land, this does not mean it is prevented by law from being land of community value. It is a matter of fact and circumstances whether the actual current use of the land is one which makes it of community value. It is clear that both the nominator and the current leaseholder identify the land as being used as grazing land for horses. Other than being designated as agricultural land there is no information that the land is being used for any purpose other than grazing horses. Therefore it does not appear that this use is ancillary. It would appear that the use for grazing is in fact actual, current and the only use the land is being put to.
- 4.15 The leaseholder states that this use is a private use. The Council as freeholder of the land states the use of the land is not broad or inclusive across the community. Whether the use of the land is 'broad' across the community is irrelevant. What is relevant is whether it furthers the social wellbeing or social interests of the local community. There does not have to be broad use of land across the community for land to further the social wellbeing or social interests of the local community.
- 4.16 Private use is capable of furthering the social wellbeing or social interests of the local community if it is not so exclusive as to have insufficient relationship with the local community.
- 4.17 However, insufficient information is provided as to which and how many members of the local community use the fields and how they qualify to use them. For that reason it is not possible to be of the opinion that the use of the field furthers the social wellbeing or social interests of the local community.
- 4.18 In addition it appears to be accepted the field is used only by horses to graze. Whilst such an activity obviously benefits the horses and their owners it cannot be said to further the social wellbeing or social interests of the local community.
- 4.19 For these reasons the Council could not be of the opinion that the land is of community value as defined by s88(1) of the Act.
- 4.20 If the Council was not satisfied that the land was of community value by s88(1) of the Act, the land could still be of community value if there is a time in the recent past when an actual use of the 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 (S88(2) of the Act.)

- 4.21 Again on the information provided it is not possible for the Council to decide that use of the land in the recent past was not ancillary use which furthered the social wellbeing or interests of the local community. The information provided does not allow the Council to form that view. In addition no information has been provided about non ancillary use of the land in the next five years or how such use would further the social wellbeing or social interests of the local community.
- 4.22 For these reasons the Council could not be of the opinion that the land is of community value as defined by s88(2) of the Act.

5. PROCEDURE ON DETERMINATION THAT LAND IS NOT AN ASSET OF COMMUNITY VALUE

- 5.1 If a nomination is unsuccessful the land nominated will not be included on the Council's list of Assets of Community Value. The Council must give to the person who made the nomination written reasons for the Council's decision that the land could not be included in its list of Assets of Community Value.
- 5.2 The Council must enter this nomination on its list of land nominated by unsuccessful community nominations.
- 5.3 The only challenge to a decision not to include land on the Council's list of Asset of Community Value's is by way of Judicial Review.

6. EFFECT OF INCLUSION ON THE LIST IF DETERMINED LAND IS AN ASSET OF COMMUNITY VALUE

- 6.1 The effect of the land's inclusion on the list is to place requirements on the owner should the owner want to dispose of the land. The owner of the grazing fields for Asset of Community Value purposes is in fact the Council.
- 6.2 The owner will be to require the owner of the property to notify the Council when intending to dispose of a listed asset, so triggering a moratorium period. The moratorium operates so as to prevent certain proposed disposals of the land being made until several specified conditions are met. These conditions are:
- (a) The owner has notified the council that he wishes to enter into a relevant disposal;
 - (b) A period of 6 weeks has then passed without the local authority receiving a written request from a community interest group to be treated as a potential bidder for the land (the interim moratorium period) or, if such a request has been made, a total period of 6 months has passed (the full moratorium period); and
 - (c) An 18 month 'protected period' starting with the date of the owner's notification to the local authority, has not ended.
- 6.3 Inclusion in the list of Assets of Community Value will not affect 'exempt disposals' as identified and listed in full in schedule 3 of the Assets of Community Value (England) Regulations 2012. Exempt disposals include
- (a) A disposal pursuant to an order made by a court or by a tribunal;
 - (b) A disposal made pursuant to a separation agreement made between spouses or civil partners
 - (c) Any disposal made under, or for the purposes of, any statutory provision relating to incapacity

- (d) A disposal— (a) to a particular person in pursuance of a requirement that it should be made to that person under a planning obligation entered into in accordance with section 106 of the Town and Country Planning Act 1990; or (b) made in pursuance of the exercise of a legally enforceable option to buy providing that the land was not listed when the agreement was entered into.
- (e) A disposal to a former owner where the land was acquired via compulsory purchase.
- (f) A Disposal in exercise of a power of sale of the land by a person who has that power by way of security for a debt.
- (g) A disposal pursuant to insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986.
- (h) A disposal of land to a person whose acquisition of the land is a statutory compulsory purchase.
- (i) A grant of a tenancy of the land pursuant to the provisions of Part 4 of the Agricultural Holdings Act 1986.
- (j) The notification of an exempt disposal will not trigger a moratorium period or protected period.

6.4 Once the notice of a non-exempt disposal has been given, the land can be disposed of in the following circumstances -

- (a) After six weeks if the Council has not received a written request from a community interest group asking to be treated as a potential bidder for the land (the interim moratorium period);
- (b) If such notification is received, after 6 months (the full moratorium period). During the full moratorium period if the owner chooses to sell the land the sale can only be to a community interest.
- (c) The owner has an 18 month protected period from the date of giving notice of disposal. This means that if there is no full moratorium period triggered, or on the expiry of any moratorium period that is triggered, the owner can sell to whoever he wants within the 18 month period from when he first gave notice. On the expiry of that 18 month period if the land has not been sold, the owner must again give notice of intention to sell which then triggers the moratorium period again.

7. RIGHT TO APPEAL LISTING / REFUSAL TO LIST

- 7.1 The owner of the grazing fields has the right to request a review of the Council's decision to list the property. Such a request must be made in writing within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council has carried out such a review, the owner may appeal to the First-Tier Tribunal against any decision within 28 days of the Council giving notification of the review decision.
- 7.2 As the owner is in fact the Council the prospect of the Council seeking to review its own decision or to appeal against its own review decision is highly unlikely.
- 7.3 The applicant or owner has no formal right to appeal a decision to refuse a nomination. However as a decision of a public body any decision could be challenged by judicial review if the correct procedures have not been followed, or the decision made is either irrational or disproportionate.

8. RECOMMENDATIONS

- 8.1 As detailed at the front of the report.