



Notice under Section 91 of the Localism Act 2011

Entry of West Byfleet Recreation Ground into Woking Borough Council's List of Assets of Community Value

1. Background

On 11 April 2019, Woking Borough Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list the West Byfleet Recreation Ground, Camphill Road, West Byfleet, KT14 6EG as an Asset of Community Value. The nomination was made by the West Byfleet Neighbourhood Forum (WBNF). A map setting out the boundaries of the asset nominated to be listed ("The Asset") is provided as an appendix to this notice.

Under Section 87 of the Act the Council must maintain a list of assets of community value. Section 88 of the Act states that:

(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.

Under Section 89 of the Act, the Council can only enter assets into the list of Assets of Community Value in response to nomination from the community.

2. The Decision-Making Process

- 2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 is delegated to the Strategic Asset Manager at Woking Borough Council.
- 2.2 The internal review process in relation to listing shall be undertaken by the Council's Head of Democratic and Legal Services, who shall not be involved in the initial decision.
- 2.3 The Strategic Asset Manager has now fully considered the nomination in light of the Act and the Assets of Community Value (England) Regulations 2012 ("the Regulations"). Following this consideration, the Strategic Asset Manager has decided to enter the property into its list of Assets of Community Value.

This decision has been taken because:

(1)

- a) The Asset lies within the administrative boundaries of Woking Borough Council
- b) The West Byfleet Neighbourhood Forum is entitled under 89(2)(b)(i) of the Act to make a community nomination in respect of the Asset
- c) The nomination from the West Byfleet Neighbourhood Forum includes the matters required under Regulation 6 of the Regulations
- (d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations
- (e) The letter of nomination from the West Byfleet Neighbourhood Forum sets out the reasons for nominating the asset, explaining why the nominator believes the Asset meets the definition in the Act

and

(2) in the opinion of the Authority,

- (a) The current use of the Asset furthers the social well-being or cultural, recreational or sporting interests of the local community
- (b) The use of the land or building currently, or in the recent past, furthers the social well-being or cultural, recreational or sporting interests of the local community.
- (c) The use of the Asset will continue to further the social well-being or interests of the local community.
- (d) The use of the building or land is not deemed 'ancillary', i.e. of secondary purpose.
This means that the use of the land or building to further social well-being or interests of the community is a principal use.

The detailed assessment upon which this decision is based is set out in 4 below.

3. What Happens Next

The Asset will now be placed on the list of Assets of Community Value which the Council is required to maintain under Section 87 of the Act.

In accordance with Section 91 of the Localism Act, the Council will send this notice to:

- (a) Woking Borough Council (Freeholder)
- (b) Woking Bowls Club (Leaseholder)
- (c) Greenwich Leisure Ltd/ Freedom Leisure
- (d) South Eastern Power Networks PLC
- (d) West Byfleet Neighbourhood Forum

The information will also be published on the Council's website. The Asset will remain on the Council's List of Assets of Community Value for a period of five years from the date of this notice unless removed with effect from some earlier time in accordance with the provisions of the regulations.

The Localism Act 2011 requires that the Council draw particular attention to the following:

- (a) the consequences for the land and its owner of the land's inclusion in the list; and
- (b) the right to ask for review.

The consequences for the land and its owner of the land's inclusion in the list

Inclusion of assets on the List of Assets of Community Value is a local land charge under the Local Land Charges Act 1975. The Council is required under Schedule 4 of the Regulations to apply to the Land Registry for a restriction to be added to the registered title of the land that "no transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene Section 95(1) of the Localism Act 2011".

Under Section 95 of the Act an owner must notify the Council if they wish to enter into a relevant disposal (as defined in Section 96 of the Act) of that asset. Owners should contact the Strategic Asset Manager at the following address: Working Borough Council, Civic Offices, Gloucester Square, Woking, Surrey, GU21 6YL.

Some types of disposal of listed assets are exempt and these are set out in full in Annex A of the document Community Right to Bid: Non-statutory advice note for local authorities.

Annex A also identifies circumstances where, although there is no requirement in the legislation that the owner has to explain to the local authority that the disposal is exempt, it would be helpful for them to do so.

A moratorium period is triggered by notification under Section 95 to allow a Community Interest Group to submit a written request to be treated as a potential bidder for the asset. The owner is advised to refer to Part 5 Chapter 3 of the Act and the Regulations in full and to seek legal advice if they wish to dispose of the asset. A disposal of listed land which contravenes the Regulations and Act will be ineffective.

The owner of the asset does not have to sell the asset to the Community Interest Group. There is also a 'protected period' (18 months from the time that the owner notified the local authority of their intention to dispose of the asset) and during this time there can be no further moratoriums on sale and the owner is free to dispose of the property as they see fit.

The right to ask for review

Asset owners have the opportunity to request a review of the decision to enter an asset on the List of Assets of Community Value. As stated at paragraph 2.2 above, the internal review process in relation to listing will be undertaken by Council's Head of Democratic and Legal Services.

Landowners wishing to request a review of the decision should do so in writing to: the Head of Democratic and Legal Services at Woking Borough Council, Civic Offices, Gloucester Square, Woking, Surrey, GU21 6YL or to Peter.Bryant@woking.gov.uk. **The written request must be made by 1 August 2019. setting out the grounds for review and whether an oral hearing is requested.** The review will normally take place within 8 weeks of the Council having received the written request for review.

Private owners may claim compensation for loss and expense incurred through the asset being listed including a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period. Regulation 14 of the Regulations contains more detail on this.

Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations provide further detailed information.

4. Detailed Assessment of the Nomination

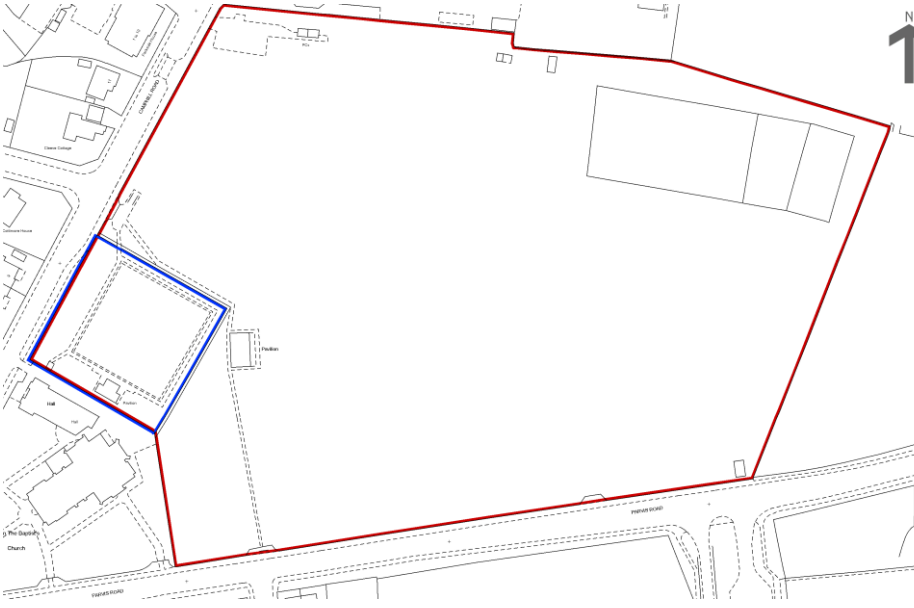
Assets of Community Value Nomination – Assessment			
DATE OF SUBMISSION:	11 April 2019	DATE DECISION TO BE MADE BY:	6 June 2019
NOMINATED ASSET:	The West Byfleet Recreation Ground, Camphill Road, West Byfleet KT14 6EG		
NOMINATION SUBMITTED BY:	West Byfleet Neighbourhood Forum (WBNF)		

STEP A: This section considers the eligibility of the nominating body to make a nomination and of the asset to be an Asset of Community Value.

A1. Is the nominating organisation an eligible body to nominate?	
Evidence supplied by nominee:	<p>The West Byfleet Neighbourhood Forum (WBNF) is eligible to make a Community Nomination having up to 15 members who are elected at each AGM. Membership is open to residents living in the Area, individuals working or carrying on business in the Area, local representative groups, County Council and Borough Councillors representing all or part of the Area.</p> <p>The West Byfleet Neighbourhood Forum (WBNF) is eligible to make a Community Nomination being a Neighbourhood Forum under Section 61F of the Town and Country Planning Act 1990 and has a local connection to the land.</p> <p>The original Constitution of the WBNF was adopted in December 2013 (with five year review period) for the purpose of preparing a Neighbourhood Plan. As the Plan was made by the Woking Borough Council in July 2017 the WBNF amended its Constitution at its AGM in September 2018 and decided to continue in operation with the purpose “to further the social, economic and environmental well being of the area”. Paragraph 3.11 thereof allows the WBNF to identify assets of community value.</p> <p>Further information including the WBNF Constitution is available on www.wbnf.org.</p>
Feedback from other parties and other information gained in relation to this criterion:	None
The SAM's consideration of the evidence provided	From the evidence provided, that Strategic Asset Manager is satisfied that the West Byfleet Neighbourhood Forum (WBNF) are an eligible nominating body.
Criteria met?	YES

A2. Does the nominating body have a local connection to the asset nominated?	
Evidence supplied by nominee:	The West Byfleet Neighbourhood Forum's key focus is the West Byfleet Area and the West Byfleet Recreation Ground is located within the boundary of their area of focus. The purpose of the WBNF is to <i>"further the social, economic and environmental well-being of the West Byfleet Area"</i> .
Feedback from other parties and other information gained in relation to this criterion	None.
The SAM's consideration of the evidence provided	The registered address of the Nominating Organisation and Representative is confirmed as being in the Borough. The key objectives of the Forum are wholly or partly concerned with the Area. On this basis, the Strategic Asset Manager is content that the Nominating Body has a local connection to the Nominated Asset.
Criteria met?	YES

A3. Does the nomination include the required information about the asset?
<input type="checkbox"/> Description of the nominated land including its proposed boundaries <input type="checkbox"/> Names of current occupants of the land <input type="checkbox"/> Names and current or last-known addresses of all those holding a freehold or leasehold estate in the land

<p>Evidence supplied by nominee:</p>	<p>Ownership details have been provided by the Nominee (both Freeholder and Leaseholder). The Nomination is based on the Title Plan SY761040.</p> <p>The Woking Borough Council is the freeholder and other interests are stated to be held by West Byfleet Bowls Club and Greenwich Leisure/Freedom Leisure.</p> <p>The Bowls Club apparently have a lease hold interest.</p> <p>Greenwich Leisure/Freedom Leisure do not appear on the Title.</p> <p>The Land Registry Title also reveals rights granted to South Eastern Power Networks PLC.</p> <p>The extent and boundary of the asset have been described as required.</p> <p>The Strategic Asset Manager has obtained the Land Registry Title Plan referred to which shows the boundaries of the Land :-</p> 
<p>Feedback from other parties and other information gained in relation to this criterion:</p>	<p>None.</p>
<p>The SAM's consideration of the evidence provided</p>	<p>A Land Registry Search clarified the boundaries of the nominated asset and the ownership details.</p>
<p>Criteria met?</p>	<p>YES</p>

A4. Is the nominated asset outside of one of the categories that cannot be assets of community value (as set out in Schedule 1 of the Assets of Community Value (England) Regulations 2012):

- A residence together with land connected with that residence
- Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960
- Operational land as defined in section 263 of the Town and Country Planning Act 1990.

Evidence supplied by nominee:

The West Byfleet Recreation Ground was apparently gifted to the Recreation Ground Charity by two local businessmen in 1913.

In 1921 it is understood that the Recreation ground was opened and has been used consistently since then as a recreation ground for the local community. It is listed by the Council on its website as a "park and recreation ground".

The West Byfleet Neighbourhood Development Plan 2017 – 2027 designated the Recreation Ground as local green space.

The boundaries of the Land do not appear to include any residential accommodation or its curtilage.

The land does not appear to require a site licence under Part 1 of the Caravan Sites and Control of Development Act 1960.

The land does include an electricity substation and below ground utilities. The question therefore arises as to whether this is operational land under Section 263 of the Town and Country Planning Act 1990.

The rights granted by Deed of Grant dated 13 January 2012 by Woking Borough Council to South Eastern Power Networks have to be considered.

South Eastern Power is a wholly owned subsidiary of UK Power Networks Holdings Limited. South Eastern Power are a statutory undertaker for the purposes of Section 263 of the 1999 Planning Act.

Operational land under section 263 is defined as :-

Land which is used for the purpose of carrying on their undertaking; and

Land in which an interest is held for that purpose.

However Section 263 on the meaning of operational land is qualified by Section 264 on "cases in which land is to be treated as not operational land".

Section 264 (1) states that Section 263 shall not apply where an interest in land is held by statutory undertakers for the purpose of carrying out their undertaking and the interest was acquired by them on or after December 6 1968

The Deed of Grant is dated 13 January 2012 and therefore the interest of South Eastern Power Networks PLC cannot be said to be on operational land.

This is further qualified where a planning permission has been granted but the Council's internet planning register reveals no such applications.

Feedback from other parties and other information gained in relation to this criterion:	None.
The SAM's consideration of the evidence provided	From the evidence provided, the Strategic Asset Manager is satisfied that the asset is not in any of the categories that cannot be assets of community value.
Criteria met?	YES

STEP B: This section considers the current or recent usage of the asset.

<p>B. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?</p> <ul style="list-style-type: none"> NOTE 1: A working definition of "recent past" is "within the past three years" NOTE 2: A working definition of "non-ancillary" is that the usage is not providing necessary support (e.g. cleaning) to the primary activities carried out in the asset, but is itself a primary, additional or complementary use. 	
Evidence supplied by nominee:	The land is apparently used extensively by the community for formal and informal sports and recreation. Local children use the playground, playing field and multi sports hard court. Dog walkers of all ages use the field. Residents of local care/ elderly residential homes use the land for recreation. West Byfleet Infants School and also Scouts/Cubs, Guides and Brownies use the land for various recreational activities. The playing field is used by male, female and childrens' football clubs and cricket pitches are hired out to local clubs. There is a thriving bowls club on the land. The playing field is used for community events on a regular basis.
Feedback from other parties and other information gained in relation to this criterion:	None
The SAM's consideration of the evidence provided	From the evidence provided the Strategic Asset Manager is satisfied that the current or recent usage which is the subject of the nomination is an actual and non-ancillary usage.
Criteria met?	YES

STEP C: This section considers whether the use furthers (or furthered, for uses in the recent past) the social interests or social wellbeing of the local community.

C2. Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made?	
Evidence supplied by nominee:	<i>"The Recreation Ground furthers the social well-being and recreational and sporting interest of the local community by providing an open accessible area for both formal and informal sporting and recreation activities. The Recreation Ground is the only publicly accessible local green space available to the local community of West Byfleet. The population of West Byfleet will increase significantly in the coming years as a result of the Broadoaks Park development and the redevelopment of Sheer House and the village centre. The value of the Recreation Ground to the local community as a recreational and sporting asset will therefore be of even greater importance and further, there will be an increased demand for its facilities".</i>

Feedback from other parties and other information gained in relation to this criterion:	None
The SAM's consideration of the evidence provided	From the evidence provided the Strategic Asset Manager is satisfied that the usage which is the subject of the nomination does have social value in the context of the community on whose behalf the nomination is being made.
Criteria met?	YES

**If the criteria are met, go to Step D. If not, place on the list of unsuccessful nominations.
If not, place on the list of unsuccessful nominations.**

STEP D: This section considers 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.

D. 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?	
Evidence supplied by nominee:	<p>See also C2. <i>The Recreation Ground furthers the social well-being and recreational and sporting interest of the local community by providing an open accessible area for both formal and informal sporting and recreation activities. The Recreation Ground is the only publicly accessible local green space available to the local community of West Byfleet. The population of West Byfleet will increase significantly in the coming years as a result of the Broadoaks Park development and the redevelopment of Sheer House and the village centre. The value of the Recreation Ground to the local community as a recreational and sporting asset will therefore be of even greater importance and further, there will be an increased demand for its facilities”.</i></p> <p>It is proposed that all existing uses of the asset will continue. All groups currently using the asset will benefit from its continued provision. In addition in future the WBNF intends to enhance the asset using funds from the Community Infrastructure Levy</p>
Feedback from other parties and other information gained in relation to this criterion:	None.
The SAM's consideration of the evidence provided	The Strategic Asset Manager considers it reasonable that the West Byfleet Recreation Ground will continue to be used by the local community including local residents and sports groups.
Criteria met?	YES

DECISION:	THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE
REASON FOR DECISION	<p>The asset lies within the administrative boundary of Woking Borough Council.</p> <p>West Byfleet Neighbourhood Forum is entitled under 89(2)b(i) of the Act to make a community nomination in respect of the asset.</p> <p>The nomination from West Byfleet Neighbourhood Forum includes the matters required under regulation 6 of the Regulations.</p> <p>The asset does not fall within the description of land which may not be listed as specified in Schedule 1 of the Regulations.</p> <p>The nomination form sets out the reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.</p> <p>As the West Byfleet Recreation Ground recently provided facilities to the community and its continued use would further the social wellbeing and/or interests of the local community, the application to list as an Asset of Community Value meets the definition set out in the act and is therefore agreed.</p>
Decision Taken by	Ian Tomes
Date	6 June 2019