

CHAPTER 3, PART 5 OF THE LOCALISM ACT 2011
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012

NOMINATION OF BUILDING OR LAND TO BE INCLUDED IN
LIST OF ASSETS OF COMMUNITY VALUE

DELEGATED REPORT

Reference: PR86-048

Case Officer: Darren McBride

Site Address: Kingsnorth Recreation Centre, Field View, Kingsnorth,
Ashford, Kent TN23 3NZ

Title Number(s): K788218 (Freehold) and K789016 (Leasehold)

Nominating Body: Kingsnorth Parish Council

Nomination Validated: 2 April 2025

Deadline Date: 28 May 2025

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Introduction

Under the Localism Act 2011 ('the Act'), the Borough Council must maintain a list of buildings or other land in its area that are of community value, known as its 'List of Assets of Community Value.'

There are some categories of assets that are excluded from listing, the principal one being a residential property. There is, however, an exception to this general exclusion where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

Generally, buildings or land are of community value if, in the opinion of the Borough Council:

- 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 community¹.

Buildings or land may also be of community value if in the opinion of the Borough Council:

¹ Subsection 88(1) of the Act

- 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 social² 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 community³.

Buildings or land which are of community value may only be included in the 'List of Assets of Community Value' in response to a community nomination by certain specified bodies such as parish councils or voluntary or community organisations with a local connection.

A valid community nomination must contain certain information, including:

- a description of the nominated building or land including its proposed boundaries
- a statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current last-known addresses of all those holding a freehold or leasehold estate in the land
- the reasons for thinking that the Borough Council should conclude that the building or land is of community value
- evidence that the nominator is eligible to make the community nomination

A valid community nomination should be determined within eight weeks. In this instance, the nomination was validated by the Borough Council on 2 April 2025 and so should have been determined by 28 May 2025. However, as explained below, on 28 May 2025 the nominating body submitted some further information and, as a result, it was agreed that the determination deadline would be extended until 13 June 2025.

If the Borough Council accepts a valid nomination then it must be included on the 'List of Assets of Community Value.' If the Borough Council does not accept that the asset nominated meets the statutory definition, or if it is one of the excluded categories, then the valid nomination must be placed on a 'List of Assets Nominated Unsuccessfully by Community Nomination.'

Procedure

² Note: the wording of this condition is different to all the other conditions in that it refers to furthering 'the social wellbeing or interest of the local community' rather than 'the social wellbeing or **social** interests of the local community.' However, in *St. Gabriel Properties Limited v London Borough of Lewisham and another* (2015), Judge Warren held that the word 'social' should be read in here (*para. 27*)

³ Subsection 88(2) of the Act

Information about this community nomination has been sent to the following:

- Kingsnorth Parish Council (Nominating Body)
- Freehold Owner(s)
- Leasehold Owner(s)⁴
- Occupier(s)
- Cllr N Ovenden (Leader of the Borough Council)
- Cllr L Wright (Cabinet Member for Communities, Health and Wellbeing)
- Cllr K Giles (Ward Member)

If the Solicitor to the Council and Monitoring Officer includes the asset on the Borough Council's 'List of Assets of Community Value' then the owner has the right to request, within eight weeks from the date when written notice of listing is given, the Chief Executive to review the decision.

If the owner is not satisfied with the outcome of the internal listing review then they have the right to appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

The property will remain listed during the review and appeal process.

Consequences of Listing

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. If the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Borough Council in writing.

Interim Moratorium

There is then a six-week interim period from the point the owner notifies the Borough Council. The Borough Council must then inform the nominating community group who may then make a written request to be treated as a potential bidder. If they do not do so in this period then the owner is free to sell their asset at the end of the six-week period.

⁴ Note: It appeared that the nominated premises were held under a 99-year lease entered into on 21 April 1998: Leasehold Title Number K789016. The leasehold proprietor is/was Kingsnorth Parish Council – the nominating body in this matter. Upon validation, I sent information about the asset of community value nomination to Kingsnorth Parish Council in its capacity as both nominating body and leasehold proprietor. In an e-mail dated 8 April 2025, the Kingsnorth Parish Council Manager informed me that '*...The Parish Council surrendered the lease in October 2023 so this should not be in place anymore.*' However, the leasehold title remains registered, there does not appear to be any application pending with HM Land Registry to amend/cancel the lease title and the 1998 leasehold proprietorship remains referenced in Freehold Title Number K788218.

Nevertheless, following the Parish Council Manager's e-mail, I have updated the list of parties to be notified of the decision in this matter. Given that Kingsnorth Parish Council (as nominating body) will be notified of the decision in any event then there can be no claim that the Borough Council has failed to inform a relevant party.

Full Moratorium

If a community interest group does make a request during this interim period, then a full six-month moratorium will operate. The community group does not need to provide any evidence of intention or financial resources to make such a bid.

During this full moratorium period the owner may continue to market the asset and negotiate sales, but they may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.

After the moratorium – either the interim or full period, as appropriate – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the Borough Council of the intention to dispose of the asset).

Compensation

Private owners (not public bodies) may claim compensation for loss and expense incurred through the asset being listed. This may include 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; or for legal expenses incurred in a successful appeal to the First-Tier Tribunal. The assumption is that most claims will arise from a moratorium period being applied; however, the wording of the legislation does appear to allow for claims for loss or expense arising simply as a result of the asset being listed.

The Borough Council is responsible for administering the compensation scheme, including assessing and determining compensation awards.

As with the listing itself, an owner may request an internal review of the Borough Council's compensation decision. If the owner remains unsatisfied then they may appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 the Assets of Community Value (England) Regulations 2012 ('the Regs').

The community nomination contains the information required by Regulation 6 of the Regs for it to be considered by the Borough Council.

The community nomination form asked the nominating body to provide their reasons for thinking that the Borough Council should conclude that the building/land is of community value. The nomination form contains two sets of questions – one set (Q1 – Q3 below) relating to premises currently in community use and one set (Q4 – Q5 below) relating to premises not currently in community use. Confusingly, the nominating body has answered both sets of questions. However, the answers appear to suggest that the nominating body

considers that, while the uses of the nominated premises have evolved over the years, both the previous and current uses were/are uses of community value.

In any event, the questions and answers state as follows:

Q1. What is the current main use of the land/building(s)?

A1. 'The current main use of the building is a Pre-School which operates 5 days a week across 39 weeks a year. The pre-school has been in operation for 30 years based at the centre. It provides an early year's education programme for 45 children attending each week and provides support to the parents and carers of these children.

'The pre-school is a registered charity and receives limited funding from the government to provide free places for children. If the pre-school was to be lost the child and families currently attending and future generations will miss out on this important service.

'The board of Trustees who oversee the pre-school have provided a letter of support for this nomination and this can be found at the end of this nomination form⁵.'

Q2. How does that current main use of the land/building(s) further the social wellbeing or social interests of the local community...?

A2. 'The current use of the building as a Pre-School furthers the well-being and social interests of the children who attend the pre-school. There are a mix of cultures that attend the pre-school which provides a rounded education to the attendees of the pre-school.

'The use of the building as a pre-school furthers the social wellbeing and social interests of the parents and carers of the children that attend the setting. It provides the parents and carers the opportunity to work which benefits the local economy. It also provides parents and carers of the children attending the opportunity to socialise.

'There is also a benefit to the staff the Pre-School employ which will be lost if the building was to be sold.'

Q3. Why do you consider that this, or some other main use to which the land/building(s) will be put which will further the social wellbeing or social interests of the local community, will continue and over what period...?

A3. 'The pre-school will continue to provide the children that attendee [sic] as well as the parents and carers of the children with the opportunity benefit from the early years education provided. There are social, cultural, recreational and sporting benefits of the preschool continuing at the recreation centre.'

⁵ Reproduced below.

Q4. *If the land/building(s) main use in the recent past furthered the social wellbeing or social interests of the local community, please confirm that use and explain how it did that (including dates for when this was)...*

A4. 'From the opening on the building in 1998 Kingsnorth Recreation Centre provided the local community with access to leisure facility that included a gym, exercise studio and hall. It also included a Parish Council Office which was utilised by residents when they required assistance from the Parish Council. The benefits of having a leisure facility that included a gym and exercise studio improved the wellbeing of residents both physically and mentally, the centre was open 7 days a week and catered for all ages and abilities. The hall was available for hire by residents for functions such as birthday parties, wedding receptions and quiz night to provide a few examples.'

Q5. *How do you anticipate that the land/building(s) will be returned to that use or put to some other main use which will further the social wellbeing or social interests of the local community and when do you consider this will happen?*

A5. 'If the building was to be offered for sale to the local community, then we could look at offering similar activities as listed above to help improve and enhance the current wellbeing of residents. The preschool element of the building could be continued and will offer support to existing residents in using the pre-school.

'Kingsnorth Parish Council would support the community in potentially purchasing the site if it came up for sale. Parish Council would look to secure grants locally and nationally to help fund the purchase and could use some of its own reserves to support the purchase.

'Kingsnorth Parish is the largest in the Borough of Ashford so having buildings such as Kingsnorth Recreation available for use by our residents is important. There is a need for this and the Parish Council would work with the community to ensure it was fully used.'

Regarding A1 (above), the supporting letter from the Board of Trustees dated 'March 2025' states as follows (*all emphases in the original*):

'To whom it might concern.

'The Trustees of the Little Acorns Pre-School are writing in support of Kingsnorth Parish Council's nomination to register the Kingsnorth Recreation Centre as an asset of Community Value. We have outlined our reasons for supporting the nomination below:

'Little Acorns Pre-school provides free Early Years education for 2-4-year-olds at Kingsnorth Recreation Centre, a building designed for this purpose. We will soon need to vacate these premises.

'Early Years education is crucial as it lays the foundation for children's success in school. The absence of Early Years education may result in

children not being adequately prepared for starting school, a problem already evident in contemporary society according to recent studies.

'The absence of early childhood education may necessitate additional intervention upon a child's entry into school to address disparities between children who have experienced nursery and pre-school programs and those who have not. According to the Early Years Alliance, one in four children are not toilet trained in time for school. In addition to this the World Book Day organisation state that over half a million children in England do not own a single book. These statistics alone show the necessity of Early Years experiences.

'We provide activities underpinned by the seven areas of the Early Years curriculum.

Personal, Social and Emotional: We assist children in becoming independent in matters such as toileting and dressing. We help them form positive relationships with their peers and adults, and we guide them in understanding boundaries and rules.

Literacy: We foster a passion for reading and comprehension, essential for future learning.

Mathematics: Early understanding of counting and grouping is essential for learning in KS1.

Communication and Language: Learning to follow directions and express needs effectively.

Physical: Gross and fine motor skills. These skills are necessary for writing.

Understanding the World: To be confident in their environment and have a positive sense of self and be able to explore and ask questions about their world.

Expressive Arts and Design. Being able to play co-operatively as part of a group

'These are just some of the necessary skills required for children to achieve the Early Learning goals by the end of the reception year, highlighting the importance of Early Years childcare places. Due to the shortage of childcare places in the Ashford area, it is crucial to provide appropriate spaces for these settings to operate. Due to the stipulations, there is a shortage of these too, hence why schools are being asked by the government to give up any spare classrooms.

'Kingsnorth Recreation Centre fits these requirements because part of it was purpose built to facilitate Early education. The availability of toilets is a major issue, making many vacant local buildings unsuitable for nurseries. Therefore, suitable buildings must be preserved.

'Little Acorns Pre-School Trustees'

Generally, recreation centres would be the type of buildings which the Community Right to Bid Scheme is designed to protect. However, the Borough Council cannot list buildings or land on its own initiative – they must be nominated. Therefore, the onus is on the nominating body to give their reasons for thinking that the Borough Council should conclude that the building/land is of community value.

There is little guidance on the criteria a local authority should consider when deciding whether an asset is of community value. When the Act was at the Bill stage, the Minister stated that:

“...We have suggested that one of the criteria for assessing what is an asset of community value could be evidence of the strength of community feeling about supporting the asset's being maintained for community use”

In this case, the nominating body is a parish council and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that the Parish Council is representing the views, or is expressing the general wishes, of a significant percentage of their local community.

As mentioned above, the nomination form is a little confusing but it seems that the nominating body is claiming that there has been a continuous community use of the nominated premises since it first opened but the nature of the community use has evolved over the years. The building is currently open and operating as a pre-school but it was also used previously as a 'leisure facility that included a gym, exercise studio and hall.' In addition, it seems that the premises were previously 'available for hire by residents for functions such as birthday parties, wedding receptions and quiz night[s].' It is unclear from the nomination form when the leisure facility/venue-for-hire elements of the use ceased but it is stated that the premises opened in 1998⁶ and the pre-school use 'has been in operation for 30 years based at the centre.' Given that the premises opened just 27 years ago this is clearly incorrect but, nevertheless, the inference is that the pre-school use of the nominated premises has been ongoing continuously since it first opened⁷. Therefore, at some point, the current pre-school use and the previous leisure facility/venue-for-hire uses must have operated concurrently.

Pausing here, I initially prepared a draft Delegated Report based on the assumption that these past and present uses occurred across the entire nominated premises and that the present use was continuing to occur across the entire premises. I took this view as the plan submitted with the nomination comprised the entire recreation centre complex.

However, just before the decision was to be made it was drawn to my attention that the current pre-school use was confined to just part of the nominated

⁶ Which correlates with the lease entered into in that year.

⁷ This is reinforced by the supporting letter submitted by the Little Acorns Pre-School Trustees which states that the nominated premises '*...fits these requirements [for use as a pre-school] because part of it was purpose built to facilitate Early education.*'

premises. Also, I was made aware of a grant of planning permission dated 14 November 2024 (Ref: PA/2024/1317) for the following:

'Change of use from a mixed-use (Use Class E (d) indoor sport, recreation or fitness/Use Class F2(b) halls or meeting places for the principal use of the local community/Use Class E(f) Creche, day nursery or day centre) to a mixed-use of Use Class F1(f) (place of public worship or religious instruction) and retention of existing Use Class E(f) (crèche, day nursery, or day centre).'

Furthermore, I was also made aware that the Little Acorns Pre-School would be leaving the premises shortly and would, in September 2025, be moving to Furley Park Primary Academy in Park Farm. None of this information was contained in nomination form (although the Little Acorns Pre-School Trustees did state that 'we will soon need to vacate these premises').

That being so, on 27 May 2025 I sent an e-mail to the nominating body stating as follows (*all emphases in original*):

'I am currently handling your recent nomination for the above premises to be added to the Borough Council's 'List of Assets of Community Value' (copy attached).

'In February 2025, before the current ACV nomination was submitted, you sent me an e-mail asking the following:

'I am currently putting together an Assets of Community Value Community Nomination Form and I have a question regarding section B questions B4 or B5.

'If the building or land is partly used for the community and some of it is not currently used for the community and is empty, do I complete both questions or just one of them?'

'Your e-mail did not refer to any specific premises but I nevertheless replied as follows:

'Regarding your query, I suppose it would depend on the building/land to be nominated, whether the two parts are functionally separate and whether the currently empty part in the recent past had a main use which furthered the social wellbeing or social interests of the local community.

'If the Parish Council is intending to nominate the whole building (the part currently in use and the part currently empty but which in the recent past had a main use which furthered the social wellbeing or social interests of the local community) then I would suggest that you complete both parts of the nomination form – Part B4 for the part in current use and Part B5 for the currently empty part.

For clarity, the Plan to accompany the nomination could then denote the two parts of the building/land.

'On the other hand, if the building/land is functionally separate and if it is only the part currently in use which has had a main use which has furthered the social wellbeing or social interests of the local community, **then I would suggest that the Plan include just the relevant part of the building/land and that Part B4 of the nomination form be completed.**'

'You subsequently submitted the ACV nomination relating to the above premises and included the entire property registered under Title Number K788218 without any marks on the plan indicating parts in use, parts currently empty, parts previously in use etc. (see the plan attached to your nomination form). Instead, the entire premises were nominated and the nomination form describes its use(s) as follows:

- Current use: Pre-school
- Previous use: Pre-school, leisure facility and venue for hire (no dates provided as to when the leisure facility/venue for hire uses commenced/ceased)
- There is no reference to any parts of the nominated premises being either empty or not in a current or former community use

'Without such markings as to any part(s) of the premises, the inference is that the pre-school use has been ongoing continuously since the premises first opened and that, at some point, the current pre-school use and the previous leisure facility/venue-for-hire uses operated concurrently. The key point for ACV purposes is that the nomination suggests that it was/is the entire premises where the community use(s) were/are being carried on.

'However, it has today been brought to my attention that the current pre-school use might be being carried on in just a small part of the nominated premises. Therefore, I should be grateful if you would clarify the following...'

I then asked nine questions (*which are reproduced below in italics*) which the nominating body answered in an e-mail dated 28 May 2025⁸:

1. *Is the current pre-school use being carried on in the whole or part of the nominated premises?*

The pre-school is being carried out in part of the nominated premises.

2. *If it is just part, please provide a revised plan showing the area(s) currently used by the pre-school.*

⁸ The original determination deadline date.

I have attached a plan that outlines the uses of the building and nursery is clearly marked on the attached plan⁹.

3. *Is there any other current use of the whole or part of the nominated premises?*

No - the building has been closed to the public since [its] purchase. The only time it has been is as a polling station on the local Borough Council and County Council elections.

4. *If so, please describe the use(s), when it occurs, when it commenced, whether it constitutes the main use of the premises and (if applicable) provide a revised plan showing the area(s) of the nominated premises where the other use(s) is/are taking place.*

As per above the building has only been used for 2 days in May 2024 for the local Borough Council elections and this May 2025 for County Council Elections. The area used was the main hall in May 2024 and the gym area in May 2025.

5. *Regarding the previous leisure facility/venue for hire uses, when did those uses commence and cease?*

Kingsnorth Recreation Centre was built in 1997 and was used as a leisure facility until September 2022 when the leisure provider 'Slice of Life' ceased trading. Since then the building has not been used for leisure purposes. The Parish Council office was in use until September 2023 since then only the pre-school has been in use for the community.

6. *Were the previous leisure facility/venue for hire uses carried on in the whole or part of the nominated premises?*

The leisure facility was carried out in parts of the building not the whole building.

7. *If it was just part(s), please provide a revised plan showing the area(s) previously used for leisure facility/venue for hire purposes.*

The areas used for leisure purposes can be seen on the attached plan. These are namely the Gym, Main Hall and Small Hall plus the toilets, showers and changing rooms.

8. *Was there ever any other use of the nominated premises, other than those mentioned above?*

Not that I am aware of.

⁹ The floor plan referred to was submitted with the application for planning permission PA/2024/1317 and can be found on the Borough Council's website at: [Floor Plan - Existing 1002.1.pdf](#)

9. *If so, please describe the use(s), when it occurred, when it ceased, whether it constituted the main use of the premises and (if applicable) provide a revised plan showing the area(s) of the nominated premises where the other use(s) were taking place.*

NA

As a result of this last-minute submission of information it was agreed that the determination deadline be extended to 13 June 2025.

For a building or land in current use to be included on the 'List of Assets of Community Value' its actual current use – not 'an ancillary use' – must further the social wellbeing or social interests of the local community.

Section 88 of the Act relates to 'land of community value' and subsection 88(6) states that in this section:

- "social interests" includes (in particular) each of the following—
- (a) cultural interests;
 - (b) recreational interests;
 - (c) sporting interests.

A recreation centre's primary use for the purposes of recreational and sporting interests would clearly further the social wellbeing or social interests of the local community and so would satisfy the provisions of section 88(6) of the Act. The previous gym and exercise studio use would likely be classed as recreational and/or sporting uses and the previous venue-for-hire use for functions such as birthday parties, wedding receptions and quiz nights would likely be classed as recreational uses.

However, those uses of the nominated premises are no longer occurring and they were, it has now been discovered, confined to just parts of the nominated premises. It is unclear when the venue-for-hire use ceased but the leisure facility use ceased in September 2022.

There is no statutory definition of 'recent past.' The Department for Communities and Local Government's guidance¹⁰ provides the following comment on the meaning of 'recent past':

'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.'

I understand that some authorities have treated the 'recent past' as being the five year period preceding the nomination but in *Scott v South Norfolk District*

¹⁰ Assets of Community Value – Policy Statement (2011)

*Council (2014)*¹¹, Judge Warren in the General Regulatory Chamber of the First-Tier Tribunal said that the phrase 'in the recent past' was deliberately loose in contrast to the five years in the second condition and that it was 'not the Tribunal's role to undermine that by giving the phrase a meaning which is certain.'

In *Worthy Developments v Forest of Dean District Council (2014)*¹², Judge Warren (again) stated that:

"It seems to me illogical to seize on the period of five years, as some suggest, when applying the past condition. This figure is chosen because it is the length of time specified by Parliament over which the future condition is to be assessed. It seems to me, however, that Parliament's failure to specify the precise period of five years when defining the past condition, cannot be taken as intending that the more precise period used in the definition of the future condition should be imported"

In *Crostone v Amber Valley Borough Council (2014)*¹³, Judge Lane stated that:

"The 'recent past' is not defined in the Localism Act 2011 or any relevant subordinate legislation. What constitutes the 'recent past' will depend upon all the circumstances of a particular case. To that extent, the expression is a relative concept. In this regard, it is relevant that the Black Swan operated as a public house for almost 200 years, until its closure in 2012..."

Accordingly, although what constitutes the 'recent past' will depend on all the circumstances in a particular case, Judge Lane's conclusion that 'the expression is a relative concept' suggests that the length of time that the building had been in community use is relevant (in *Crostone* it was nearly two hundred years). Therefore, the implication seems to be that the longer the period of use furthering a community benefit the longer the period which will constitute the 'recent past.'

In this case, the premises opened in 1997/1998 and, it would seem, the leisure facility use of parts of the premises was occurring continuously until its cessation in September 2022 i.e. less than three years ago.

In my view, having regard to the relative concept of 'recent past' as outlined by Judge Lane in *Crostone* (above), September 2022 would likely be viewed as the 'recent past' when viewed in the context of at least 24 years of continuous use prior to that date.

The nomination therefore satisfies the first element of the test set down in section 88(2)(a) of the Act to a limited extent given that the leisure facility use was confined to just parts of the nominated premises and those parts of the premises are now lying empty. That being so, the previous uses of parts of the premises can be given some weight.

¹¹ CR/2014/0007

¹² CR/2014/0005

¹³ CR/2014/0010

The remainder of the premises were in use as a pre-school since the premises were first opened and that use of part of the premises is currently ongoing.

It is stated in the nomination form that '[t]here are social, cultural, recreational and sporting benefits of the preschool continuing at the recreation centre.' This is clearly referencing the wording of section 88(6) of the Act (above).

The supporting letter submitted by the Little Acorns Pre-School Trustees provides the main detail and refers to the following activities:

Personal, Social and Emotional: We assist children in becoming independent in matters such as toileting and dressing. We help them form positive relationships with their peers and adults, and we guide them in understanding boundaries and rules.

Literacy: We foster a passion for reading and comprehension, essential for future learning.

Mathematics: Early understanding of counting and grouping is essential for learning in KS1.

Communication and Language: Learning to follow directions and express needs effectively.

Physical: Gross and fine motor skills. These skills are necessary for writing.

Understanding the World: To be confident in their environment and have a positive sense of self and be able to explore and ask questions about their world.

Expressive Arts and Design. Being able to play co-operatively as part of a group

Generally, a school serving the local community (as opposed to an 'independent school') can be included in the Borough Council's 'List of Assets of Community Value.' This is demonstrated by the provisions of paragraph 14, Schedule 3 to the Regs (which, for the sake of brevity, I need not reproduce here). I see no reason why a pre-school which serves the local community cannot likewise be included in the 'List of Assets of Community Value.' In fact, it could perhaps be argued that the more 'social' (as opposed to the more stringently 'educational') types of activities which would be provided to younger children at pre-school level would be even more in line with the objectives of the asset of community value regime.

In any event, the activities described above are the types one would expect at a pre-school serving the local community and so, in my view, the actual current main use of part the nominated premises is a use which furthers the social wellbeing or social interests of the local community.

For the purposes of the asset of community value regime, this blend of previous and current uses of various parts of the nominated premises is unusual. Nevertheless, in my view it would be reasonable to conclude that the current main use of part the nominated premises as a pre-school when coupled with the previous leisure facility/venue-for-hire uses in the 'recent past' of the other parts of the premises would mean that, taken as a whole, the main use(s) of the entire nominated premises does/did further the social wellbeing or social interests of the local community. The tests set down in section 88(1)(a) and/or 88(2)(a) of the Act are therefore satisfied.

I now turn to the second element of the test which, because of the hybrid nature of this particular nomination, would be one or both of the following:

- 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? (section 88(1)(b) of the Act); and/or
- 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? (section 88(2)(b) of the Act).

In the nomination form, the nominating body states that:

'The pre-school will continue to provide the children that attendee [*sic*] as well as the parents and carers of the children with the opportunity benefit from the early years education provided...'

In fact, the pre-school use by the Little Acorns Pre-School will be ceasing shortly and the leisure facility/venue-for-hire uses have already ceased.

Elsewhere in the nomination form, the nominating body refers to its community aspirations for the premises if the building was ever offered for sale. However, the most recent transfer of the freehold only occurred in June 2024 and yet the nominating body did not purchase the premises or assist a local community group in doing so. In fact, as mentioned above, until October 2023 the nominating body itself had the benefit of a 99-year lease of the entire premises but decided to surrender that interest.

The freehold owner has obtained the grant of planning permission dated 14 November 2024 (referred to above) and is, it would seem, intending to cease permanently the use of the premises for indoor sport, recreation or fitness uses and the use of the halls or meeting places for the principal use of the local community. Instead, the intention is to change the use of the premises to 'a place of public worship or religious instruction' whilst also retaining 'the existing... crèche, day nursery, or day centre' use in a small part of the premises.

Regarding the 'the existing... crèche, day nursery, or day centre' use, in so far as the Little Acorns Pre-School is concerned, events seem to have moved on since the grant of planning permission as their occupation of part of the premises is about to come to an end. Naturally, the owner could reinstate the 'crèche, day

nursery, or day centre' use with a different operator. However, the Planning Statement submitted in support of the application for planning permission and the plans/drawings approved by the November 2024 grant of planning permission – specifically the Proposed Floor Plan (Ref 1004) and Proposed Site Layout Plan (Ref 1001.1) – all suggest that the intended main use of the premises is as 'a place of public worship or religious instruction.' Even if it were reinstated, the 'crèche, day nursery, or day centre' use would be merely ancillary or secondary to that main use. Given that the owner is a charity whose objectives include the advancement of the Christian faith then it is hardly surprising that the use as 'a place of public worship or religious instruction' is likely to take precedence.

Also, the nominating body has confirmed that, save for the soon-to-end pre-school use, 'the building has been closed to the public since [its] purchase' in June 2024. This suggests that the new owner is focused on its main aim which is for the premises to be used as 'a place of public worship or religious instruction.' In the meantime, the potential to generate some income from the premises from, say, a continued pre-school use of part of the premises appears to be of little interest to the owner. This reinforces my view that it is unlikely that the various community uses will be reintroduced, let alone reintroduced as a main use.

It has not been put to me whether the intended main use of the premises as 'a place of public worship or religious instruction' is a use which would itself further the social wellbeing or social interests of the local community.

In my view, the cessation of the previous leisure facility/venue-for-hire uses in the 'recent past,' the imminent departure of the Little Acorns Pre-School and the clear intentions of the owner of the premises (as outlined in the grant of planning permission) all suggest that it is unrealistic to think that there can continue to be a 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. Likewise, it is unrealistic to think that there is a time in the next five years when there could be a 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.

Accordingly, the nomination fails to satisfy the test(s) set down in section 88(1)(b) and/or 88(2)(b) of the Act.

Conclusions

The nomination satisfies the test(s) set down in section 88(1)(a) and/or 88(2)(a) of the Act but it fails to satisfy the test(s) set down in 88(1)(b) and/or 88(2)(b) of the Act.

Accordingly, the nominated building/land should not be included in the Borough Council's 'List of Assets of Community Value.'

Recommendation

That the Solicitor to the Council and Monitoring Officer decline the nomination

for this building/land to be included in the Borough Council's 'List of Assets of Community Value.'

That the Solicitor to the Council and Monitoring Officer consent to this building/land being placed instead on the Borough Council's 'List of Assets Nominated Unsuccessfully by Community Nomination.'

*

AUTHORITY

In accordance with the functions delegated to me, and for the reasons set out above, I hereby decline the nomination for this building/land to be included in the Borough Council's 'List of Assets of Community Value.' This building/land should instead be placed on the Borough Council's 'List of Assets Nominated Unsuccessfully by Community Nomination.'



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Solicitor to the Council and Monitoring Officer

Date: 11/06/2025

