

**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:** PR86-046

**Case Officer:** Darren McBride

**Site Address:** Land lying to the south east of Bethersden Road, Woodchurch, Ashford, Kent (known as 'Woodchurch Windmill, Bethersden Road, Woodchurch, Ashford, Kent TN26 3QJ')

**Title Number(s):** K896684 (Freehold)

**Nominating Body:** Woodchurch Parish Council

**Nomination Validated:** 11 February 2025

**Deadline Date:** 8 April 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 community<sup>1</sup>.

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<sup>1</sup> Section 88(1) of the Act

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

- there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social<sup>2</sup> 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<sup>3</sup>.

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 11 February 2025 and so should have been determined by 8 April 2025. However, on 3 April 2025 the nominating body submitted some further information and, as a result, on 4 April 2025 it was agreed that the determination period would be extended until 25 April 2025.

If the Borough Council accepts a valid nomination then it must be included in 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.'

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<sup>2</sup> Note: the wording of this condition is different to all of the other conditions in that it refers to furthering 'the social wellbeing or interests 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]

<sup>3</sup> Section 88(2) of the Act

## Procedure

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

- Woodchurch Parish Council (nominating body)
- Freehold Owner(s)
- Cllr N Ovenden (Leader of the Borough Council)
- Cllr L Wright (Cabinet Member for Communities, Health & Wellbeing)
- Cllr A Hicks (Ward Member)
- Cllr D Ledger (Ward Member)

If the Solicitor to the Council and Monitoring Officer includes the asset in 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.

In this case the nominated premises are owned by the Borough Council. When the listing authority owns the nominated property then, clearly, there is a conflict of interest and yet this is not addressed in the asset of community value regime. The situation is forced on the listing authority by the legislation and cannot be avoided. The listing authority is subject to a duty to decide the listing issue raised by the nomination and cannot delegate this decision unless it requests another authority to act on its behalf pursuant to section 101(1)(b) Local Government Act 1972. With applications to register a town or village green it is open to the relevant authority to appoint an independent expert to hold a non-statutory inquiry if there is a conflict of interest. However, it seems that this is not a practice that has been adopted in respect of assets of community value nominations. As the timetable (just eight weeks) is so tight and there is the possibility of a review with an oral hearing it is unlikely that such a course could be adopted.

Therefore, the listing authority must take particular care with nominations where there is a conflict. Regarding this matter, I confirm that under the scheme of delegations, the decision maker within the Borough Council (the Solicitor to the Council and Monitoring Officer<sup>4</sup>) has no responsibility for the nominated premises.

Likewise, regarding any potential internal listing review, no express account is taken in the asset of community value regime of the possibility of conflicts of interest. However, again, I confirm that under the Borough Council's scheme of delegations any internal listing review would be carried out by an officer who has no involvement with the nominated premises.

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<sup>4</sup> Principal Solicitor, Strategic Development and Deputy Monitoring Officer to substitute where necessary.

Finally on this point, when a valid asset of community value nomination is received the Borough Council sends formal notification to various parties including, of course, the owner of the nominated premises. Ordinarily, formal notice to the Borough Council would be sent to the Solicitor to the Council and Monitoring Officer. However, in this case, to ensure that the said officer is kept at arm's length until the decision itself is to be made, I have sent formal notice to the Assistant Director of Environment, Property & Recreation as the officer having day-to-day responsibility for the nominated premises.

### **Consequences of Listing**

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. Again, notwithstanding that in this case the Borough Council is the owner of the nominated premises, if the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Borough Council (in its capacity as listing authority) 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.

#### 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 seem 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.

In this case, however, the Borough Council is a public body and so, notwithstanding that it is the owner of the nominated premises, the compensation provisions would not apply.

## **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.

Pausing here, it should be noted that this latest nomination is a revised and expanded re-submission of a nomination which was submitted in 2024 ('the 2024 Nomination'). On 16 January 2025, the Borough Council declined the 2024 Nomination and instead included it in its *List of Assets Nominated Unsuccessfully by Community Nomination*.

The 2024 Nomination can be found on the Borough Council's website here:

<https://www.ashford.gov.uk/media/nj3l10sn/nomination-form-woodchurch-windmill.pdf>

The January 2025 decision (in relation to the 2024 Nomination) can be found on the Borough Council's website here:

<https://www.ashford.gov.uk/media/nusn2n3r/delegated-report-woodchurch-windmill.pdf>

The January 2025 decision was not challenged by way of judicial review. Instead, the nominating body has submitted this new revised/expanded nomination ('the 2025 Nomination').

Moving on, 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 relating to premises not currently in community use. In this instance, confusingly, the nominating body has answered the first set of

questions (relating to premises currently in community use) but then stated in answering a question relating to premises not currently in community use<sup>5</sup> that:

'NB Even though the [...] interior of [the] building is inaccessible the exterior is still accessible to residents and visitors as described in [A]2 [Below][...].'

Therefore, it seems that while the small area of land around the nominated windmill building<sup>6</sup> might be accessible, the windmill building itself is currently closed to the public<sup>7</sup>. The 2025 Nomination has been framed to suggest a current ongoing community use and yet it is clear that the primary focus of the 2025 Nomination – the windmill building itself – is closed to the public. As such, the Borough Council is being asked to accept that, notwithstanding that the interior of the windmill building is closed and inaccessible, the exterior is still accessible to residents and visitors and that this is sufficient to demonstrate a current use of the windmill building. I will come back to this shortly.

In any event, the questions and answers in the 2025 Nomination form state as follows<sup>8</sup>:

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

A1. 'The current main use of the building was established by agreement between the Woodchurch community and ABC on 23/6/1979 (Common Seal of ABC affixed). It signalled the start of a Public/Third sector partnership to maintain and manage the building for the benefit of Woodchurch residents and others. The subsequent conversion from unincorporated community body to a charity (The **Society of Friends of Woodchurch Windmill**), also in 1979, aptly describes the community-led governance which still exists today whilst the Charity's stated objective demonstrates the added value, ie **"TO PROMOTE THE PERMANENT PRESERVATION FOR THE BENEFIT OF THE PUBLIC GENERALLY AND ESPECIALLY THE INHABITANTS OF THE PARISH OF WOODCHURCH IN THE COUNTY OF KENT OF THE WOODCHURCH WINDMILL (OR IF IT SHOULD BE DESTROYED, OF OTHER BUILDINGS OF HISTORIC INTEREST OR BEAUTY OR LANDS OF ECOLOGICAL VALUE OR OTHER SCIENTIFIC IMPORTANCE WITHIN THE SAID PARISH) AND GENERALLY TO PROTECT AND PRESERVE THE CHARACTER AND AMENITIES OF THE SAID PARISH"**

'In the 1979 agreement, the owner (ABC) allowed the Woodchurch community to rebuild the Windmill which it did by local effort and fundraising. A later agreement (7/9/97) between the Trustees of the Charity and ABC (signed by the then Borough Secretary/Solicitor and the

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<sup>5</sup> The Question states: 'If the land/buildings(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)...'

<sup>6</sup> See the Plan annexed to this Report/Decision for the extent of the nominated building/land.

<sup>7</sup> This corresponds with what was stated in the 2024 Nomination.

<sup>8</sup> All emphases, parentheses etc. are as contained in the original 2025 Nomination form.

Mayor) conveyed the management responsibilities of both parties. Due to the financial constraints and pressures on public spending, ABC turned its back on the partnership 5 years ago with the effect that the Charity can now only make the exterior of the structure accessible.

'Up to that point 5 years ago

a) the partnership between ABC and the Friends' charity ensured a fully operational, safe, well interpreted and accessible heritage asset which supported the Windmill's inclusion as a dedicated Heritage Asset in ABC's Heritage Strategy.

b) The mill not only represented a successful model of community spanning 40 years but also at a practical level, provided a valuable educational facility for groups of local children, young adults, U3A students etc and tourists to learn about traditional rural Kent industries and the importance of environmental issues.'

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 Windmill is seen by residents (Ref: Village Survey 2023) as an integral element in Woodchurch's cultural offer and a key component in the character of the place. It plays its part along with other village assets in generating footfall in order to sustain the village business core (2 pubs, Post Office, General stores, Butcher, 2 Garages, Cafe etc) which has been lost in other villages and, by extension sustains and creates local employment. It assists and complements the Borough Council's ambition of ensuring visitors spend more time and money in the Borough.

'As described in 1) above, it is an amenity that all age groups, income levels and sexes in the village, can enjoy and learn about.

'Recreationally, it sits above the village. It offers visitors, dog walkers, joggers and ramblers a milestone with panoramic views over the village and the Romney Marsh beyond in a peaceful and contemplative setting.

'Given Woodchurch's high elderly and retired demographic, walks to the Windmill with family and friends are not only commonplace but an appropriate form of activity for that age group with the associated health and social integration benefits.

'When operating, the Windmill encourages increased volunteer capacity, especially those who have an interest in heritage and education. This sits happily with ABC's stated ambition of promoting the value of volunteer work as a step towards employment'

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. 'Woodchurch Parish Council believes in empowering communities and would fully support and encourage the merger of the Windmill Charity

with 2 other heritage/recreational-related charities to form a new community-led "Woodchurch Heritage Trust".

'This will further the social well being and interest through coordinated promotion and marketing, increased community ownership and engagement, improved local decision-making due to the deep local knowledge that exists in the village, stronger social connections, capacity building within the community and a greater sense of responsibility for the Windmill's future success, leading to a more sustainable outcome than exists now.

'For added social value, the Woodchurch Hub, an established volunteer-led social enterprise would assist the new Trust by providing information and outsourced services to it (eg website, newsletter, copying, sales space)

'Woodchurch Parish Council sees a new partnership between the Council itself, The Heritage Trust and the Woodchurch Hub in a project to maintain the Mill as a key asset to the village and re-open it to the public in perpetuity.'

On 31 March 2025, when preparing this Delegated Report, I contacted the nominating body and asked for clarification on two points:

'...First, in the nomination form you state that the windmill building is currently closed. Could you please let me know when it closed?

'Second, before its closure, could you please let me know what *specifically* was its last main use and how you consider that that use furthered the social wellbeing or social interests of the local community?'

As mentioned above, on 3 April 2025, the nominating body then submitted further information which states as follows:

'We were under the impression that the revised ACV nomination paper included sufficient content for you to make a decision on its registration but your subsequent correspondence suggests otherwise. Thank you for giving us the opportunity to clarify and expand.

'A fully working Windmill fosters social connectivity, promotion of mental and physical health and provides learning/engagement opportunities as well as economic benefits to the village[.] Let's take each in turn-

#### Social Connections

a) When the Mill was fully wo[r]king it served as a focal point for the development of strong social bonds for those with a real interest in the village's heritage. A community of interest developed (which still exists today) between the Windmill, The Village Life Museum, the Church and local history groups.

b) The Windmill played a major part in increasing and enhancing capacity in the community. Especially at the time of its rebuild in the 1980's, which is well documented in photos inside the building, volunteers worked together to fundraise and physically rebuild the



structure. That brought about opportunities for interaction and fostered wellbeing by combatting loneliness and allowing residents to use their skills for community benefit

#### Mental and Physical Health

- a) Generally, given its location in the open air and the views over the Woodchurch landscape, it offers a place for peaceful reflection which contributes to enhanced mental health.
- b) Its location encourages physical activity, especially amongst the village's elderly and promotes active travel like walking and off-road cycling. It is served by a public right of way (footpath) which runs right through the Mill's boundary.

#### Learning Opportunities

- a) When it was working it attracted residents on its Open Days to learn about the Mill's workings, its history and to take in the views from its balcony. Additionally, volunteers opened it to other groups such as the U3A and schools as a learning experience.
- b) A book - Woodchurch Windmill - Life and Restoration is still in print today[.] The book, produced locally by volunteers of the Society of Friends of Woodchurch Windmill [...] is a practical example of the sense of pride the Mill creates in the village and appreciation of our local history.

#### Economic benefits

- a) The working Mill attracted visitors who also used and sustained the Village's businesses and facilities. Consequently, the village still has a core of viable businesses such as the 2 pubs, post office, butcher, cafe etc which in many villages of the size of Woodchurch have been forced to close.

'Each of the above are considered important in their own rights but the combination provides an holistic benefit in terms of well being or quality of life that is far greater than the sum of those 4 parts.

'When [Ashford Borough Council ('ABC')] decided to renege on the management agreement 5 years [*sic*] and not fund the work needed to repair and maintain the exterior of the building, the Society of Friends of Woodchurch Windmill were left with no option other than to close the building to the public for Health and Safety reasons.

'The decision by ABC not to invest further in the Listed building not only meant its exterior aspect quickly started to deteriorate but it also greatly diminished the holistic benefit on the village's wellbeing.

'The Mill is no longer open to the public but is still accessible such that some of the above benefits still apply in entirety, some in part whilst others don't apply at all. So, in summary

- The historical community interest in the village still exists but is diminished without the involvement and inclusion of the Windmill

- The opportunities for using the Mill to combat loneliness and use of skills for the benefit of the village has been lost and has shifted to other well-being projects such as the Village Shed project
- The Windmill still provides a destination that enhances mental and physical health
- People can still learn about the Windmill via the books written about it, but the closure robbed people of the enjoyment of visiting and the learning opportunities it provided

'In conclusion, the Windmill, even in its dilapidated state, still helps to foster a sense of belonging and a shared identity[.] The results of the 2023 Village Survey indicated the residents' high regard for the Mill and the degree to which they felt that the village's rural identity and sense of place is diminished without an aesthetically pleasing, working mill.

'Plans are in place to create a new Heritage Trust that will bring the Windmill back within the heritage community of interest, use its influence to encourage greater capacity in the village to fundraise and rebuild if necessary and importantly, to recreate the holistic wellbeing benefit that has eroded following ABC's decision not to invest further in the Mill.'

Generally, 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 it is reasonable to assume that the Parish Council is representing the views, or is expressing the general wishes, of a reasonable percentage of their local community. Therefore, I am satisfied that the local community is supportive of this nomination.

Regarding the 2025 Nomination form, the nominating body has answered the set of questions relating to premises currently in community use, yet it is clear that the premises are in fact closed and so do not have a current ongoing community use. Nevertheless, the Borough Council is being asked to accept that, notwithstanding that the interior of the windmill building is closed and inaccessible, the exterior is still accessible to residents and visitors and that this is sufficient to demonstrate a current use of the windmill building. With respect, I do not accept such a premise. If the same were claimed in respect of, say, a closed public house – that the pub has shut down but it still has a current main use as a public house because the public can still look at the empty pub building from the outside – then such a hypothesis would, I submit, be rejected by any fair minded and properly informed observer.

Therefore, the Borough Council must consider whether:

- (a) there is a time in the recent past when an actual use of the premises that was not an ancillary use furthered the social wellbeing or social 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 premises that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

*There is a time in the recent past when an actual use of the premises that was not an ancillary use furthered the social wellbeing or social interests of the local community*

First, there is an obvious issue with the way in which the 2025 Nomination has been presented. The nominating body has revised and expanded their latest nomination in order to overcome the perceived shortcomings of the 2024 Nomination. As a result, there could be some tension between what is now being claimed in the 2025 Nomination form and what was claimed in the 2024 Nomination form. For the purposes of this Report, I do not intend to dwell on any such tensions. If/where they do arise, I have simply taken a view on the likely veracity of each point.

Moving on, there is no statutory definition of 'recent past.' The Department for Communities and Local Government's guidance<sup>9</sup> 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 Council (2014)*<sup>10</sup>, 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)*<sup>11</sup>, 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

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<sup>9</sup> Assets of Community Value – Policy Statement (2011)

<sup>10</sup> CR/2014/0007

<sup>11</sup> CR/2014/0005

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)*<sup>12</sup>, 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 2025 Nomination form provides no details about when the premises were closed because, of course, the 2025 Nomination form has been framed to suggest a current ongoing community use. Therefore, it is impossible from the 2025 Nomination form to establish whether there was a time in the recent past when an actual use of the premises that was not an ancillary use furthered the social wellbeing or social interests of the local community.

The 2025 Nomination form states that the Borough Council 'turned its back on the partnership 5 years ago with the effect that the Charity can now only make the exterior of the structure accessible.' However, the 'partnership' seems to be reference to a 1979 agreement relating to the management responsibilities for the premises, but this does not explain when the premises were actually closed.

However, the further information submitted on 3 April 2025 acknowledges that the nominated premises are currently closed to the public and in the covering e-mail, the nominating body states that:

'...the windmill was damaged in January 2019 as a result of a storm. It was unsafe to allow public access from that date...'

Therefore, it is now clear that the nominated premises closed to the public in January 2019 – just over six years before the submission of the 2025 Nomination.

The nominating body does not state when the nominated premises first opened. However, the windmill is a Grade II\* listed building<sup>13</sup> (first listed on 16 August 1962) and the Historic England list entry states as follows:

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<sup>12</sup> CR/2014/0010

'One of a pair of Mills known as 'the twins' and both brought here from another site. The Upper Mill dated from the early C18, was moved from Place Lane, ceased working in 1910 and was later demolished. **This Mill, the Lower Mill, probably dates from later in the C18, came from Susan's Hill and ceased working in 1926.** Smock type. Ground floor tarred brick, above faced with weatherboarding. Sweeps without shutters. Boat-shaped cap damaged at time of re-survey (1976). Fantail intact.'  
**[emphasis added]**

Regarding the emphasised passage, it seems that the nominated premises dates from the 18<sup>th</sup> century. The entry states that the premises ceased working in 1926, but the 2025 Nomination suggests that it was still in operation until January 2019. Absent any explanation I suspect that the windmill may have ceased operating as a commercial mill in 1926, but it was subsequently brought back into use as an historical or educational attraction for visitors until its final closure in January 2019.

Assuming that is the case, there is still the issue of when its use as an historical or educational attraction first commenced. The 2025 Nomination does not claim that the purely commercial use persisting until 1926 would have constituted a use which furthered the social wellbeing or social interests of the local community. Therefore, it is likely that the period when the windmill was being used as an historical or educational attraction would be most relevant for the purposes of the asset of community value regime.

In my view, it seems that the historical/educational use may date back to at least 1979 when the 'current main use of the building was established by agreement between the Woodchurch community and ABC on 23/6/1979 (Common Seal of ABC affixed).' If so (and setting aside that there is no 'current' main use of the premises because the windmill building is closed), that use would have persisted for at least 40 years before the windmill was closed in 2019.

In my view, having regard to the relative concept of 'recent past' as outlined by Judge Lane in *Crostone* (above), January 2019 would be viewed as the 'recent past' when viewed in the context of at least 40 years of continuous use prior to that date. Also, the mere presence of the windmill in the locality for centuries (even before its main community use was taken up in or before 1979) would likely have had some limited 'cultural' value which could reasonably be taken into account when establishing the 'recent past' for asset of community value purposes.

The nomination therefore satisfies the first element of the test set down in section 88(2)(a) of the Act.

Second, regarding the actual use of the premises, again, the 2025 Nomination form states that 'the current main use of the building was established by agreement between the Woodchurch community and ABC on 23/6/1979

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<sup>13</sup> List Entry Number: 1121143

(Common Seal of ABC affixed).’ However, as explained above, there is no ‘current’ main use of the premises because the windmill building is closed.

Nevertheless, when asked what the main use is (or was) the 2025 Nomination form refers to the objective of those responsible for the maintenance/management of the windmill building:

‘To promote the permanent preservation for the benefit of the public generally and especially the inhabitants of the parish of Woodchurch [...] and generally to protect and preserve the character and amenities of the said parish”

The protection and preservation of the windmill building is not a use let alone a main use which furthered the social wellbeing or social interests of the local community. Instead, the objective seems more akin to the protection and preservation of an historic monument.

The nominating body continues by stating that the windmill was, in the past, ‘a fully operational, safe, well interpreted and accessible heritage asset.’ Again, this does not describe an actual main use which furthered the social wellbeing or social interests of the local community.

The nominating body states that the windmill ‘provided a valuable educational facility for groups of local children, young adults, U3A students etc and tourists to learn about traditional rural Kent industries and the importance of environmental issues.’ Whilst an historical/educational facility could, in theory, include a main use which furthered the social wellbeing or social interests of the local community, the 2025 Nomination form does not explain what that ‘social’ use would have been or explain how it furthered the social wellbeing or social interests of the local community.

The 2025 Nomination form states elsewhere that the windmill ‘is seen by residents [...] as an integral element in Woodchurch’s cultural offer and a key component in the character of the place.’

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.

Regarding the claimed ‘cultural offer,’ so far as relevant, dictionary definitions of ‘culture’ and ‘cultural’ include the following:

Collins

1. ‘relating to a particular society and its ideas, customs, and art.’
2. ‘involving or concerning the arts.’

Cambridge

'The way of life, especially the general customs and beliefs, of a particular group of people at a particular time'

It is unclear from the 2025 Nomination form what the nominating body means by 'cultural offer' – the windmill building does not/did not, it would seem, ever provide an artistic use or a use which provided an insight into the belief-system of the local community. Instead, perhaps 'cultural offer' is referring to an insight into the local community's previous customs or way of life i.e. as a mill community. However, while the 2025 Nomination form is vague on this point, in the further information received on 3 April 2025, the nominating body clarifies that 'when the Mill was fully wo[r]king it served as a focal point for the development of strong social bonds for those with a real interest in the village's heritage...' including an interest developed by 'local history groups.'

Also, in the further information the nominating body states that 'when it was working it [the windmill] attracted residents on its Open Days to learn about the Mill's workings, its history...' and 'volunteers opened it to other groups such as the U3A and schools as a learning experience.'

In my view, these types of cultural activities in the recent past would have offered an insight into the local community's previous customs or way of life. As such, that main 'cultural' use would have furthered the social wellbeing or social interests of the local community

Elsewhere the nominating body refers to the windmill as playing a part 'in generating footfall in order to sustain the village business core' and, by extension, sustaining and creating local employment. However, this claimed economic benefit does not/did not constitute a main use which furthered the social wellbeing or social interests of the local community.

The nominating body does refer to a 'recreational' use - 'it [the windmill] sits above the village. It offers visitors, dog walkers, joggers and ramblers a milestone with panoramic views over the village and the Romney Marsh beyond in a peaceful and contemplative setting.'

A main recreational use could further the social wellbeing or social interests of the local community. However, in this instance, it seems that the windmill is/was merely a 'milestone' for walkers, joggers etc. in the same way that a monument, a park bench or even a tree might be considered a landmark along a route. While the windmill might be an interesting or attractive 'milestone' along the way, there is no suggestion that the nominated premises itself is/was ever used for recreational purposes.

In conclusion, the claimed economic and recreational benefits add little but, for the reasons set out above, the 'cultural' interests referred to in the 2025 nomination mean that the second element of the test set down in section 88(2)(a) of the Act is satisfied.

*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/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community*

The central government guidance is silent on the question of whether there is a realistic prospect that there could again be a community use of nominated building/land. The case law suggests that the test does not require the likely future use of the building/land to be determined but rather to determine whether future community use is a realistic prospect<sup>14</sup>.

In this case, the nominating body has stated that 'plans are in place to create a new Heritage Trust that will bring the Windmill back within the heritage community of interest, use its influence to encourage greater capacity in the village to fundraise and rebuild if necessary and importantly, to recreate the holistic wellbeing benefit...'

In short, plans appear to be in place to reintroduce the 'cultural' historical/educational use of the nominated premises and the 'historical community interest in the village still exists.'

On balance, in my view, given such community backing it is realistic to consider that the premises could re-open in the next five years.

Regarding future viability, the central government guidance is again silent. In *Worthy* (mentioned above), the Court considered detailed financial appraisals which indicated that it would not be economically viable for the public house in question to return to community use. However, Judge Warren stated that:

"...It is important, however, not to confuse commercial viability with what altruism and community effort can achieve. The calculations advanced by Worthy Developments Ltd do not, in my judgment, ...demonstrate that the committee's plans are not realistic. Although there was some discussion of the figures at the hearing, it does not seem to me necessary to go into further detail on this point. The legislation does not require a detailed business case at this stage" [emphasis in original]

Other cases appear to support this stance<sup>15</sup> and so it does not seem to me to be necessary for the Council to consider the viability of some future community use of the premises. The test seems to be simply 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 that would further the social wellbeing or social interests of the local community.

Also, it should be noted that the use would not need to be as before, and it would not even necessarily need to be economically viable in the sense that it would have to make a profit for its operator. This is because it could be run as a not-for-profit co-operative by local community volunteers as either its previous use or for some other non-ancillary community use.

## Conclusions

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<sup>14</sup> See again: *Worthy Developments v Forest of Dean District Council* (2014)[para. 19]

<sup>15</sup> See for example: *Gibson v Babergh District Council* (2015)(CR/2014/0019); *Sawtel v Mid-Devon District Council* (2014)(CR/2014/0008); *St. Gabriel's* (above) etc.



For the reasons set out above there is, in my view, a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social interests of the local community; and it is, in my view, realistic to think that there is a time in the next five years when there could be non-ancillary use of the building/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

I have taken into consideration the potentially adverse impact that listing could have on the owner(s) of the building/land (as summarised above under the sub-heading *Consequences of Listing*) but the internal listing review process and appeal do allow the owner(s) the opportunity to challenge the decision to list.

Accordingly, in my view, this building/land should be included in the Council's 'List of Assets of Community Value.'

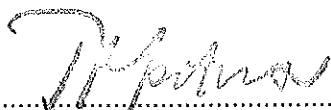
### **Recommendation**

That the Solicitor to the Council and Monitoring Officer accept the nomination for this building/land to be included on the Council's 'List of Assets of Community Value.'

\*

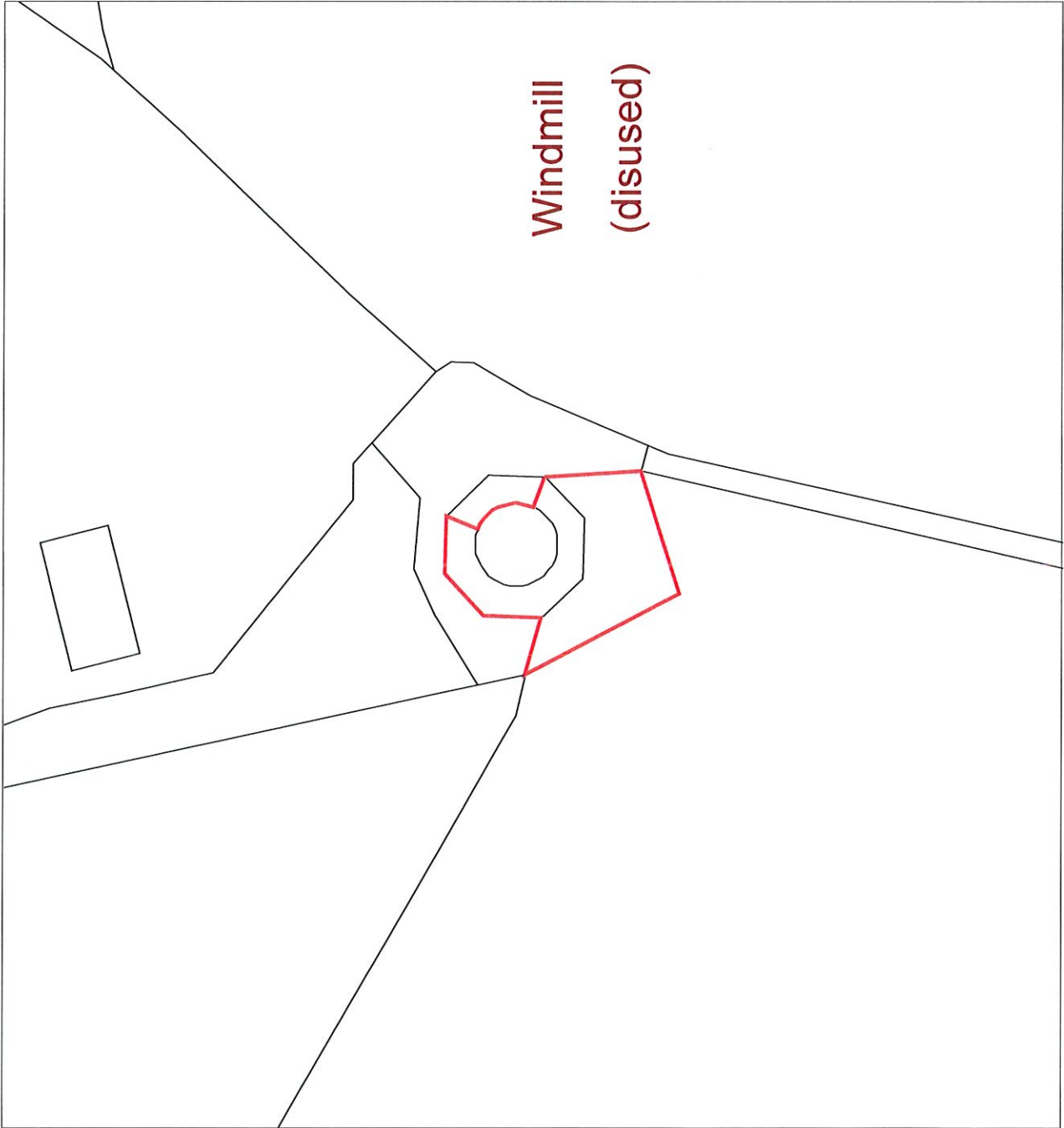
### **AUTHORITY**

**In accordance with the functions delegated to me, I hereby accept the nomination for this building/land to be included on the Council's 'List of Assets of Community Value,' for the reasons set out above.**



.....  
**Solicitor to the Council and Monitoring Officer**

**Date:** ..... 24/04/2025 .....

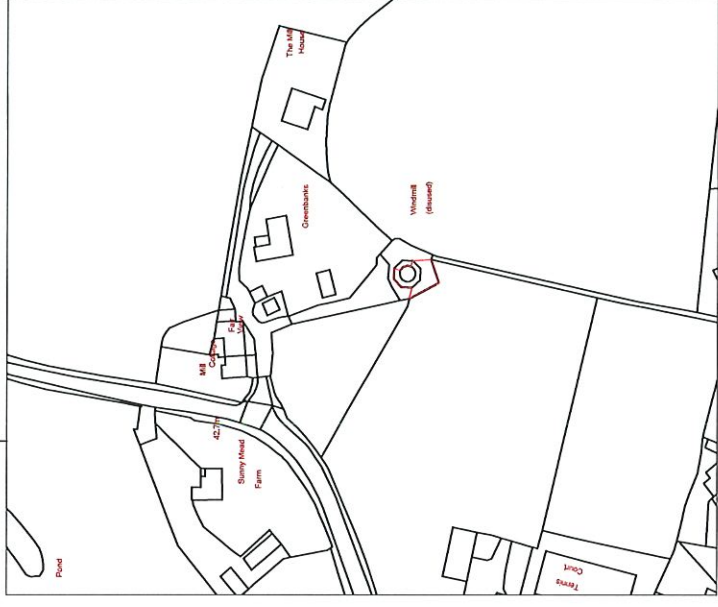


Windmill  
(disused)



SCALE 1:200

BLOCK PLAN



LOCATION PLAN



SCALE 1:1250

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**ASHFORD**  
**BOROUGH COUNCIL**  
CUSTOMERS HOMES & PROPERTY  
Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL  
tel : 01233 331111

<b>PROJECT</b>		WOODCHURCH WINDMILL
<b>DRG-TITLE</b>		WOODCHURCH WINDMILL, BETHERSDEN ROAD WOODCHURCH, ASHFORD, KENT, TN26 3JQ
<b>SCALE(S)</b>	<b>PAPER SIZE</b>	
AS SHOWN	A3	
<b>DRAWN</b>	<b>AUTOCAD FILE</b>	<b>DATE</b>
AH	FILE NO.	14/11/2024
<b>DRG.No.</b>	AH/1114/24	<b>REV.</b>
		A