

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: PR86-054

Case Officer: Darren McBride

Site Address: The Green at Stonebridge, The Street, Brook, Ashford, Kent (comprising part unregistered land and part of an area of land known as 'land on the north-west side of The Street, Brook, Ashford, Kent')

Title Number(s): K71515 (FREEHOLD)(PART)

Nominating Body: Brook Parish Council

Nomination Validated: 27 May 2026

Deadline Date: 22 July 2026

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Introduction

Under the Localism Act 2011 ('the Act'), the 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 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.

¹ Section 88(1) of the Act.

Buildings or land may also be of community value if in the opinion of the 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 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 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 must be determined within eight weeks. In this instance, the nomination was validated by the Council on 27 May 2026 and so should be determined by 22 July 2026.

If the Council accepts a valid nomination then it must be included in the 'List of Assets of Community Value.' If the 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

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

- Brook Parish Council (Nominating Body)
- Freehold Owner(s)
- Cllr N Ovenden (Leader of the Council)

² Note: the wording of this passage of the legislation is different to all the other passages 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.

³ Section 88(2) of the Act.

- Cllr K Giles (Cabinet Member for Communities and Health)
- Cllr S Betty (Ward Member)

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

Interim Moratorium

There is then a six-week interim period from the point the owner notifies the Council. The 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.

Protected 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 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 allow for claims for loss or expense arising simply as a result of the asset being listed.

The 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 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 of 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 Council.

The community nomination form asked the nominating body to provide their reasons for thinking that the Council should conclude that the building/land is of community value. The questions and answers state as follows:

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

A1. 'The land is a green open space that children play on, there are a number of trees on the land. The community has used the space over many years and buried a time capsule (2000) here plus have erected the Brook sign on the land and have held Carol Singing events on the land too..'

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 community has a small safe green space to look out over and to use for community gatherings should it so wish.'

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. 'This is a main focal point for the 20 or so houses that overlook the land. The area is pleasant, well kept and offers residents some protection from urbanisation.'

When this nomination was validated, I notified the individuals and bodies mentioned under the sub-heading *Procedure* (above). The Freehold Owner of part of the nominated premises is Kent County Council ('KCC'). On 12 June 2026 I received an e-mail from an officer within KCC's 'Infrastructure, Deputy Chief Executive's Department' which stated as follows:

'Good afternoon,

'Many thanks for sending over your request to add the land at Title Reg K71515 as an asset of community value.'

'I have investigated this for you, and the KCC only own the southeastern fringe of that field, we hold this land for Highways purposes. Under the Localism Act 2011, land used as Highways does not qualify for an Asset of Community Value under the criteria. The remainder of the field is unregistered so we could not comment on that.'

'Apologies I couldn't be of more help...'

On 30 June 2026 I responded as follows:

'Thank you for your e-mail dated 12 June 2026 [...].'

'Schedule 1 to the Assets of Community Value (England) Regulations 2012 ('the Regs') sets out the categories of land which are not of community value (and therefore may not be listed).'

'Regarding this matter, you state that the nominated area of land owned by Kent County Council is land held for highways purposes and that 'under the Localism Act 2011, land used as Highways does not qualify for an Asset of Community Value under the criteria.'

'I understand that the said area of land is not in actual use as a highway. Nevertheless, I should be grateful if you would point me to the Schedule 1 exemption which states that land held for highways purposes is exempt from listing. If KCC is relying upon paragraph 4, Schedule 1 to the Regs (*'operational land as defined in section 263 of the Town and Country Planning Act 1990'*), then I should be grateful if you would clarify which category within section 263 of the Town and Country Planning Act 1990 (as amended) that you consider applies in this instance.'

'I look forward to hearing for you...'

On 7 July 2026, KCC's officer replied (copying in a colleague(s) within KCC's 'HTW Development Agreements – GT' Department):

'Thanks for your email. Because the land has been adopted by Highways, it may be better for them to comment further. @HTW Development Agreements - GT please could you advise further?'

That same day (7 July 2026), an officer within KCC's Development Agreements Team replied:

'Sorry this not something I can comment on as we only undertake adoptions as public highway, I have copied the Highway Definition Team in case they can advise.'

At the time of writing, I have received no further correspondence from any person or team within KCC.

Absent any clarification from KCC, I do not consider that any of the Schedule 1 exemptions would apply in this instance.

Moving on, the 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 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.

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.

In this case, the information submitted indicates that the land is used by the local community for children to play on and, if it so wished, for community gatherings. It has also been used for Carol Singing events.

In my view, these uses are integral to the main use of the land as an informal open amenity space for the benefit of the local community. As such, these uses would further the social wellbeing or social interests of the local community.

It is stated that the nominated land ‘offers residents some protection from urbanisation.’ Whether or not this is the case, protection from urbanisation is not a ‘use’ as such and so would not (at least directly) further the social wellbeing or social interests of the local community.

Nevertheless, the actual current main use of the land (as outlined above) leads me to conclude that it does further the social wellbeing or social interests of the local community. Moreover, the fact that the land is currently being used for these community purposes suggests that it is realistic to think that the current use can continue.

Conclusions

In my view, it is reasonable to conclude that the actual current use of the land does further the social wellbeing or social interests of the local community and that there can continue to be non-ancillary use of the land which will further 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 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 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 land to be included in the Council's 'List of Assets of Community Value.'

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AUTHORITY

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



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Solicitor to the Council and Monitoring Officer

Date: 21st July 2026...

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