

## Cheltenham Borough Council

### Request for the inclusion of buildings at 57-59 Winchcombe Street (formerly known as the Axiom Centre) on the Council's list of assets of community value

#### Report of the Director Commissioning

<b>Accountable officer</b>	<b>Jane Griffiths, Director Commissioning</b>
<b>Ward(s) affected</b>	<b>All Saints</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>A community right to bid nomination form was received on 20 November to seek the property at 57-59 Winchcombe Street, formerly the Axiom Centre, listed as an asset of community value.</p> <p>I have made an assessment of the nomination in accordance with Part 5 Chapter 3 of the Localism Act 2011 and, in particular, against the criteria set out in s.88 of the Localism Act.</p>
<b>Decision</b>	<p><b>That the nomination to have property at 57-59 Winchcombe Street, formerly the Axiom Centre, listed as an asset of community value in accordance with Part 5 Chapter 3 of the Localism Act 2011 is unsuccessful and the property will therefore be listed in the Council's List of Land Nominated by Unsuccessful Community Nominations.</b></p>
<b>Financial implications</b>	<p>None identified in connection with this decision.</p> <p><b>Contact officer: Des Knight Accountant Des.Knight@cheltenham.gov.uk 01242 264124</b></p>
<b>Legal implications</b>	<p>The Localism Act 2011 requires the council to determine whether the nominated land is 'land of community value' by considering either its actual current use ( s88(1)) or, as in this case (s88(2)) if in the opinion of the local authority:</p> <p>'there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and</p> <p>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.'</p> <p>Since the Localism Act came into force there has been one case decided by the First-Tier Tribunal (London Borough of Hackney and Churchwell Residents' Group). Although this case considered s88 and determined the meaning of 'realistic' it did not consider the wording 'recent past'.</p> <p><b>Contact officer: Shirin Wotherspoon Solicitor – One Legal 01684 272017</b></p>

<b>HR implications (including learning and organisational development)</b>	None identified
<b>Key risks</b>	Three risks have been identified with this recommendation and these are detailed in Appendix 1
<b>Corporate and community plan Implications</b>	None identified
<b>Environmental and climate change implications</b>	None identified

## 1. Background

- 1.1** The Localism Act 2012 introduced a Community Right To Bid which gives community and voluntary sector groups, charities, parish and town councils a right to identify a property that is believed to be of value to their social interests or social wellbeing and gives them a fair chance to make a bid to buy the property on the open market if the property owner decides to sell.
- 1.2** The legislation places a duty upon local authorities to maintain the list of land in its area that is land of community value, as nominated by the local community. If any land or buildings on this list then come up for sale, the local community will be given six months to prepare a bid to buy the land.

## 2. What is an asset of community value (s88 Localism Act 2011)

- 2.1** A building or land is deemed to be of community value :

S88(1) ‘...if, in the opinion of the local authority -

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

Or

S88(2) ‘...if in the opinion of the local authority—

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

Furthermore, it does not fall within one of the exemptions e.g. residential premises.

- 2.2 Social interests include (a) cultural interests; (b) recreational interests; (c) sporting interests. Social well-being relates to social interaction and engagement. It is a sense of involvement with other people and their communities.

### 3. The nomination for property at 57-59 Winchcombe Street

- 3.1 An unincorporated community group consisting of 26 members has submitted a nomination on 20 November; the nomination states:

“Despite the closure of the Arts Centre in 2000, the Cheltenham community have maintained a continuous dialogue resulting in a campaign to re-claim the centre for community use.

As a result of arts activities and a community cafe in the Axiom, Cheltenham has influenced international culture following commercial success of its protégées. Young people were a focus of the centre which cultivated skills that have carried many people through life. Widespread issues such as isolation and reduced engagement with civic life were successfully tackled through increased commitment to community values.

Residents consider cultural deprivation to have developed following the lack of a central multi-purpose hub for the arts, catering to a wider social demographic than is currently facilitated in Cheltenham. Questions have been asked whether Cheltenham Borough Council aim to curate an image which does not accurately represent or celebrate diversity within the local community.

Following the re-sale of the property through agents DTZ the displaced Axiom community have formed an un-constituted group of 26 people to submit the right to bid application so that we can develop a bid with particular focus upon project sustainability.”

- 3.2 The property is currently on the market with agents DTZ.

### 4. The Decision

- 4.1 Whilst the use of the building in its past life as an arts and cultural facility would meet the criterion of furthering social wellbeing and interests, I am clear that this use was not in the recent past, the building having not been used for the past 13 years.
- 4.2 Although the legislation does not define the meaning of the term recent, there is reference to a period of five years in the following sections:
- 1) Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next **5 years** and
  - 2) Section 87 (3) which provides that ‘where land is included in a local authority’s list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the **period of 5 years** beginning with the date of that entry ..’
- A) My view is that five years is a sufficient period time to define the recent past. This view is shared by other councils that have added a reference to five years in their community right to bid guidance.
- B) I consider that defining recent past to extend beyond 13 years for this one instance could be problematic, as it would effectively set a precedent that the Council was defining recent past

as any period of time up to 15 years.

- C) For these reasons, I cannot support the nomination of the property at 57-59 Winchcombe Street, formerly the Axiom Centre, to be considered an asset of community value.
- D) Nevertheless, I do wish the community group well in its proposed purchase of the building.

## 5. Consultation

In considering this nomination I met with a group of officers that included the Director Built Environment, Head of Property Services, Strategy and Engagement Manager on 2<sup>nd</sup> December to review the nomination against the criteria set out in s.88 of the Localism Act. The group supported me in this decision.

I have also consulted with the Cabinet members for Built Environment and Housing and Safety.

<b>Report author</b>	<b>Contact officer:</b> <b>Jane Griffiths</b> <b>Director Commissioning</b> <b>jane.griffiths@cheltenham.gov.uk,</b> <b>01242 264126</b>
<b>Appendices</b>	1. Risk assessment  2. History of the former Axiom Building prepared by Klara Sudbury.
<b>Background information</b>	

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the building is listed as an asset of community value, the owner may appeal the decision that could involve the Council in officer time and expense, particularly if the case ended up going to tribunal	Mike Redman	2.12.13	3	4	12	reduce	Decision is made not to list the property		Jane Griffiths	
	If the building is listed as an asset of community value, the owner may claim compensation from the Council if they incur any financial loss	Mike Redman	2.12.13	4	4	16	reduce	Decision is made not to list the property		Jane Griffiths	
	If the building is not listed as an asset of community value, then the community group might feel aggrieved that the Council is not supporting their aspirations to purchase the property	Mike Redman	2.12.13	3	4	12	reduce	Explain the decision not to list		Jane Griffiths	
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											