

Cheltenham Borough Council
Request for the inclusion of a building on the Council's register
of assets of community value
Report of the Deputy Chief Executive

Accountable officer	Pat Pratley, Deputy Chief Executive
Ward(s) affected	All
Key Decision	No
Executive summary	<p>The council has recently received a nominations from Fairview Community Association to have a local pub in the borough designated as "Asset of Community Value"</p> <p>The nominations was as follows:</p> <ul style="list-style-type: none"> • The Maple Leaf
Recommendations	I have made an assessment of this nomination against the criteria set out in s.88 of the Localism Act and my decision is set out in section 5 of this report.
Financial implications	<p>There is a direct cost to the Council of registering the assets with the Land Registry. This will be approximately £60.00</p> <p>To help council's meet the costs incurred by local authorities in meeting these requirements the government has provided the council with a pot of money called "new burdens funding" worth around £8,000. This was estimated on the basis of 40 successful claims for compensation across all administering local authorities over a year.</p> <p>In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims. However, it would appear that the council would have to meet those costs between £8,000 and £20,000.</p> <p>There is also provision that an owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions</p> <p>An owner may also appeal to a Tribunal against the local authority's review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review.</p> <p>Contact officer: Des Knight Business Partner Accountant – GO Shared Services Des.Knight@cheltenham.gov.uk 01242 264124</p>

Legal implications	<p>The Council's duty in relation to maintaining a list of Assets of Community Value and assessing nominations of land and buildings to be added to that list, are contained within the Localism Act 2011 and The Assets of Community Value (England) Regulations 2012.</p> <p>The criteria to be considered when making the decision whether or not to list an asset as an asset of community value are set out within the body of this report.</p> <p>In addition to notifying the owners and adding the buildings to the list of registered assets, the council will need to register a restriction on the titles of the buildings/land (where registered at the Land Registry) to record that the buildings are assets of community value.</p> <p>Contact officer: Rose Gemmell Solicitor – One Legal Rose.gemmell@teWKesbury.gov.uk 01684 272014</p>
HR implications	None identified
Key risks	Three risks have been identified with this recommendation and these are detailed in appendix 1
Corporate and community plan Implications	None identified
Environmental and climate change implications	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 owner decides to sell.
- 1.2** The legislation places a duty upon local councils 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

- 2.1** A building or land is deemed to be of community value if, in the opinion of the council:
- Its actual current use furthers the social wellbeing and interests of the local community, or a use in the recent past has done so; and
 - That use is not an ancillary one; and
 - For land in current community use it is realistic to think that there will continue to be a use which furthers social wellbeing and interests, or for land in community use in the recent past it is realistic to think that there will be community use within the next 5 years (in either case, whether or not that use is exactly the same as the present or past); and
 - 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

3.1 Fairview Community Association chose to submit a nomination for 1 pub. The details are as follows:

- The Maple Leaf, 83 Hewlett Road, Cheltenham

4. Consultation process and recommendations

I met with the Strategy and Engagement Manager, The Director of Planning and a Solicitor from One Legal to review the ten nominations. The nominations were assessed against the following set of criteria:

- Is the nominating organisation eligible?
- Can the nominating organisation demonstrate a local connection to the asset?
- Does the nomination include the information requested on the nomination form?
- If the asset is outside one of the categories of exempt assets, as set out in schedule 1 of the regulations?
- Is there evidence of the use being described in the nomination, and that this is the main and non-ancillary use of the land or premises, or this has been its use within the last 5 years?
- Does this use further the social wellbeing and social interests of the local community?
- Could the asset realistically continue to be used for this, or another qualifying community purpose (or could this be achieved within the next five years)?

The results of this assessment for the nomination are attached as appendix 2.

5. The decision

Buildings	Owner	Recommendation
The Maple Leaf	Mr. Paul Haskins	There is good evidence that the Maple Leaf furthers (or in the recent past has furthered) the social wellbeing and social interests of the local community, that this is the main and non-ancillary use of the premises. The comments from both the owner and the owner's legal representative have been noted, but there still remains the possibility that the qualifying use could be achieved within the next five years. This nomination therefore meets the criteria to be an asset of community value and will be placed on Cheltenham Borough Council's list of successful nominations

6. What happens next?

6.1 All of the buildings / sites that meet the criteria will now be placed on Cheltenham Borough Council's list of successful nominations. The council will also inform all the relevant owners.

6.2 Review / appeal process:

6.2.1 If the owner objects to their property being placed on the list, they have a right to an internal review by the council of the decision to list. The deadline for the owner to request this review is 8 weeks from the date written notice of listing was given. The review must be conducted by an officer of appropriate seniority, who did not take part in the decision to list. The owner may appoint a representative and the council will be required to provide all relevant documents to the representative.

6.2.2 The council must complete their review within 8 weeks, unless a longer period has been

agreed in writing. The owner and council will bear their own costs of the review.

6.2.3 If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the council's review decision. The written response following the internal review should inform the owner of their right to an independent appeal. The owner making the appeal can be either the same owner who requested the review, or - if the property has been sold in the meantime - the new owner.

6.3 Moratorium

6.3.1 The owner of the property must then advise the Council if they intend to sell the property and we would then publicise this on the web site as well as informing the nominator. The nominating group then have 6 weeks to decide whether or not they wish to bid.

6.3.2 If the nominating group wish to be considered as a potential bidder, then a 6 month moratorium period will be started whereby the owner may not dispose of the building. During this period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception. The owner may sell to the nominating group during the moratorium period.

6.3.3 After the moratorium period 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.

6.3.4 All the above time periods run from the date the owner notified the local authority of intention to dispose.

6.4 Compensation

6.4.1 Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will 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 Tribunal.

6.4.2 The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.

6.4.3 The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.

6.4.4 To help council's meet the costs incurred by local authorities in meeting these requirements the government has provided the council with a pot of money called "new burdens funding" worth around £8,000. This was estimated on the basis of 40 successful claims for compensation across all administering local authorities over a year.

6.4.5 In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims. However, it would appear that the council would have to meet those costs between £8,000 and £20,000.

6.4.6 There is also provision that an owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions

6.4.7 An owner may also appeal to a Tribunal against the local authority's review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review.

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Appendices	<ol style="list-style-type: none">1. Risk assessment2. Results of the assessment
Background information	

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	Pat Pratley	2.12.13	3	3	9	reduce	Appeal process in place to ensure that any decision can be reviewed independently of original decision making.		Mark Sheldon	Commissioning Division Risk Register
	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	Pat Pratley	2.12.13	3	3	9	reduce	Decision making and appeal process established. Some government funding available however Council still exposed to some financial impact.		Pat Pratley	Commissioning Division Risk Register
	If a nominating group feels aggrieved that an asset was not listed by the council then there is a risk that the group could pursue a judicial review against the Council	Pat Pratley	2.12.13	4	2	8	reduce	Assessment and appeal process in place plus community group will be provided with an explanation regarding any decision not to list.		Pat Pratley	Commissioning Division Risk Register
<p>Explanatory notes</p> <p>Impact – 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>Likelihood – 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>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											