

**ASSETS OF COMMUNITY VALUE**  
**THE LOCALISM ACT 2011 ('THE ACT') AND THE ASSETS OF COMMUNITY VALUE**  
**(ENGLAND) REGULATIONS 2012 ('THE REGULATIONS')**

**LISTING DECISION NOTICE**

<b>Application Number:</b>	ACV/00023
<b>Nominated Asset:</b>	The Lower and Upper Allotments
<b>Address:</b>	Pier Street Isle of Dogs London E14 3HP
<b>Nominator:</b>	Isle of Dogs and District Allotment Society
<b>Owner:</b>	London Borough of Tower Hamlets
<b>Owner's representative:</b>	Ralph Million Senior Strategic Asset Manager
<b>Leaseholder/ Occupier</b>	The Mudchute Association
<b>Leaseholder/ Occupier's representative:</b>	-
<b>Decision:</b>	The Lower and Upper Allotments are of community value and the land is to be listed as an asset on the London Borough of Tower Hamlets' list of ACVs

## 1. The Relevant Law

Section 88 of the Act provides:

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the 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
  
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value 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.

In order for land to be included in the list, the nomination must be made by a parish council, a community council or a person that is a voluntary or community body with a local connection as provided by section 89(2)(b)(iii) of the Act.

The Regulations set out further criteria for voluntary or community bodies. These are:

- That their activities are wholly or partly concerned with the local authority's area or with a neighbouring local authority's area;
- Any surplus is wholly or partly applied for the benefit of the local authority's area or a neighbouring local authority's area; and
- In the case of an unincorporated body, it has at least 21 local members, meaning a person on the electoral register at an address in the local authority or a neighbouring authority's area.

Under Regulation 5 of the Regulations, a voluntary or community body includes an unincorporated body whose members include at least 21 individuals and which does not distribute any surplus it makes to its members; and a company limited by guarantee which does not distribute any surplus it makes to its members.

Regulation 6 of the Regulations sets out certain information which the nomination must include:

A community nomination must include the following matters-

- (a) a description of the nominated land including its proposed boundaries;
- (b) a statement of all the information which the nominator has with regard to-
  - (i) the names of current occupants of the land, and
  - (ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;
- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and
- (d) evidence that the nominator is eligible to make a community nomination.”

Under section 90 of the Act, if a local authority receives a community nomination it must accept the nomination if it relates to land which is in its area and is of community value. If the relevant criteria are not met then the land must be included in the Local Authority's list of unsuccessful nominations.

## **2. Background**

On 18<sup>th</sup> January 2017, a nomination to list the Lower and Upper Allotments, Pier Street, Isle of Dogs, London E14 3HP ('the premises') as an Asset of Community Value under the Act and the Regulations was registered.

## **3. Consideration**

In determining this application, I have been mindful that I need to consider:

- (1) Is the nominator a voluntary or community body within the meaning of Regulation 5; AND
- (2) Do the contents of the nomination meet the requirements of Regulation 6 for a Community Nomination; AND
- (3) Whether there is an actual current use of the building or other land that is not an ancillary use and which furthers the social wellbeing or social interests of the local community (section 88(1)(a) of the Act); AND
- (4) 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)(a) of the Act).

In addition, in reaching my determination, I have had regard to the following:

1. ACV Nomination Form
2. The Act, the Regulations, and DCLG's non-statutory guidance ("Community Right to Bid: Non-Statutory advice note for local authorities", October 2012)
3. The Interpretation Act 1978
4. Relevant authorities of the First Tier Tribunal including:
  - (a) *Patel v Hackney LBC* (CR/2013/0005)
  - (b) *Pullan v Leeds CC* (CR/2015/0011)

Dealing with each of the questions (1) through to (4) above, I would advise:

(1) Is the nominator a voluntary or community body within the meaning of Regulation 5?

For an asset to be considered for listing, the Council has to receive a community nomination and which is to be made by a parish council, a community council or a person that is a voluntary or community body with a local connection. Schedule 1 of the Interpretation Act 1978 provides that a person includes: "a body of persons.... unincorporated". What constitutes a voluntary or community body with a local connection is governed by both regulations 4 and 5 of the Regulations. Regulation 5(c) of the Regulations provides that a nominator can be an unincorporated group of at least 21 local people and which does not distribute any surplus to its members.

I am satisfied that the Isle of Dogs and District Allotment Society is a voluntary or community body with a local connection and therefore that it is a valid nomination.

(2) Do the Contents of the nomination meet the requirements of Regulation 6 for a Community Nomination?

The Council may only list a building or other land pursuant to a valid community nomination. The statutory requirements for a valid community nomination are set out below followed by my assessment of the requirements:

(a) a description of the nominated land including its proposed boundaries;

Assessment: Yes.

(b) a statement of all the information which the nominator has with regard to-

- (i) the names of current occupants of the land, and
- (ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land

Assessment: Yes.

- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value;

Assessment: Yes although no assessment is made at this stage however in relation to the veracity of these reasons or, indeed, whether they would satisfy the relevant statutory requirements.

- (d) evidence that the nominator is eligible to make a community nomination.

Assessment: Yes. The Council can only consider listing an asset where a voluntary or community body which is eligible to make a community nomination makes such a nomination. Where an application is received from a body which is not, under the tests set out in the legislation, eligible to make a community nomination then there is no valid application before the Council. As stated in (1) above, I am satisfied that the nominator has made a valid nomination.

- (3) Whether there is an actual current use of the building or other land that is not an ancillary use and which furthers the social wellbeing or social interests of the local community (section 88(1)(a) of the Act)?

This is the first limb of section 88(1) the Act.

I note that neither the Act nor the Regulations require any evidence to be provided: indeed regulation 6(c) of the Regulations merely provides that the nominator provide reasons for thinking that the responsible authority should conclude that the land is of community value.

Further, pursuant to section 88(1) of the Act the test is whether the local authority is "of the opinion" that the land is of community value. As to Community Value, this is an actual use of the building that was not an ancillary use and furthered the social wellbeing or interests of the local community. Social Interests includes cultural interests, recreational interests and sporting interests.

There is no definition of "local community" in either the Act or the Regulations. Further, there is no guidance as to how it is to be determined. Neither is the term defined in the Interpretation Act 1978. Accordingly, the term has its ordinary English meaning and as the ordinary English meaning of words comes from the context in which they are used then the words "local community" are to be considered in the context of the Act.

In the *Pullan* case, Judge Lane considered this to be deliberate "*since it will usually be a question of fact as to what the "local community" comprises in any*

*particular case.*” This therefore does not necessarily equate to the entirety of the Tower Hamlets area. The local community will vary from asset to asset and will be decided on a case-by-case basis. In essence, the local community is a group of interacting people living in a common location. The group is organised around common values and is attributed with social cohesion within a shared geographical location in social units larger than a household.

The area of a local community will vary depending on the nature of the premises. For allotments, the local community is likely to be the area where the allotments are based and therefore I intend to use the Isle of Dogs area as this focuses the test on the community being a local one. **It is in this context that I have considered local community.**

Having regard to appendices 5.3 and 5.4, the vast majority of plot holders reside on the Isle of Dogs and those that do not reside in Tower Hamlets.

As to the term “social wellbeing”, this is also not defined in either the Act or the Regulations. Further, there is no guidance as to how it is to be determined. Neither is the term defined in the Interpretation Act 1978. Accordingly, the term has its ordinary English meaning and as the ordinary English meaning of words comes from the context in which they are used then the words “social wellbeing” are to be considered in the context of the Act.

There is no consensus around a single definition of wellbeing, but there is general agreement that at minimum, wellbeing includes the presence of positive emotions and moods (e.g., contentment, happiness), the absence of negative emotions (e.g., depression, anxiety), and satisfaction with life, fulfilment and positive functioning. In the context of the Act therefore, wellbeing can be described as judging life positively and feeling good. From that, we can say that wellbeing is a positive outcome that is meaningful for people and for many sectors of society, because it tells us that people perceive that their lives are going well. Good living conditions (e.g. housing, employment) are fundamental to well-being.

As to the definition of the word “social”, this would be relating to or involving activities in which people spend time talking to each other or doing enjoyable things with each other. In the context of the Act, social would relate to human society, the interaction of the individual and the group, or the welfare of human beings as members of society.

Taking all this together, social wellbeing would be considered to be a state of affairs to meet the basic needs of the people. It is a sense of involvement with other people and with our communities. It is not just about being happy or content, but also about being actively engaged with life and with other people. It is how people experience their connections with others. **It is in this context that that I have considered social wellbeing.**

The Act does define the term “social interests” and which includes (in particular) each of the following:

- (a) cultural interests;
- (b) recreational interests; and
- (c) sporting interests.

Therefore the term social interests is not limited to (a) to (c) above but the interest would have to be social and therefore anything that would classify as self-interest would be disregarded.

I have considered this matter based on the contents of the nomination form and the Appendices. I then have to determine the weight that I place on the other assertions and whether this is sufficient for me to be of the opinion that the premises should be listed. In doing so, I would have taken account of my own personal knowledge of the premises but I have none.

In considering assertions, if an assertion is founded on a demonstrable misunderstanding of the true factual position or otherwise indicates no more than an uninformed hunch then it carries no weight whatever and will be ignored. Further, the mere number of assertions irrespective of their content can never be a good reason for listing. What matters are whether the assertions show an actual use (and not ancillary) of the premises that furthered the social wellbeing or interests of the local community.

It does not matter whether the asset is operated as a commercial concern or non-profit making body. Neither the Act nor the Regulations specify that it has to be one or the other. All that has to be satisfied is the statutory criteria. In this case, however the Isle of Dogs and District Allotment Society is self-funding and non-for profit.

The term “non-ancillary” is not defined in either the Act or the Regulations. Further, there is no guidance as to how it is to be determined. Neither is the term defined in the Interpretation Act 1978. Accordingly, the term has its ordinary English meaning and as the ordinary English meaning of words comes from the context in which they are used then the words “non-ancillary” are to be considered in the context of the Act. Ancillary means that something is of secondary importance or is providing support. In the context of the Act it can be seen as “an incidental and minor feature of the use of asset”. From that, I take the view that non-ancillary relates a primary, additional or complementary use and a two (2) pronged test can be used to determine whether it is ancillary or non-ancillary:

- (1) is the particular use significant (which does not require it to be the predominant use); and if it is then
- (2) is it supportive of a non-community use of the asset?

Therefore, a significant community use that is not supportive of a non-community use will be a non-ancillary use.

Further, a non-ancillary community use does not have to be a primary use.

I take the view that allotments would generally further the social wellbeing or interests of a local community. The tending of an allotment is a way of growing healthy vegetables, fruit and herbs. A person can gain pleasure in growing his or her own food in harmony with the environment. There is a sense of accomplishment and it is a way to relax and get away from the stresses and strains of a busy lifestyle. There is also the benefit of exercise. These all further the social well-being and social interests.

Allotments are also places where friendships and community can thrive. Plot holders can make friends with people who have similar interests, and pass on knowledge and expertise to those who are starting afresh. Allotments can be spaces of natural discovery, as more and more families participate in the 'grow your own' trend. The benefits are therefore for the local community

All of the above applies to the lower and upper allotments within the Mudchute Park and Farm area.

- (4) 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)?

I am mindful that in the *Patel* case that Judge Warren confirmed that the test "is it realistic to think" should not be confused with the test which the Courts and Tribunals use as the civil standard of proof: i.e. on a balance of probabilities.

I can see no reason why the allotments would not continue to operate as they currently do. This is the current use that I am of the opinion furthers the social wellbeing or interests of the local community.

Taking account of the above, I am therefore of the opinion that it is realistic to think that the current non-ancillary use of the lower and upper allotments within the Mudchute Park and Farm area will continue.

#### **4. Decision**

In view of the above, I am of the opinion that the lower and upper allotments within the Mudchute Park and Farm area are of community value and the land is to be listed as an asset on the London Borough of Tower Hamlets' list of ACVs.



Signed..... *Kevin Miles* .....

Dated..... 10/04/2017 .....

Kevin Miles  
Chief Accountant