

## Notice under Section 91 of the Localism Act 2011

### Entry of Hatherley Rd Allotments, Hatherley Road, Warden Hill, Cheltenham into Cheltenham Borough Council's List of Assets of Community Value

#### 1. Background

On 30 March 2015, Cheltenham Borough Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list Hatherley Rd Allotments, Hatherley Road, Warden Hill, Cheltenham as an Asset of Community Value ("the Asset"). The nomination was made by Cheltenham Civic Society.

Under Section 87 of the Act the Council must maintain a list of assets of community value. Section 88 of the Act states:

- (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.*

Under Section 89 of the Act, the Council can only enter assets into the list of Assets of Community Value in response to nomination from the community.

#### 2. The Decision-Making Process

2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 is delegated to the Deputy Chief Executive.

2.2 The internal review process in relation to listing shall be undertaken by the Director of Resources, who was not involved in the initial decision.

2.3 The Deputy Chief Executive has now fully considered the nomination in light of the Act and the Assets of Community Value (England) Regulations 2012 ("the Regulations"). Following this consideration, the Deputy Chief Executive decided to include Hatherley Rd Allotments on its list of Assets of Community Value.

This decision has been taken because:

- (1)
  - a) The Asset lies within the administrative boundaries of Cheltenham Borough Council
  - b) Cheltenham Civic Society is entitled under 89(2)b(i) of the Act to make a community nomination in respect of the Asset

- c) The nomination from Cheltenham Civic Society includes the matters required under Regulation 6 of the Regulations
- (d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations
- (e) The letter of nomination from Cheltenham Civic Society sets out the reasons for nominating the Asset, explaining why the nominator believes the Asset meets the definition in the Act and

(2) in the opinion of the Council,

- (a) The current use of the Asset furthers the social well-being or cultural, recreational or sporting interests of the local community
- (b) The use of the land or building currently, or in the recent past, furthers the social well-being or cultural, recreational or sporting interests of the local community.
- (c) The use of the Asset will continue to further the social well-being or interests of the local community.
- (d) The use of the building or land is not deemed 'ancillary', i.e. of secondary purpose.

This means that the use of the land or building to further social well-being or interests of the community is a principal use.

The detailed assessment upon which this decision is based is set out in 4 below.

### **3. What Happens Next**

The Asset will now be placed on the list of Assets of Community Value which the Council is required to maintain under Section 87 of the Act.

In accordance with Section 91 of the Localism Act, the Council will send this notice to:

- The owner,
- The occupier of the land if not the owner,
- The successful community nominator of the asset.
- Any other person(s) specified by the Regulations

The Council will also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in).

The information will also be published on the Council's website. The Asset will remain on the Council's List of Assets of Community Value for a period of five years from the date of this notice unless removed with effect from some earlier time in accordance with the provisions of the regulations.

The Localism Act 2011 requires that the Council draw particular attention to the following:

- (a) the consequences for the land and its owner of the land's inclusion in the list; and
- (b) the right to ask for review.

#### The consequences for the land and its owner of the land Asset's inclusion in the list

A local land charge under the Local Land Charges Act 1975 will be registered against the Asset to record that it has been included in the Council's lists of Assets of Community Value.

Where the Asset is registered at the Land Registry, the Council is required under Schedule 4 of the Regulations to apply to the Land Registry for a restriction to be added to the registered title of the land that "no transfer or lease is to be registered without a certificate signed by a

conveyancer that the transfer or lease did not contravene Section 95(1) of the Localism Act 2011”.

Under Section 95 of the Act an owner must notify the Council if they wish to enter into a relevant disposal (as defined in Section 96 of the Act) of the Asset. Owners should contact:

Richard Gibson  
Strategy and Engagement Manager  
Cheltenham Borough Council  
Municipal Offices  
Promenade  
Cheltenham  
GL50 1PP

Some types of disposal of listed assets are exempt and these are set out in full in Annex A of the document Community Right to Bid: Non-statutory advice note for local authorities.

Annex A also identifies circumstances where, although there is no requirement in the legislation that the owner has to explain to the Council that the disposal is exempt, it would be helpful for them to do so.

Once the Owner notifies the Council of an intended relevant disposal there is a six week period in which a Community Interest Group can ask to be treated as a potential bidder for the Asset. During this interim moratorium period the owner can only sell the Asset to a Community Interest Group.

If a Community Interest Group does make a written request to be treated as a bidder of the Asset there will be a six month moratorium during which the owner can only dispose of the Asset to a Community Interest Group.

**The owner is advised to refer to Part 5 Chapter 3 of the Act and the Regulations in full and to seek legal advice if they wish to dispose of the asset. A disposal of listed land which contravenes the Regulations and Act will be ineffective.**

After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – 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 local authority of wishing to sell). The process and lengths of the moratorium periods are contained in section 95 of the Act.

#### The right to ask for review

Asset owners have the opportunity to request a review of the decision to include the Asset into the Council’s list of Assets of Community Value. Owners wishing to request a review of the decision should do so in writing to:

Director of Resources  
Cheltenham Borough Council  
Municipal Offices  
Promenade  
Cheltenham  
GL50 1PP

**The written request must be made within 8 weeks from the date on the covering letter to this notice and must set out the grounds for review and whether an oral hearing is requested.**

The review will normally take place within 8 weeks of the Council having received the written request for review. Private owners may claim compensation for loss and expense incurred through the asset being listed including 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. Regulation 14 of the Regulations contains more detail on this. Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations provide further detailed information.

If you have any queries about this letter please contact:

Richard Gibson  
Strategy and Engagement Manager  
Cheltenham Borough Council  
Municipal Offices  
Promenade  
Cheltenham  
GL50 1PP

**Assets of Community Value  
Assessment Process Summary**

<b>Name of nominating organisation</b>	Cheltenham Civic Society
<b>Name of nominated property:</b>	Hatherley Road Allotments
<b>Address of nominated property</b>	Hatherley Road, Warden Hill, Cheltenham

**Stage 1 assessment – eligibility criteria**

All of the criteria must be fulfilled for the nomination to be taken to stage 2 assessment.

<b>Criteria</b>	<b>Evidence Required</b>	<b>Assessment</b>
<p><b>A. Is the nominating organisation eligible?</b></p> <p>Nomination must be received by a qualifying community organisation, as set out in government regulations:</p> <ul style="list-style-type: none"> <li>• parish council, including neighbouring parish council</li> <li>• unincorporated groups</li> <li>• neighbourhood forums</li> <li>• community interest groups with a local connection (charity, community interest company, company limited by guarantee that is non profit distributing, industrial and provident society that is non profit distributing)</li> </ul>	<p>In the case of community interest groups, the constitution, memorandum and articles of association or governing document.</p> <p>In the case of an unincorporated group, evidence of the membership of at least 21 people who appear on electoral roll.</p>	<p>Cheltenham Civic Society is registered charity established for the public benefit in the area comprising Cheltenham and its environs:</p> <ul style="list-style-type: none"> <li>• To promote high standards of planning and architecture</li> <li>• To stimulate public interest in the geography, history, natural history, architecture, urban design, and planning of the area of benefit.</li> <li>• To secure the preservation, protection, development, improvement, and care of features of historic or public interest.</li> </ul> <p>Cheltenham Civic Society is therefore a qualifying community organisation.</p>
<p><b>B. Can the nominating organisation demonstrate a local connection to the asset?</b></p> <p>The organisation must demonstrate that its activities are concerned with the local authority area where the asset is located or with a neighbouring authority.</p>	<p>Any evidence demonstrating local connection for example: website, publications, reports, maps.</p>	<p>Yes the charitable objects of Cheltenham Civic Society relate specifically to Cheltenham.</p>

<p><b>C. Does the nomination include the information requested on the nomination form?</b></p> <p>This should include:</p> <ul style="list-style-type: none"> <li>• a description of the land and proposed boundaries</li> <li>• details of any information the nominating organisation has regarding ownership, occupancy, freeholders and leaseholders</li> </ul>	<p>Nomination form to be checked for this information.</p>	<p>Yes</p>
<p><b>D. If the asset is outside one of the categories of exempt assets, as set out in schedule 1 of the regulations?</b></p> <p>A residence and land associated with a residence, except where an otherwise eligible asset contains residential quarters.</p> <p>Licensed caravan sites.</p> <p>Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990.</p>	<p>Evidence will be checked against known information and planning history.</p>	<p>No</p>

## Stage 2 assessment – determining community value

All of the criteria must be fulfilled for the nomination to be successful.

Criteria	Evidence Required	Assessment
<p><b>E. 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?</b></p>	<p>Any evidence of usage history including number of individuals or groups, publicity, calendar of events, bookings schedule etc.</p>	<p>Yes, there is evidence that the use described in the nomination form is the main and non-ancillary use of the land or premises.</p>
<p><b>F. Does this use further the social wellbeing and social interests of the local community?</b> In particular:</p> <ul style="list-style-type: none"> <li>• What is the current level of use of the asset and who uses it?</li> <li>• Is it used by particular communities of interest or need?</li> <li>• What do communities gain from their use of the asset and what would be the impact if it were lost?</li> </ul>	<p>What evidence is there that the asset furthers social interests including (a) cultural interests; (b) recreational interests; (c) sporting interests.</p> <p>What evidence is there that the asset furthers social well-being in terms of promoting social interaction and engagement and generating a sense of involvement with other people and their communities.</p>	<p>The evidence supplied by the Civic Society is as follows:</p> <p>The prize winning allotments just off Hatherley Road have 29 plots and are in the middle of a residential area used by local people who run a very social and friendly site.</p> <p>There is a strong network of allotment holders who meet for regular social functions related to growing food and tending their plots. Many allotmenters are members of the Cheltenham and District Allotment Holder's Association and take part in produce shows organised by the Council. Several top prize winners are based at Hatherley. There is a waiting list for an allotment of approximately 3 to 4 years reflecting its popularity.</p> <p>Allotments are a facility which is almost unique as being a place which can be used by people of different ages, races, religions, gender and backgrounds who can get out of their homes, meet their neighbours and share a common experience.</p> <p>This community spirit contributes to the social wellbeing of the area as well as being a source of cheap and healthy fruit and vegetables for many extended families and friends.</p> <p>Allotments are however, not just a means of growing food. If the allotments were moved to a new site, the neighbourhood and local community would lose a valuable social, sustainable and recreational asset.</p>

		<p><b>The asset therefore meets the criteria to be listed as it furthers the social (recreational) interests of the local community and furthers the social wellbeing of the local community in terms of promoting social interaction and engagement and generating a sense of involvement with other people and their communities.</b></p>
<p><b>G. 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)?</b></p>	<p>Evidence that there has been no significant change to the asset, which might impact on its fitness for purpose for proposed use or any business plans available for the asset.</p> <p>Condition of the asset and likelihood of funds being raised to remedy any defects to ensure it is fit for purpose.</p> <p>Evidence of a suitable organisation in a position to take this on.</p> <p>Market intelligence to support the case for sustainable community use of the asset.</p>	<p>Yes the asset will realistically continue to be used for this, or another qualifying community purpose.</p>

**Recommendation**

That this nomination meets the criteria to be an asset of community value and will be placed on Cheltenham Borough Council's list of successful nominations.