

NOTICE UNDER SECTION 91 OF THE LOCALISM ACT 2011 – 26 APRIL 2021

ENTRY OF BROAD OAK WAY/CAERNARVON CLOSE GREEN SPACES AND PATHWAYS INTO CHELTENHAM BOROUGH COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE

1. Background

In March 2022, Cheltenham Borough Council received a nomination form to list the green spaces and pathways in and around Broad Oak Way and Caernarvon Close as an asset of community value. The nomination was submitted by Up Hatherley Parish Council.

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 Executive Director People and Change.

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

2.3 The Executive Director People and Change 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 the green spaces and pathways in and around Broad Oak Way and Caernarvon Close in 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) Up Hatherley Parish Council is entitled under 89(2)b(i) of the Act to make a community nomination in respect of the Asset
- c) The nomination from Up Hatherley Parish Council 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 Up Hatherley Parish Council 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.

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
Head of Communities, wellbeing & partnerships
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:

Executive Director of Finance and Assets
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
Head of Communities, wellbeing & partnerships
Cheltenham Borough Council
Municipal Offices
Promenade
Cheltenham
GL50 1PP

The land refers to the green spaces and pathways in and around Broad Oak Way and Caernarvon Close marked red on the plan

