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Report of: *Jayne Ludlam*

Report to: *Cabinet Member for Neighbourhoods and
Community Safety*

Date of Decision: *5 November 2018*

Subject: *Asset of Community Value Nomination – Birley
Spa*

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? Neighbourhoods and Community Safety		
Which Scrutiny and Policy Development Committee does this relate to? Safer and Stronger Communities Scrutiny and Policy Development Committee		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given?		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		

Purpose of Report:

This report is to provide the Cabinet Member with sufficient information to enable him to make a decision as to whether Birley Spa should be listed as an Asset of Community Value pursuant to Part 5, Chapter 3 of the Localism Act 2011.

Recommendations:

To accept the registration of Birley Spa as an Asset of Community Value.

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: <i>Tim Hardie</i>
	Legal: <i>Victoria Clayton</i>
	Equalities: <i>Michelle Hawley</i>
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>
2	EMT member who approved submission: Jayne Ludlam
3	Cabinet Member consulted: <i>Cabinet Member for Neighbourhoods and Community Safety</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.
	Lead Officer Name: <i>Dawn Shaw</i>
	Job Title: <i>Head of Libraries and Community Safety</i>
	Date: <i>31 October 2018</i>

1. PROPOSAL

- 1.1 To accept the nomination of Birley Spa as an Asset of Community Value

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The Localism Act 2011 gave Local Authorities a statutory duty to receive and determine nominations for land and buildings in the local authority area to be classified as an Asset of Community Value.

An application has been received and assessed against the statutory criteria.

In order for an asset to be listed certain statutory criteria must be fulfilled.

The initial part of the assessment assesses whether the group nominating the asset and the asset itself meet the statutory criteria of eligibility. Once this has been established there needs to be consideration of the community value of the land or buildings.

The essence of the legislation is that land is of community value if in the opinion of the local authority an actual current use or recent past use, that is not an ancillary use, furthers the social well-being or social interests of the local community and 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 well-being or social interests of the local community.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 The ACV Panel considered the nomination and the representations from interested parties.

The legislation and the guidance issued by the Government do not provide a clear definition of what an asset of community value should be. The view taken by the City Council is that a property which is currently closed (as in this case) should have been a hub or focal point for a significant proportion of an identifiable community, in order to justify registration as an asset of community value. That usage should also have been more than ancillary to the principle use of the property.

Birley Spa has recently been put up for sale at auction by the owner, Sheffield City Council. Following receipt of this nomination the Council withdrew the property from the auction.

The information provided by nominator and the owner suggests that the property has been closed to the public since at least 2010. Therefore the nomination was considered to be based on recent past use. Accordingly the panel considered the requirements in Section 88(2) of the Localism Act 2011.

Broadly, the two elements of the test are:

- There is a time in the recent past when an actual use of the building furthered the social wellbeing or interests of the local community.
- It is realistic to think that there is a time in the next five years when there could be use of the building that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

It is clear that there is a local community for the purpose of this nomination.

Both elements of the test require there to be a local community. Sometimes it can be difficult to ascertain whether there is a local community, such as nominations for public houses in city centre locations. In this instance, the information provided by the nominator detailing the previous community use of the property meant that the panel were able to determine that there was a local community for the purpose of this nomination.

The nomination has been made by the Friends of Birley Spa, a unincorporated body whose members include at least 21 individuals registered on the electoral role of the local authority or a neighbouring local authority, and which does not distribute any surplus it makes to its members which is eligible to nominate under Section 89(2)(b)(iii) of the Localism Act 2011 and Regulation 5(1)(c) of the Assets of Community Value (England) Regulations 2012.

The owner of the property provided representations on the nomination but concerned its comments primarily to whether it was recent past use given the passage of time and whether it is realistic to think that a community use can come forward in the future. The nominator was given an opportunity to comment on the owner's objection and where relevant those representations are referred to below.

Recent Past

Birley Spa was last open in approximately 2010, some 8 years ago. The owner stated that this was not sufficient to be considered recent past use. The panel considered previous tribunal cases¹ which considered the recent past requirement, noting that the wording was deliberately

¹ CR/2014/0007 & CR/2015/0019

open to interpretation compared to the five year requirement of the second limb of the test. The previous tribunal cases noted that it was reasonable to consider the history of the building in order to determine what could constitute recent past use. In this case the Spa's history went back as far as the 1840s but it is clear that it has not been continuously open since that time.

The panel went on to consider that many authorities appear to use '5 years' as a threshold for recent use but noted at least one authority² used 5 years but also listed exceptions such as if the land has been disused for more than five years but when it was last in use its principle use furthered the social wellbeing or social interests of the community. The panel felt it was unnecessary to confine the authority to a 'policy'. They noted that all of the various uses of Birley Spa during its long history (including the most recent use) were of a community nature. This weighed in favour of the first limb of the Section 88(2) test being met. The panel were keen to note that the test is 'in the opinion of the authority' and that each case needed to be on its own merits. 8 years would not necessarily be considered as 'recent past' in each case.

The nomination has provided details to demonstrate that Birley Spa acted as a focal point or hub for the community.

The nominator provided details of the previous uses of the Spa, including various community events. The panel were comfortable to conclude that the previous uses furthered the social well-being and interests of the local community.

After much discussion on the various points, the panel thought that given the long history of the building and that its use had always been of a community nature it was reasonable to conclude that '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.' Therefore the first part of the test was met.

Realistic to think test

The panel went on to consider the second limb of the Section 88(2) test - whether 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.

The panel discussed that the building was in disrepair and that made it less likely that a community use could come forward due to the prohibitive nature of the repair costs. The panel considered where or whether the community's needs were currently being met given the last 8 years of closure and noted the owner's plan showing the nearby

² Runnymede – See Procedure Guide <https://www.runnymede.gov.uk/article/14207/Assets-of-community-value>

locations of other community centres. The panel were concerned that all indications appeared to be that a community use of the site was unviable and previous attempts to refurbish and increase usage of the site had failed (as detailed by the owner in their comments). The panel noted that the withdrawn sale at auction included information regarding a potential future use as a dwelling.

The panel discussed that viability was a concern, but whilst a community use was not necessarily the most likely outcome for the property given the extent of disrepair, it was still a realistic potential outcome for the property citing the evidence of community interest provided by the nominator. The panel noted that even if the owner proceeded to sell the property at auction, it could be bought by someone wanting to use the premises for a commercial purpose that included community uses.

The panel considered that if a community use could come forward prior to any future auction sale (if the owner proceeded with that course of action) it was more likely to be supported by the local authority owner than if it were owned by a private entity. A future community use which furthers the social wellbeing or social interests of the local community appeared to be a realistic prospect for the future of this building.

In conclusion, it appears that this property's recent past use furthered the social wellbeing and interests of the local community and 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 that would further (whether or not in the same way as before) the social well-being or social interesting of the local community therefore satisfying the statutory tests set out in section 88(2) of the Localism Act 2011 such that the property should be listed as an Asset of Community Value.

The nomination primarily concerned itself with the land that had been put up for sale by the Council. The panel noted that the nomination included some elements of current use of the surrounding areas such as for dog walking but there was neither any indication that the nomination was for areas extending beyond the immediate site of the bath house or sufficient information about that use such that it could reasonably be considered to be of a 'focal point' nature that the Council would normally look for in order to recommend a site for listing as an Asset of Community Value.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

4.1.1 There are no equality of opportunity implications of this decision.

4.2 Financial and Commercial Implications

4.2.1 In its capacity of the administrator of the Asset of Community Value process there is no financial implication of the decision. As the owner of Birley Spa there may be a financial implication for the Council of this

decision, but this is not relevant when considering whether to accept the recommendation.

4.3 Legal Implications

- 4.3.1 The Council needs to comply with the provisions of the Localism Act 2011 and Assets of Community Value (England) Regulations 2012 when processing a nomination for an Asset of Community Value. Once it has been determined that the nomination has been properly made in accordance with the legislation the authority needs to consider whether the tests in Section 88 of the Localism Act 2011 are met.

4.4 Other Implications

- 4.4.1 As owner of the nominated property there are other implications to this decision but they are outside the scope of this report and are not relevant to this decision.

5. **ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 To refuse the registration of Birley Spa as an Asset of Community Value

6. **REASONS FOR RECOMMENDATIONS**

- 6.1 It appears that this property's recent past use furthered the social wellbeing and interests of the local community and 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 that would further (whether or not in the same way as before) the social well-being or social interesting of the local community therefore satisfying the statutory tests set out in section 88(2) of the Localism Act 2011 such that the property should be listed as an Asset of Community Value.