

**Report of** Chief Officer Economy & Regeneration

**Date:** 24th October 2017

**Subject:** Review of Decision to add Thorp Arch & Boston Spa Cricket Club, Leeds, LS23 7AR to the List of Assets of Community Value

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Wetherby		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number:		

### Summary of main issues

1. Thorp Arch and Boston Spa Cricket Club was added to the List of Assets of Community Value on 31<sup>st</sup> July 2017.
2. As is their right, the owner has asked that the decision be reviewed internally. The review has taken place without an oral hearing.
3. The original decision has been reviewed and further information provided by both the owner and the nominator considered. The owner's position is that membership of Thorp Arch and Boston Spa Cricket Club is made up of a significant proportion of people from outside the local community, although no evidence has been provided to support that view.
4. In my view the home addresses of the club's members is not a critical issue. I am of the opinion that by its presence in the village as a place for sporting activity and socialising, the club serves to provide for and be part of the local community. The club still uses the property and nothing has been provided to suggest anything other than it being realistic to think the use can continue.
5. I am of the opinion that Thorp Arch and Boston Spa Cricket Club has a non-ancillary use that furthers the social interests of the local community and that it is realistic to think that such a use can continue.
6. **Decision**

The Chief Officer Economy & Regeneration has reviewed the decision to add Thorp Arch and Boston Spa Cricket Club, Leeds, LS23 7AR to the List of Assets of Community Value and concluded that the property should remain listed as an Asset of Community Value.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to review the decision to add Thorp Arch and Boston Spa Cricket Club to the List of Assets of Community Value and decide whether or not the property should remain on the List of Assets of Community Value or whether it should instead be added to the List of Land Nominated by Unsuccessful Community Nominations in accordance with Part 5 Chapter 3 of the Localism Act 2011.

## **2 Background information**

- 2.1 Part 5 Chapter 3 of the Localism Act 2011 details the legislation for Assets of Community Value and sets out the Community Right to Bid. The right came into force on 21<sup>st</sup> September 2012 and its purpose is to give communities a right to identify a property or land that is believed to further their social interests or social wellbeing and gives them a fair chance to make a bid to purchase the property or land on the open market if the owner decides to sell. From the date the landowner informs the Council of their intention to sell; eligible community groups have a period of six weeks to confirm whether or not they wish to submit to bid to purchase the property or land. If they do inform the Council that they want to bid, the landowner is prevented from disposing of the property for a period of six months (from the date they originally informed the Council of their intention to sell) unless it is to a community organisation. The landowner is free to dispose of the property at the end of the six month period to whomsoever they see fit.
- 2.2 Section (90) states if a local authority receives a community nomination, the authority must consider the nomination. The authority must accept the nomination if the land nominated is in the authority's area, is of community value and if the nomination is made by an eligible group. In line with Regulation 10 and Schedule 2 of The Assets of Community Value (England) Regulations ("the regulations") the owner has a right to request an internal review of the decision to add their property to the List of Assets of Community Value.
- 2.3 The subject property is Thorp Arch and Boston Spa Cricket Club, Leeds, LS23 7AR and was added to the List of Assets of Community Value ("the list") on 31<sup>st</sup> July 2017. The property is located within the Wetherby ward (please see the red line boundary plan at Appendix 1). Ward Members and Area Support (Citizens and Communities) have been made aware that the property has been added to the list and that the decision is being reviewed. No comments have been received in response.
- 2.4 The landowner is the Trustees of the Hatfield Estate and their representatives have requested the review on their behalf. The owner did submit an objection to the nomination and that objection was considered as part of the decision to add the property to the list.

- 2.5 For property or land to be added to the List of Assets of Community Value, the nominator must be able to demonstrate and satisfy all the listing criteria as laid down in the legislation. The legislation states that buildings or land with a current use is considered to be of community value if, in the opinion of the authority, there is:
- a) an actual current use of the building or other land that is not an ancillary use which furthers the social wellbeing or social interests of the local community.’
  - 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.’
- 2.6 For buildings or other land that do not have a current use, the legislation states that land is of community value, if in the opinion of the 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.
- 2.7 It is important to note that if either of the criteria stated at 2.5 or 2.6 is met, then the Council must add the nominated asset to the List of Assets of Community Value.

### **3 Main issues**

- 3.1 This report is a review of the original decision and considers the information submitted by the nominator and owner during the initial assessment, the report upon which the original decision was made (“the original report” attached at Appendix 2) and further information supplied by the owner and nominator as part of the review (attached at Appendices 3 and 4 respectively). The owner did not request an oral hearing as it is their right to do in line with Schedule 2 para 7(1) of the regulations. I am happy to proceed with the review without a hearing.
- 3.2 I am satisfied that the nominator was eligible to nominate the property and that the process followed in assessing the original nomination was correct. The review request was submitted within 56 days of listing as the regulations require.
- 3.3 The rationale for listing the property is summarised in the original report’s conclusions as follows:
- “...officers conclude that it is our view that by its nature the Club serves the local community. The playing of cricket matches and practicing of cricket is the only non-ancillary use of the site. The club is based in Boston Spa and is named after the two villages of Boston Spa and neighbouring Thorp Arch. Membership of the cricket club is surely made up of members of the local community. Therefore people from the local community, playing and practicing cricket on the land is a*

*non- ancillary use that furthers the social interests of the local community. The property has a current use that furthers the social interest of the local community and it is realistic to think that such a use can continue. Therefore the criteria as set out in section 88(1) of the Localism Act 2011 is considered to have been met and the nominated land should be added to the List of Assets of Community Value.”*

- 3.4 The aim of the parish council’s nomination was to preserve the use of Thorp Arch and Boston Spa Cricket Club.
- 3.5 For a property to be added to The list of Assets of Community Value, the nominator must demonstrate that a current non-ancillary use furthers the social interests and social wellbeing of the local community and that it is realistic to think that it can continue to do so whether or not in the same way. The same test will be applied as part of this review.

**Does a current non-ancillary use further the social interests or social wellbeing of the local community?**

- 3.6 The owner’s review request is attached in full at Appendix 3. In summary the owner’s position is that the original report relied on an assumption about the makeup of membership of the cricket club and that a significant proportion of membership is from beyond the local community. The review request then appears to state that the local community is Thorp Arch and Boston Spa. The review request does not challenge any of the other points made in favour of adding the property to the list. Nevertheless, I will review all of the criteria required for listing.
- 3.7 As stated above the nominator is eligible to nominate the property. I have reviewed the information provided with the nomination and am satisfied it meets the requirements set out in Regulation 6. The nomination met the requirements so the council was therefore obliged to assess the nomination.
- 3.8 The report produced for the original decision refers to Section 88(6)(c) of the Localism Act 2011 and that “sporting interests” are included in the definition of “social interests” and therefore that the playing of cricket itself is an eligible use. I agree with that position. I note the owner has not challenged this point in their review request.
- 3.9 The report also considered whether or not playing cricket is an ancillary use. There are other uses of the land, but even the owner’s objection made clear that playing and practicing cricket is a non-ancillary use. The report goes as far as to state playing and practicing cricket is the only non-ancillary use and I am in agreement. Again, I note the owner has not challenged this point in their review request.
- 3.10 The bone of contention is whether or not it is the local community whose social interests are furthered. In their objection to the nomination and as quoted in the original report, the owner put forward the position that only members of the cricket club use the facilities and that the club is not open to the local community as a whole. The review request goes on to make a case that a significant proportion of

the members of the cricket club come from outside the local community which they appear to be defining as Thorp Arch and Boston Spa.

- 3.11 I have started by considering this latter point. The Localism Act does not define the area of “the local community”. I consider it likely that there is no such definition because different types of asset may benefit significantly different geographical locations. For example, a number of professional football grounds have been listed as Assets of Community Value. Such assets may benefit the whole of a city and possibly beyond. On the other hand, a local village shop probably serves to benefit a very small geographical area. The original report points out that the cricket club is based in Thorp Arch and named after the two villages. Whilst I am reluctant to set a specific geographical boundary to the local community, I do think in these circumstances it is proper to consider the two villages and at the very least the immediate surrounding area, taking account of the presence of the other clubs I refer to in 3.13, as “the local community” for the purposes of assessing this nomination.
- 3.12 The owner concedes in their review request that they have been unable to obtain a breakdown of members’ locations. The parish council has not been able to provide this information either, but does mention in their submission that at a neighbourhood plan presentation in 2013 the club stated that 75% of its members live in Thorp Arch and Boston Spa. However, no further evidence is provided to support this claim. I have obtained information from the Wetherby Cricket League website which shows that just in that league, there are 14 other teams within a ten mile drive of Thorp Arch and Boston Spa. I acknowledge that the subject club plays in a different league at a higher level, but even then, Wetherby Cricket Club is in the same league and that club is only 3.4 miles away. Nothing has been provided to show why Thorp Arch and Boston Spa is so unique as to attract usage from far and wide. On a balance of probabilities, I conclude it is likely that the majority of the members live in or very near to the two villages of Thorp Arch and Boston Spa.
- 3.13 In my view the evidence of club membership is not determinative of this assessment. Some members of the club may not play cricket at all, and may use the club to meet friends and socialise. Some non-members who live in one of the two villages or the immediate surrounding area may have their social interests furthered by the presence of a cricket club in the village, for example by having somewhere for their children to play cricket, or by being able to watch cricket matches. I note from the original report that the club’s website invites new players and offers free taster sessions. I have checked and this information is still prominent on the site’s home page. I am of the opinion that by its presence in the village as a place for sporting activity and socialising, the club serves to provide for and be part of the local community. Thorpe Arch and Boston Spa cricket club furthers the social interests and social wellbeing of the local community.
- 3.14 With that in mind, I must give consideration as to whether or not it is realistic to think that there can continue to be non-ancillary use which will further (whether or not in the same way) the social wellbeing or social interests of the local community. The original report succinctly makes the point that the club is currently open and running and that nothing has been provided to suggest that there are

plans to change use or close. I am satisfied with this position. I note that this is another point which the owner has not challenged in their review request

- 3.15 Given the above, I am satisfied that the criteria for listing as set out in paragraph 88(1) of the Localism Act 2011 is considered to have been met and the nominated land should remain on the List of Assets of Community Value.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Council's role is to review the decision to add the property to the List of Assets of Community Value as set out in the Localism Act 2011, therefore no consultation and engagement is necessary.
- 4.1.2 The Executive Member for Communities has been informed of the review.
- 4.1.3 Wetherby ward members and colleagues in area leadership have been informed of the review request. No comments have been received in response.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 5.2.1 Equality, diversity, cohesion and integration considerations do not form part of the eligibility criteria upon which nominations are assessed. However, consideration has been given to ensure that all people have an equal opportunity to nominate assets of community value.

### **4.3 Council policies and City Priorities**

- 4.3.1 The Council has an obligation under the Localism Act 2011 to review decisions to add properties to the List of Assets of Community Value.

### **4.4 Resources and value for money**

- 4.4.1 The Localism Act contains a right private landowners to take the Local Authority to a first tier tribunal if they are dissatisfied with a decision on a nomination and are still dissatisfied after a formal internal review. If a first tier tribunal finds in the landowner's favour, the Local Authority is liable for all costs of the tribunal.
- 4.4.2 The Act also gives the landowner a right to compensation if they incur costs or loss of value directly from complying with the Assets of Community Value legislation. This compensation is payable by the Local Authority.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The City Solicitor confirms that the conclusions and recommendations in this report represent a reasonable and proper application of the statutory criteria for determining whether the nominated property is an asset of community value.
- 4.5.2 The Chief Officer Economy & Regeneration has authority to take the decisions requested in this report under Executive functions 2(o) (specific to the Director of City Development) of the Director of City Development's sub delegation scheme.

4.5.3 The proposal constitutes a significant operational decision and is therefore not subject to call in.

#### **4.6 Risk Management**

4.6.1 The report has potential risk implications as the landowner is able to request that the decision is considered at the first tier tribunal.

#### **5 Conclusions**

5.1 In order to remain on the List of Assets of Community Value, all listing criteria, as laid down in Part 5 Chapter 3 of the Localism Act 2011, must be satisfactorily met.

5.2 The landowner objected to the nomination and after the property was added to the list requested that the decision be reviewed. I have reviewed the original decision and, for the reasons set out above I conclude that the property should remain on the List of Assets of Community Value.

#### **6 Decision**

6.1 The Chief Officer Economy & Regeneration has reviewed the decision to add Thorp Arch and Boston Spa Cricket Club, Leeds, LS23 7AR to the List of Assets of Community Value and concluded that the property should remain listed as an Asset of Community Value.

#### **7 Background documents<sup>1</sup>**

7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.