

Review of Community Nomination as an Asset of Community Value for Paxton Hall, 186 Kirkstall Lane, Leeds, LS5 2AB

Date: 4 December 2023

Report of: Asset Management Officer

Report to: Chief Officer of Asset Management and Regeneration

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief Summary

- In accordance with the Localism Act 2011 (the **Act**) and the Assets of Community Value (England) Regulations 2012 (the **Regulations**) the Council received a nomination from the International Taoist Society for Paxton Hall, 186 Kirkstall Lane, Leeds, LS5 2AB to be included on the Council's list of assets of community value (the **List**).
- The nomination was received on 19 June 2023 and the Head of Asset Management subsequently approved the nomination and the property's inclusion on the List on 31 July 2023.
- The landowner, Paxton Horticultural Society, opposed the decision and, in accordance with Section 92 of the Act, have exercised their right to request that the Council review its decision to include the land / building in the List.
- This report reviews the decision by re-evaluating the land / building against the criteria for listing detailed within the Act and the Regulations. The report goes on to set out the findings of the review into the decision, which is that listing should be upheld.

Recommendations

- a) The Chief Officer of Asset Management and Regeneration is recommended to uphold the decision made on 31 July 2023 to include the Paxton Hall in the List of Assets of Community Value on the basis that the criteria in Section 88(1)(a) and (1)(b) of the Act have been met, and therefore the site is "land of community value".

What is this report about?

1. The purpose of this report is to review a decision by the Head of Asset Management on 31 July 2023 to include Paxton Hall, 186 Kirkstall Lane, Leeds, LS5 2AB in the List of Assets of Community Value (**ACVs**).

2. Part 5 Chapter 3 of the Act and the Regulations (as previously referenced above) contain the legislative requirements relating to (1) the possibility of land / building being nominated as and thereafter incorporated on a local authority's list as an ACV and (2) the subsequent "Community Right to Bid" process. The purpose of this is to give communities a right to identify a building or land that is believed to further the local community's social wellbeing or social interests and gives them a fair chance to make a bid to purchase the building or land on the open market if the owner decides to sell. From the date the landowner informs the Council of their intention to undertake a "relevant disposal", any "community interest groups" (as defined in the Regulations) have a period of six weeks to request in writing for the group to be treated as a potential bidder in relation to the land. Upon the receipt of such a request, the owner 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 undertake a "relevant disposal") unless it is to a community interest group. At the end of the six-month period the landowner is then free to dispose of the building / land at their own discretion.
3. Whether or not a "relevant disposal" is in prospect, the ability of any "community interest group" to fund an acquisition, potential funding opportunities for future acquisitions of a building / land etc. are not part of the considerations to be taken into account when deciding whether a building / land is to be added to the List. As such, they are not considered further as part of this Report. Correspondingly, in undertaking this review, consideration has been given to the situation as existed with regards to Paxton Hall at the time of the listing and the evidence that was before the decision-maker at that time.
4. Section 90 of the Act details the procedure that a local authority must follow if it receives a "community nomination". The authority must consider the nomination and accept it if the land nominated is in the authority's area (s90(3)(a) and is of community value (s90(3)(b).
5. Firstly, in consideration of the requirement under s90(3)(a) of the Act, Paxton Hall is located within the Leeds boundary. The satisfaction of this requirement for a successful nomination is not in dispute and accepted by all parties.
6. The freehold interest is owned by Paxton Horticultural Society. They are a registered charity (No.1075700) and have confirmed their ownership. Paxton Horticultural Society have confirmed that they hire the hall out to various community groups who charge a small fee for people to attend their meetings.
7. On 31 July 2023 the Head of Asset Management approved a decision to include Paxton Hall on the List following receipt of a nomination from the International Taoist Society, received on 19th June 2023. Paxton Horticultural Society previously set out grounds objecting to the nomination and have subsequently exercised their right to request that the Council review its listing decision in accordance with s92 of the Act. The submissions made by the freehold owner in their letter requesting the listing review (dated 9 October 2023) have been duly noted and considered as part of this listing review.
8. The requirements for undertaking a listing review are detailed in Regulation 10 and Schedule 2 of the Regulations. As required by the Regulations, the review must be conducted by a senior officer of the Council and an officer who did not take part in making the original listing decision. Accordingly, this review has been undertaken by Neil Young, Asset Management Officer, and it is confirmed that this officer was not involved in the original decision that is the subject of this review.

9. Given that it is accepted the building / land is in the authority's area, in accordance with s90(3)(a) of the Act, the review of this decision considers the evaluation previously undertaken by the Council in accordance with Part 5 Chapter 3 of the Act – that is, the eligibility of the building / land as being “of community value” such that it should be included in the List (s90(3)(b)).
10. For ease of reference the relevant section of the Act that defines what is to be regarded as “land of community value” is Section 88:

88 Land of community value

(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.

11. The nomination of Paxton Hall as an ACV cited that the building has consistently been used as a community venue for over 40 years. Originally, usage was exclusively by horticulture groups however it is argued this has expanded in recent years to include charities and community groups with broader interests including nature, health, recreation and sport.
12. In their letter dated 5 July 2023 Paxton Horticultural Society challenged the nomination to include Paxton Hall on the List on the following grounds:
 - I. the property has been hired by membership-only groups who charge a small member fee for attending meetings and has at no stage been used by members of the public.
 - II. that the property has become underutilised in recent years due to groups finding alternative accommodation
 - III. that there is good availability of other community-use spaces in the local area and;

- IV. that the loss of Paxton Hall as a hireable venue would not cause “hardship” to the local community as a result of its current level of use and the availability of other accessible venues.

13. Officers did not accept these points as a basis to refuse the nomination and proceeded with the listing. This report is reconsidering that decision to list as an ACV on the basis of the request received from Paxton Horticultural Society, specifically whether the building / land satisfies the definition of “land of community value” (section 88 of the Act) and so is eligible for listing on the basis on its value to the community. Given that the site in question remains in use, the question of eligibility in this instance focusses on s88(1)(a) and (b) of the Act. The key questions to determine here are:

- I. Are there actual, current non-ancillary uses of the site that further the social wellbeing or social interests of the local community? AND
- II. Is it realistic to think that this type of non-ancillary use of the site can continue which will further the social wellbeing or social interests (whether or not in the same way) of the local community?

14. When considering these questions, it has been firmly established that the normal civil standard of proof (i.e. the balance of probabilities / more likely than not) does not apply in this context. It is whether in the opinion of the Council as the local authority responsible for listing, “*it is realistic to think*” that the qualifying use of the site can continue – this is not the same as being convinced that the use *will* continue, just that it is “*realistic to think*” that it can. Indeed, in considering cases regarding ACV listings, the First-Tier Tribunal has accepted that the test “*is not a demanding one. Parliament has chosen to set the bar low*” (King v Chiltern District Council [2016] UKFTT CR/2015/0025 (GRC)) and so the threshold for officers to be satisfied of this is low.

15. The phrase “social wellbeing” is not defined in the Act. However, it is accepted that the phrase is to be given its ordinary meaning and much depends on the circumstances of the individual case (Pullan v Leeds City Council [2016] UKFTT CR/2015/0011 (GRC)). The phrase “social interests” is defined in s88(6) of the Act as “***includes (in particular) each of the following –***

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

16. To assess these key questions, the review has taken into consideration information provided by the Paxton Horticultural Society and the International Taoist Society and content from the Paxton Horticultural Society website.

17. The Paxton Horticultural Society website lists group activities that take place at Paxton Hall. This includes use by the Hardy Plant Society - West Yorkshire Group, the West Yorkshire Fuchsia & Pot Plant Society, the National Vegetable Society, White Rose Military Modellers, Polio Society and West Riding Anglers. A Slimming World group was also a regular hirer of the hall however their bookings ceased earlier this year. Three out of the six listed groups are horticultural in nature, with three out of the six catering for other, broader interests. The website describes Paxton Hall as being utilised by “groups with a diversity of interests”.

18. Paxton Horticultural Society have argued that the hall is only hired by membership-only groups and imply that hall users are not “members of the public”. The relevant section of legislation does not make any reference to this, nor excludes use by groups that are membership-only, and it is for local authorities to interpret. Membership-only groups are still catering for members of the public, with the two types of provision not being mutually exclusive. Further to this, it is considered typical of community venues for individual users to be associated with particular groups or activities, whether through a paid membership or not, and that paid members of the groups who use Paxton Hall are still members of the public. The fact that Paxton Hall is used by multiple user groups catering for a broad range of interests and activities suggests that it does further the social wellbeing or social interests of the local community.
19. The current owner has highlighted that there are a number of other, alternative venues available in the area and in close proximity to Paxton Hall. However, the availability of other community-accessible venues in the nearby vicinity is not a factor required to be considered under section 88 of the Act. The presence of other community-use facilities nearby does not preclude Paxton Hall from still being “land of community value” and therefore being an ACV – it does not have to be exclusive in its service of this function for the local community and so this point cannot be considered. In the case of Paxton Hall, the Paxton Horticultural Society website lists six user groups that use venue. It is understood from the owner that there are at least eight meetings taking place in the Hall each month. While suggestions have been made that not all the groups continue to use the facility, or may not use in the future, this information has not been substantiated or evidenced to the satisfaction of the Council. Given the current usage it therefore remains realistic to think that non-ancillary use of the facility exists and can reasonably continue. As previously noted, it does not have to be established that this *will* be the case on the balance of probabilities and the low threshold is satisfied here.
20. The legislation requires a local authority to determine whether an asset or piece of land has community use, not to judge whether the loss of a venue used by the community could be offset due to the availability of other community venues. Therefore the suggestion from Paxton Horticultural Society that selling Paxton Hall would not cause “hardship” to the local community is not relevant to this review. Whilst it may be possible for user groups who currently use Paxton Hall to relocate to other venues with little impact on their activities and members, this does not detract from Paxton Hall being a venue that has a “community value” in serving the social wellbeing and social interests of the local community. Members of the local community are able to meet here to share mutual interests and undertake social connections, which further their wellbeing. venue.
21. It is acknowledged that Paxton Hall is not in constant use throughout a month, but there does remain a regular use as a meeting space for groups. As such this use is not ancillary to any other use, but is the building’s “actual current use” as required by the Act. To suggest that the Hall is vacant and unused, such that a vacant building is the main use and anything else (i.e. the meetings held) are ancillary to that, cannot be sustained. Vacancy, non-use or abandonment of land / building are not a use classification. Correspondingly, any statement by the owner of his intention not to allow qualifying use(s) to continue in the future are not to be regarded as determinative. This is a judgment for the local authority to make and not something upon which a landowner has a power of veto (*Banner Homes Ltd v St Albans City and District Council* [2016] UKUT 0232 (AAC)).

22. Further, considerations of whether a building / land can commercially or viably operate when considered from the perspective of 'hard-headed' financial analysis are not to be focused on as part of this review, nor the initial decision to list as an ACV. The First-Tier Tribunal has made it clear in cases considering ACVs that what it is "*realistic*" to think may happen in the future – particularly if altruism and community effort come into play – can often be underestimated. The legislation does not require any detailed business cases to be presented or deemed acceptable for a listing to be successful (Worthy Developments Ltd v Forest of Dean District Council [2014] UKFTT CR/2014/0005 (GRC)).

23. It is clear from the information that is publicly available that Paxton Hall is an important venue for local community use, with current and recent use by a range of community-orientated groups for activities and hobbies. It is the conclusion of this review that the use of Paxton Hall constitutes non-ancillary use which furthers the social wellbeing and social interests of the local community, and that it is realistic that the use of the venue for this kind of activity can continue.

24. The review into the decision contained within this report concludes that the interpretation of the legislation by officers when accepting the nomination of Paxton Hall and authorising its inclusion on the List of Assets of Community Value was in accordance with Section 88 of the Act and that the Council must therefore uphold the decision to include the site in the List of Assets of Community Value.

What impact will this proposal have?

25. The decision to uphold the inclusion of Paxton Hall on the List of Assets of Community Value will result in the Hall remaining on the List held by the Council in accordance with Section 87 of the Act.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing Inclusive Growth Zero Carbon

26. Having venues in communities where people can access and come together to meet, socialise and engage in events and activities is important for the physical and mental wellbeing of the people who live in those communities. In addition, such venues allow those from across different sectors and backgrounds within these communities to come together and develop in an inclusive and cohesive way.

What consultation and engagement has taken place?

Wards affected: Kirkstall

Have ward members been consulted? Yes No

27. The Executive Member for Resources was informed of the nomination.

Kirkstall ward members were informed of the nomination. Councillor Fiona Venner previously confirmed her support to the nomination. No other comments were received. Ward members were subsequently informed about the decision to accept the nomination

and to include Paxton Hall on the List. Ward members have further been informed of the land owner exercising their right to request a review into the nomination. Cllr Andy Rontree commented that it was his view that the building should remain available for community use.

What are the resource implications?

28. Regulation 11 of the Regulations contains a right to appeal for an owner of listed land (either the owner who requested the review or a subsequent owner) if they remain dissatisfied following a listing review by the Council. If the First-Tier Tribunal found in the landowner's favour on appeal, there could also be an award of costs against the Council in accordance with Regulation 14 of the Regulations.

The Regulations also give the owner a right to compensation if they incur costs or loss of value directly from complying with the legislation in terms of making a "relevant disposal" once a building / land are listed. Any compensation would be payable by the Council.

What are the key risks and how are they being managed?

29. The decision to uphold this listing could result in the landowner (either the owner who requested the review or a subsequent owner) exercising their right to appeal and the Council being called to a First-Tier Tribunal. The Council would be liable for an award of costs and potential compensation to the landowner if an appeal found in the landowner's favour. However, upon making the recommendation in this report, officers are confident that the relevant legislation has been interpreted diligently and that the conclusions drawn from the review in support of the decision to approve the nomination of Paxton Hall are reasonable.

What are the legal implications?

30. The Council's Legal Services department have reviewed the report, such as to confirm 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 "land of community value" and, as such, is correctly included in the Council's List of Assets of Community Value.

The Chief Officer of Asset Management & 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.

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

Options, timescales and measuring success

What other options were considered?

31. This is a procedural matter and the only options are to maintain the current listing as an Asset of Community Value or remove the property from the List. The considerations set out in this paper provide justification for the recommendation being made.

How will success be measured?

32. This will be measured by Paxton Hall remaining on the List of Assets of Community Value until a time when it can be legally removed in the event of sale of the land or expiry of the statutory term of five years from the date of entry onto the List (whichever is sooner) in accordance with Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 or expiry.

What is the timetable for implementation?

33. Upon approval of this report, the property will be retained on the list of Assets of Community Value until the time arises as noted above.

Appendices

None

Background papers

None