



Unsuccessful Assets of Community Value Summary

Name of Asset Date of nomination

REF number

Address Included on list of ACVs

Settlement not included in list ACV

County

Postal Code

Reasons for Decision

The nomination of the Admiral Nelson public house has been made by Leicester CAMRA. In the opinion of the Council, the Nomination is not a valid community nomination (section 89(1) of the localism Act 2011) because it does not demonstrate the agreement between members, or that 21 people eligible to vote in the Local Authority or neighbouring Local Authority are members of Leicester CAMRA. It also does not indicate that the distribution of surplus funds are for the benefit of the Local Authority or neighbouring Local Authority area. The Admiral Nelson should not therefore be listed as an ACV as the nomination is not considered by the Authority to be a valid community nomination (section 89(1) of the Localism Act 2011).

Reviews

Date of Review Appeal decision

nature of review grounds date of decision

reason for decision

Name of Asset

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Reasons for Decision

The Coach and Horses Public House has been nominated by Lubenham Parish Council and the nomination is in accordance with the regulations; the Coach and Horses is within the boundary of Lubenham Parish. The current primary function of the pub building is to further the social well being of the community and it is realistic to think that this will continue if purchased by the community. A response has been received from the asset owner, Everards, and they do not intend to contest the nomination. Consideration must be given whether there is sufficient evidence to list the entire site as nominated or just the building. The Parish Council has suggested that the car park is used not only during opening hours, but also at other times of the day for much needed parking in Lubenham, although no evidence is provided for this. Given the location of the Coach and Horses on the A4304 between Market Harborough and Lutterworth serious consideration must be given whether to include the entire site as an Asset of Community Value. The non ancillary use of any asset must be to further the social wellbeing and social interests of the local community. It is clear that the pub building does this as a non ancillary function, but little evidence has been provided that the car park and extended site perform a non ancillary function. In the opinion of the Authority the wider site should be excluded from the ACV listing and the building of the Coach and Horses listed as an ACV only.

Reviews

Date of Review

Appeal decision

date of decision

nature of review grounds

reason for decision

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Reasons for Decision

The site nominated was the play area, and adjacent field. The village green (part of the secondary highway) is used for village events as stated in the nomination form, however this land is not with the nomination boundary. The agricultural field only is being considered as part of this evidence. The community also state that the area nominated is important because it is within the conservation area of the village. The larger portion of the nomination site, identified by the Diocesan Board of Finance as an agricultural field, has been identified as being important for wildlife and habitat by the community. While the importance of the land for biodiversity is not questioned here, it is whether it constitutes a non ancillary use of the field and whether the importance for biodiversity furthers the social wellbeing, cultural, recreational or sporting interests of the community. The Board of Finance contest that 'the presence of various wildlife species and the inclusion of the land within the conservation area do not form a use of the land' The application must be determined on the current use of the land. The use by the community of the agricultural field and whether that use is a non ancillary use is not clear. The District Council agree with the owner that the location within the conservation area and the presence of biodiversity within the field do not constitute reasons within the legislation for designating as an Asset of Community Value. The boundary line of the ACV submission has been amended to exclude the agricultural field from the nomination. The reason being that the agricultural field's non ancillary use does not further the social well being, recreational or sporting interests of the community. The location within the conservation area and the importance for biodiversity are not reasons to consider that the land is suitable for designation as an Asset of Community Value.

Reviews

Date of Review

Appeal decision

date of decision

nature of review grounds

reason for decision

Name of Asset

Golden Shield Public House, Fleckney

Date of nomination

19/04/2017

REF number

Fleckney 8b

Address

46 Main Street

Settlement

Fleckney

County

Leicestershire

Postal Code

LE8 8AN

Date included on unsuccessful list

20/06/2017

Date listing expires

19/06/2022

Included on list of ACVs

not included in list ACV

Reasons for Decision

The Golden shield has been nominated by Fleckney Parish Council. The asset is within the Local Authority area and is therefore a valid nomination. The Golden Shield, just as a public house, is insufficient use to register as an Asset of Community Value. There should be evidence of other use by community groups to successfully register the asset. The evidence provided with the nomination is insufficient to demonstrate that the asset has a social interest function other than it is a public house. The use as a public house is a non ancillary function of the asset, but evidence of other social interest function that are non ancillary have not been provided. While it is realistic to consider that the function as a public house can continue, any other community interest functions have not been provided. This does not suggest that other social interest functions will not be possible if the asset is purchased by the community. The Golden Shield is not within any of the exempt categories

Reviews

Date of Review

Appeal decision

date of decision

nature of review
grounds

reason for decision

Name of Asset Date of nomination

REF number
Address Included on list of ACVs
Settlement not included in list ACV
County
Postal Code

Reasons for Decision

The Old Crown has been nominated by Fleckney Parish Council. The asset is within the Local Authority area and is therefore a valid nomination. The Old Crown, just as a public house, is insufficient use to register as an Asset of Community Value. There should be evidence of other use by community groups to successfully register the asset. The evidence provided with the nomination is insufficient to demonstrate that the asset has a social interest function other than it is a public house. The asset owner has not responded to the initial notification of nomination. The use as a public house is a non ancillary function of the asset, but evidence of other social interest function that are non ancillary have not been provided. While it is realistic to consider that the function as a public house can continue, any other community interest functions have not been provided. This does not suggest that other social interest functions will not be possible if the asset is purchased by the community. The Old Crown is not within any of the exempt categories

Reviews

Date of Review Appeal decision
date of decision
nature of review grounds reason for decision

Name of Asset Date of nomination

REF number
Address Included on list of ACVs
Settlement not included in list ACV
County
Postal Code

Reasons for Decision

The site should not be listed as an asset of community value. Land is an asset of community value if its main use has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future. The Localism Act states that "social interests" include cultural, recreational and sporting interests. The current use of the site appears to be for grazing, and no evidence is given of current or recent use for social interests or social wellbeing.

Reviews

Date of Review Appeal decision
date of decision
nature of review grounds reason for decision

Name of Asset Red Lion Car Park and Garden (submission 2)

Date of nomination 22/05/2017

REF number Great Bowden 3

Date included on unsuccessful list

Date listing expires

Address 5 Main Street

Included on list of ACVs

14/07/2017

13/07/2022

Settlement Great Bowden

not included in list ACV

County Leicestershire

Postal Code LE16 7HB

Reasons for Decision

The asset has been nominated by the Parish Council and is within the Area of the Local Authority, therefore the nomination is compliant. The legislation requires that the main use of the asset has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future. The profitability of the public house is not a main use of the garden or car park, nor does it further the social wellbeing of the community. It was the consideration of the Authority that the community do not 'go to the pub garden' as it is not a public park, but 'go to the pub'; the garden being for use by the patrons of the pub. The car park and garden provide an ancillary function of the public house. The access/egress, profitability and parking issues highlighted in the nomination are ancillary functions of the asset. Events have undoubtedly been held at the Red Lion garden and car park and there is pictorial evidence of such. However, it is considered that these are pub events held, as their main function, to increase the profitability of the public house for the benefit of the publican or owner. There is no evidence given of regular meetings in the car park and garden by the community, local or otherwise. The asset owner has stated that there is no realistic prospect of the recent use continuing in the future. However, while this may not be strictly accurate, it is not a consideration as the use is ancillary to the Public House. The land is not in any of the exempt categories. The car park does not in the opinion of the Authority provide for the cultural, recreational or sporting interests of the community. It may indeed provide other important functions, but it cannot, in the opinion of the Authority, be considered as part of the Community Right to Bid. It is the opinion of the Local Authority that the Red Lion Car Park and Garden should remain on the list of unsuccessful assets of community value.

Reviews

Date of Review

Appeal decision

date of decision

nature of review grounds

reason for decision

Name of Asset

The Munt

Date of nomination

06/06/2015

REF number	<input type="text" value="Kibworth H 1"/>		<input type="text" value="Date included on unsuccessful list"/>	<input type="text" value="Date listing expires"/>
Address	<input type="text" value="behind 45 Leicester Road"/>	Included on list of ACVs	<input type="text" value="10/12/2015"/>	<input type="text" value="22/07/2020"/>
Settlement	<input type="text" value="Kibworth Harcourt"/>	not included in list ACV		
County	<input type="text" value="Leicestershire"/>			
Postal Code	<input type="text" value="LE8 0NN"/>			

Reasons for Decision

The asset is within the boundary of Harborough District Council and has been nominated by Kibworth Harcourt Parish Council which is recognised as a relevant body under the Localism Act S81. The land is a prominent visual amenity in the area and has historical significance to the community. The access across the land is important for the community for walking and dog walking, and contributes to the health and well being of the community. The asset has been nominated by the community as a Local Green Space and it has been recommended that it is designated as such in the new Local Plan. The Parish Council has given assurance that they plan, if the land is purchased by the PC, to retain the asset as a field for community use in perpetuity.

Reviews

Date of Review	<input type="text" value="10/09/2015"/>	Appeal decision	<input type="text" value="Appeal upheld"/>
		date of decision	<input type="text" value="10/12/2015"/>
nature of review grounds	<p>Council are in breach of Regulation B of The Act(The Assets of Community Value Regulations 2012) in that they did not contact the asset owner on receipt of nomination to list.</p> <p>The land listed on the ACV plan is 'land connected with a residential property' an as outlined in Schedule 1 of The Act is legally exempt from being listed.</p> <p>The definition of an Asset of Community Value is that the lands primary use is for social wellbeing or social interests of the local community. Thw land cannot be used by persons, in any way, without trespass and therefore cannot meet the criteria for listing.</p> <p>The access across the land is by public footpath, which is adequately protected in law and requires no further legal encumbrance.</p>	reason for decision	<p>The Regulations state that the following may not be listed: 'any residence together with land connected with that residence'.</p> <p>Upon initial consideration the officers considered that there was sufficient separation between the residential curtilage and the land nominated to permit the registration. However upon reviewing the legislation and the circumstances surrounding the nomination , it is found that the nominated land would fall within this category and therefore should not be listed.</p> <p>Land Use</p> <p>The legislation requires that in the opinion of the Council the land to be listed has:</p> <p>'an actual current use of the ... land that is not an ancillary use and furthers the social wellbeing or social interests of</p>

the local community'

The officer initially reviewing the matter gave considerable weight to the historic nature of The Munt and failed to consider the 'use' aspect in its entirety. As there is no public access to the nominated land (save for the footpath) it fails the test of 'use' and therefore should not be listed.

Name of Asset

The Red Lion garden and ancillary land

Date of nomination

26/01/2017

REF number	Great Bowden 2		Date included on unsuccessful list	Date listing expires
Address	5 Main Street	Included on list of ACVs <input type="checkbox"/>	23/03/2017	22/03/2022
Settlement	Great Bowden	not included in list ACV <input checked="" type="checkbox"/>		
County	Leicestershire			
Postal Code				

Reasons for Decision

The ACV nomination by the Parish is valid in terms that land is in the Parish Council (PC) area therefore the PC has sufficient standing to make the application. A PC is only required to provide the following: 1. a description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership. 2. Any information the nominator has about the freeholders, leaseholders and current occupants of the site. 3. The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act. 4. The nominator's eligibility to make the nomination (Section 5.1, ACV Guidance Note and regulation 6 ACV Regulations 2012). Eligibility is decided on whether the group is able to provide the above information and whether it meets the definition of a "voluntary or community body" under section 89 of the Localism Act 2011 and regulation of the ACV Regulations 2012. Consequently, a council could not refuse to accept a nomination on the grounds that the community body will be unable to acquire and manage the asset in future. It is the view of the council that this is a valid nomination albeit the information (or absence of it) submitted by the PC must be taken into account by the council in making the decision and in determining on the facts and evidence to support the listing of the pub as a ACV. In making the decision the council must consider if the asset meets the definition set out in s88. To determine if the asset should be listed the council base their judgement on information provided by the PC, information received via the nomination being publicised and information from the asset owner. The judgement is not a legal test but a decision of fact based on the evidence provided. The council must decide that in their opinion there is:

- An actual current use or in the recent past the use of the building or other land that is non ancillary use furthers the social wellbeing or social interests of the local community
- 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

The asset owners legal representatives have objected on two grounds a) The nominator has failed to demonstrate that there was a time in the recent past when the property satisfied the community value criteria. b) There is no realistic realisation that within the next 5 years the property could satisfy again the community value criteria. Point a) In order for land or a building to be considered to have community value it must (among other things) have previously been used for the purposes of furthering the social wellbeing or interests of the local community in the recent past. It must also be realistic to think that it will be used for the same purpose again in the next five years - section 88, Localism Act 2011. Point b) in Evenden Estates v Brighton and Hove City Council the owners had applied for Planning Permission due to the closure of the pub and the court ruled that the ACV s88(2) test was met and the listing remained. The court held that if the planning permission should be refused it was realistic to assume that the Owners would look to do something else with the pubwhether a public house or for some other currently permitted use that would further social interest, therefore it was not fanciful that the property could satisfy the community social value within the next 5 years. Other points clarified in this case for listing the Pub as a ACV were that the pubs long history of use as a public house and the recent losses related to only a short period of that history (this is applicable to the Red Lion nomination as the PC say been in use as a pub since the 1700's). There were other significant housing developments in the area which would bring several hundreds of people to the area (increase in the community) which went in favour of the listing. The

decision clarified that a lack of funds was not a determinative that a sustainable enterprise would not come forward The Authority is able to be affirmative in respect of whether the nomination is a valid nomination from a qualifying organisation, as it is more of a legal test. With regard to the s88(1)the Authority considers that the information has to be considered in the round. The cases relating to appeals against listing of properties as ACVs give guidance on how to interpret the test but each case is determined on its on particular facts. The Parish Council has a reasonable track record in delivering community based projects, and the Parish is of sufficient size to reasonably expect that a sustainable enterprise can be undertaken that will provide recreational or social interest for the community. The village of Great Bowden is due to grow during the next 5 years. Current applications include: 62 dwellings at Land Off Berry Close Great Bowden Leicestershire Ref. No: 17/00138/REM - approved 50 dwellings Land Off Welham Lane Great Bowden Leicestershire Ref. No: 16/02083/REM - approved 50 dwellings Land North Of Leicester Lane Great Bowden Leicestershire Ref No: 16/01942/OUT Additionally 1200 dwellings are due to be erected at the Strategic Development Area approximately 2.8km away (edge of SDA boundary) in the next 8 to 10 years , with a further 600 dwellings proposed on land off Kettering Road Market Harborough some 3.4km away. This will place additional burdens on existing community assets in and around Market Harborough and Great Bowden; it is realistic to think that commercial businesses will benefit from the increase in population not only in Great Bowen but the wider community. The site of the Red Lion is large and little evidence has been provided by the PC to demonstrate why the entire site is required for the Red Lion to be a functional asset that provides social wellbeing and social interest for the local community. It is the opinion of the Authority that it would be unreasonable to list the entire Title of the Red Lion as an Asset of Community Value. After due consideration of the facts presented to it, the authority is of the opinion that the building of the Red Lion at Great Bowden meets the criteria for being listed as an Asset of Community Value, and that it is reasonable to think that if purchased by the Parish Council it could be used in the future as a public house or other community asset. The remainder of the site should be removed from the listing as has happened in other local Acv listings for public houses. The decision of the Council is therefore to list the Red Lion as an Asset of Community Value in accordance with the red edged plan at Appendix A. The remainder of the title (car park and garden) to be listed as an unsuccessful ACV

Reviews

Date of Review

Appeal decision

date of decision

nature of review
grounds

reason for decision