

Notice under Section 91 of the Localism Act 2011

Entry of the Stoneyholme Recreation Ground into Burnley Borough Council's List of Assets of Community Value

- **Background**

On 13 July 2021, Burnley Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list the Stoneyholme Recreation Ground as an Asset of Community Value. The nomination was made by an unincorporate community group. A map setting out the boundaries of the asset nominated to be listed ("The Asset") is provided as an appendix to this notice.

Under Section 87 of the Act the Council must maintain a list of assets of community value.

Section 88 of the Act states that:

(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.

- **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 a Panel consisting of the Council's Head of Housing and Development, its Property Services manager and its Head of Policy and Engagement.

2.2 The internal review process in relation to listing shall be undertaken by the Council's Head of Legal and Democratic Services, who shall not be involved in the initial decision.

2.3 The Panel 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 Panel decided to enter part of the property into its list of Assets of Community Value.

This decision has been taken because:

(1)

- a) The Asset lies within the administrative boundaries of Burnley Borough Council
- b) The unincorporated group is entitled under 89(2)b(i) of the Act to make a community nomination in respect of the Asset
- c) The nomination from the unincorporated group 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 the unincorporated group 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 Authority,

- The current use of the Asset furthers the social well-being or cultural, recreational or sporting interests of the local community
- 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.
- For part of the land only, the use of the Asset will continue to further the social well-being or interests of the local community.
- 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.

The detailed assessment upon on which this decision is based is set out in 4 below.

- **What Happens Next**

The Asset will, in part, 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:

- (a) Burnley Council
- (b) Friends of Stoneyholme Recreation Ground

The information will also be published on the Council's website. The Asset, as identified in appendix 2, 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's inclusion in the list

Inclusion of assets on the List of Assets of Community Value is a local land charge under the Local Land Charges Act 1975. 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 that asset. Owners should contact the Property Services Manager at the following address: Burnley Council, Burnley Town Hall, Burnley, BB11 9SA.

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 local authority that the disposal is exempt, it would be helpful for them to do so.

A moratorium period is triggered by notification under Section 95 to allow a Community Interest Group to submit a written request to be treated as a potential bidder for the asset. 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.

The owner of the asset does not have to sell the asset to the Community Interest Group. There is also a 'protected period' (18 months from the time that the owner notified the local

authority of their intention to dispose of the asset) and during this time there can be no further moratoriums on sale and the owner is free to dispose of the property as they see fit.

The right to ask for review

Asset owners have the opportunity to request a review of the decision to enter an asset on the List of Assets of Community Value. As stated at paragraph 2.2 above, the internal review process in relation to listing will be undertaken by the Council's Head of Legal and Democratic Services. Nominators do not have a right of review.

Landowners wishing to request a review of the decision should do so in writing to: the Head of Legal and Democratic Services, Burnley Council, Burnley Town Hall, Burnley, BB11 9SA Town Hall, or to cwaudby@burnley.gov.uk. **The written request must be made by 22nd October 2021 (8 weeks from panel decision date) setting 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. For details see the relevant regulations.

Detailed Assessment of the Nomination

Assets of Community Value Nomination – Assessment			
DATE OF SUBMISSION:	13 th July 2021	DATE DECISION TO BE MADE BY:	7th September 2021
NOMINATED ASSET:	Stoneyholme Recreation Ground		
NOMINATION SUBMITTED BY:	Friends of Stoneyholme Recreation Ground		

STEP A: This section considers the eligibility of the nominating body to make a nomination and of the asset to be an Asset of Community Value.

A1. Is the nominating organisation an eligible body to nominate?	
Evidence supplied by nominee:	The nominating organisation is an un- incorporated community group.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	Names and addresses of 21 members of the group provided.
Criteria met?	YES

A2. Does the nominating body have a local connection to the asset nominated?	
Evidence supplied by nominee:	Residents in the local area are members of the group.
Feedback from other parties and other information gained in relation to this criterion	None.
The Panel's consideration of the evidence provided	Not required.
Criteria met?	YES

A3. Does the nomination include the required information about the asset?	
<ul style="list-style-type: none"> • Description of the nominated land including its proposed boundaries • Names of current occupants of the land • Names and current or last-known addresses of all those holding a freehold or leasehold estate in the land 	
Evidence supplied by nominee:	See appendix 1 below.
Feedback from other parties and other information gained in relation to this criterion:	None.
The Panel's consideration of the evidence provided	Known to be Burnley Council land
Criteria met?	YES

A4. Is the nominated asset outside of one of the categories that cannot be assets of community value (as set out in Schedule 1 of the Assets of Community Value (England) Regulations 2012):	
<ul style="list-style-type: none"> • A residence together with land connected with that residence • Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960 • Operational land as defined in section 263 of the Town and Country Planning Act 1990. 	
Evidence supplied by nominee:	Public amenity green space and play area
Feedback from other parties and other information gained in relation to this criterion:	None.

The Panel's consideration of the evidence provided	The Panel is satisfied that the asset is not in any of the categories that cannot be assets of community value.
Criteria met?	YES

STEP B: This section considers the current or recent usage of the asset.

B. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?	
<ul style="list-style-type: none"> NOTE 1: A working definition of "recent past" is "within the past three years" NOTE 2: A working definition of "non-ancillary" is that the usage is not providing necessary support (e.g. cleaning) to the primary activities carried out in the asset, but is itself a primary, additional or complementary use. 	
Evidence supplied by nominee:	Currently used for recreational purposes.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	A parcel of the land in the plan at Appendix 1 is adopted motorway verge for which there is no community use. Taking this out, the Panel is satisfied that the current or recent usage which is the subject of the nomination is an actual and non-ancillary usage.
Criteria met?	YES

STEP C: This section considers whether the use furthers (or furthered, for uses in the recent past) the social interests or social wellbeing of the local community.

C2. Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made?	
Evidence supplied by nominee:	<p>One of the few recreation areas in that part of the borough. Used for play, exercise, recreation, dog walking.</p> <p>The pandemic and lockdowns have shown how important local open spaces are to health and wellbeing.</p> <p>The land supports bio-diversity. Including bats and owls.</p> <p>The local neighbourhood is surrounded by development and main roads.</p>
Feedback from other parties and other information gained in relation to this criterion:	<p>The Panel considered the consultation responses to planning application FUL/2021/0270 (college development proposal).</p> <p>The Panel considered Burnley Council's Green Space Strategy. This identifies that the Clifton St residential area has a surplus</p>

of open space relative to the size of the population that it serves. Overall there is 11.5 hectares of green space within the Clifton St residential area of which 4 hectares is classified as amenity greenspace and this includes the recreation ground.

District Number	District Name	Residential Area	Open Space Name	Abr'v	Area Ha
5	North Burnley	Clifton Heights	Ashfield Road Grass Area	N&SN	0.33
5	North Burnley	Clifton Heights	Clifton Heights	N&SN	4.62
5	North Burnley	Clifton Heights	West Gate	N&SN	2.50
5	North Burnley	Clifton Heights	Clifton Street	AGS	0.06
5	North Burnley	Clifton Heights	Stoneyholme Rec	AGS	3.93
5	North Burnley	Clifton Heights	Clifton Street Playground	CYP	0.06

Regards amenity green space, there is currently a surplus provision of 3.8 hectares when compared with the Burnley local standard for provision which is 0.2 ha per 1,000 population.

The population of Clifton St residential area (2011 census) is 256 including 44 children.

Amenity Green Space						Local Standard			0.80	
District Name	Residential Area	0 – 4	5 – 9	10 – 14	0-14	Res Pop	AGS (Ha)	AGS Per 1,000	Quantity to meet standards	Surplus/ Deficit
	South Burnley	1282	1038	1219	3518	19276	11.88		15.42	-3.54
North	Casterton	97	119	93	309	1617	1.29	0.80	1.29	0.00
Burnley	Clifton Heights	14	15	15	44	256	4.00	15.63	0.20	3.80
	Daneshouse	338	285	234	857	2865	3.26	1.14	2.29	0.97
	Heasandford	426	323	302	1051	4609	4.32	0.94	3.69	0.63
	Lanebottom	22	22	31	75	633	0.00	0.00	0.51	-0.51
	Lower Manor Lane	41	22	25	88	685	0.56	0.82	0.55	0.01
	N Briercliffe	62	78	78	218	1296	0.38	0.29	1.04	-0.66
	N Lanehead	117	117	170	404	2502	1.67	0.67	2.00	-0.33
	S Lanehead	108	107	93	288	1827	1.00	0.55	1.46	-0.46
	Queensgate	233	189	150	572	2656	1.27	0.48	2.12	-0.85
	Rakehead	175	147	126	448	2350	1.15	0.49	1.88	-0.73
	S Briercliffe	92	54	76	222	1366	0.90	0.66	1.09	-0.19
	Stoneyholme	330	291	211	832	2409	0.89	0.37	1.93	-1.04
	North Burnley	2041	1754	1589	5364	25069	20.69		20.06	0.63

The proposal to sell land for the college development involves the loss of approximately 2 hectares of amenity green space, with 2 hectares remaining. This would mean that there remains a surplus of 1.8 hectares.

The panel considered whether the asset was of sufficient quality to be considered for listing:

- Part of Stoneyholme Recreation Ground was designated for industrial use in the Council's 1990 Local Plan. The current Burnley Local Plan re-designated part of SRG for education purposes.
- Since the first designation, there has been no investment in the site, and facilities that were provided have been re-located:

	<ul style="list-style-type: none"> ▫ Play Area: Development of four new play areas at Clifton St (within SWG), Byerden Holme Park, Stoneyholme Community Garden, Burns St. ▫ Ball court: Byerden Holme ball court ▫ Football pitch: Contribution to provision of new artificial turf pitch at Prairie ▫ Community/ Changing Room: Burnt down in the early 1990s and not replaced
The Panel's consideration of the evidence provided	Although the quality of the asset is not high, on balance, the community evidence is enough to demonstrate that the amenity green space for play and exercise creates social value for the community.
Criteria met?	YES

If the criteria are met, go to Step D. If not, place on the list of unsuccessful nominations. If not, place on the list of unsuccessful nominations.

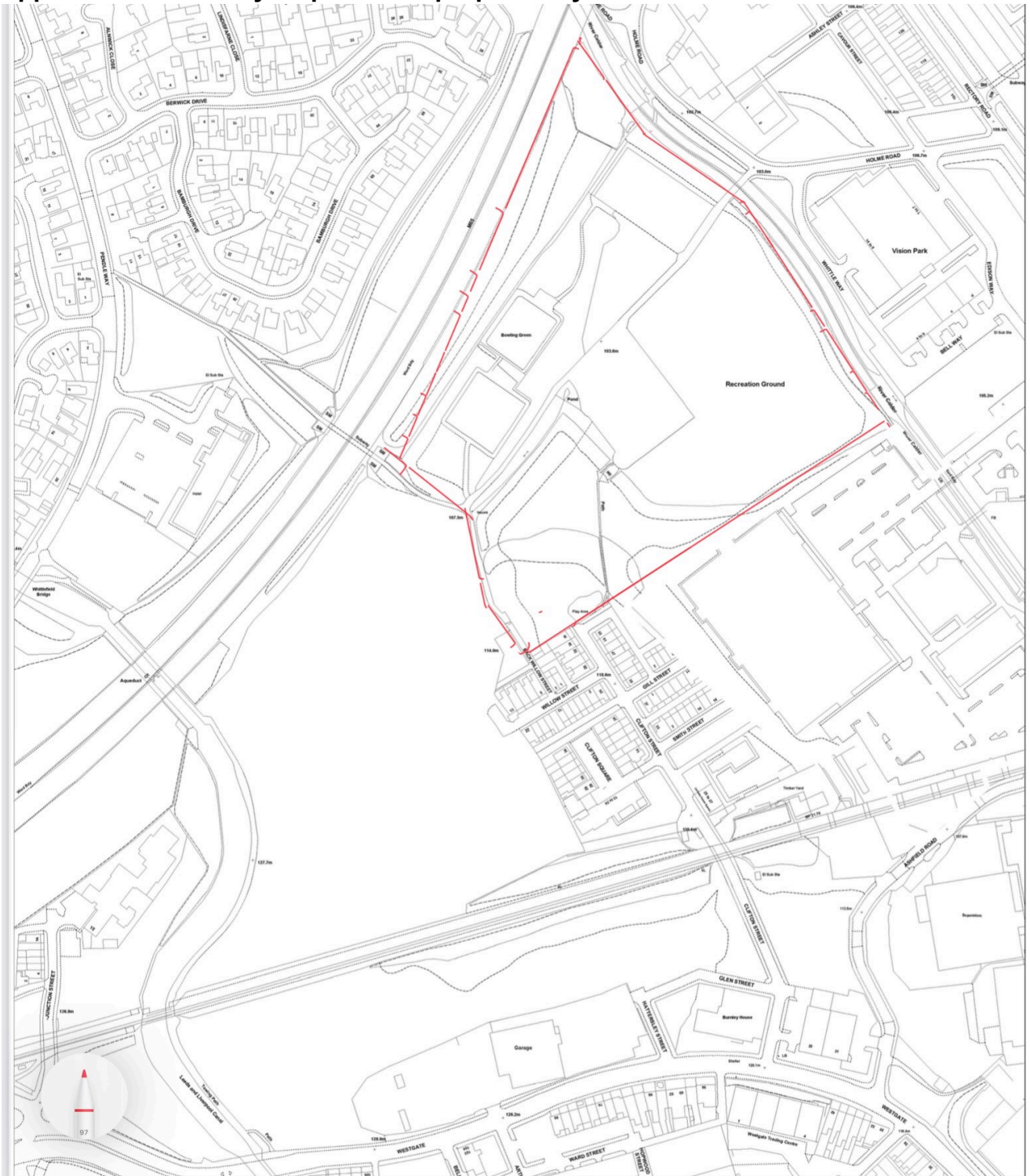
STEP D: This section considers whether it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

D. Is it 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?	
Evidence supplied by nominee:	Friends group committed to improving the site and encouraging their use.
Feedback from other parties and other information gained in relation to this criterion:	<p>The district council's Local Plan has allocated the site for development, including for education purposes. The plan is current until 2032.</p> <p>The council has received a planning application from Burnley College to develop a north campus at the site.</p> <p>The panel has considered the effect of the planning status of the land on whether it is realistic to consider that the land can continue to further the social wellbeing of the local community.</p> <p>The panel considered the follow cases:</p> <ul style="list-style-type: none"> • Spirit Pub v Rushmoor BC CR/2013/0003 an extant planning permission for change of use to a McDonalds restaurant made the continued pub use of the Tumbledown pub unrealistic. • New Barrow Ltd v Ribble Valley BC CR/2016/0014 the appellant successfully relied upon a recently granted licence upon the land along with a pre-application enquiry response by the Respondent council as local planning authority to submit that the continued use

	<p>of allotments was unrealistic.</p> <ul style="list-style-type: none"> • Greyhound Inn Developments Ltd v Bromsgrove DC CR/2017/0004. The authority's local plan allocated a nearby site 'BROM3' for 490 dwellings, contributing to the council's '5 year housing land supply'. The Greyhound Inn, whilst not part of BROM3, was marked for demolition in order to allow sufficient access to the housing site. It was successfully argued that with the BROM3 allocation being current until at least 2030 (the end date of the plan) it was not realistic to believe the pub could come back into community use since its demolition would occur under one owner or another.
The Panel's consideration of the evidence provided	<p>The Panel cannot pre-determine the outcome of the planning application process. Even so, given that the site has been earmarked in the authority's Local Plan for development (and had also been allocated for development in previous versions of the Local Plan), and given that a planning application has been received for the land, on balance, it is unrealistic to consider that all of the land identified in Appendix 1 can continue to further the social wellbeing of the local community. However, the application identifies future community use for some parts of the land and so, for that land only, the criteria has been met. The map at Appendix 2 highlights the areas where there remains a realistic prospect that the land can continue to further the social wellbeing of the local community.</p>
Criteria met?	PARTIALLY MET

DECISION:	THAT PART OF THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE
REASON FOR DECISION	The nomination partially meets the criteria.
Decision Taken by	<p>Paul Gatrell, Head of Housing and Development</p> <p>Andrew Leah, Property Services Manager</p> <p>Rob Dobson, Head of Policy and Engagement</p>
Date	27 th August 2021

Appendix 1- Boundary map of asset proposed by the nominator



Appendix 2- Boundary map of area to be listed as an Asset of Community Value

