

Notice under Section 91 of the Localism Act 2011

Entry of Turf Moor into Burnley Borough Council's List of Assets of Community Value

1. Background

On 27th March 2019, Burnley Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list Turf Moor as an Asset of Community Value. The nomination was made by The Clarets Trust. 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.

2. 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 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 Clarets Trust 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 Clarets Trust 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 Clarets Trust 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,

- (a) The current use of the Asset furthers the social well-being or cultural, recreational or sporting interests of the local community
- (b) 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.
- (c) The use of the Asset will continue to further the social well-being or interests of the local community.
- (d) 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 which this decision is based is set out in 4 below.

3. What Happens Next

The Asset will 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) Longside Properties Ltd
- (b) The Clarets Trust

The information will also be published on the Council's website. The Asset 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 People, Law and Regulation.

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 democracy@burnley.gov.uk. **The written request must be made by 1st October 2019 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. Regulation 14 of the Regulations contains more detail on this.

Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations provide further detailed information.

4. Detailed Assessment of the Nomination

Assets of Community Value Nomination – Assessment			
DATE OF SUBMISSION:	27th March 2014	DATE DECISION TO BE MADE BY:	18th July 2019
NOMINATED ASSET:	Turf Moor Stadium, Harry Potts Way, Burnley, BB10 4AX		
NOMINATION SUBMITTED BY:	The Clarets Trust		

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 Clarets Trust is registered as the Burnley Supporters Society Ltd with the Financial Conduct Authority under the Industrial and Provident Societies Act 1965 and we are affiliated nationally to Supporters Direct.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	The Panel checked that the Trust is registered.
Criteria met?	YES

A2. Does the nominating body have a local connection to the asset nominated?	
Evidence supplied by nominee:	The Clarets Trust Membership is open to all fans and supporters of Burnley Football Club. The Trust is a shareholder in Burnley FC Holdings Ltd. We hold regular liaison meetings with the Club. Our membership is not exclusive to people living within Burnley – but is a democratic body with rules and a constitution.
Feedback from other parties and other information gained in relation to this criterion	None.
The Panel's consideration of the evidence provided	The registered address of the nominee is confirmed as being in the borough.
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:	<p>Owner details provided by the nominee: Longside Properties Ltd, Turf Moor, Burnley, Lancashire, BB10 4BX.</p> <p>The Clarets Trust agreed to include the stadium and the playing area in their nomination, and have agreed to exclude the car parks, and the leisure centre and its parking area.</p>
Feedback from other parties and other information gained in relation to this criterion:	<p>When initially listed in 2014, in response to the draft submission from the Claret's Trust, the Company Secretary provided the following evidence: "The asset of Turf Moor is owned by Longside Properties Ltd solely."</p> <p>With the car parks not included in the nomination, the Company Secretary added: "we will not have an objection to the application."</p> <p>Following the request for re-listing, no further information has been provided by the Club in response to a request for feedback.</p>
The Panel's consideration of the evidence provided	A Land Registry search clarified the boundaries of the nominated asset and the ownership details.

Criteria met?	YES
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<p>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):</p> <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:	Turf Moor Stadium was built to provide a new home for Burnley Football Club after its original home, Calder Vale RUFC, Reedley, was no longer considered suitable in 1883. The Stadium was opened in 1883, and Burnley FC has played there ever since: the hosting of Burnley football matches remains its principal current use. Very few clubs come anywhere near being able to equal their link with their ground in Burnley's case going back even before the Football League itself was founded.
Feedback from other parties and other information gained in relation to this criterion:	None.
The Panel's consideration of the evidence provided	From the evidence provided, that 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.

<p>B. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?</p> <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:	Turf Moor Stadium was built to provide a new home for Burnley Football Club after its original home, Calder Vale RUFC, Reedley, was no longer considered suitable in 1883. The Stadium was opened in 1883 and Burnley FC has played there ever since; the hosting of Burnley football matches remains its principal current use. Very few clubs come anywhere near being able to equal their link with their ground, in Burnley's case going back even before the Football League itself was

	<p>founded.</p> <p>For the 24 home games Burnley played at The Stadium in the last 2017/18 season, the cumulative attendance was over 400,000, with an average league attendance of 20,688 supporters and a highest attendance for a game being 21,841. In addition to its principal current use of hosting football matches, The Stadium provides as an ancillary use a conferencing, exhibition and entertainment business using The Stadium's facilities, including a number of meeting and exhibition rooms, bars, and entertainment facilities. It also includes car parking facilities around the ground and an overflow car park.</p>
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	From the evidence provided 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>Burnley FC delivers both social value and community benefit to Burnley and Lancashire more broadly as an integral part of the local area. The Club's history in Burnley goes back to its founding in 1882. Its principal activity is the furtherance of local sporting interest, listed by the Localism Act as a social interest that a Community Asset should further.</p> <p>The Club:</p> <ul style="list-style-type: none"> Promotes the enjoyment of sport and exercise to local people throughout the community, particularly young people, both through its own matches (match day tickets are free for under-10s accompanied by an adult, and a range of concessions are offered) and through activities the Club undertakes through its Charitable arm – Burnley Football Club in the Community (BFCitC) with whom the Clarets Trust works in collaboration to encourage supporters' involvement with the Club. Serves as a focus for community pride, providing Burnley with a shared history and heritage through the achievements of the Club and the many celebrated players from its history, and regularly celebrating the contribution that

	<p>the Club's non-player employees, volunteers, and supporters make to the Club's success.</p> <ul style="list-style-type: none"> • Helps build a sense of community identity, bringing together diverse elements of Lancashire, across a range of ages and social and economic backgrounds, on a regular basis for a shared purpose. • Provides local people with an inclusive social environment open to all members of the community which the Club works to foster, for example through its regular support of such initiatives as the 'Kick it Out' campaign (an equality and inclusion campaign for football and the wider community). • Engages fans in the support of local charitable causes, recent activity includes the donation of gifts that the Football Club deliver to the Children's Ward of the Royal Blackburn Hospital, raising money for charitable causes such as BFCitC, as well as donating kit to Clarets Trust's "Shirts for South Africa" campaign, with kit being sent to several countries around the world. BFCitC also supports local charities including Pendleside Hospice. • Provides economic benefits to local businesses such as increasing trade for nearby and associated pubs and restaurants on match days, as well as working to bring together a network of local businesses for mutual benefit. • Is the subject of considerable local interest, as attested to by the consequent significant coverage in the local media, as well as regular coverage in the national media. • Represents the town and area nationally, not least through its continued membership of the Premier League which has increased the number of visitors from home and abroad to the town. <p>As well as acting as a focus for the people of Burnley, Burnley Football Club also works within the Lancashire community, operating a range of sporting, social, and educational activities and programmes under the aegis of BFCitC which brought more than £2.5m to the area in 2017/18 and reached more than 27,000 people in the same year.</p> <p>Turf Moor Stadium is crucial in enabling Burnley Football Club to deliver this social value and community benefit through sporting and community activities, in that the Club needs a suitable home to host its football matches. Listing Turf Moor Stadium as a Community Asset would mean that in any circumstance where the Stadium's current owners were to look to dispose of it, the community would have the opportunity to secure the Football Club's future. This step would:</p> <ul style="list-style-type: none"> • Protect the Stadium's viable use as venue for Burnley Football Club and BFCitC for current and future generations, • Ensure it continues as a site for delivering social benefit and community value, both through the continued hosting of
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	<p>Burnley’s games, and through the associated community activities Burnley undertakes.</p> <ul style="list-style-type: none"> • Help ensure a sustainable future for Burnley within the community, with the community owning a stake in The Stadium. • Provide the opportunity to use the non-football revenues generated by The Stadium to support Burnley and its sporting and community activities.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel’s consideration of the evidence provided	<p>Information on the Club’s website corroborates the evidence provided. It states: “Football is more than just a game, we are a town club, at the heart of a thriving and enterprising town, and Burnley FC in the Community is committed to making a difference in the local community.” The Club’s level of commitment to community engagement is evidenced by the work done by BFC in the Community.</p> <p>In considering the evidence, the Panel is neither in a position nor is it required to examine the feasibility of the community buying the nominated asset should it be put up for sale. While it is clear that a football stadium is of a different magnitude to a village pub, the Panel notes that Eric Pickles- the former Secretary of State who sponsored the Localism Act – has issued a statement in support of football stadiums being nominated: “Football Stadiums are not only the heart and soul of every team, they are rooted in and loved by the neighbourhoods that surround them.”</p> <p>In addition, the Panel has considered the decision of the First Tier Tribunal in response to an appeal from the owners of Oxford FC to the listing of their ground as an asset of community value. The judge was satisfied that the stadium met the criteria for nomination.</p>
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:	Turf Moor will clearly continue to be the home of Burnley Football Club for many years to come. As well as their role within the football world, they are also rapidly redeveloping their role as a Community Club. BFCitC is widely respected and is rapidly building up the club's links and role with many local organisations in Burnley, Pendle and Rossendale and beyond. The work of BFCitC now covers most of East Lancashire and has expanded into West Yorkshire The Club obviously wants to succeed in the football world but increasingly recognises its wider role in the community as whole.
Feedback from other parties and other information gained in relation to this criterion:	None
The Panel's consideration of the evidence provided	As the Club prepares for a season in the Premier League, it is clear that Turf Moor will continue to promote the social interests of the local community.
Criteria met?	YES

DECISION:	THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE
REASON FOR DECISION	The nomination meets the criteria.
Decision Taken by	Paul Gattrell, Head of Housing and Development Andrew Leah, Property Services Manager Rob Dobson, Head of Policy and Engagement
Date	18 th July 2019