

## **Notice under Section 91 of the Localism Act 2011**

### **Entry of Bell Pit Wood into Burnley Borough Council's List of Assets of Community Value**

#### **1. Background**

On 22<sup>nd</sup> October 2014, Burnley Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list Bell Pit Wood as an Asset of Community Value. The nomination was made by the Trees for Burnley Group of Burnley Civic 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 a 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 Corporate Policy Officer.

2.2 The internal review process in relation to listing shall be undertaken by the Council's Senior Solicitor, 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 not to enter Bell Pit Wood into its list of Assets of Community Value.

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

### 3. What Happens Next

The Asset will now be placed on the list of unsuccessful nominations 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:

#### **Burnley Civic Trust- Trees for Burnley group**

The information will also be published on the Council's website.

Under the statutory regulations, there is no right of appeal against a decision not to list a property or land as an asset of community value.

### 4. Detailed Assessment of the Nomination of as an Asset of community Value

| <b>Assets of Community Value Nomination – Assessment</b> |   |                              |          |
|--|---|------------------------------|----------|
| DATE OF SUBMISSION:                                      | 22/10/2014                                    | DATE DECISION TO BE MADE BY: | 17/12/14 |
| NOMINATED ASSET:   | Bell Pit Wood                                 |                              |          |
| NOMINATION SUBMITTED BY:                                 | Burnley Civic Trust (Trees for Burnley Group) |                              |          |

**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.**

| <b>A1. Is the nominating organisation an eligible body to nominate?</b>                 |   |
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| Evidence supplied by nominee:   | The Trees for Burnley Group is part of the Civic Trust which is a registered Charity. |
| Feedback from other parties and other information gained in relation to this criterion: | None  |
| The Panel's   | Check done through Charity Commission.  |

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| consideration of the evidence provided |     |
| Criteria met?                          | Yes |

| <b>A2. Does the nominating body have a local connection to the asset nominated?</b>    |  |
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| Evidence supplied by nominee:  | Trees for Burnley is the “practical conversation volunteer group of Burnley Civic Trust, and was formed in 1992.” It has been instrumental in the Forest of Burnley millennium project, in partnership with Burnley Council. |
| 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 nominee has a local connection.  |
| Criteria met?  | Yes  |

| <b>A3. Does the nomination include the required information about the asset?</b>   |  |
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| <ul style="list-style-type: none"> <li>• Description of the nominated land including its proposed boundaries</li> <li>• Names of current occupants of the land</li> <li>• Names and current or last-known addresses of all those holding a freehold or leasehold estate in the land</li> </ul> |  |
| Evidence supplied by nominee:  | Map with area of Bell Pit Wood shaded.   |
| Feedback from other parties and other information gained in relation to this criterion:  | <p>Search requested from the Council’s Property Services Team to confirm the boundary and ownership of the land.</p> <p>The Panel notes that the land has been included as a potential development site in Burnley Council’s “Issues and Options” document. This document, which was out for public consultation in September 2014, forms part of Burnley Council’s local planning framework. The Panel is clear that its inclusion in the options document is not a consideration in its decision making. The Local Plan process and the process for considering nominations are separate. Each asset of community value nomination is considered on its own merit against the criteria set out by the Government in the regulations.</p> <p>The Panel also notes the Deed of Dedication relating to this land.</p> |
| The Panel’s consideration of the evidence provided   | The Panel is satisfied that the nomination provides sufficient information, which has been supplemented by information from the Council.   |

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| Criteria met? | Yes |
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| <p><b>A4.</b> 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"> <li>• A residence together with land connected with that residence</li> <li>• Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960</li> <li>• Operational land as defined in section 263 of the Town and Country Planning Act 1990.</li> </ul> |  |
| Evidence supplied by nominee:   | Boundary map provided.   |
| 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, and following a land search, the Panel is satisfied that the asset is not in any of the categories that cannot be assets of community value. |
| Criteria met?   | Yes  |

**If the criteria are met move on to Part B. Otherwise, inform the nominator that the nomination is ineligible and place on the list of unsuccessful nominations.**

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

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| <p><b>B.</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"> <li>• NOTE 1: A working definition of “recent past” is “within the past three years”</li> <li>• 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.</li> </ul> |   |
| Evidence supplied by nominee:  | Used by walkers.  |
| 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   |

**If the current or recent usage that is the subject of the nomination is actual and non-ancillary, go to Step C. If not, place on the list of unsuccessful nominations.**

**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.**

| <b>C2. Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made?</b> |  |
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| Evidence supplied by nominee:   | <ul style="list-style-type: none"> <li>• The woodland was planted by volunteers.</li> <li>• Plantings included fruit trees- this was to encourage healthy eating in the community, with residents able to pick the fruit (the apples always disappear).</li> <li>• The woodland is a natural habitat.</li> <li>• The woodland is used by dog walkers, and other walkers. There is an intention to make the paths more accessible (for families with prams for example). It is a green link to Rowley lake.</li> <li>• It has created a shelter from the elements on Ridge Avenue, which is kinder to pedestrians walking along the ridge towards the parks than was previously the case before the plantings.</li> </ul>   |
| Feedback from other parties and other information gained in relation to this criterion:   | Lancashire County Council is currently opposing changes to the pathways as it is a gas emitting site.  |
| The Panel's consideration of the evidence provided  | <ul style="list-style-type: none"> <li>• The volunteering activity associated with the woodland was primarily in the past. While significant at the time, the Panel must consider the land's current main use.</li> <li>• Being a natural habitat is not, in itself, a relevant consideration.</li> <li>• In the opinion of the Panel, the nomination does not satisfy the criteria for inclusion in the list of assets of community value because:               <ul style="list-style-type: none"> <li>○ The land does not further the wellbeing of the community in a distinct and unique way. The current value attached to the land by walkers, as identified in the nomination, can also be created by the area surrounding the nominated parcel of land. Appendix 1 shows the green space in the local area.</li> <li>○ Even if the nominated land did play a more distinct role in furthering wellbeing or social interests, it would only satisfy the criteria if a very</li> </ul> </li> </ul> |

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|               | <p>narrow definition of “local community” (i.e. the residents in the immediate vicinity of the land) is used. The Panel’s definition of “local community” is much broader than a local neighbourhood- in entails the local community of Burnley, inferring a significant section of the citizenry in the local area.</p> <ul style="list-style-type: none"> <li>○ To further explain the application of the criteria, it is useful to use the analogy of a village post office (an asset that the Government clearly had in mind in setting the regulations). A village post office would meet the criteria because it is likely to play a unique and distinct role in furthering the wellbeing of almost the entire population of a village.</li> <li>● It is difficult for the Panel to assess the sheltering effect identified in the nomination form. Nevertheless, the Panel is of the view that, even if there is a sheltering effect, this is not sufficient evidence of a connection between the land and the social wellbeing of the local community, even if a very narrow definition of community is applied.</li> </ul> |
| Criteria met? | No  |

**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.**

| <b>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?</b> |  |
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| Evidence supplied by nominee:   |  |
| Feedback from other parties and other information gained in relation to this criterion:   |  |
| The Panel’s consideration of the  |  |

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| evidence provided |  |
| Criteria met?     |  |

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| <b>DECISION:</b>           | <b>THAT THE NOMINATED LAND BE PLACED ON THE LIST OF UNSUCCESSFUL NOMINATIONS</b>  |
| <b>REASON FOR DECISION</b> | The nomination does not meet the criteria.  |
| <b>Decision Taken by</b>   | Paul Gatrell, Head of Housing and Development<br>Andrew Leah, Property Services Manager<br>Rob Dobson, Corporate Policy Officer |
| <b>Date</b>                |   |

Appendix 1 overleaf.

