

**Eden District Council**

**Executive**  
**7 July 2015**

**Nomination as an Asset of Community Value - Centre 67,  
Chapel Street, Appleby**

**Reporting Officer: Director of Corporate and Legal Services**

**Responsible Portfolio: Resources**

**1 Purpose of Report**

- 1.1 An application has been received from Appleby in Westmorland Town Council to nominate Centre 67, Chapel Street, Appleby as an asset of community value.

**2 Recommendation:**

The Executive should consider whether the land comprising Centre 67, Chapel Street, Appleby is of community value.
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**3 Report Details**

- 3.1 An application has been received from Appleby in Westmorland Town Council to nominate Centre 67, Chapel Street, Appleby as an asset of community value. The nomination form which has been submitted to the Council is appended to this report (Appendix A).

**Statutory Provisions**

- 3.2 Under the Localism Act, the Council has an obligation to maintain a list of land in its area which is of community value. There is appended to this report as Appendix B a summary of the statutory provisions which sets out the procedure to nominate land and which Members should consider.
- 3.3 In essence, an application to nominate land as an asset of community value can be made by a number of specified bodies including a parish council. An application by a parish council represents a community nomination.
- 3.4 If the Council receives a community nomination it must consider it. The Council must accept the nomination if the land nominated is:
- a) in the authority's area; and
  - b) is of community value.
- 3.4.1 Land is of community value if the Authority is of the opinion that:

- a) an actual or current use, which is not ancillary, of the building or other land 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.
- 3.4.2 In addition, there is an alternative test of 'community value' which is set out in Section 88(2). This sub-section states that land is of community value if:
- 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 ways as before) the social wellbeing or social interests of the local community.
- 3.4.3 'Social' interests is defined in the Act to include each of the following:
- a) cultural interests;
  - b) recreational interests; and
  - c) sporting interests.
- 3.4.4 If the Council is of the opinion that the statutory test and that the land is of community value is satisfied and met Centre 67 must be listed as an asset of community value.
- 3.5 The statutory provisions included in the Regulations set out a variety of criteria which must be met in relation to a nomination.

### **The Nomination Criteria**

- 3.6 The community nomination must:
- a) nominate the land; and
  - b) be made by a community body with a local connection.
- 3.9 The community nomination must include:
- a) a description of the land and its proposed boundaries;
  - b) a statement of information the applicant has with regard to the occupants and those with a freehold or leasehold interest;
  - c) the nominator's reasons for thinking the authority should conclude the land is of community value;
  - d) evidence that the applicant is able to make a community nomination.

- 3.10 The application has to be determined by the Council within eight weeks, that is by 23 July 2015.
- 3.11 The Council must give information it is considering the listing application to interested parties who are identified in the statutory provisions. Notification has been given to:

Appleby in Westmorland Town Council;

The Chair of Trustees of Eden Community Outdoors;

The Company Secretary of Eden Community Outdoors; and

The Chief Officer of Eden Community Outdoors.

### **The Application**

- 3.12 The application is made by Appleby in Westmorland Town Council. The application nominates Centre 67 with reference to a plan. The plan accords with the registered title. The application indicates that the building dates from 1830 and gives Chapel Street its name. It was originally a place of worship, education, meetings and social gatherings. It was acquired by Westmorland County Council in 1953. It was refurbished as a youth centre and relaunched in 1967. The building was transferred to Eden Community Outdoors in 1990. The building contains and provides a climbing wall, computers and a film screen. Centre 67 is expressed always to have been a community asset primarily but not exclusively focused on the needs of young people.
- 3.13 It does appear in relation to the preliminary issues that:
- The application meets the requirements for a community nomination.
  - The application is made by the Town Council.
  - The Town Council is clearly the authority which is concerned with the town in which Centre 67 is situated.
- 3.14 The community nomination includes:
- A description of the land and its proposed boundaries.
  - A statement of information which the applicant has with regard to the occupants and those with freehold or leasehold interests in the land.
  - The nominator's reasons for thinking the authority should conclude the land is of community value.
  - Evidence that the applicant is able to make the nomination.
- 3.15 The application sets out what are considered to be the actual and current uses of the land which further the social wellbeing or social interests of the community.

- 3.16 The issue which has to be decided is whether an actual or current use of the land which is not ancillary furthers the social wellbeing or social interests of the local community and it is realistic to think that there can continue to be a non-ancillary use of the land which will further (whether or not in the same way) the social wellbeing or social interests of the local community, as required by Section 88 of the Localism Act 2011.

### **The Notification Responses**

- 3.17 A response has been received from the Chief Officer of Eden Community Outdoors which is attached as Appendix C. The response indicates that the building has a community use. The Centre has a main hall, kitchen and meeting rooms which are available to rent. There is a climbing wall which is available for group climbing sessions. There is a list of activities undertaken within the Centre for June 2015 which include Taekwondo, Metafit, willpower and grace, coffee morning, aerobics and Pilates, insanity, the filling station, youth club and a second hand bookshop and climbing.
- 3.18 Eden Community Outdoors is seeking to dispose of the building. It has requested expressions of interest in how anyone interested in taking over the running and ownership of Centre 67, as a registered charity, would manage the Centre and promote its use to the wider community and ensure its sustainability. The information relating to the disposal which appeared on the website is included as Appendix D. The building was available 'free of charge' to a registered charity, potentially.
- 3.19 Eden Community Outdoors does not provide 'youth work'. The organisation works with young people outside doing forest schools and summer week activities. Eden Community Outdoors does not wish Centre 67 to be listed as an asset of community value.
- 3.20 Eden Community Outdoors has received expressions of interest from other charities. It is understood that the Trustees have voted, unanimously, to accept the submission which was made by Eden Housing Association. The submission made by Eden Housing Association is attached as Appendix E. The submission sets out the expression of interest by Eden Housing Association and how it would manage Centre 67, promote its use to the wider community and ensure its sustainability.
- 3.21 Eden Housing Association and Eden Community Outdoors have both confirmed that the submissions which they have made may be reported to the Council in full and in public.

### **Other Submissions**

- 3.22 A number of interested parties have made representations in support of the listing of the asset being one of community value. The representations are included as Appendix F.

### **The Effect of Listing**

- 3.23 The effect of land being included on the list of assets of community value is, broadly, that the owner is prevented from disposing of it within a period of six

months subject to compliance with the statutory provisions. There are some exemptions from the restrictions which are specified in the act. Under Section 95(5) the moratorium on disposing of listed land does not apply if the disposal is by way of gift and this includes a gift by trustees of any trust by way of settlement upon the trust. It may be, therefore, that the listing of the asset does not inhibit or prohibit the purchase of the land by Eden Housing Association if this is by way of a gift.

### **The Assessment of the Application**

- 3.24 The Council is required to consider the application with reference to the statutory criteria. If the use of the land for community value purposes is established the application must be accepted and the owner and the applicant must be notified of the decision. If the use is not established the application must be refused and the appropriate parties notified of the refusal together with the grounds upon which the refusal is made. The Council will require to be of the opinion that the land is of community value and that the provision set out in Paragraph 3.4 of the report are met if the land is to be listed.
- 3.25 The Council should consider the actual uses which are made of Centre 67. The uses are set out in the submissions which have been made by Eden Community Outdoors and are contained in that body's documents. The Council will have to determine whether the actual uses which are identified in the application are ancillary to other uses or not. The Council will have to consider whether the uses are social in nature. Members will note that social wellbeing is not defined but social interests are defined in particular to include each of the following:
- Cultural interests;
  - Recreational interests
  - Sporting interests
- 3.26 The Council should take account of all of the representations which it has received in and with reference to the application and determine what weight should be given to those representations.
- 3.27 The actual uses which the local community makes of the land must not be ancillary. The term 'ancillary' means secondary, not primary, subsidiary and supplementary. The Council should adopt a common sense fact-based approach to this definition and ask itself whether any of the actual current uses which are relied upon are uses which are not secondary, subsidiary or supplementary to any other actual uses.
- 3.28 It is clear that Centre 67 has been and is used as a youth and community centre and facility. Members should consider whether the uses to which the building is put further the social wellbeing or social interests of the local community. Members should also consider whether it is realistic that there

can continue to be non-ancillary use of the building which will further those social interests.

## **4 Policy Framework**

4.1 The Council has four corporate priorities which are:

- Decent Homes for All
- Strong Economy, Rich Environment
- Thriving Communities
- Quality Council

## **5 Implications**

### **5.1 Legal**

5.1.1 The legal implications are contained within the body of the report. Any application to list land as an asset of community value must be determined within eight weeks of receipt. The application concerned was received on 29 May 2015.

5.1.2 An owner may ask for a review of a listing of land as an asset of community value. A review must be heard by an officer of the authority of appropriate seniority who did not take any part in the making of the decision to be reviewed. Any review must be undertaken within eight weeks and an oral hearing may be requested. The Chief Executive, the Director of Finance and the Communities Director have been authorised to undertake any review.

5.1.3 The owner may appeal to the First Tier Tribunal against a review decision.

5.1.4 In the event of a claim for compensation being made it is possible that a review of any decision upon such an application would require to be made. The relevant Chief Officers are able to undertake any review of the compensation awarded or which may be payable.

### **5.2 Financial**

5.2.1 Any decision to reduce or increase resources must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 16 April 2015.

5.2.2 The regulations identify that an owner or former owner of listed land is entitled to compensation from the local authority in whose area the land is situated, of such amount as the local authority may determine where the following circumstances, which are set out in Regulation 14(2), apply.

5.2.3 The circumstances are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed.

5.2.4 The regulations set out, for the avoidance of doubt, without prejudice to other types of claim which may be made, that the following types of claim may be made:

- a) A claim arising from any period of delay in entering into a binding agreement to sell the land which is caused by the relevant disposal being prohibited during the six weeks period in which the Council may receive notification as set out in the Act or where the prohibition continues during the six months by relevant disposal of land being prohibited during any part of that six month period.
- b) A claim for reasonable legal expenses incurred in a successful appeal to the First Tier Tribunal against the Council's decision to list the land, to refuse to pay compensation or with regard to the amount of the compensation offered or paid.

5.2.5 It is possible that a claim for compensation may be made on behalf of the owners of Centre 67 in the event of being listed as an asset of community value and, if made, the Council would have to consider it. The Government has indicated that it will meet any claims in compensation over £20,000 to be met by an Authority in any year. Any claim would have to be assessed in accordance with the relevant provisions.

### **5.3 Equality and Diversity**

5.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.

### **5.4 Environmental**

5.4.1 The Council has to have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.

### **5.5 Crime and Disorder**

5.5.1 Under the Crime and Disorder Act 1998 the Council has to have regard to the need to reduce crime and disorder in exercising any of its functions.

### **5.6 Children**

5.6.1 Under the Children Act 2004 the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.

### **5.7 Risk Management**

5.7.1 The Localism Act and the Regulations which have been made set out a statutory framework against which any application must be considered. The Council should adopt a process which is compliant with the statutory framework. The decision should take account of the information in the report and the representations which have been received. Members should consider and apply the statutory criteria and reach a decision which is reasonable and related to relevant considerations to avoid a risk of a successful challenge.

5.7.2 The determination of the applications are matters for the Council in the first instance although there are review and appeal provisions. The process adopted and any decision made may be scrutinised in an appeal or review.

## **6 Reasons for decision/recommendation**

6.1 To enable the application which has been made to be considered.

P G Foote  
Director of Corporate and Legal Services

**Governance Checks:**

Checked by or on behalf of the Chief Finance Officer	✓
Checked by or on behalf of the Monitoring Officer	✓

Background Papers:

Contact Officer: P G Foote  
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Appendix A	The Nomination Form
Appendix B	Summary of Statutory Provisions
Appendix C	Response from Eden Community Outdoors
Appendix D	Information relating to the disposal of Centre 67
Appendix E	Submission made by Eden Housing Association
Appendix F	Representations Received