

Eden District Council

Cabinet

20 September 2022

Nomination as an Asset of Community Value – Clifton Village Play Area

Portfolio:	Resources
Report from:	Assistant Director Legal and Democratic Services
Wards:	Eamont
OPEN PUBLIC ITEM	

1 Purpose

- 1.1 To consider the nomination of Clifton Village Play Area, as an Asset of Community Value under the Localism Act 2011.

2 Recommendation

It is recommended that the nomination of Clifton Village Play Area as an asset of community value be accepted.

3 Report Details

- 3.1 A nomination has been received from Clifton Community Council for Clifton Village Play Area to be listed as an asset of community value. The application is dated 25 July 2022 and was received on 2 August 2022. A copy of the nomination form is attached at Appendix A of this report. The supporting information can be found within the same appendix with further information being contained in Appendix B.
- 3.2 A plan of the land to which the nomination refers is attached at Appendix C.
- 3.3 Under the Localism Act 2011 [“the Act”] and The Assets of Community Value (England) Regulations 2012 [“the Regulations”] made thereunder the Council has a duty to maintain a list of land in its area which is of community value, and also a list of unsuccessful nominations of such land. There is a summary of the statutory provisions setting out the procedure and criteria for the nomination of land appended to this report as Appendix D.
- 3.4 The Act goes further to state that a nomination must include certain information in order to be considered by the local authority. The nomination must include a description of the land, names of occupiers and owners of the land, the nominator’s reasons for thinking that the land is of community value and evidence that the nominator is eligible to make a nomination.
- 3.5 The nomination of land as an asset of community value can be made by numerous different parties. In this case it has been made by Clifton Community Council under section 89(2)(b)(i) of the Act. The application is valid for the purposes of this nomination and thus the Council must consider the application.
- 3.6 Land which is of ‘community value’ is defined in section 88 of the Act. Briefly, its principal use must, in the Council’s opinion, ‘further the social wellbeing or

social interests of the local community' and 'it must be realistic to think' that such a use 'can continue' in the future.

Alternatively, there is a time in the 'recent past' when the principal use furthered the social wellbeing or interests of the local community and it is realistic to think that there is a time in the next five years when it would do so again (whether or not in the same way as before).

3.7 Under the Act 'social interests' can include cultural interests, recreational interests or sporting interests. The Act does not define 'recent past'. The Department for Communities and Local Government (now the Department for Levelling Up, Communities and Housing) commented that "we will leave it to the local authority to decide, since 'recent' might be viewed differently in different circumstances. For example, 'recent' might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter."

3.8 Clifton Community Council set out the reasons why they believe that the nominated land should be viewed as being of community value. Reasons stated, as found within Appendices A and B, are as follows:

- *"This is the community playarea for Clifton Village and is an incredibly important asset for the community of Clifton."*
- *"Clifton Community Council have tried to on a number of occasions open discussion relating to devolution of this asset to the Community Council so it can be protected, preserved and improved but these discussions have so far failed."*
- *"Clifton Community Council therefore want to take all steps possible to protect this valuable community amenity for its social and health benefits (e.g. encouraging children to play and be active in the outdoors), for children to have a safe place to play, and where care givers and children can meeting with others."*
- *"In terms of usage this is used on a daily basis by children within the Parish, particularly after school for school age children, and during the day for those who have younger children. It is used intensively during the school holidays."*
- *"It recently also hosted the Platinum Jubilee events for children within the Parish."*
- *"This is the only play equipment in the Parish."*

3.9 From the evidence presented, the nominated land brings both social and health benefits to children and caregivers in the local area whilst promoting wellbeing. The nominated land furthers the social interests and wellbeing of the community and is of community value. It is considered that the nomination should be accepted.

4 Policy Framework

4.1 The Council has four corporate priorities which are:

- Sustainable;
- Healthy, safe and secure;

- Connected; and
- Creative

5 Consultation

- 5.1 Consultation has been conducted in accordance with the statutory requirements of the Localism Act 2011, including with the local ward member and the owner of the land. As the Parish Council nominated the land, notification to them is superfluous.
- 5.2 No representations have been received from the local ward member.
- 5.3 The Owner has confirmed that they understand the requirements for listing an asset of community value and, subject to the land meeting those requirements in full, there would be no objection to the nomination.

6 Implications

6.1 Financial and Resources

- 6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2019-2023 as agreed at Council on 7 November 2019.
- 6.1.2 There are no proposals in this report that would reduce or increase resources, save for as referred to in paragraph 6.2.2 below.

6.2 Legal

- 6.2.1 The legislation provides an appeal mechanism for owners whose land is listed to a First Tier Tribunal, but contains no separate provision for disappointed applicants or nominating groups. However, interested parties could seek permission for a judicial review by the High Court of the Council's decision on various grounds, such as illegality, irrationality or procedural impropriety.
- 6.2.2 The Regulations provide that an owner or former owner of listed land is entitled to compensation from the Council if, at a time when the person was the owner of the land and the land was listed, they did incur loss or expense which would likely not have been incurred if the land had not been listed. This situation may potentially arise if the nominated land were to be sold and the value of the land was affected by the moratorium period. It is the owner's responsibility to provide evidence of the extra costs incurred and must be made within 13 weeks of the costs being incurred. However, please note that the compensation scheme does not usually extend to public authorities and bodies as defined at 12.5 of Appendix D.
- 6.2.3 The Council is required to determine the nomination within eight weeks of receipt. This nomination should have been determined on or before 27 September 2022. Whilst it is acknowledged that this report will be presented to the Cabinet slightly after the determination date, the application requires determination.

6.3 Human Resources

- 6.3.1 There are no Human Resources implications arising out of the proposal.

6.4 Environmental

- 6.4.1 There are no environmental implications arising out of the proposal.

6.5 Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	There are not considered to be any equality or diversity implications relevant to the subject matter and the Council's responsibilities nor are there any rurality implications.
Health, Social Environmental and Economic Impact	The report takes into account the social interests and wellbeing of the community. There are not considered to be any adverse impacts under this heading.
Crime and Disorder	The Council is aware that adequate amenity provision and the social interests and wellbeing of the community are all matters that are likely to help reduce crime and disorder.
Children and Safeguarding	The Council is aware that adequate amenity provision and the social interests and wellbeing of the community are all matters that are likely to help promote the welfare of children.

6.6 Risk Management

Risk	Consequence	Controls Required
Members' attention has been drawn above in paragraphs 6.2 and Appendix D to the risk of its decision being challenged.	Legal challenge and compensation claims	The Council cannot be sure of the likelihood of any such challenge, which will depend partly on the resources available to those aggrieved. Legal and financial risks are closely linked, as is any impact on the Council's reputation. They are largely dictated by the provisions of the legislation and the Council's duties as explained. Regardless of the risks the Council must proceed to make a decision in accordance with its statutory duty.

7 Other Options Considered

7.1 None as the statutory criteria are considered to be met. The Council has a statutory duty to make a decision on the nomination.

8 Reasons for the Decision/Recommendation

8.1 To carry out the Council's statutory duty as the determining authority under the provisions of the Localism Act 2011.

8.2 Please also refer to 3.9 above.

Tracking Information

Governance Check	Date Considered
Chief Finance Officer (or Deputy)	24 August 2022
Monitoring Officer (or Deputy)	5 September 2022
Relevant Assistant Director	N/A

Background Papers:

Appendices: Appendix A - Nomination Form
Appendix B - Further Supporting Information
Appendix C - Plan
Appendix D - Statement of Statutory Provisions

Contact Officer: Lisa Tremble, Assistant Director Legal and Democratic Services
(Monitoring Officer)

Eden District Council

Community Right to Bid - Nomination Form

Assistance in completing this form can be found by downloading the guidance from the website

Section 1 - About the property to be nominated

Name of property	Clifton Village Playarea
Address of property	Off the A6, Clifton, adjacent to Clifton School
Postcode	CA10 2EG
Property owner's name	Eden District Council
Address	Penrith Town Hall
	Corney Square
	Penrith
Postcode	CA11 7QF
Tel	
Current occupier's name	N/A Playarea

Section 2 - About your community organisation and its contact point

Name of organisation	Clifton Community Council				
Your Title	█	First Name	█		
Surname	█				
Position in organisation	Clerk & Responsible Financial officer				
Email address	█				
Address	█				
Postcode	█	Tel		Mobile	

Organisation type - tick all that apply

- | | |
|---|---|
| <input type="checkbox"/> Unincorporated Community/Voluntary Group

<input type="checkbox"/> Neighbourhood Forum

<input type="checkbox"/> Industrial and Provident Society

<input type="checkbox"/> Company Limited by Guarantee | <input checked="" type="checkbox"/> Parish Council

<input type="checkbox"/> Community Interest Company

<input type="checkbox"/> Charity

<input type="checkbox"/> Other |
|---|---|

How many members do you have (this is particularly important for unincorporated community groups)?	4 sitting councillors
--	-----------------------

Section 3 - Supporting information for nomination

Any information entered in this section only may be copied and passed onto the owner of the property you are nominating. Definition of an asset of community value can be found in the guidance document.

Why do you feel the property is an asset of community value? Please give as much information as possible and attach any supporting evidence.

This is the community playarea for Clifton Village and is an incredibly important asset for the community of Clifton. Clifton Community Council have tried to on a number of occasions open discussion relating to devolution of this asset to the Community Council so it can be protected, preserved and improved but these discussions have so far failed.

Clifton Community Council therefore want to take all steps possible to protect this valuable community amenity for its social and health benefits (e.g. encouraging children to play and be active in the outdoors), for children to have a safe place to play, and where care givers and children can meeting with others.

Section 4 - Boundary of property

What do you consider to be the boundary of the property? Please give as much detail/be descriptive as possible. Please include a plan and if this is not possible, please provide a sketch stating the dimensions of the property to be listed, as precise information is required for registration purposes.

The property is boundaried to the A6 side with an established hedge, and then a metal fence provides the boundary between it and Crooklands View There is then a wall and hedging on the final boundary between this site and the school

Section 5 - Attachment checklist

- Copy of group Constitution- *N/A Parish Council- Standing orders enclosed*
- Name and home addresses of 21 members registered to vote in nomination area (if group is not incorporated), plus confirmation they belong to the group and support the nomination
- Site boundary plan and description

Section 6 - Declaration

I can confirm that to the best of my knowledge the information contained in this nomination form is complete and accurate.

Signed:		Dated:	25.7.22
---------	---	--------	---------

Please send your completed form to:

Assistant Director Legal and Democratic Services
Eden District Council
Town Hall
Penrith
CA11 7QF

Or email to: legal@eden.gov.uk

[REDACTED]

From: Clifton Parish Council <cliftonpc@outlook.com>
Sent: 09 August 2022 11:54
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Community Asset Registration Request
Attachments: clifton-playpark-asset-map.pdf

Dear [REDACTED]

Please find attached a map of the Playarea Land, we have exported this from Google Maps (which have been accepted by EDC in the past for Community Asset Registrations)

[REDACTED] in terms of usage this is used on a daily basis by children within the Parish, particularly after school for school age children, and during the day for those who have younger children. It is used intensively during the school holidays.

It recently also hosted the Platinum Jubilee events for children within the Parish.

Yes, this is the only play equipment in the Parish.

Kind regards

[REDACTED]

Clerk to Clifton Community Council

Sent from [Outlook](#)

Clifton Community Council takes your privacy seriously.

Clifton Community Council would like to inform you that by contacting the parish Clerk at cliftonpc@outlook.com or carrying out work on behalf of Clifton Community Council this may result in you providing personal information which you consent to the Community Council holding.

Your personal data will be kept in compliance with the new General Data Protection Regulation (GDPR) Clifton Community Council will not pass your personal data to any other individual or organisation.

It should be noted under the Financial Regulations & Governance which Clifton Community Council are bound by that some personal information is required to be minuted and available in the public domain.

If you are concerned with any interaction with the Community Council with regard to your personal details please contact the Clerk.



Eden District Council

Assets of Community Value

**A Summary of the Statutory Provisions
Procedure to Nominate Land**

1. Introduction

- 1.1 Under the Localism Act, the Council has to maintain a list of land in its area that is of community value. The obligation arises under Section 87 of the Localism Act. It is for the Council to decide the form and content of its list of assets of community value, subject to whatever regulations the Secretary of State may make.

2. Land of Community Value

- 2.1 A building or other land in the Council's area is land of community value if in the authority's opinion:
- a) an actual or current use 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. The Procedure for including Land in a List

- 3.1 Land in the Council's area which is of community value may be included in the list only:
- a) in response to a community nomination; or
 - b) were permitted by regulations made by the Secretary of State.
- 3.2 A community nomination means one which nominates the land in the area for inclusion in the list of assets and is made by a Parish Council or by a person that is a voluntary or community body with a local connection.
- 3.3 Regulations may enable a nomination to be made by someone in circumstances other than where it is a community nomination.
- 3.4 Upon the community nomination being made it must be considered. The Council must accept the nomination if the land is in the Council's area and of community value. If the Council is required to accept the nomination, the authority must cause the land to be included in the list of assets. If the nomination is unsuccessful the Council must give to the person who made the nomination the authority's written reasons for its decision that the land could be included in the list.

4. Notice of Inclusion

- 4.1 The Council must give a written notice of the inclusion or removal of land in its list of assets of community value to:
- a) the owner of the land;
 - b) the occupier of the land if he is not the owner;
 - c) if the land was included in the list in response to a community nomination, the person who made the nomination; and
 - d) any person who is so specified in the regulations.
- 4.2 If appropriate where it is not reasonably practicable to give a notice, the Council may instead take reasonable alternative steps to bring the notice to the person's attention.

5. Review of a Decision

- 5.1 The owner of the land included within the authority's list of assets of community value may ask the authority to review the decision. The Council must notify the person concerned of the decision and the reasons for the decision on any review. The Council may remove the land and if it does so, must give notice to the body which made any community nomination.

6. List of Unsuccessful Community Nominations

- 6.1 The Council must maintain a list of land in its area that has been nominated by unsuccessful community nominations. This list is to be known as the list of land nominated by unsuccessful community nominations.

7. Publication

- 7.1 The Council must publish its list of assets of community value and the list of any land nominated by unsuccessful community nominations. The list must be available for inspection. The Council must provide a free copy of its list of assets to any person who asks for it.

8. Moratorium

- 8.1 The person who is the owner of land which is included within the authority's list of assets of community value must not enter into a relevant disposal of the land unless certain conditions are met. The conditions are:
- a) The particular person has notified the Council in writing of that person's wish to enter into relevant disposal of the land;
 - b) Either the interim moratorium period has ended without the Council having received from any Community Interest Group a written request for the Group to be treated as a potential bidder for the land or the full moratorium period has ended; or
 - c) That the protected period has not ended.

- 8.2 There are exclusions from the moratorium where a disposal is by way of gift or in relation to a disposal by will or intestacy, amongst others.
- 8.3 The full moratorium period means six months beginning with the date upon which the Council receives notification under Condition 8.1 a.
- 8.4 The interim moratorium period means six weeks beginning with the date upon which the Council receives notification under Condition 8.1 a.
- 8.5 The protected period means the period of eighteen months beginning with the date upon which the Council receives notification in relation to the disposal under Condition 8.1 a.
- 8.6 The meaning of the term “relevant disposal” is defined in the Act: Section 96 and includes the disposal of the freehold estate or the grant of a qualifying leasehold estate. The effect of the moratorium is that the community has to make an initial expression of interest in six months and the owner cannot sell to anyone else for six months if it does.
- 8.7 The effect of listing is to prevent a sale until there has been an adequate period to submit a bid should the owner wish to sell.
- 8.8 The Council’s list of assets must reveal that the notice has been received and indicate the date upon which the notice was received and the moratorium periods which are applicable.
- 8.9 If the Council receives from a Community Interest Group a written request to be treated as a potential bidder, the Council must pass that notification onto the owner or inform the owner of the details of the request. This obligation arises if the notice is received before the end of the interim moratorium period.
- 8.10 The Localism Act enables the Secretary of State to make regulations providing for the payment of compensation.

9. Local Land Charge

- 9.1 If land is included within the list of assets of community value, it should be included in the local land charges register. The Secretary of State may make regulations providing for enforcement and do anything to give advice and assistance in relation to land of community value. The Council has a duty to co-operate with other local authorities if different parts of any land are in different local authority areas. The District Council is the appropriate local authority for the purposes of the application of these provisions. A Parish Council is not a local authority for this purpose. A County Council is only a local authority for this purpose where there is no District Council in the area concerned.

10. The Regulations

- 10.1 The Secretary of State has made the Assets of Community Value (England) Regulations 2012. The Regulations came into force on 21 September 2012, the day after they were made. The Regulations identify land which is not of community value. The following are not land which is of community value and therefore may not be listed:

- A residence together with any land connected with that residence, however, land which is a residence falls within the exclusion may be listed if the residences of a building that is partly used as a residence and but for that residential use of the building the land would be eligible for listing.
- Land on which a site license is required under the Caravan Sites and Control of Development Act cannot be listed.
- Operational land as defined in Section 263 of the Town & Country Planning Act 1990 cannot be listed. Operational land is that which belongs to a statutory undertaker.

10.2 The Regulations define what is meant by “a local connection”. The activities that the body concerned must be wholly or partly connected with the Council’s area and there may be a requirement for it to have at least twenty-one local members if it is a Neighbourhood Forum. A voluntary or community body means:

- a Neighbourhood Forum
- Parish Council
- a non incorporated body with at least twenty-one individuals who are members and which does not distribute any surplus to its members
- a charity
- a company limited by guarantee which does not distribute any surplus to its members
- an industrial and providence society which similarly does not distribute any surplus; and
- a community interest company.

11. Content of a Community Nomination

11.1 A community nomination must include:

- A description of the nominated land including its proposed boundaries;
- A statement of all the information which the nominator has with regard to the current occupants and the owner;
- The nominator’s reasons for thinking that the Council should conclude the land is of community value and the evidence that the nominator is able to make the community nomination.

11.2 The Council has a period of eight weeks to respond to the nomination. The Council must notify a Parish Council, the owner of the land and any occupant that a nomination is under consideration.

12. Compensation

12.1 An owner is entitled to compensation from the Council of such amount as the Council may determine in the following circumstances:

- 12.2 That the person making the claim has at the time when the person was the owner of the land 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.
- 12.3 The regulations identify that a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused by the prohibition upon the disposal and a claim for reasonable legal expenses incurred in any successful appeal against the Council's decision are claims which may be made.
- 12.4 A claim for compensation must be made in writing to the Council and before the end of the period of thirteen weeks after the loss or expense was incurred. The claim must state the amount of compensation which is being sought and be supported by evidence. The Council must give the claimant written reasons for its decision in relation to any request for compensation.
- 12.5 The regulations identify that a body which has its accounts audited under Section 2 of the Audit Commission Act 1998, a department or body to which Section 6 of the National Audit Act 1983 applies and a body which has its resources examinable under Section 7 of the 1983 Act may not claim compensation.
- 12.6 A person who makes a claim for compensation may ask the Council to review its decisions in relation to compensation, a written for a decision must be given. An appeal may be made to a first tier tribunal against any decision of the Council on any review.
- 12.7 The Council must notify the owners and mortgagees of any listed land as soon as practicable after the land is entered on the register.
- 12.8 The regulations set out a procedure for a listing and a compensation review and identified relevant disposals to which the Act does not apply. There are fifteen such examples.