

**Executive Member for Finance and  
Performance Decision Session**

**15 August 2016**

Report of the Assistant Director of Governance and ICT

**Applications for Community Right to Bid under the Localism Act 2011**

**Summary**

1. This report presents applications to list the following assets as Assets of Community Value (ACV), for consideration by the Council
  - a. White Rose House, 73 Main Street, Wheldrake York, YO19 6AA.
  - b. Grove House 40/48 Penley's Grove Street, York, YO31 7PN.

**Background**

2. The Community Right to Bid legislation exists to ensure that property (land and building) assets which are currently used (or have recently been used) to the benefit of the local communities are not disposed of without the local community being given a fair opportunity to bid for these assets when they are put on the open market. This right is not simply to accommodate 'public assets' but also private assets, the test is whether such assets are viewed as 'assets of community value'. These assets therefore could be currently owned by the public, private or voluntary sector.
3. Two applications have been received under this legislation, for a decision by the Executive member. The Council is legally bound to determine an application within eight weeks of receiving the nomination.

**White Rose House, 73 Main Street, Wheldrake.**

4. Wheldrake Parish Council has nominated White Rose House for inclusion on the list. Parish Councils are statutorily entitled to make nominations. The nomination appears at Annex 1.

5. The property is owned and occupied by Girlguiding North Yorkshire South, a charity supporting activities for girls and young women. In accordance with the Regulations, the freehold owner occupier has been informed in writing that the application has been made. They have made representations which cast doubt on whether community use is more than an ancillary use of the building. The owner's representation appears at Annex 2.
6. The application needs to be judged against the statutory test which, is whether the building either:
  - *Has an actual current use that is not an ancillary use which furthers the well-being or social interests of the community, and 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 well-being or social interests of the local community; or*
  - *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 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*
7. The key issue in this case is therefore whether the community use can be said to be more than ancillary. It is the view of Officers that the evidence is not sufficiently strong to support such a conclusion.

**Grove House, Penley's Grove Street, York**

8. The Groves Association has nominated Grove House for inclusion on the register. The freehold of Grove House is owned by City of York Council.
9. The Association feels that the site would be an ideal site for a co-operative housing venture. The Association envisages purchasing the property in staged payments and creating a community land trust.
10. Under the ACV Regulations a property used wholly or partly as a 'residence' is 'land which is not of community value' (and therefore may not be listed).

11. Grove House is now closed and so is not currently occupied as a residence although, until its use as a care home ceased, it clearly was.
12. A property can still be regarded as a residence even when it is empty. The Regulations say:

“a building is a residence if—

  - (i) it is normally used or partly used as a residence, but for any reason so much of it as is normally used as a residence is temporarily unoccupied”
13. The Regulations go on to say that:

“a building or other land is not a residence if.....

  - (ii) it was previously used as a residence but is in future to be used for a different purpose and planning permission or development consent for a change of use to that purpose has been granted.”
14. In this case there is no settled intent to use the property for a purpose other than a residence and no planning permission has been granted for an alternative use.
15. The key question then is whether the property can currently be regarded as temporarily unoccupied.
16. The Council’s property team have pointed out that the property has recently been marketed and options for sale will be presented to the Executive in September. They say:

“it is fair to say that the property will be reoccupied for residential use. All the bids we have received for purchasing the property are for redeveloping the site for residential uses. Even the nominator’s proposed use for the property is residential. The site was allocated for housing in the draft local plan (Sept 2014).”
17. In these circumstances the view of Officers is that the most reasonable interpretation of the facts is that the property is used as a residence but is currently temporarily unoccupied. On that basis it does not qualify to be listed as an asset of community value.
18. **Implications.**

**Financial** - Compensation may be payable by the Council to the owner of any property which is listed. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items

as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

**Human Resources (HR)** – none

**Equalities, Crime and Disorder and IT** - none

**Legal** – Organisations falling within any of the following categories are eligible to submit an ACV nomination relating to property within their local area:

- (i) a parish council
- (ii) a charity, non-profit making company or community interest company with a local connection to the nominated property
- (iii) an unincorporated association which has at least 21 members registered to vote in the local area

The organisations who have submitted the nominations covered by this report fall within the above criteria and are therefore entitled to submit their ACV nominations.

The applications must be judged against the statutory criteria which are described in the body of the report.

There is a statutory right of appeal against a decision to include an asset in the list. There is no right of appeal against a decision not to list although the usual public law rights to challenge decisions by way of judicial review will apply.

**Property** – All property issues included in the report

**Other** – none

## 19. **Risk Management**

There are no significant risks other than those described in the report.

## 20. **Recommendations**

20.1 The Executive Member is asked to.

- a. Reject the application to list White Rose House, Wheldrake as an asset of community value as the evidence of community use is not sufficient to meet the statutory criteria.

- b. Reject the application to list Grove House, Penley's Grove Street as an asset of community value as it is excluded from the definition of an Asset of Community Value set out in the legislation.

Reason: To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

## Contact Details

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Report  
Approved



Date 5/8/2016

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Wards Affected: Wheldrake and Guildhall

All

For further information please contact the author of the report

## Annexes

*Annex 1 – White Rose House, Wheldrake – Application to add to the list of community assets.*

*Annex 2 - White Rose House, Wheldrake – response from the Girlguiding North Yorkshire South*

*Annex 3 – Grove House, Penley's Grove Street – Application to add to the list of community assets.*

