

Executive Member for Finance and Performance Decision Session

Report of the Assistant Director of Governance and ICT

Application for Community Right to Bid under the Localism Act 2011

Summary

1. This report presents an application to list Holgate Community Garden as an Asset of Community Value (ACV), for consideration by the Council.

Background

2. An application has been made to include Holgate Community Garden on the list of assets of community value under the community right to bid legislation. That legislation exists to ensure that property (land and building) assets which are currently used (or have been 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. The definition of 'community value' is set out in the regulations and can be summarised as
 - The actual current principal use of the building/land furthers social well being or the social interests of the local community and there is a realistic prospect that a principal use of the property (not necessarily the same use as present) will also further the social well-being or social interests of the local community (whether or not in the same way as at present) or;

- In the recent past a principal use of the property has furthered the social well-being or social interests of the local community and there is a realistic prospect that within the next 5 years a principal use of the property (not necessarily the same use as previously) will again further the social well-being or social interests of the local community (not necessarily in the same way as previously).
4. There is no exhaustive list of what is considered to be an asset of community value but cultural, recreational and sporting interests are included. Excluded specifically are residential type properties (such as hotels, housing in multiple occupation and residential caravan sites) and operational land of statutory undertakers.

The process

5. The regulations set out how potential assets can be listed which in brief is as follows:
- **Nomination** – this can be by a voluntary or community body with a local connection. This includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils). An unincorporated association that is not registered as a charity must have at least 21 members registered to vote in the local area before it is eligible to submit a nomination.
 - **Consideration** – the local authority have 8 weeks to make the decision. If the nomination is successful the asset details are entered onto the 'Community Value list' and also the local land charges register. If unsuccessful then the details are entered onto an 'unsuccessful nominations' list for a period of 5 years to prevent repeat nominations. The owner can request a review of the decision which must be completed within 8 weeks and the owner can further appeal within 28 days of the review outcome to a Tribunal.
 - **Compensation** – there are statutory compensation provisions. However these will not apply in this case since those provisions are only relevant to privately owned assets. The Gardens are owned by the City Council.

Holgate Community Garden and Play Park

6. The freehold of Holgate Community Garden and Play Park is owned by The City of York Council.

7. The application is being made by the Friends of Holgate Community Garden on the basis that the property is a green haven for inner city dwellers in York, particularly Holgate residents. The garden and basket ball court are actively used on a daily basis by families, dog walkers, picnickers, urban explorers, gardeners and other groups. The local residents have invested large amounts of their own time and money in transforming a run down area into a space filled with flowers, vegetables and well cared for play equipment.
8. The community garden is part of the Edible York movement and provides the neighbourhood's children with a safe enclosed green space, who play in it on a daily basis. The basketball court is used by St Paul's Primary School and Out of School Club for physical education and forest school sessions throughout the year. Further information can be found in the nomination form attached at annex 1.
9. Legal Services have confirmed that the nomination meets the eligibility criteria specified in the relevant legislation and the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012. The property comes under the responsibility of the City of York Council's Parks and Open Spaces. The head of this service has confirmed that he has no objection to the proposed listing.

Implications

10. **Financial** – there are no immediate financial implications

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

It is accepted that the Friends of Holgate Community Garden fall within criteria (iii) and are therefore entitled to submit their ACV nomination.

The report sets out the definition of 'land of community value'. If the listing authority considers that a nominated property falls within that definition then it must include the property on its ACV register unless the property falls within an exempt category. The Holgate Community Garden does not fall within an exempt category.

Property – property issues have been included in the body of the report

Other – none

Risk Management - There are no significant risks to this application.

Recommendations

11. The Executive Member is asked to agree to the listing of Holgate Community Garden and Play Park as an asset of community value for the reasons outlined above.

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

Contact Details

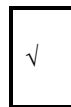
Author and Chief Officer responsible for the report:

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**Report
Approved**



Date 30th August 2016

Wards Affected: Holgate

For further information please contact the author of the report

Annex

Annex 1 – Holgate Community Garden and Play Park – Application to add to the list of community assets