

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

14 February 2022

Report of the Director of Economy, Regeneration and Housing

Application for Community Right to Bid under the Localism Act 2011

Summary

1. This report details an application to list Holgate Allotments, York as an Asset of Community Value (ACV), for consideration by the Council. The application has been received from Holgate Allotment Association.

Recommendations

2. The Executive Member is asked to consider the officer recommendation to:

Approve the renewal of the listing of Holgate Allotments, York, as an Asset of Community Value (ACV) for the reasons outlined within this report.

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

Background

3. The application has been received, for a decision by the Executive Member in the Council's statutory capacity as an Asset of Community Value (ACV) listing authority.
4. The freehold of the site is owned by City of York Council and leased to York Allotments Charitable Incorporated Organisation (CIO), who in turn sublet to Holgate Allotments Association. The site was previously entered on the Council's list of ACV property on 29 June 2015 following an earlier ACV nomination received on 7 May 2015.

As pursuant to Section 87(3) of the Localism Act 2011 land/property must be removed from the ACV list after 5 years from date of listing. This application is a request to re-add the site onto the Council's AVC list (for a further period of 5 years).

5. The purpose behind these provisions is to ensure that property (land and building) assets which are currently 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.
6. The definition of 'land of community value' is set out in section 88 of the Localism Act 2011. To be considered as an asset of community value the land or property must satisfy either of the following criteria:
 - a. 88(1) an actual current non-ancillary use of the building or other land 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

- b. 88(2) there is a time in the recent past when an actual non-ancillary use of the building or other land furthered the social well-being or social interests of the local community and it is realistic to think that there is a time within the next 5 years when there could be non-ancillary use (whether or not the same use as before) that would further the social well-being or social interests of the local community
7. 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

8. The regulations set out how potential assets can be listed which in brief are 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).
- **Consideration** – the local authority have 8 weeks to make the decision. Under the Council's procedures the Executive member is the decision maker. If the nomination is successful the asset details are entered onto the 'Community Value list' – see further details in the report – 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. Neither the Localism Act nor the ACV Regulations give the nominating organisation any right to appeal a decision of the local authority that the nominated property is not an asset of community value/does not satisfy the necessary S.88 criteria referred to above.
- **Disposal of assets on the list** – if a building or piece of land which is on the list is going to be sold with vacant possession then the owner of the asset needs to give notice to the local authority. There is then a 6 week moratorium period for any community group to express interest in writing and if they do, then a 6 month period is provided for that group to prepare its bid. After that period the owner can market the property and any bid from the community group will be considered with bids from other interested parties. There is no guarantee that the offer from the community group will be successful as the owner of the asset will dispose of the property in accordance with its own criteria for disposal. There are a number of exceptions contained within the legislation that mean that this moratorium period does not apply and the owner does not need to give notice of its intention to sell. This includes when there is a legally enforceable requirement, which pre-dates the listing, to sell to a specific party.
- **Compensation** – the presence of the land or building asset on the community value list may result in additional expenditure or a loss to the owner and therefore the owner can apply for compensation from the local authority. 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).

Holgate Allotments

9. The freehold of Holgate Allotments is owned by City of York Council. The nomination is being made by Holgate Allotment Association (HAA) who have confirmed their status as occupier in their application. Legal Services have confirmed that a nomination must be considered by the Council if the nominator is someone who meets the eligibility criteria specified in the relevant legislation and if the nomination form includes the information specified in Regulation 6 of the ACV Regulations 2012. Holgate Allotment Association is an eligible organisation and the application is valid.
10. In accordance with the regulations to notify the owner (CYC) Dave Meigh, Operations Manager – Public Realm has been consulted. He has confirmed he has no objection to the nomination.
11. City of York Council own the freehold to various allotment sites in York. The sites are leased out to York Allotments CIO (YACIO) pursuant to a lease granted on 9 April 2021. The term is a period of 7 years from the date of the lease at a peppercorn rent. YACIO sublet Holgate Allotments to Holgate Allotments Association.
12. YACIO have been informed of the nomination. A response received from Tony Chalcraft, Chair YACIO Trustees, confirms that Holgate Allotment Association's nomination is fully supported by the trustees of YACIO. Comments in his response include that Holgate Allotments is one of the largest and longest established sites in the city. It is fully tenanted with a long waiting list. He states that HAA has undergone several projects to improve the site and encourage a sense of community including the Carriage Garden. He emphasises that the site provides a green space in an otherwise urban area and that its environmental value is enhanced by Holgate Beck which forms the Eastern Boundary.
13. Holgate Allotment Association (HAA) state in their nomination that Holgate Allotments were originally established to provide growing space for the people occupying the high-density terraced housing in the nearby area. Additionally, St Paul's C of E Primary School occupies a plot, this being the only green space available to its pupils. Plots are also occupied by York Mind and Ecotherapy at St Nicks. The site is also accessible for those using mobility scooters. The demand for plots continues to be high, with a typical waiting list in excess of ten in number. HAA state the allotments are considered to

have a positive impact on both physical and mental health with plot holders able to increase their activity levels, have access to a peaceful outdoor environment, meet and socialise with other plot holders, and engage in an activity that is a recognised form of stress relief.

14. The HAA have developed a community plot, the Carriage Garden which includes a pond and decking area based around a restored Great Northern Railway wagon providing a community space for tenants. The awarding of a National Lottery Community Fund grant is enabling the development of two unlettable allotment plots into a community orchard and an apiary benefitting plot holders and the local community with a place to meet and socialise. The plan includes a series of accessible raised beds.
15. HAA state there is a mix of long and short term tenants ensuring that those new to the area or with a new interest has a reasonable chance to get a plot. The association has increased community involvement in the site through open days, apple pressing days and fetes. Holgate Allotments provide protection and an ideal habitat for wildlife including hedgehogs, voles, newts and bats (many of which are on the Red List of Conservation) in what is a heavily urbanised area. Holgate Allotments provides a means to fulfil CYC's key priorities listed in its "Vision for Holgate"; *increase community involvement, increase access to healthy lifestyle choices and to help your money go further.*
16. Impact statements from Richard Knowles, St Paul's C of E Primary Head Teacher, Dr Toni Bunnell, plot holder and Wildlife Biologist, and Dan Brittan, Self Help and Group Manager for York Mind have stated their support for the nomination.

Analysis

17. If the decision is to approve the ACV nomination application then the owner of the property has a statutory right to request a review of that decision by submitting a review request to the Council within 8 weeks of the decision date. (If the decision is to reject the ACV nomination application, the legislation does not give the nominating group any right to appeal that request though they could potentially seek a judicial review of the decision by submitting a J.R. claim to the High Court).

Options & Recommendation

18. The application to renew the listing of Holgate Allotments as an Asset of Community Value can either be accepted or rejected. There are no other options as it is considered that sufficient information has been provided to make a decision. Based on the information provided it is recommended to renew the listing of the ACV for this property.

Council Plan

19. A Council that listens to residents through working with communities and partners.

Implications

20. 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).

21. Human Resources (HR) – none

22. Equalities, Crime and Disorder and IT - none

23. Legal – Advice and comments have been sought from Legal Services and incorporated within this report.

24. Property – All property issues included in the report

25. Other – none

Risk Management

26. There are no significant risks to these applications.

Contact Details

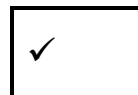
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**Report
Approved**



3/02/2022

Wards Affected: Holgate

For further information please contact the author of the report

Annexes

Annex 1 – Holgate Allotments, York – Application to add to the list of assets of community value.

Annex 2 – Site Plan

Annex 3 – Response from the Chair YACIO Trustees

Annex 4 – Current list of assets of community value

Abbreviations used in the report

ACV - Assets of Community Value

CIO – Charitable Incorporated Organisation

HAA – Holgate Allotments Association