**Notice under Section 91 of the Localism Act 2011**

**23rd July 2018**

**Entry of The Richmond Arms, 7 Richmond Place, Beacon Hill, Bath BA1 5PZ into Bath & North East Somerset Council’s List of Assets of Community Value**

1. **Background**

On **28th May 2018**, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 (“the Act”) to list The Richmond Arms as an Asset of Community Value. The nomination was made by Save the Richmond Arms. A map setting out the boundaries of the asset nominated to be listed (“The Asset”) is provided as an Appendix to this notice.

Under Section 87 of the Act the Council must maintain a list of assets of community value.

Section 88 of the Act states that

(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area is land of community value if in the opinion of the authority—

(a) an actual current use of the building or other land that is not an ancillary use 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.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

(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 way as before) the social wellbeing or social interests of the local community.

Under Section 89 of the Act, the Council can only enter assets into the list of Assets of Community Value in response to community nomination.

1. **Decision-Making Process**

The Council’s Cabinet on October 10th 2012 resolved to agree that:

2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 be delegated to the Director for Partnerships and Corporate Services (and, in the event of this Director having a conflict of interest, to a Director nominated by the Corporate Director), drawing on the decision-making guidance as set out in Appendix One (of the report)

2.2 The Director for Partnerships and Corporate Services be delegated decision-making with regard to updating this guidance, in consultation with the Council Leader, in response to experience of implementing the provisions, new regulations and emerging case law

2.3 The internal review process in relation to listing be undertaken by a Director not involved in the initial decision

2.4 The Director for Property Services be delegated to make arrangements relating to the procedures following listing, including moratorium and compensation provisions, as set out in Appendix Two (of the report)

In accordance with this decision, the Director for Partnerships and Corporate Services has now fully considered the nomination in light of the Act and the Assets of Community Value (England) Regulations 2012 (“the Regulations”). Following this consideration, the Director for Partnerships and Corporate Services has decided to enter the property into its list of Assets of Community Value.

This decision has been taken because:

(1)

a) The Asset lies within the administrative boundaries of Bath & North East Somerset Council and Lansdown Ward

b) Save the Richmond Arms is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset

c) The nomination from Save the Richmond Arms includes the matters required under Regulation 6 of the Regulations

(d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations

and

 (2) in the opinion of the Authority,

(a)The actual current use of the Asset that is not an ancillary use furthers the social wellbeing and interests of the local community;

(b) Given that the Asset remains fit for purpose to further the social interest and social wellbeing of the local community, and considering also that there are examples of similar and comparable assets serving these interests, it is realistic to think that the current non-ancillary use of the Asset will continue to further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

The detailed assessment on which this decision is based, following the criteria adopted by the Council Cabinet on 10th October 2012, and fully considering information supplied by the nominee and other parties (including the owner), is set out in 4 below.

1. **What Happens Next**

The Asset will now be placed on the list of Assets of Community Value which the Council is required to maintain under Section 87 of the Act.

In accordance with Section 91 of the Localism Act the Council will send this notice to:

The owner of the property

Save the Richmond Arms

The information will also be published on the Council’s website. The Asset will remain on the Council’s List of Assets of Community Value for a period of five years from the date of this notice unless removed with effect from some earlier time in accordance with the provisions of the regulations.

The Localism Act 2011 requires that the Council draw particular attention to the following:

(a) the consequences for the land and its owner of the land’s inclusion in the list, and

(b) the right to ask for review

The consequences for the land and its owner of the land’s inclusion in the list

Inclusion of assets on the List of Assets of Community Value is a local land charge under the Local Land Charges Act 1975. The Council is required under Schedule 4 of the Regulations to apply to the Land Registry for a restriction to be added to the registered title of the land that “no transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene Section 95(1) of the Localism Act 2011”.

Under Section 95 of the Act an owner must notify the Council (at the following address: Director, Property Services, Lewis House, Manvers Street, Bath BA1 1JG) if they wish to enter into a relevant disposal (as defined in Section 96 of the Act) of that asset. Some types of disposal of listed assets are exempt and these are set out in full in Annex A of the document Community Right to Bid: Non-statutory advice note for local authorities. Annex A also identifies circumstances where, although there is no requirement in the legislation that the owner has to explain to the local authority that the disposal is exempt, it would be helpful for them to do so.

A moratorium period is triggered by notification under Section 95 to allow a Community Interest Group to submit a written request to be treated as a potential bidder for the asset. The owner is advised to refer to Part 5 Chapter 3 of the Act and the Regulations in full and to seek legal advice if they wish to dispose of the asset. A disposal of listed land which contravenes the Regulations and Act will be ineffective.

The owner of the asset does not have to sell the asset to the Community Interest Group. There is also a ‘protected period’ (18 months from the time that the owner notified the local authority of their intention to dispose of the asset) and during this time there can be no further moratoriums on sale and the owner is free to dispose of the property as they see fit.

The right to ask for review

Asset owners have the opportunity to request a review of the decision to enter an asset on the List of Assets of Community Value, within 8 weeks of listing. The internal review process in relation to listing will be undertaken by a Director not involved in the initial decision.

Landowners wishing to request a review of the decision should do so in writing to the above address or to assets@bathnes.gov.uk by **17th September 2018**, setting out the grounds for review and whether they are requesting an oral hearing.

Private owners may claim compensation for loss and expense incurred through the asset being listed including a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period. Regulation 14 of the Regulations contains more detail on this.

Part 5, Chapter 3 of the Localism Act 2011 and the [Assets of Community Value (England) Regulations](http://www.legislation.gov.uk/ukdsi/2012/9780111526293/contents) provide further detailed information.

1. **Detailed Assessment of the Nomination of The Richmond Arms, Bath, as an Asset of Community Value**

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| **Assets of Community Value Nomination – Assessment** |
| DATE OF SUBMISSION: | **28/05/2018** | DATE DECISION TO BE MADE BY: | **23/07/2018** |
| NOMINATED ASSET: | The Richmond Arms inn, 7 Richmond Place, Beacon Hill, Bath BA1 5PZThe boundary of the asset is set out in the boundary map attached as an Appendix |
| NOMINATION SUBMITTED BY: | **Save The Richmond Arms** |

**STEP A: This section considers the eligibility of the nominating body to make a nomination and of the asset to be an Asset of Community Value. It does this through a series of YES/NO ANSWERS**

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| **A1.** Is the nominating organisation an eligible body to nominate? |
| Evidence supplied by nominee: | Save The Richmond Arms constitution and membership list. An officer of the Council has accessed the current electoral register for Bath & North East Somerset, and has confirmed that all 24 members of Save The Richmond Arms are listed on the register as of 04 June 2018. Save The Richmond Arms is therefore a valid unincorporated body in accordance with Regulation 5(1)(c) of the Regulations and complies with section 89(2)(b)(iii) of the Act. |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and any comments: | **YES** - The Council is satisfied that the nominating body is an eligible body to nominate. |

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| **A2.** Does the nominating body have a local connection to the asset nominated? |
| Evidence supplied by nominee: | In accordance with Regulation 4 of the Assets of Community Value (England) Regulations 2012:the nominating body’s activities are wholly concerned with the Bath & North East Somerset area (specifically the nominated asset); andany surplus made by the nominating body is wholly applied for the benefit of the Bath & North East Somerset area (specifically the nominated asset).The submitted map shows that the Asset is sited wholly within the boundaries of Bath and North East Somerset.  |
| Feedback from other parties and other information gained in relation to this criterion | None |
| Score (YES/NO) and any comments: | **YES**- The Council is satisfied that the nominating organisation has a local connection to the nominated asset. |

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| **A3.** Does the nomination include the required information about the asset?* Description of the nominated land including its proposed boundaries
* Names of current occupants of the land
* Names and current or last-known addresses of all those holding a freehold or leasehold estate in the land
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| Evidence supplied by nominee: | A plan of the nominated land including proposed boundaries.The name and address of the current owners of the nominated asset have been provided. |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and any comments: | **YES**- the Council is satisfied that the nomination has included the required information about the asset. |

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| **A4.** Is the nominated asset outside of one of the categories that cannot be assets of community value (as set out in Schedule 1 of the Assets of Community Value (England) Regulations 2012):* A residence together with land connected with that residence
* Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960
* Operational land as defined in section 263 of the Town and Country Planning Act 1990.
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| Evidence supplied by nominee: | Nomination and supporting evidence sufficiently demonstrates that the asset is outside of the categories of assets within Schedule 1 of the Regulations |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and any comments | **YES**- the Council is satisfied that the nomination is outside of one of the categories that cannot be assets of community value  |

**If YES to all of Part A, move on to Step B. If NO to one or more parts, please inform the nominator that the nomination is ineligible. Place nomination on list of unsuccessful nominations.**

**STEP B: This section considers the current or recent usage of the asset. It does this through a YES/NO answer and an identification as to whether the use is current or in the “recent past”**

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| **B1.** Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?* NOTE 1: A working definition of “recent past” is “within the past three years”
* NOTE 2: A working definition of “non-ancillary” is that the usage is not providing necessary support (e.g. cleaning) to the primary activities carried out in the asset, but is itself a primary, additional or complementary use.
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| Evidence supplied by nominee: | The nomination form states that the asset is currently used as a public house, and has been in continuous use as such since circa 1872. |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and any comments: | **YES**- the **current** usage which is the subject of the nomination is an actual and non-ancillary usage.  |

**If the current or recent usage that is the subject of the nomination is actual and non-ancillary, go to Step C. If not, place on the list of unsuccessful nominations.**

**STEP C: This section considers whether the use furthers (for current uses) or furthered (for uses in the recent past) the social interests or social wellbeing of the local community. It does this through a series of questions scored on the basis of evidence.**

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| **C1.** Who benefits from the use?* Does it meet the social interests of the community as a whole and not simply the users/customers of the specific service?
* Who will lose if the usage ceases?
 | Evidence provided by nominee | The nomination form states that:The Richmond Arms is an important part of the social fabric of the local community, allowing a wide range of people to meet and socialise, both as customers and as a community.It is the focus of the welcome given to newcomers in an area remote from the centre of the city. The local people cover the social spectrum – prominent local business people, professionals, trades people, craftsmen/artists, retired people and young families. Many of these people would not have the chance to meet each other if it wasn’t for the accessibility of The Richmond Arms and the social cohesion that it provides in the Lansdown/upper Fairfield Park area. The people who have formed the Save The Richmond Arms unincorporated body are a classic example of this, covering all sections of our community. The only group that isn’t prominent are 18 to 25 year olds. Although they probably socialise in the town centre, the pub closer to home will inevitably feature more significantly when a little older.It is the only public amenity in the Lansdown/upper Fairfield Park area - an area of very steep hills and therefore the only location many residents can walk to. Other pubs either being too far up the hill (Hare and Hounds, gastropub) or too far down (Fairfield Arms and Rising Sun, undergoing their own difficulties). None of these could fulfil the essential community role that the Richmond Arms plays (because of its location and relative isolation) in giving the residents an easily accessible meeting place in the Lansdown/upper Fairfield Park area.It should be noted that new housing developments around Lansdown (e.g. Ensleigh, Somerset Place) will bring an additional 1200 residents into the local catchment area and that can only mean that The Richmond Arms has even more relevance in the social well-being of the area.The bar received (and still would receive, if open) a decent turnover of locals and passing trade every day – a previous informal survey showed between 15 and 65 people per day (more footfall at weekends). Weekend lunchtimes and summer evenings can be significantly busier if the weather is nice and the beer garden comes into its own.The kitchen has served highly regarded a la carte and bar menus and a daily barbecue was very popular in the summer months.As well as the above, the Richmond Arms has been, and will continue to be used by various groups:• Local business groups for monthly meetings, around 8 people• Breakfast and evening networking events• St Stephens church choir post weekly choir practice• St Stephens School PTA and other parent groups (monthly during term time)• Monthly (Wednesdays) pub quiz attracts teams from the local area and beyond (up to 8teams from 2 to 6 players per team)• Birthday and other parties for members of the local community• Wedding receptions• Post-Bath Half Sunday lunches for groups of runners and their families.Visitors from overseas and outside of the Bath area and walkers are familiar visitors given the pub’s close proximity to the local countryside. Interaction with these welcome visitors is very beneficial to the members of the community who for various reasons do not venture far afield.The negative consequences of losing this community asset would be:• An irreplaceable loss of social health and wellbeing, particularly among the older sections of the community• The loss of the only accessible meeting place – there simply are no alternatives in the area due to topography of the area and the relative isolation of the Richmond Arms• The need to travel by car to locations further afield (not sustainable and certainly not local)There would also be:• Loss of employment of bar, kitchen and waiting staff (full and part-time)• An associated negative impact on local trade and retail suppliers in terms of lostrevenue from food, drink and general supplies. We believe this to be in the region of £80K - £100K per year.However, a positive consequence that the threat of the loss of this community asset has brought about is that we are keen to be involved in the ownership and management of it for the benefit of the local community. To that end, we are constructing a robust business case topresent at the appropriate time. This is a key part of our case for inclusion on the list of Assets of Community Value – we would use it so much more for community benefit than the current owners do. To this end, The Richmond Arms (Bath) Community Benefit Society Limited was set up and has been in existence since 2013.Other examples of how the local community have been voluntarily involved in the running of thepub are:• Proactive and positive promotion of the Richmond Arms in local media and on social media• Passing on all local press contacts to publicise the pub and it’s food, events, etc (not used by the current owner or the previous tenant)• Created and supplied a personalised marketing plan for the pub (not used by the current owner or previous tenant)• Organised and helped to organise events such as summer parties, Christmas and New Year’s Eve parties, Halloween fancy dress, children’s entertainment including face painting• Charity raffles• Guest bartender nights where members of the community ran the bar• Organising and running the monthly pub quiz• Helping the previous tenant get set up e.g. operation of the new till• Helping out behind the bar when short-staffed |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The Ward Councillor for Lansdown has written in support of the application stating:“I support local residents in trying to preserve the identity of their community by retaining The Richmond Arms”. |
| Enter score out of 25 and rationale | **25** - Furthering social interests of most of the local community is clearly demonstrated: the application states that the only section of the community which is not prominent in its usage of The Richmond Arms are those in the 18 – 25 age group. |
| **C2.** Is any aspect of the usage actively discouraged by the Council’s Policy and Budget Framework? | Evidence provided by nominee | There is no evidence that the usage is actively discouraged by the Council’s Policy and Budget framework and it is not contrary to existing planning policies.Information that was included in the application:The Localism Act 2011 and the BANES Local Plan provide a degree of protection for community assets, including public houses.The Government’s National Planning Policy Framework (NPPF) outlines how local people and their councils can produce plans which reflect the needs and priorities of their communities. Within this the Richmond Arms performs both economic and social roles, providing local jobs and a place that positively contributes to the community’s well-being. Section 8 of the NPPF - Promoting Healthy Communities – is particularly relevant in this regard.Also, the Government issued a consultation document regarding the longstanding and serious concerns about the relationship between large pub companies and their tenants.<https://www.gov.uk/government/consultations/pub-companies-and-tenants-consultation> Policy CF1 of the BANES Local Plan applies:“Development involving the loss of a site used, or last used, for community purposes will be permitted only where:” etc.**There are no alternative facilities available and no proposals by the current owner to provide one.**Policy CF7 of the BANES Local Plan applies: “Planning permission will not be granted for the redevelopment or change of use of a publichouse which would result in the loss of premises which provide, or could provide, a needed community facility in that locality, unless:” etc.It is clear that the Richmond Arms would be a viable business and we intend to put forward our business case if this application is successful. Perceived lack of viability is purely the result of the current owner’s aspiration to achieve an unrealistic rent coupledwith an unsustainable business model. The current owner is looking for £28k rent per annum, £20k ingoing charge and a £7.5k security deposit. This is twice the cost of larger, busier, city pubs currently on offer e.g. The Royal Oak, Widcombe. In any event, there are no proposals to provide alternative facilities of equivalent or greater value to the local community. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) |  |
| Enter score out of 25 and rationale | **25** - No active discouragement by the Council’s Policy and Budget Framework has been identified. |
| **C3.** Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made? | Evidence provided by nominee | The nomination states that:The Richmond Arms is the only community facility in the Lansdown/upper Fairfield Park area widely used by a variety of organisations including St Stephens Church, St Stephens School and other local groups such as the FSB. These are mutually beneficial arrangements for the local community with many of the pub users also being part of the Church and also having children at the school.There is no village hall, no shop, no Post Office, no cafe – the area needs The Richmond Arms and it can provide these much needed amenities as a community owned facility. For some locals, particularly the elderly, it is the only place where they get regular contact with the outside world. The Richmond Arms generates a feeling of belonging and the level of support described in C4 below demonstrates the local pride and cohesion that people in the area feel.Tangible examples of social value and community cohesion are the annual Christmas Carol service, the annual New Year’s Eve party, the fortnightly pub quiz, birthday parties and wedding receptions. The Richmond Arms is a welcoming place for local residents to entertain friends and relatives from far and wide. Closer to home, the pub offers an invaluable contact point for news of local residents who are in hospital or confined at home.With future residential growth in the area of approximately 1200 people in the Lansdown area, The Richmond Arms clearly has an important part to play in developing social value and sense of place with its new neighbours. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The Council’s Corporate Sustainability Manager has stated that there is evidence that this asset provides local services that would only otherwise be accessible by car, particularly for less physically able residents, and that the application is therefore in line with the Council’s overall sustainability objectives. |
| Enter score out of 25 and rationale | **15** - The nomination emphasises the uniqueness of The Richmond Arms in the area, and its capacity to cater for the current and future social needs of the whole community.  |
| **C4.** How strongly does the local community feel about the usage as furthering their social interests? | Evidence provided by nominee | When Save The Richmond Arms found out that another change of use planning application had been submitted for the Richmond Arms, we quickly rallied the support of the local community. Save The Richmond Arms has coordinated the various activities aimed at keepingthe Richmond Arms as a community asset. Around 150 formal objections have been submitted on the BANES planning website. Given the short time we have had to organise ourselves, we feel that this is a clear indication of the strength of feeling of the local community regarding the social benefits of the Richmond Arms. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) |  |
| Enter score out of 25 and rationale | **15** - It is evident that the local community is strongly opposed to any attempt to change the current usage of The Richmond Arms. However, an even stronger case would have been made with more evidence of the local community’s support for its current usage. |
| **Total score:** | **80** |

**If STEP C meets a minimum scoring of 55%, go to Step D**

**STEP D: This section considers 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 wellbeing or social interests of the local community.**

For assets such as this where the actual non-ancillary usage is a **current** one (see Step B above), 88(1) (b) of the Localism Act requires the Council to consider whether in the opinion of the local authority **it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further (whether or not in the same way) the social wellbeing or social interests of the local community**.

This will be considered through the following tests:

* If the asset is considered to remain fit for purpose (under D1 below), then this is considered to be sufficient grounds for thinking that it is realistic to think that continuing use of the asset will further the social wellbeing or social interests of the local community identified in Step C above.
* If the building is not considered to remain fit for purpose under D1, then an additional Test (under D2 below) will be applied to determine whether the asset could be made fit for purpose practically and within reasonable resource requirements and within timescales. The timescales to be applied for this to take place for assets with “recent usage” will be “within the next five years”.

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| **D1.** Has the building/land-take/space/legal requirement for this usage changed significantly since its initial use so that the asset is not fit for purpose? |
| Evidence supplied by nominee: | The nomination states that the asset has been trading as a public house since c.1872. It was equipped and run as a public house up until its recent closure in January 2018.The application included an outline business case which demonstates the asset could be run again as a viable public house.  |
| Feedback from other parties and other information gained in relation to this criterion: | None  |
| Score (YES/NO) and rationale | **NO**- the asset is considered to be fit for purpose, as its current usage has not changed since its initial use as a public house. |

**If No to D1, place on register of Assets of Community Value, and do not go to D2. If Yes to D1, go to D2.**

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| **D2.** Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales? |
| Evidence supplied by nominee: | Not applicable |
| Feedback from other parties and other information gained in relation to this criteria: | Not applicable |
| Score (YES/NO) and Rationale: | Not scored as NO answer to D1 above |

**If yes to D2, place on register of Assets of Community Value. If no to D2, place on list of unsuccessful nominations.**

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| **RECOMMENDATION:**  | **THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE** |
| **REASON FOR DECISION** | (1)a) The Asset lies within the administrative boundaries of Bath & North East Somerset and Lansdown Ward.b) Save the Richmond Arms is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Assetc) The nomination from Save The Richmond Arms includes the matters required under regulation 6 of the Regulations(d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations and (2) in the opinion of the authority, (a) The current and recent use of the Asset that is not an ancillary use furthers the social wellbeing and interests of the local community (b) Given that the Asset remains fit for purpose to further the social interest and social wellbeing of the local community, and considering that there are examples of similar and comparable assets serving these uses, it is realistic to think that the current non-ancillary use of the Asset will continue to further (whether or not in the same way as before) the social wellbeing or social interests of the local community. |
| **Decision Taken by** | David TretheweyDirector Partnerships and Corporate ServicesBath & North East Somerset Council |
| **Date** | 23rd July 2018 |