

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

**25th August 2017**

### **Entry of The Royal National Hospital for Rheumatic Diseases Buildings, Upper Borough Walls, Bath BA1 1RL, into Bath & North East Somerset Council's list of Assets of Community Value**

#### **1. Background**

On 10<sup>th</sup> July 2017 Bath & North East Somerset Council ('the Council') received a nomination under Section 89 of the Localism Act 2011 ('the Act') to list The Royal National Hospital for Rheumatic Diseases Buildings, Upper Borough Walls, Bath, BA1 1RL as an Asset of Community Value. The nomination was made by Bath Preservation Trust. 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.

## **2. Decision-Making Process**

The Council's Cabinet on October 10<sup>th</sup> 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 of Strategy and Performance (and, in the event of this Divisional Director having a conflict of interest, to a Divisional Director nominated by the Strategic Director - Resources), drawing on the decision-making guidance as set out in Appendix One (of the report).
- 2.2 The Director of Strategy and Performance 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 Divisional Director not involved in the initial decision. (Subsequently, on 5th April 2016, the Divisional Director, Strategy and Performance, made a delegated decision to amend the Council's process for reviewing entries on to the register of Assets of Community Value, so that any Review be undertaken by an officer of appropriate seniority who did not take any part in making the decision to be reviewed, within 8 weeks of request. This brought the process in line with national regulations).
- 2.4 The Divisional Director 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 of Strategy and Performance 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 of Strategy and Performance has decided that this nomination has not been successful and will be added to the the Council's list of unsuccessful nominations

This decision has been taken because:

- (1)
  - a) The Asset lies within the administrative boundaries of Bath & North East Somerset Council and Abbey Ward.
  - b) Bath Preservation Trust is entitled under 89(2)(b)(iii) of the Act to make a community nomination in respect of the Asset in that it is a person that is a voluntary or community body with a local connection.
  - c) The nomination from Bath Preservation Trust 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.
  - (e) The nomination form sets out the reason for nominating the Asset, explaining why the nominator believes the Asset meets the definition in the Act.

and

(2) in the opinion of the Authority,

- (a) The actual current use of the Asset that is not an ancillary use which 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, it is realistic to think that the current non-ancillary use of the Asset will not 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 10<sup>th</sup> October 2012, and fully considering information supplied by the nominee and other parties is set out in 4 below.

### **3. What Happens Next**

The Asset will now be placed on the list of unsuccessful nominations 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 Act the Council will send this notice to:

The owner of the property  
Bath Preservation Trust

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 Act 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: Divisional 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 officer of appropriate seniority who did not take part 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](mailto:assets@bathnes.gov.uk) by 27<sup>th</sup> October 2017, 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 Act and the Regulations provide further detailed information.

**4. Detailed Assessment of the Nomination of: The Royal National Hospital for Rheumatic Diseases Buildings, Upper Borough Walls, Bath BA1 1RL, as an Asset of Community Value**

<b>Assets of Community Value Nomination – Assessment</b>			
DATE OF SUBMISSION:	<b>10<sup>th</sup> June 2017</b>	DATE DECISION TO BE MADE BY:	<b>4<sup>th</sup> September 2017</b>
NOMINATED ASSET:	The Royal National Hospital for Rheumatic Diseases Buildings, Upper Borough Walls, Bath BA1 1RL		
NOMINATION SUBMITTED BY:	<b>Bath Preservation Trust</b>		

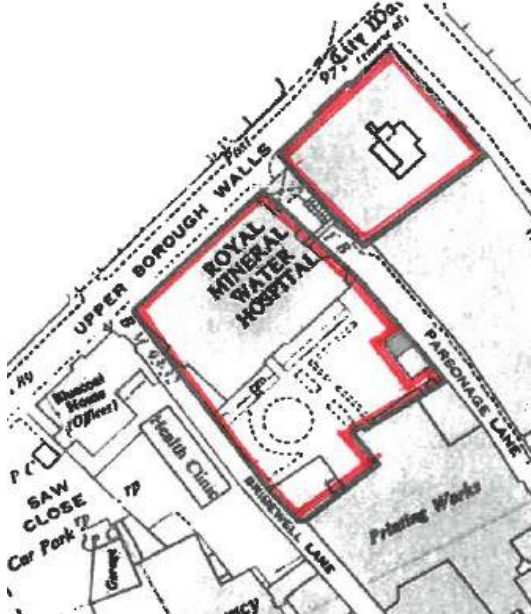
**STEP A: This section considers the eligibility of the nominating body to make a nomination and of the asset to be an Asset of Community Value. It does this through a series of YES/NO answers.**

<b>A1. Is the nominating organisation an eligible body to nominate?</b>	
Evidence supplied by nominee:	<b>YES</b> Charity and a Company limited by guarantee - charitable objects stated

Feedback from other parties and other information gained in relation to this criterion:	
Score (YES/NO) and any comments:	Yes

<b>A2. Does the nominating body have a local connection to the asset nominated?</b>	
Evidence supplied by nominee:	The body's activities are wholly or partly concerned with the local authority's area
Feedback from other parties and other information gained in relation to this criterion	
Score (YES/NO) and any comments:	<b>YES-</b> The Council is satisfied that the nominating organisation has a local connection to the nominated asset.

<b>A3. Does the nomination include the required information about the asset?</b>	
<ul style="list-style-type: none"> <li>• Description of the nominated land including its proposed boundaries</li> <li>• Names of current occupants of the land</li> <li>• Names and current or last-known addresses of all those holding a freehold or leasehold estate in the land</li> </ul>	

Evidence supplied by nominee:	<p><b>Yes</b></p>  <p>The attached plan excludes the electricity substation adjacent to the site which, under Paragraph 4 , Schedule 1 of The Assets of Community Value (England) Regulations 2012, as</p>
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	operational land of a statutory undertaker is not of community value.
Feedback from other parties and other information gained in relation to this criterion:	
Score (YES/NO) and any comments:	Yes

<p><b>A4.</b> 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)?:</p> <ul style="list-style-type: none"> <li>• A residence together with land connected with that residence</li> <li>• Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960</li> <li>• Operational land as defined in section 263 of the Town and Country Planning Act 1990.</li> </ul>	
Evidence supplied by nominee:	No
Feedback from other parties and other information gained in relation to this criterion:	
Score (YES/NO) and any comments	Yes

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”

<p><b>B1.</b> Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage?</p> <ul style="list-style-type: none"> <li>• NOTE 1: 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.</li> </ul>	
Evidence supplied by nominee:	<p><b><u>The Nomination form includes the following:</u></b></p> <p>The subject of the nomination is “healthcare”</p> <p>No further information is provided other than a link to the website: <a href="http://www.rnhrd.nhs.uk/">http://www.rnhrd.nhs.uk/</a></p> <p>This is current non-ancillary use.</p>
Feedback from other	

parties and other information gained in relation to this criterion:	
Score (YES/NO) and any comments:	<b>YES</b> The <b>current</b> 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.**

<p><b>C1. Who benefits from the use?</b></p> <ul style="list-style-type: none"> <li>• Does it meet the social interests of the community as a whole and not simply the users/customers of the specific service?</li> <li>• Who will lose if the usage ceases?</li> </ul>	<p>Evidence provided by nominee</p>	<p>The nominator states that the “the RNHRD building currently, and since its inception, has served the local community as a provider of healthcare. This use is to become redundant since the merger of the RNHRD with the Royal United Hospital NHS Trust, and the sale of the building is intended to re-provide the health provision in the RUH main campus. However, the history of the building is closely related.”</p> <p>The RNHRD website: <a href="http://www.rnhrd.nhs.uk/">http://www.rnhrd.nhs.uk/</a> provides information that demonstrates delivery of healthcare to the service users.</p> <p>“The Royal National Hospital for Rheumatic Diseases (RNHRD), known locally as 'the Min', is a specialist hospital in the centre of Bath with an international reputation for research and expertise in rheumatology, chronic fatigue and pain management. We also provide diagnostic, endoscopy and clinical measurement services. The hospital was acquired by our local actue hospital the <a href="#">Royal United Hospitals Bath</a> in February 2015. We provide patient-centred services, where each patient has the best support for their care and</p>
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		<p>rehabilitation, and work as partners with patients and their carers to support them in the management of their condition.</p> <p>With around 380 employees and 25 inpatient and day-case beds anyone is able to choose to come to our hospital for treatment regardless of where they live if clinical need suggests our services are the most appropriate”</p> <p>The nomination puts forward the following as evidence :</p> <p>History Funds Remit beyond local area</p> <ul style="list-style-type: none"> <li>• The application does not provide evidence of social interests of the community as a <i>whole</i>.</li> <li>• The information provided simply covers the users/customers of the specific service.</li> </ul> <p>No evidence of any other usage other than healthcare has been provided within the nomination.</p> <p>If the healthcare ceases at this site there are plans in place to move to the provision of services to another site.</p>
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	None
	Enter score out of 25 and rationale	<p><b>10</b></p> <p>Use that is being claimed at the site is that it offers a quality healthcare service to patients, with a national remit treating patients regardless of where they live.</p> <p>No evidence is provided which shows that this site meets the social interests of the community as a whole.</p>



		<p>“Social interests” include in particular cultural, recreational and sporting interests. No information has been provided anywhere in the nomination of the asset that the</p> <p>Some evidence is given about historic links to the Bath World heritage site but none other than the link to former patients that received care at the site.</p> <p>The building does contain a mosaic of historical importance. No details were provided within the application that indicate how many visitors there are to the site or if people attend the site for this reason.</p>
<p><b>C2.</b> Is any aspect of the usage actively discouraged by the Council’s Policy and Budget Framework?</p>	Evidence provided by nominee	A supporting document provided alongside the nomination form sets out proposals for developing the site for mixture of commercial and other use.
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	None
	Enter score out of 25 and rationale	<p>There is no evidence that the usage is actively discouraged by the Council’s Policy and Budget framework.</p> <p><b>25</b></p>
<p><b>C3.</b> Why is the usage seen as having social value in the context of the community on whose behalf the nomination is being made?</p>	Evidence provided by nominee	<p><u>The Nomination form includes the following:</u></p> <p>The building currently, and since its inception, has served the local community as a provider of healthcare and is seen to support the story of the World Heritage Site.</p> <p>The social value of this site as a provider of healthcare has been nationally and locally admired and loved for centuries.</p>

		<p>The affection in which the building is held by former patients, and the importance of its story to the World Heritage Site, gives a strong case for retaining an element of community involvement in the building.</p> <p>As a subsidiary issue, the Min contains significant paintings and collections relevant to the history of Healthcare in Bath, and there is also significant Roman history on the site and the Roman mosaic in the basement is supposedly accessible to the public on request at any time.</p>
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	None
	Enter score out of 25 and rationale	<p>This nomination which is prompted by a desire to retain a building which is considered to enhance the character of the local area is not sufficient by itself to show a community benefit. The focus should be on the use to which the building is put rather than the physical appearance of the building which should be dealt with exclusively by building and planning law.</p> <p><b>10</b></p>
<b>C4.</b> How strongly does the local community feel about the usage as furthering their social interests?	Evidence provided by nominee	<p><u>The response below was included within the nomination form;</u></p> <p>This question could be reframed as 'how strongly would the community feel if the building were purely commercially occupied and managed, with no public benefit or community involvement'. In this case I would assert that the community would be likely to feel that a community asset had been removed and 'privatised' without their consent and that those who had allowed this to happen had let the community down.</p>

	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	None
	Enter score out of 25 and rationale	<p><b>0</b></p> <p>The statements included within the nomination have been considered but no evidence has been provided from existing or prior users of the services delivered at this site in the past or the present.</p> <p>The nomination does not include any evidence that shows how the whole of the local community feels about the site fulfilling a social function beyond healthcare.</p>
<b>Total score:</b>	<b>45</b>	

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 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”.


<b>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?</b>	
Evidence supplied by nominee:	
Feedback from other parties and other information gained in relation to this criterion:	
Score (YES/NO) and rationale	

**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.**

<b>D2. Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales?</b>	
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 applicable

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

<b>RECOMMENDATION:</b>	<b>This nomination will be added to the Council’s list of unsuccessful nominations</b>
<b>REASON FOR DECISION</b>	<p>(1)</p> <p>a) The Asset lies within the administrative boundaries of Bath &amp; North East Somerset and Abbey Ward.</p> <p>b) Bath Preservation Trust is entitled under 89(2)(b)(iii) of the Act to make a community nomination in respect of the Asset. Bath Preservation Trust includes the matters required under Regulation 6 of the Regulations.</p> <p>(d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations.</p> <p>and</p>

	<p>(2) in the opinion of the authority,</p> <p>(a) The actual current use of the Asset that is not an ancillary use and does not further the social wellbeing and interests of the local community.</p> <p>Reasons Summary:</p> <p>It is accepted that in principle that a hospital is eligible to be listed, however it must be demonstrated that the healthcare usage at the hospital promotes social wellbeing as well as providing direct health benefits to patients . For example: through promoting local associations and connections for those who are ill, their relatives and local people.</p> <p>Some evidence has been provided that the historical context of the healthcare provision promotes social identity in the world heritage city, however this is not considered sufficient grounds for the council to be satisfied that it promotes social wellbeing.</p> <p>“Social interests includes in particular “cultural, recreational and sporting interests”.</p>
<p><b>Decision Taken by</b></p>	 <p>David Trethewey Divisional Director Strategy and Performance Bath &amp; North East Somerset Council</p>
<p><b>Date</b></p>	<p>25<sup>th</sup> August 2017</p>