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

**24th November 2016**

**Entry of Stanton Prior Cross Wall Orchard Amenity Area, Stanton Prior, Bath. BA2 9HT**

**(Near Stanton Prior Village Hall), into Bath & North East Somerset Council’s list of Assets of Community Value**

1. **Background**

On 29th September 2016 Bath & North East Somerset Council (‘the Council’) received a nomination under Section 89 of the Localism Act 2011 (‘the Act’) to list Stanton Prior Cross Wall Orchard Amenity Area, Stanton Prior, Bath. BA2 9HT ( Near Stanton Prior Village Hall) as an Asset of Community Value. The nomination was made by Marksbury Parish Council. 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 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

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 to enter the property into the Council’s 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 Farmborough Ward

b) Marksbury Parish Council is entitled under 89(2)(b)(i) of the Act to make a community nomination in respect of the Asset

c) The nomination from Marksbury Parish Council 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 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 owners of the property

Marksbury Parish Council

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: 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 by 19th January 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 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 Stanton Prior Cross Wall Orchard Amenity Area, Stanton Prior, Bath. BA2 9HT (Near Stanton Prior Village Hall), as an Asset of Community Value**

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| **Assets of Community Value Nomination – Assessment** | | | |
| DATE OF SUBMISSION: | **29th September 2016** | DATE DECISION TO BE MADE BY: | **24th**  **November 2016** |
| NOMINATED ASSET: | The boundary of the asset is set out in the boundary map attached as an Appendix | | |
| NOMINATION SUBMITTED BY: | **Marksbury Parish Council** | | |

**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: | **Marksbury Parish Council** |
| 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: | The submitted map shows that the Asset is sited wholly within the boundaries of Bath and North East Somerset and the Parish of Marksbury. |
| 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 | |
| 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. |
| 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. | |
| 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, as the nominated asset is a Orchard Amenity Area. |
| 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. | |
| Evidence supplied by nominee: | The land known as Stanton Prior Cross Wall Orchard Amenity Area is 0.214 of a hectare situated next to Stanton Prior Village Hall. It is bounded by hedges and the recently reconstructed wall which surrounds the hall. The land is used by the villagers of Stanton Prior and is owned by the Duchy of Cornwall at Newton Park Estate in BANES. A peppercorn rent for its use is paid each year by Marksbury Parish Council to the Duchy of Cornwall. |
| 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 | In 2011 the villagers of Stanton Prior acquired the village hall and surrounding land from a property developer. 17 out of the 26 householders in the village gave money to finance the acquisition of the hall and land. More than twice the money required was raised from loans and donations by the villagers. Since then, village volunteers have reconstructed the hall and surrounding stone walls. It has been a tremendous example of a community project. The Cross Wall Orchard Amenity Area adjoins the land owned by the village and is an integral component for the villagers, young and old, to congregate for recreational purposes and fundraising events. These include serving cream teas, hosting monthly barbecues, growing vegetables etc. in the allotments, bonfire nights and occasional weddings and other celebrations. This is the ONLY area in the village where the local children can safely play ball games. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The Ward Councillor forFarmborough Sally Davis:  I fully support this nomination & I'm aware The Duchy who own the area are also supportive.  It is well used as a community space by residents. |
| Enter score out of 25 and rationale | **25** – The nomination and the evidence from the Ward Councillor comprehensively demonstrate that the asset meets the social interests of the community as a whole, and that its loss would have a very significant detrimental effect on the community. |
| **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. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | None |
| 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 |  |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | The land is vital for those villagers who wish to grow their own produce. The activities that take place on the land are essential for raising funds to support the village hall and St. Lawrence Church. The children of the village need the land to charge about in and to play ball games as there is no other such area in Stanton Prior. There is a tremendous community spirit in the village and this is due in no small part to the number of social events that are centred around the hall and land. Stanton Prior is quite isolated with no pub, shops, schools or subsidised recreational facilities. Whilst this makes for a tranquil rural environment, it does necessitate the creation of safe spaces where villagers of all ages can convene and raise funds for their communally owned assets. The Cross Wall Orchard is the only such open air space in the village. |
| Enter score out of 25 and rationale | **20** - The nomination states that the Stanton Prior Cross Wall Orchard Amenity is used throughout the year |
| **C4.** How strongly does the local community feel about the usage as furthering their social interests? | Evidence provided by nominee | The Village Committee is comprised of every household in Stanton Prior and meets every quarter. There was overwhelming support for the idea of listing the land as a community asset. It was agreed that we should advise the Duchy of Cornwall of our intention to list the land. We have received a very encouraging response from the Duchy who have always supported the efforts of Stanton Prior to foster community spirit. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | This nomination is in line with Council environmental sustainability policies, particularly the B&NES Local Food Strategy which has an objective of increasing the amount of food grown locally either by individuals privately or in communal growing schemes, so we fully support this.  Jane Wildblood  Corporate & Community Sustainability Manager  Strategy & Performance  Bath & North East Somerset Council |
| Enter score out of 25 and rationale | **20** – There is strong evidence that the local community, including the Ward Councillor, B&NES Community Sutainabilty and the Parish Council, places a high value on the social use of the Amenity area. |
| **Total score:** | **90** | |

**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: | No. |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and rationale | No. |

**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 applicable |

**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 Farmborough Ward.  b) Marksbury Parish Council is entitled under 89(2)(b)(i) of the Act to make a community nomination in respect of the Asset  c) The nomination from Marksbury Parish Council 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 Trethewey  Divisional Director  Strategy and Performance  Bath & North East Somerset Council |
| **Date** | 24th November 2016 |