

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

**23<sup>rd</sup> December 2020**

### **Entry of The Approach Golf Course, Bath into Bath & North East Somerset Council's List of Assets of Community Value**

#### **1. Background**

On **26<sup>th</sup> October 2020**, Bath & North East Somerset Council received a nomination under Section 89 of the Localism Act 2011 ("the Act") to list **The Approach Golf Course, Bath** as an Asset of Community Value. The nomination was made by **Aspire Heritage**. 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 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 Landsdown Ward
- b) **Aspire Heritage** is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset
- c) The nomination from **Aspire Heritage** 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 10<sup>th</sup> October 2012, and fully considering information supplied by the nominee and other parties (including the owner), is set out in 4 below.

### 3. 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**
- **Aspire Heritage**

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](mailto:assets@bathnes.gov.uk) by **17<sup>th</sup> February 2021**, 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 provide further detailed information.

#### 4. Detailed Assessment of the Nomination of The Approach Golf Course, Weston Road, Bath , as an Asset of Community Value

<b>Assets of Community Value Nomination – Assessment</b>			
DATE OF SUBMISSION:	<b>26/10/2020</b>	DATE DECISION TO BE MADE BY:	<b>23/12/2020</b>
NOMINATED ASSET:	The Approach Golf Course, Weston Road, Bath  The boundary of the asset is set out in the boundary map attached as an Appendix		
NOMINATION SUBMITTED BY:	<b>Aspire Heritage</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:	Aspire Heritage certificate of incorporation of a private limited company – Company Number 12725569  Aspire Heritage is therefore a Company Limited by Guarantee 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:	<b>YES</b> - The Council is satisfied that the nominating body is an eligible body to nominate.

<b>A2. Does the nominating body have a local connection to the asset nominated?</b>	
Evidence supplied by nominee:	<p>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 &amp; North East Somerset area (specifically the nominated asset); and The certificate of incorporation of a private limited company – Company Number 12725569</p> <p>The submitted map shows that the Asset is sited wholly within the boundaries of Bath and North East Somerset.</p>
Feedback from other parties and other information gained in relation to this criterion	None
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>A plan of the nominated land including proposed boundaries.</p> <p>The name and address of the current owners of the nominated asset have been provided.</p>
Feedback from other parties and other information gained in relation to this criterion:	The current owners have confirmed that they have received notification of this application and have no intention of currently selling the property.
Score (YES/NO) and any comments:	<b>YES-</b> the Council is satisfied that the nomination has included the required information about the asset.

<b>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):</b>	
<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:	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	<b>YES-</b> 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”**

<b>B1.</b> Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage? <ul style="list-style-type: none"> <li>NOTE 1: A working definition of “recent past” is “within the past three years”</li> <li>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.</li> </ul>	
Evidence supplied by nominee:	
Feedback from other parties and other information gained in relation to this criterion:	None
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.**

<b>C1.</b> Who benefits from the use? <ul style="list-style-type: none"> <li>Does it meet the social interests of the community as a whole and not simply the</li> </ul>	Evidence provided by nominee	The nominee states: <ul style="list-style-type: none"> <li>This site is an important, publicly accessible, outdoor local facility offering an opportunity to enjoy activities including walking, golf and dog walking on the site.</li> </ul>
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<p>users/customers of the specific service?</p> <ul style="list-style-type: none"> <li>Who will lose if the usage ceases?</li> </ul>		<ul style="list-style-type: none"> <li>In terms of the golf offering, it is accessible to almost all ages and abilities, with club hire available and a choice of 12 or 18 holes, giving people the option to vary their activity and try a new activity without having to purchase expensive equipment.</li> <li>It is also centrally located with parking along Weston Lane and in Victoria Park, so has good access on foot, bike and by car.</li> <li>The site is frequently used by dog walkers and those exercising outdoors. It fulfils the governments objectives on increasing activity and for healthier lifestyles and has remained an important facility for the public during lockdown, where people have brought their own equipment and continued to access the facilities, or continued walking and running in the grounds evidencing the importance of this facility to the local community.</li> </ul>
	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&amp;NES Council)</p>	<p><b>Lucy Hodge - Liberal Democrat Councillor for Lansdown Ward</b></p> <p>As local ward councillor for Lansdown Ward, I strongly support this nomination for the following reasons:</p> <p>The Approach Golf Course contributes significantly to the the social interests of the community as whole within my ward. This site allows the community to enjoy a range of activities including walking, jogging, outdoor exercise groups, golf and dog walking. The golf facilities are accessible to all ages and abilities, both residents and visitors, at an affordable price. This facility has been particularly valued by young people during the periods of COVID restrictions as an alternative outdoors activity to walking and cycling. Children have made their own flags and parents' golf clubs have been sought and brought back into use. It is also valued as a green lung in the centre of the community, with the many trees and verdant aspect contributing to a sense of wellbeing.</p> <p>I am aware of considerable strength of feeling within the Community that the current usage of the site as a golf course should be preserved</p>

		<p>and this is evident from the emails I receive from both individual residents, residents' associations nearby to the site, from posts on Next Door.com and Twitter comments.</p> <p>I also believe the use of this land as a golf course is sustainable into the future, as the recent renewed interest amongst young people has demonstrated.</p> <p><b>Andrew Furse – Chair of B&amp;NES Council and Ward Member for Kingsmead</b></p> <p>I have no objection, although in discussion recently the idea that a more accessible green space would be better than parts of the space being exclusive to the golf fraternity. The planting of more trees for a wooded area was being promoted and if this is the ambition for this space then I would be interested in supporting it too.</p> <p><b>Sue Craig- Ward Member for Kingsmead</b>  Personally, having lived in Bath most of my life and been a frequent user of both the approach course and Entry Hill, I would be pleased if a way could be found to leave this asset to be used in its current form.</p> <p><b>An article (13 June 2020) on the Bath Newseum website provides an interview with local golfer Ben Reed regarding the current closure of the gold course:</b>  <a href="https://bathnewseum.com/2020/06/13/greens-man-sees-red/">https://bathnewseum.com/2020/06/13/greens-man-sees-red/</a></p>
	<p>Enter score out of 25 and rationale</p>	<p><b>20/25</b></p> <p>The case that is set out shows a good level of support for the land that not only operates as a local golf course but also provides the wider community with a place for leisure activities.</p> <p>The recent loss of Entry Hill Golf Course in Bath has reduced the number of venues offering affordable Gold to this final site.</p> <p>Support is provided from local councillors.</p>

<p><b>C2. Is any aspect of the usage actively discouraged by the Council's Policy and Budget Framework?</b></p>	<p>Evidence provided by nominee</p>	<p>No aspect of the land or buildings usage is actively discouraged by B&amp;NES Council's Policy &amp; Budget Framework.</p>
	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&amp;NES Council)</p>	<p>This asset is a green space which actively supported by the council's <b>Health and Wellbeing strategy</b>.</p> <p>The <b>B&amp;NES Parks and Trees Team</b> can't see any problems arising from this application.</p> <p><b>Martin Baker – Property Management (B&amp;NES Council)</b> This is an operational Council asset (PF05) where GLL have a management agreement to operate as a public golf course on the Council's behalf</p> <p>Article published on <b>Somerset Live</b> Website 24<sup>th</sup> June 2020: <a href="https://www.somersetlive.co.uk/news/somerset-news/fears-grow-bath-golf-course-4259156">https://www.somersetlive.co.uk/news/somerset-news/fears-grow-bath-golf-course-4259156</a></p> <p>Fears grow that Bath golf course will never re-open as council says it's reviewing services that 'run at a loss'</p>
	<p>Enter score out of 25 and rationale</p>	<p><b>25/25</b></p> <p>No aspect of the land or buildings usage is actively discouraged by B&amp;NES Council's Policy &amp; Budget Framework.</p> <p>Due to Covid-19 the current operator of the golf offering has not been able to operate their usual offering. The site has remained accessible.</p>
<p><b>C3. Why is the usage seen as having social value in the context of the community on whose behalf the nomination is</b></p>	<p>Evidence provided by nominee</p>	<p>The nomination states :</p> <p>As set out in C1, the site is open to the public and offers a valuable public resource for enjoying outdoor activity and contributing to wellness and overall physical and emotional health.</p> <p>A recent report in the Bath Echo quotes</p>

<p>being made?</p>		<p>Councillor Paul Crossley, cabinet member for Community Services, as saying of the associated golf-course: “Entry Hill is not only part of Bath’s World Heritage Site but is also important as a place where our communities can enjoy the outdoors and stay active’*. The principle here applies equally to Approach Golf Course, if not more so, given its more accessible, city-centre location.</p> <p>It is used for golf, walking, dog exercise, as a route to encourage walking and cycling into town and an important area of open green space which enhances the character of the World Heritage Site and Conservation Area which again contributes to the character and appearance of the area and the public’s experience and enjoyment of the locality. In short, the public has an interest in the future of this asset for a variety of reasons, including but not limited to, the provision of outdoor leisure and sports facilities within the city to contribute to public health and wellbeing.</p> <p><i>*Bath Echo, ‘Next steps to be agreed for future of Entry Hill and Approach golf courses’ (Wednesday 15th July 2020)</i></p>
	<p>Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&amp;NES Council)</p>	<p>The Royal Victoria Park (opened in 1830) neighbours the Approach Golf Course, Historic England sets out the importance of this park and its settings on their website:  <a href="https://historicengland.org.uk/listing/the-list/list-entry/1001257">https://historicengland.org.uk/listing/the-list/list-entry/1001257</a></p>
	<p>Enter score out of 25 and rationale</p>	<p><b>15/20</b></p> <p>Details are provided that demonstrate the social value that the site has and still delivers.</p>
<p><b>C4.</b> How strongly does the local community feel about the usage as furthering their social interests?</p>	<p>Evidence provided by nominee</p>	<p>The nomination states :</p> <p>This application has been initiated as a response to the strong feelings voiced by the local community to the proposed uncertainty of the future of the Approach Course site. There has been widespread discussion and concern from members of the public via social media, including the Nextdoor App, which demonstrates the weight of public interest in the</p>

		future use of this site.
	Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council)	The Trip Advisor website contains positive reviews of the Golf Course Facilities: <a href="https://www.tripadvisor.co.uk/Attraction_Review-g186370-d242921-Reviews-The_Approach_Golf_Course-Bath_Somerset_England.html">https://www.tripadvisor.co.uk/Attraction_Review-g186370-d242921-Reviews-The_Approach_Golf_Course-Bath_Somerset_England.html</a>
	Enter score out of 25 and rationale	<b>5/25</b> There is very little evidence of strong feeling from the wider community that demonstrates strong arguments on how they feel about the social interests for this site.
<b>Total score:</b>	<b>65 /100</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 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”.

**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, the land and buildings are well suited to the current use and could be easily re-opened allowing the site to return to its former use efficiently and with little additional works or maintenance.
Feedback from other parties and other information gained in relation to this criterion:	None
Score (YES/NO) and rationale	<b>NO</b>

**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 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.**

<b>RECOMMENDATION:</b>	<b>THAT THIS ASSET BE PLACED ON THE ASSETS OF COMMUNITY VALUE</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 Landsdown Ward.</p> <p>b) Aspire Heritage is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset</p> <p>c) The nomination from Aspire Heritage 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 current and recent use of the Asset that</p>

	<p>is not an ancillary use furthers the social wellbeing and interests of the local community</p> <p>(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.</p>
<b>Decision Taken by</b>	 <p>David Trethewey Director Partnerships and Corporate Services Bath &amp; North East Somerset Council</p>
<b>Date</b>	23 <sup>rd</sup> December 2020