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

**12th September 2017**

**Entry of Withy Bed, into Bath & North East Somerset Council’s list of Assets of Community Value**

1. **Background**

On 1st August 2017 Bath & North East Somerset Council (‘the Council’) received a nomination under Section 89 of the Localism Act 2011 (‘the Act’) to list Withy Bed (By Brook Bradford Road, A363) as an Asset of Community Value. The nomination was made by Bathford 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 Bathavon North Ward

b) Bathford 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 Bathford 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,

1. The actual recent use of the Asset that was not an ancillary use. The Asset has furthered the social wellbeing and interests of the local community
2. It is realistic to think that there is a time in the next five years when there could be non-ancillary use of land that would 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

Bathford 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 by an officer of appropriate seniority 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 7th November 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 Withy Bed (By Brook, Bradford Road, A363), as an Asset of Community Value**

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| **Assets of Community Value Nomination – Assessment** | | | |
| DATE OF SUBMISSION: | **18th July 2017** | DATE DECISION TO BE MADE BY: | **12th**  **September 2017** |
| NOMINATED ASSET: | **Withy Bed (By Brook, Bradford Road, A363),**  The boundary of the asset is set out in the boundary map attached as an Appendix (Land Registry title number ST140194) | | |
| NOMINATION SUBMITTED BY: | **Bathford 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: | Bathford 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 Bathford. |
| 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 as a Parish Council that 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 have been provided.  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. | |
| 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 field. |
| 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 nomination states that the land that was until 2015, owned by a Mr Fawcett, but had been available for community use for a very minimum of twenty years and there is substantial evidence that it was used for many years before that. Prior to this period it was used informally by the community for fishing, canoeing, walking, and picnicking and so on. |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and any comments: | **YES**- the was a usage in the recent past to 2015 which is the subject of the nomination that 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 Parish Council believes that the land is of considerable informal recreational value.  The Parish Council has set out the usage of Withy Bed in a spreadsheet that shows that on average 147 visits were being made to the land every month and types of usage.  The activities listed include, dog walking, picnics and birdwatching. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | None |
| Enter score out of 25 and rationale | **20**  The legislation makes referance to social interests and includes cultural, recreational and sporting interests. The nomination contains specific data about such usages. |
| **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** |
| **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 Parish Council states that it has had connections to the land since its inception. Part of it was previously used as a cattle pound and has always been regarded as in the public domain.  The Parish Council states that Local historian David Howells has documentary evidence of the use of Withy Bed for a period greater than twenty years. This includes a scrap book maintained by the Parish Council of work by the Parish Council which received a Conservation Prize in 1987 for its work on Withy Bed. There is also documentation of an earlier period (Tithe Map of 1839) available which will confirm public access over many years by a significant number of inhabitants. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | None |
| Enter score out of 25 and rationale | **15**  The relevance and importance of this land is as described in the nomination. |
| **C4.** How strongly does the local community feel about the usage as furthering their social interests? | Evidence provided by nominee | The Bathford community supported the recent Town Village Green application and members gave evidence at the non-statutory enquiry held in 2016  Evidence from the Town Village Green enquiry estimates 147 visits a month from those Bathford residents who gave evidence to the enquiry. Evidence summaries have been provided.  Although there are no comparable figures available for Non-Bathford residents an application for registration of the footpath which crosses to the edge of the green area, saw nearly one hundred people who have completed evidence forms as to their use. |
| Evidence gained from other relevant sources (owner, Ward member, Parish Council, B&NES Council) | None |
| Enter score out of 25 and rationale | **15**  Bathford residents provided support to the 2016 Town Village Green application. |
| **Total score:** | **75** | |

**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 **recent** rather than a **current** one (see Step B above), 88(2) (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 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**.

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**  The Parish Council states that the asset remains fit for purpose as soon as the enclosure fence is removed and is available for public access. |
| Feedback from other parties and other information gained in relation to this criterion: | None |
| Score (YES/NO) and rationale | **NO**  Other than the fact that the site is currently fenced, thus restricting public access, the asset remains fit for purpose for the recent use as set out in the nomination.  In addition, the Parish Council cites that volunteers would be willing to restore the land and remove fencing, thus restoring public access.  It is therefore considered that it is realistic to consider that there will be a time in the next five years when there could be non-ancillary use of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community. |

**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 Council and Bathavon North Ward  b) Bathford 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 Bathford 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 recent use of the Asset that was not an ancillary use has furthered the social wellbeing and interests of the local community  (b) It is realistic to think that there is a time in the next five years when there could be non-ancillary use of land that would 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** | 12th September 2017 |