



DECISION NOTICE

SERVICE AREA:	GOVERNANCE AND PENSIONS
SUBJECT MATTER:	NOMINATION OF LAND AT SPRING STREET, MOSSLEY AS AN ASSET OF COMMUNITY VALUE (REF CA16)
DECISION:	<p>That</p> <ol style="list-style-type: none"> 1. The nomination that land known as the landscaped area and car park at Spring Street, Mossley be included on the Council's list of Assets of Community Value BE ACCEPTED and the land be added to the Council's list Assets Community Value. 2. It is acknowledged that the Council wishes to dispose of the asset and therefore the necessary notifications need to be provided under the legislation of this intention at the time all relevant parties are advised of the nomination and the necessary due process undertaken.
DECISION TAKER	Sandra Stewart
DESIGNATION OF DECISION TAKER(S):	Executive Director, Governance, Resources and Pensions (Borough Solicitor)
DATE OF DECISION:	4 November 2017
REASON FOR DECISION:	<p>The Council has received a nomination for land at Spring Street Mossley to be included on its register of Assets of Community Value. Under the Localism Act 2011 the Council is required to consider nominations within 8 weeks from receipt of a valid nomination and must register the land or buildings as an ACV if, in its opinion –</p> <ol style="list-style-type: none"> (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 (section 88(1)) <p>If a building or other land in a local authority's area that is not land of community value as a result the above, the land is of community value if the Council is of the opinion that—</p> <ol style="list-style-type: none"> (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 (section 88(2)) <p>On the information provided the Council is of the opinion that the land is land of community value and for that reason the land</p>

	should be added to the Council list of Assets of Community Value
ALTERNATIVE OPTIONS REJECTED (if any):	To refuse the nomination and add the land to the Council's list of land nominated by unsuccessful community nominations. To do so would be contrary to the Localism Act 2011.
CONSULTEES:	The registered freehold owner of the property – Tameside Metropolitan Borough Council The Ward Councillors for Mossley - Cllr Jack Homer, Cllr Tafheen Sharif, Cllr Frank Travis
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no immediate financial implications as a result of this report. If the land were to be listed as an ACV there is provision within the Act for the payment of compensation by the Council to an owner who has suffered loss as a result of listing land as an ACV.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	Under the Localism Act 2011 and the regulations made under it the Council must consider nominations received from qualifying bodies to add properties to its list of assets of community value. Where the property is within the Council's area and is of community value the Council is required to list the property, the effect of which will prevent the property being sold other than to a Community Interest Group for a period of between 6 weeks and 6 months depending on whether the Community Interest Group wishes to be treated as a bidder. If land is added to the list, the owner has a right to request the Council review its decision within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community value. Where the Council does not accept a nomination there is no such right of review or appeal.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	Not Applicable
ACCESS TO INFORMATION:	The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor by:  Telephone:0161 342 4354  e-mail:Peter.mccaughley@tameside.gov.uk





Signed:

Sandra Stewart – Executive Director, Governance, Resources and Pensions (Borough Solicitor)

Date: 4 November 2017

DECISION REPORT

SERVICE AREA:	GOVERNANCE, RESOURCES AND PENSIONS
SUBJECT MATTER:	NOMINATION OF LAND AT SPRING STREET, MOSSLEY AS AN ASSET OF COMMUNITY VALUE (REF CA10)
DATE OF DECISION:	
DECISION TAKER	Sandra Stewart – Executive Director, Governance, Resources and Pensions (Borough Solicitor)
REPORTING OFFICER:	Peter McCaughley – Principal Solicitor, Legal Services
REPORT SUMMARY:	The report acknowledges receipt of a nomination from the Mossley Town Council for land Spring Street Mossley to be included on the Council’s list of Assets of Community Value under the provisions of sections 87 to 108, chapter 3 of part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
RECOMMENDATIONS:	The nomination for land at Spring Street, Mossley to be included on the Council’s list of Assets of Community Value BE ACCEPTED and the land be included on the Council’s ACV list.
JUSTIFICATION FOR DECISION:	<p>The Council has received a nomination for land at Spring Street Mossley to be included on its register of Assets of Community Value. Under the Localism Act 2011 the Council is required to consider nominations within 8 weeks from receipt of a valid nomination and must register the land or buildings as an ACV if, in its opinion –</p> <ul style="list-style-type: none"> (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 (section 88(1)) <p>If a building or other land in a local authority's area that is not land of community value as a result the above, the land is of community value if the Council is of the opinion that—</p> <ul style="list-style-type: none"> (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 (section 88(2)) <p>The Council can, on the information provided, form the opinion that the land is land of community value and for that reason the land should be included on the Council’s list of Assets of Community Value.</p>

ALTERNATIVE OPTIONS REJECTED (if any):	<p>To refuse the nomination and add the land to the Council's list of land nominated by unsuccessful community nominations</p> <p>To do so would be contrary to the Localism Act 2011</p>
CONSULTEES:	<p>The registered freehold owner of the property – Tameside Metropolitan Borough Council</p> <p>The Ward Councillors for Mossley - Cllr Jack Homer, Cllr Tafheen Sharif, Cllr Frank Travis</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	<p>There are no immediate financial implications as a result of this report. If the land were to be listed as an ACV there is provision within the Act for the payment of compensation by the Council to an owner who has suffered loss as a result of listing land as an ACV.</p>
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	<p>Under the Localism Act 2011 and the regulations made under it the Council must consider nominations received from qualifying bodies to add properties to its list of ACV. Where the property is within the Council's area and is of community value the Council is required to list the property, the effect of which will prevent the property being sold other than to a Community Interest Group for a period of between 6 weeks and 6 months depending on whether the Community Interest Group wishes to be treated as a bidder. If land is added to the list, the owner has a right to request the Council review its decision within 8 weeks of the Council giving notification of inclusion of the property on the ACV list. Where the Council does not accept a nomination there is no such right of review or appeal.</p>
RISK MANAGEMENT:	<p>If the Council decides not to include the assets on its ACV list, the nominator has no formal right to review the Council's decision but may seek to have the decision reviewed by the courts through Judicial Review proceedings.</p>
LINKS TO COMMUNITY PLAN:	<p>Growing and encouraging local community groups to take responsibility for delivering some services in their local area helps to reduce dependency on public services and build community spirit and self-worth for those involved.</p>
ACCESS TO INFORMATION:	<p>The background papers relating to this report can be inspected by contacting the report writer, Peter McCaughley Principal Solicitor by:</p> <p> Telephone:0161 342 4354</p> <p> e-mail:Peter.mccaughley@tameside.gov.uk</p>

1. BACKGROUND

- 1.1 The Localism Act 2011 (“the Act”) and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) provide a legal framework for listing Assets of Community Value.
- 1.2 The Act requires the Council to maintain a list of land in Tameside that is land of community to be known as a list of Assets of Community Value (ACV).
- 1.3 A building or land will be of community value if the council is of the opinion that its actual current use, which is not ancillary use, furthers the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be non-ancillary use which will further (whether in the same way or not) the social wellbeing or social interests of the local community (S88(1) of the Act).
- 1.4 If land is not of community value by virtue of the above paragraph it will be if 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 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 (S88(2) of the Act).
- 1.5 Social interests include culture, recreation and sport.
- 1.6 The land can only be listed as an ACV in response to a ‘community nomination’. The Act provides that a community nomination includes a nomination by a person that is a voluntary or community body with a local connection to the land (S89(2)).
- 1.7 Regulation 5 provides that a voluntary or community body includes, amongst other things Parish Council if the nomination is made in respect of land within the Parish Council’s own area.
- 1.8 If the Council receives a community nomination it must consider it and must accept the nomination if the land nominated is in Tameside and of community value. If the Council is required to accept the nomination then the land must be included on the Council’s ACV list.
- 1.9 The Council must decide within 8 weeks of receiving a community nomination whether land nominated should be included within the list.
- 1.10 Where land is included in the list the owner of that land can ask the Council to review its decision to list. The owner of the land can then appeal to the First-tier Tribunal against the Council’s decision on review. The nominator has no such right of review or appeal.
- 1.11 The owner of the land for ACV purposes will be the freehold owner where there is no lease for a term which, when granted, had at least 25 years or more to run. Where there is a leaseholder that person will be the owner if they hold a lease, which when granted, had at least 25 years or more to run.
- 1.12 The effect of a property’s inclusion on the list will be to require the owner of the property to notify the Council when intending to dispose of a listed asset, so triggering a moratorium period. The moratorium operates so as to prevent certain proposed disposals of the land being made to anyone other than a Community Interest Group until several specified conditions are met. These conditions are:
 - (a) The owner has notified the council that he wishes to enter into a relevant disposal;
 - (b) A period of 6 weeks has then passed without the local authority receiving a written request from a Community Interest Group to be treated as a potential bidder for the land

- (the interim moratorium period) or, if such a request has been made, a total period of 6 months has passed (the full moratorium period); and
- (c) An 18 month 'protected period' starting with the date of the owner's notification to the local authority, has not ended.

1.13 A Community Interest Group is one of the following:

- (a) A parish council for the area in which the land is situated;
- (b) a charity;
- (c) a company limited by guarantee which does not distribute any surplus it makes to its members;
- (d) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or
- (e) a community interest company.

1.14 The owner is not compelled at any point to sell the asset to a Community Interest Group; rather he cannot sell it to anyone else within the moratorium period. The owner can sell the property at any price that he can obtain or not at all as the case maybe. There is no obligation whatsoever for the owner to negotiate or deal with the Community Interest Group.

1.15 Where a nomination is refused, the application and decision to refuse will be recorded on the Council's list of unsuccessful nominations.

2. NOMINATION

2.1 The Council must consider any community nomination it receives. A community nomination is one which is made by a person that is a voluntary or community body with a local connection to the land.

2.2 On 29 August 2017, the Council received a nomination from the Mossley Town Council for land described as the landscaped area and car park at Spring Street, Mossley to be included on the Council's ACV list.

2.3 Mossley Town Council is in fact a Parish Council. A nomination made by a Parish Council in respect of land within the Parish Council's own area is a genuine 'community nomination'. This nomination is at pages **A1 – A4** of the bundle.

2.4 The Town Council had in fact previously submitted a nomination in respect of this land on 17 April 2017. That nomination was withdrawn by the Town Council after Tameside MBC, the owner of the land, withdrew the land from sale. Consequently that nomination was never determined.

3. CONSULTATION

3.1 Having received a community nomination the Council was required to take all practical steps to give the information that it is considering listing the land as an asset of community value to the owner of the land, the freeholder and leaseholder where they are not the owner of the land, and any lawful occupier of the land.

3.2 The freehold owner of the land at the time the nomination was received was in fact Tameside MBC. No leases have been granted on the land and there are no known tenancies, either formal or informal. The land was due to be sold at auction on 17 October 2017 but was not sold as the reserve price was not met.

3.3 A plan of the nominated land is at page **A5**.

- 3.4 Pictures of the nominated land are at pages **A6 – A8**. The following link to Google Maps also provides a view of the site <https://www.google.co.uk/maps/@53.5204391,-2.0413204,3a,75y,270h,90t/data=!3m6!1e1!3m4!1sUDTv9Pq-eL-VWNkGvtLU3gl2e0!7i13312!8i6656>
- 3.5 Notice of the nomination was given to the Council's Estates and Investment Management Partnership section and to the Council's Investment and Development section. This can be seen at **A9 – A10**.
- 3.6 As part of the Council's own procedure Ward Councillors for Mossley (this being the ward in which the nominated land is situated) were notified of the nomination and invited to make comments. This notification is at **A11 – A13**.

4. DETERMINATION OF THE NOMINATION

- 4.1 Under section 88 of the Act the Council must determine whether the nominated land is of community value. Section 88 says as follows:-
- (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.
- 4.2 With regard to this legislation the Council can be of the opinion that the nominated land is land of community value. The reason for this is detailed in the following paragraphs.
- 4.3 The nomination states "*The Spring Street/Mill Lane community car park provides vital parking provision in Mossley for both residents and parents . . . [and] is used by parents of primary and nursery school children at school start and finish times. The car park is hugely important to residents and parents.*"
- 4.4 The nomination also states "*The green garden next to the car park provides valuable amenity space and a safe space for children to play . . . and for residents to sit outside. This garden provides residents with a green lung of fresh air away from the stresses and strains of being indoors. This aspect is particularly important for young families, the elderly and those not able to walk far.*"
- 4.5 The Council's Estates and Investment Management Partnership section has responded to the nomination stating the actual current use of the land is "*part free car park used by the*

local people/part overgrown landscaping which has been tidied up recently by local residents and part unused outside the boundaries of the car park and landscaping .land". The Estates and Investment Management Partnership section also states there is no ancillary use of the land; the current use of the car park relieves congestion on adjoining streets and when children arrive at and leave the nearby school; there are no leases on the land; the site was previously occupied by 12 terraced houses in 1981 and vested in the Council by way of a compulsory purchase order; consent was given by the Planning Authority in December 1987 for the provision of amenity space, play area and car park at the site.

- 4.6 The Council's Head of Investment and Development has queried whether a car park used by parents of children attending the nearby junior school could further the social wellbeing or social interests of the local community. He submits that if parents are driving their children to school rather than walking them, the children are deprived the health benefits as well as the benefits of social interaction with other children that a walk to school would provide. The relevant part of his response is at **A14**.
- 4.7 The Ward Councillors for Mossley are all in support of the land being included in the Councils register of Assets of Community Value. The Councillors have stated that the land is *'used by the community, as well as by the local school. The area is very condensed as it is.'* The councillors are of the view that the current actual use of the land furthers the social wellbeing and social interests of the local community. They are also of the view that 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.
- 4.8 In particular the Councillors have highlighted their agreement with the statement contained in the nomination that *'both the car park and open space area are highly valued and the site should be retained for such community use.'*

5. LAND OF COMMUNITY VALUE BY VIRTUE OF S88(1) OF THE ACT

- 5.1 Land will be of community value if in the opinion of the Council its actual current use, which is not ancillary use, furthers the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be non-ancillary use, which will further (whether in the same way or not) the social wellbeing or social interests of the local community(S88(1) of the Act).
- 5.2 The pictures provided, and more clearly the Google Map images, show the land is as described by the nominator. In its response to the nomination the Council accepts that the land is used as car park. Whilst the Council's response refers to the *'poorly maintained landscaped area'* it does not refute the nominator's claim that the landscaped area is used by children to play in and residents to sit in.
- 5.3 On the information provided the Council can be of the opinion that the actual current use of the land nominated is as a car park and as a local amenity area. Neither uses appear to be ancillary to any other actual use.
- 5.4 In respect of the car park it is clear from the First Tier Tribunal decision in the case of **S & D Trough v Shropshire Council & Anor (Localism Act 2011) [2015] UKFTT CR 2015 0002** that a car park can be an asset of community value, depending on who uses it and for what purpose. It is clear that the car park at Spring Street, being free, is very convenient to residents of Spring Street and the surrounding area. It is unlikely that this convenience is enough to further the social wellbeing or social interests of the local community.
- 5.5 However, the nomination states the car park is more than just a convenience. It states that the car park is used by parents of primary and nursery school children attending at start and

finish times. The car park helps alleviate parking congestion, and the road safety issues that go with such congestion, at these times.

- 5.6 The nomination also states that residents rely on the parking area due to the shortfall in available parking spaces in the area.
- 5.7 No further information is provided about who else may use the car park and for what purposes (such as by people attending community activities).
- 5.8 The Council's Head of Investment submits that those children who are brought to school by car miss out on the exercise and social interaction and for that reason the car park doesn't further the social wellbeing and social interests of the local community.
- 5.9 No information has been provided to rebut the nominator's suggestion that there is vehicle congestion at school drop off and pick up times. Likewise no information has been provided to rebut the nominator's suggestion that there is a shortfall of available parking spaces in the area.
- 5.10 It would appear clear that the car park is convenient to local residents. However it is likely that the benefits of the car park go beyond simple convenience, and that its use by local residents and those dropping and collecting young children from a local nursery and school furthers the social wellbeing and social interests of the local community. It provides a safe place for parents to park and for children to alight from and get into vehicles when travelling to and from school. The car park would also benefit the local community by reducing the number of cars parked roadside which in turn would make the roads less congested and potentially safer. The people who use the car park are likely to be parents who are taking their children to the local school, local residents and people visiting local residents. Whilst it may be preferable for all children to walk to school the fact that some children, for a variety of different reasons, may be driven to school does not mean that the car park fails to further the social wellbeing and social interests of the local community.
- 5.11 No information is given about future use of the land, other than the Council stating in its response that *"if the land is sold it is highly likely that a future owner will seek to redevelop the land and this will make off street parking unavailable"*. Whilst the land was put up for auction on 17 October 2017 it did not sell. For that reason it is not unrealistic to think at present that the car park will continue to be used in the same way which in turn will continue to further the social wellbeing or social interests of the local community.
- 5.12 For these reasons the Council can be satisfied that the land used as a car park at Spring Street is land of community value as defined by section 88(1) of the Act.
- 5.13 In respect of the land described as amenity area, it is clear from the Google Map images that the area has been maintained in the past. The photographs provided by the Council, which appear to have been taken in winter to judge from the absence of leaves on the surrounding trees, show the area in a less maintained state. The Council's response of 19 May 2017 to the original nomination relating to this land states that residents had recently tidied up this area.
- 5.14 The nominator states that in an area where residents have no green gardens of their own and where there is limited outdoor space the amenity area is used by children to play in and for residents to sit in. Such amenity use clearly furthers the social wellbeing or social interests of the local community, regardless of whether or not other such places existed nearby.
- 5.15 Again other than the Council's response about how a future owner might use the land it is not unrealistic to think that the amenity space will continue to be used in the same way which in turn will continue to further the social wellbeing or social interests of the local community.

5.16 The Council can therefore be of the opinion that the amenity land at Spring Street, Mossley is land of community value as defined by S88(1) of the Act.

6. LAND AS COMMUNITY VALUE BY VIRTUE OF S88(2) OF THE ACT

6.1 As the Council can be of the opinion that the land is land of community value as defined by s 88(1) of the Act, it is not required to consider the second limb of S88. This states that if the Council was not satisfied that the land was of community value by s88(1) of the Act, the land could still be of community value if there is a time in the recent past when an actual use of the land that was not an ancillary use furthered the social wellbeing or interests of the local community, and 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 (S88(2) of the Act.)

6.2 However for the sake of completeness the Council could be of the opinion that the land could also be community land as defined by s 88(2). It would appear that since 1985 to the present time the land has been used as a car park and amenity land. This amounts to a use at a time in the recent past. For the reasons given at Part 5 of this report the Council can be of the opinion that this use was not ancillary use and it furthered the social wellbeing or interests of the local community. It is realistic to think at this time that the current use will continue.

7. PLANNING CONSIDERATIONS

7.1 It is noted that the nomination appears to be at least partly motivated by a desire to preclude development on the nominated asset. The First Tier Tribunal has held that it is irrelevant whether the nominator may be motivated by such a desire as such matters fall to be addressed through planning legislation rather than through the ACV legislation (**Idsall School v Shropshire Council [2015] UKFTT CR/2014/0016**).

8. EFFECT OF INCLUSION ON THE LIST IF DETERMINED LAND IS AN ACV

8.1 The effect of the land's inclusion on the list is to place requirements on the owner should the owner want to dispose of the land. The owner of the building and land at Spring Street is in fact the Council.

8.2 The owner will be required to notify the Council when intending to dispose of a listed asset, so triggering a moratorium period. The moratorium operates so as to prevent certain proposed disposals of the land being made to anyone other than a Community Interest Group until several specified conditions are met. These conditions are;

(a) The owner has notified the council that he wishes to enter into a relevant disposal;

(b) A period of 6 weeks has then passed without the local authority receiving a written request from a community interest group to be treated as a potential bidder for the land (the interim moratorium period) or, if such a request has been made, a total period of 6 months has passed (the full moratorium period); and

(c) An 18 month 'protected period' starting with the date of the owner's notification to the local authority, has not ended.

8.3 A community interest group is one of the following:

a) A parish council for the area in which the land is situated;

- b) a charity;
- c) a company limited by guarantee which does not distribute any surplus it makes to its members;
- d) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or
- e) a community interest company

8.4 Inclusion in the ACV list will not affect 'exempt disposals' as identified and listed in full in schedule 3 of the Assets of Community Value (England) Regulations 2012. Exempt disposals include;

- (a) A disposal pursuant to an order made by a court or by a tribunal;
- (b) A disposal made pursuant to a separation agreement made between spouses or civil partners
- (c) Any disposal made under, or for the purposes of, any statutory provision relating to incapacity
- (d) A disposal— (a) to a particular person in pursuance of a requirement that it should be made to that person under a planning obligation entered into in accordance with section 106 of the Town and Country Planning Act 1990; or (b) made in pursuance of the exercise of a legally enforceable option to buy providing that the land was not listed when the agreement was entered into.
- (e) A disposal to a former owner where the land was acquired via compulsory purchase.
- (f) A Disposal in exercise of a power of sale of the land by a person who has that power by way of security for a debt.
- (g) A disposal pursuant to insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986.
- (h) A disposal of land to a person whose acquisition of the land is a statutory compulsory purchase.
- (i) A grant of a tenancy of the land pursuant to the provisions of Part 4 of the Agricultural Holdings Act 1986.

8.5 The notification of an exempt disposal will not trigger a moratorium period or protected period.

8.6 Once the notice of a non-exempt disposal has been given, the land can be disposed of to a non community interest group in the following circumstances:

- (a) After six weeks if the Council has not received a written request from a community interest group asking to be treated as a potential bidder for the land (the interim moratorium period);
- (b) If such notification is received, after 6 months (the full moratorium period). During the full moratorium period if the owner chooses to sell the land the sale can only be to a community interest.

8.7 The owner has an 18 month protected period from the date of giving notice of disposal. This means that if there is no full moratorium period triggered, or on the expiry of any moratorium period that is triggered, the owner can sell to whoever he wants within the 18 month period from when he first gave notice. On the expiry of that 18 month period if the land has not been sold, the owner must again give notice of intention to sell which then triggers the moratorium period again.

9. RIGHT TO APPEAL LISTING / REFUSAL TO LIST

9.1 The owner of the land at Spring Street has the right to request a review of the Council's decision to list the property. Such a request must be made in writing within 8 weeks of the Council giving notification of inclusion of the property on the register of assets of community

value. Where the Council has carried out such a review, the owner may appeal to the First-Tier Tribunal against any decision within 28 days of the Council giving notification of the review decision.

- 9.2 As the owner is in fact the Council the prospect of the Council seeking to review its own decision or to appeal against its own review decision is unlikely
- 9.3 The nominator or owner has no formal right to appeal a decision to refuse a nomination. However as a decision of a public body any decision could be challenged by judicial review if the correct procedures have not been followed, or the decision made is either irrational or disproportionate.
- 9.4 The First Deputy (Finance & Performance) has confirmed that the Council intends to dispose of the listed asset, so triggering a moratorium period. Accordingly the necessary notifications under the legislation needs to be undertaken and due process followed thereafter.

10. COMPENSATION SHOULD DETERMINATION BE TO LIST LAND AS AN ACV

- 10.1 The ACV provisions have an impact on the right of property owners which potentially could include serious financial consequences. There is a compensation scheme for property owners to claim for costs or loss incurred as a result of complying with the ACV procedures required by the Act where that loss would be likely not to have been incurred if the land where not listed.
- 10.2 The Act doesn't prescribe all the circumstances where loss may be incurred but does give two examples of where loss may be incurred –
 - (a) loss arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused by either of the moratorium periods ;
 - (b) the owner incurs reasonable legal expenses in a successful appeal to the First-Tier Tribunal against the Council's decision either to list the land or refuse to pay compensation, or with respect to the amount of compensation offered or paid by the Council.
- 10.3 Any claim for compensation from the Council by the owner must be made in writing before the end of 13 weeks after the loss or expense was incurred or has finished being incurred.
- 10.4 The owner has the right to request a compensation review by the Council in response to a decision as to whether compensation is paid, and as to the amount of any compensation. Any such request must be made within 8 weeks by writing, starting with the date on which the Council gives written notification of its decision. Where the Council has carried out such a review, the owner may appeal to the First-Tier Tribunal against any decision.
- 10.5 As the Council is the owner of the land at Spring Street, a claim for compensation is not anticipated.

11. RECOMMENDATIONS

- 11.1 As detailed at the front of the report.