

"Protecting the Green Belt around Chesham"

26 April 2019

pjp/4153

Community Right to Bid - Chiltern District Council  
King George V House  
King George V Road,  
Amersham,  
Buckinghamshire  
HP6 5AW

Dear Sir,

**Re: S. 88 Localism Act (LA) 2011 – Application to List an Asset of Community Value**

I write on behalf of this community organisation who are seeking to have the fields NE of Chesham near Lye Green consisting of circa 39.6 ha, listed as an asset of community value.

I enclose the completed application form together with relevant Land Registry documents and copies of all the items listed on the checklist within the Council's application form, a completed version of which is enclosed herewith.

Regarding Question 5, I have indicated on the form that this letter will answer that question. Namely, "***Why do you feel the property is an asset of community value?***";

Section 88 of LA 2011 states that a building or other land in a local authority's area is considered to be land of community value if in the opinion of the local authority... it furthers the social wellbeing or social interests of the local community, and ... it is realistic to think it will continue to do so in the next five years.

This community organisation asserts that the land in question satisfies S.88(2) of LA 2011 for the following reasons;

1. For several decades the land has been used regularly by local people for informal outdoor recreation.
2. These recreational uses have mainly related to hiking/rambling, dog walking, bird watching, jogging, and general outdoor exercise but have also included observing nature and local wildlife with family and children, kite flying, practicing for Duke of Edinburgh expeditions and socialising with likeminded people from the immediate neighbourhood.
3. These activities are continuing uses which collectively contribute to the health, education and wellbeing of the community.
4. Although there are several public footpaths that cross the fields, those undertaking these recreational activities have for decades not confined their use of the land to the public footpaths and have enjoyed full unrestrained freedom to enjoy all the land.

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5. This has included freedom to roam around the field boundaries and to cross the land and explore the wooded areas within the land using many additional informal routes which, over many years, has established a network of other well-trodden footpaths upon the land.
6. Indeed, it is the very openness of the land and the tranquillity it provides as well as public access to informal outdoor recreation, and the ability to interact with nature and wildlife as well as the freedom to socially interact with neighbours on the land that the community values and which provides the social wellbeing currently enjoyed.
7. This situation has prevailed for decades and those living around the fields and nearby assert these practices are both commonplace and exercised without any complaint or effort by landowners to fetter such activity.
8. Acceptance of these practices is evidenced by the facts recited in a sworn Statutory Declaration enclosed herewith together with letters and Statements of Truth provided by more than 50 local people which also attest to how the land contributes to their social wellbeing or the interests of the local community. Not least of which is the sense of identity the land affords the surrounding community. Some of these letters and statements portray the emotional connection of local people to this land and they recite fond memories from their activities on the fields and explain how it has improved their wellbeing.
  - a. One elderly person who has lived here for 82 years confirmed the land has been used regularly by the community throughout her lifetime and she enclosed a couple of old photographs showing the cricket team that used to play on the fields in the 1930's & 40s and another of a community event also held on the fields.
  - b. In another letter, a couple who have lived here over 22 years explained how important the land has been to them and how it has assisted them raising numerous foster children who previously had traumatic upbringings with little prior exposure to the countryside, nature, or wildlife and the writer describes how this land has, as a consequence, had a positive impact on their children's health & wellbeing.
9. The habitual and peaceful use of the land and the presence of numerous gates that access the land from neighbouring private residences over more than 20 years has probably established easements by prescription for many of the people living near the land. However, even if prescriptive rights are not recognised or are not yet registered over the property at Land Registry, it is apparent from a recent court decision, that the legislative intention within S.88 of the Localism Act 2011, was plainly that 'actual use', in the statutory context, should mean what it says and it was upheld that land should be registered as an Asset of Community value despite the fact that some uses had (in that case) constituted trespass. Even so, the total absence of any objections by the landowner(s) and their inaction to restrain or prohibit public access, indicates their acquiescence to the many recreational uses that have prevailed upon the land by the local community for decades.
10. Consequently, over time, the community living in or around Lye Green and along Lycrome Road including residents at Deer Park Walk and Henry Mash Court as well as those people living in the housing estate around Brushwood school and along Lye Green Road, have enjoyed improved wellbeing and social interaction with their neighbours. The land has become an integral part of the cultural identity of living around Lye Green and near the NE part of Chesham and makes an important contribution to the social wellbeing of all those living there.

11. Numerous photographs annexed to the statutory declaration included herein, show the physical evidence of the extent of the community's use of the land as well as various people indulging in various informal outdoor recreational activities there.
12. It is contended that the extent of the value that the local community and others place on the land, is demonstrated by the fact that almost 1,800 local people have signed a petition in 2016 calling for this land to remain subject to Green Belt designation and not earmarked for development. A copy of this petition is therefore included with this application.

It is acknowledged that aside from those who may have prescriptive rights over the land, some of the wider communities use of the land over previous decades has been undertaken without express consent of the landowner. Without prejudice to those who may be able to claim rights of prescription, the local authority is respectfully directed to consider the decided case of *Banner Homes vs St Albans City & District Council CR/2014/0018* that was considered by the Court of Appeal last year.

In *Banner Homes*, the Court of Appeal considered whether the use of a field for over 40 years by the local community for recreational activities, which constituted trespass as the field was in private ownership, could nevertheless constitute an 'actual use' for the purpose of listing an asset as an asset of community value pursuant to LA 2011, s 88. The owner of the field, Banner Homes, relied on the 'in bonam partem' principle of construction that presumes against the construction of a statutory provision to reward an unlawful action with a benefit, unless a contrary Parliamentary intention is revealed. Banner Homes argued that as a matter of law, 'actual use' for the purposes of LA 2011, s 88 had to mean lawful use; and since the actual use of the field (in that case) by the local residents was a trespass, and unlawful, it could therefore not form the basis for the purpose of listing an asset as being of community value.

The Court of Appeal in *Banner Homes* disagreed with those arguments. It found that the legislative intention in LA 2011, s 88 was plainly that 'actual use', in the statutory context, should mean what it says. However, Sharp LJ explained that she considered that in using the field, no criminal damage or other criminal activity was involved; on the contrary, the evidence made perfectly plain that the use of the field by the local community were entirely peaceable in nature. She commented that the inherent requirement that the use of the land in question had to further social wellbeing or social interests would in practice, preclude many unlawful activities for the simple reason that unlawful activities were by their nature unlikely to satisfy the tests of furthering social wellbeing/interests.

'Social wellbeing' is not defined but in this case will be a question of fact. I contend this is demonstrated by the enclosed statements. 'Social interest' is defined as including in particular cultural interests, recreational interests and sporting interests. Both definitions have been quite broadly interpreted. Dog walking in a field, children playing on a small green, and the holding of weekly music events on a pub's first floor have all been held to constitute recreational and cultural interests.

The local authority is further directed to the case of *4C Hotels (2) Ltd vs City of London CR/2017/0011*, where the First Tier Tribunal considered the requirement in LA 2011 s 88, that the use 'furthered' the social wellbeing or interests of the local community'. In that case the FTT rejected the submission that the word 'furthered' meant that the use of the building had to make a contribution to social wellbeing or social interests over and beyond what was already available

elsewhere and that the prospective cessation of the use had to make a difference to the 'offer' available to the local community.

The Assets of Community Value (England) Regulations 2012 (the 2012 Regulations), SI 2012/2421, set out certain categories of assets which are excluded from listing. Primarily these exclusions relate to private residences, and land connected with a residence, land licensed for use as a residential caravan site, and operational land of statutory undertakers as defined in TCPA 1990.

Accordingly, this application excludes Brushwood School and any private residence or residential curtilage that borders the land.

In conclusion, this organisation contends that the land is of community value as defined in S.88 Localism Act 2011 as its uses furthers the social wellbeing or social interests of the local community, and it is realistic to think it will continue to do so in the next five years as explained in the attachments herewith.

Therefore, I respectfully request the local authority list the land as an asset of community value.

Please note that this application includes both redacted and unredacted copies of all supporting letters and statements to assist in the consideration of this application. The Local Authority is requested not to publish or circulate unredacted copies to third parties without seeking prior written consent via ourselves.

Yours faithfully,



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