

**COMMITTEE: SOUTH EAST AREA REF NO: SEAC/18/18**

**DATE: 21 NOVEMBER 2018**

**SUBJECT: CONSULTATION ON AN ASSET OF  
COMMUNITY VALUE NOMINATION – LAND  
KNOWN AS WHITE ELM WOODLAND, MITRE  
WAY, IPSWICH**

**REPORT AUTHOR: CLARE DAWSON - DULIEU**

**HEAD OF SERVICE: SHIRLEY JARLETT**

***Short description of report content and the decision requested:***

On 11 October 2018, Ipswich Borough Council received a nomination from White Elm Woodland Limited for Land known as White Elm Woodland, Mitre Way, Ipswich to be registered as an Asset of Community Value (ACV) under the Localism Act 2011.

The purpose of this report is to consult with Holywells Ward Councillors as to whether the nominated property should be listed as an ACV.

***List of Appendices included in this report:***

Appendix 1 - Asset of Community Value Nomination Form submitted 11 October 2018 and supplementary evidence from applicant.

Appendix 2 – objection received from Mr Robert Appleton 10 November 2018.

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***This report was prepared after consultation with:***

Chair of South East Area Committee – Councillor Sarah Barber

Holywells Ward Councillors - Councillor Harsant, Councillor Parry and  
Councillor Studd

Portfolio Holder for Communities – Councillor Meudec

Chief Operating Officer– Helen Pluck

Head of People and Governance – Shirley Jarlett

Operations Manager for Finance – Tom Minnican

Operations Manager for Corporate Support – Deborah Carr

*The following policies form a context to this report:*

*(all relevant policies must also be referred to in the body of the report)*

*Building a Better Ipswich*

### **LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW**

*(papers relied on to write the report but which are not published and do not contain exempt information)*

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### **OTHER HELPFUL PAPERS**

*(papers which the report author considers might be helpful – this might include published material)*

- 1. Community Right to Bid: Non-statutory advice note for local authorities (Department for Communities and Local Government, October 2012)**
- 2. Ipswich Borough Council's Executive report of 18 December 2012 (Ref No. E/12/164) – Assets of Community Value – Community Right to Bid**

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## **1. Introduction**

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- 1.1 On 11 October 2018, Ipswich Borough Council received a nomination on behalf of White Elm Woodland Limited for Land known as White Elm Woodland, Mitre Way, Ipswich to be registered as an Asset of Community Value (ACV) under the Localism Act 2011. A copy of the nomination is attached as Appendix 1.
- 1.2 On 18 December 2012, Ipswich Borough Council's Executive gave the Head of Corporate Services (now Head of People and Governance) the delegated authority to determine ACV nominations. Executive further resolved that the appropriate Portfolio Holder and Ward councillors (through Area Committee where practicable) should be consulted as to whether a nominated property should be listed as an Asset of Community Value.
- 1.3 The purpose of this report is to consult with the Holywells Ward Councillors as to whether the land known as the White Elms Woodland at Mitre Way, Ipswich should be listed as an ACV.

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## **2. Background**

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- 2.1 The Localism Act 2011 and The Assets of Community Value (England) Regulations 2012 gives voluntary and community organisations a right to nominate a building or other land for listing by the local authority as an Asset of Community Value. If the nomination is accepted by the Council the nomination is listed on a Register of Assets of Community Value. All accepted nominations will normally remain on the Register for 5 years. An ACV listing can in some circumstances restrict an owner in disposing of their property.

### The Nomination

- 2.2 On 11 October 2018, Ipswich Borough Council received an ACV nomination for White Elm Woodland Limited.
- 2.3 The reasons given for the nomination were –

*“Various policies (detailed attached below) seek to protect this special woodland however the site remains on the open market and at risk of future planning applications and therefore – development. This much adored woodland has for many years furthered the social and mental wellbeing of those living around it and we wish to protect it for future generations to come. Hundreds of residents overlook it and benefit from the abundance of wildlife within it. The social interests to the local community are invaluable”.*

### The effect of an ACV nomination – disposal

- 2.4 The nomination of land or property as an Asset of Community Value does not restrict an owner in disposing of their property. It is only the Council's decision to list land or property as an Asset of Community Value which can have this effect.

### The effect of an ACV nomination - development

- 2.5 The Local Planning Authority may be mindful of the community interest in a nomination when determining planning applications relating to the land in question.

### Timescale for determining an ACV nomination

- 2.6 Ipswich Borough Council's Head of People and Governance must decide whether or not to list nominated land as an ACV within 8 weeks of receiving a nomination. The White Elms Woodland nomination was received by the Council on 11 October. Therefore, a decision on this nomination requires to be taken by 5 December 2018.

### What is an Asset of Community Value?

- 2.7 Land is of community value if either

- the present and future conditions in Section 88(1) of the Localism Act 2011 are satisfied.

or

- the past and future conditions in Section 88(2) of the Localism Act 2011 are satisfied.

- 2.8 Section 88(1) states:

“...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”.

2.9 Section 88(2) states:

“...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.”

2.10 ‘Social interests’ are defined under Section 88(6) of the Localism Act 2011 as including cultural interests, recreational interests and sporting interests.

The effect of listing a property as an ACV – disposal

2.11 The listing of a property as an ACV can give a community interest group the opportunity to bid to purchase or acquire a long lease of the ACV when the owner wishes to dispose of it. However, there is no requirement on the seller to sell to the community group (even if they are the highest bidder).

2.12 If an owner wishes to dispose of an ACV, by either a freehold sale or by granting or assigning a leasehold estate of at least 25 years, they must notify the Council of their intention to dispose of the asset. A moratorium on the disposal of 6 weeks (the interim moratorium) then comes into effect. During the 6 weeks, a community interest group has the opportunity to express an interest in the asset and submit a written intention to bid for the property.

2.13 If any written intentions to bid for the property are received during the interim moratorium period, a full moratorium period of 6 months comes into force. During the full moratorium period, an owner can continue to market their land/property and negotiate sales but cannot exchange contracts or enter into a binding contract to exchange contracts, except to a community interest group.

2.14 After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18

months from the date when the owner notified the Council of their intention to dispose of the asset.

#### The effect of listing a property as an ACV – development

- 2.15 A listed ACV can be considered as a material planning consideration in relation to the determination of a planning application for the land.

#### Challenging inclusion of land on ACV list

- 2.16 Where an owner of land listed as an ACV objects to the listing, they can request that the local authority reviews the decision to list the property. At Ipswich Borough Council, the Executive has delegated the power to review a decision to list a property as an ACV to the Chief Operating Officer and Deputy Chief Executive. A request for review must be made in writing within 8 weeks of the local authority having given written notice that the land is to be listed as an ACV.
- 2.17 If the owner of land listed as an ACV is dissatisfied with the listing review decision, they have a further right of appeal to the First-Tier Tribunal (General Regulatory Chamber). An appeal must be made within 28 days of the local authority sending the owner its review decision.

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### **3. Relevant Policies AND Area Action considerations**

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- 3.1 The Council's stated goals, aims and key activities are set down in the corporate plan, Building a Better Ipswich.
- 3.2 One of the key activities identified in Underlying Principle 1: A Fairer Ipswich states that the Council will "enable local residents to develop their communities where the need is greatest, and seek to remove unhelpful blocks on community activities".

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### **4. Options Considered / Under Consideration**

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- 4.1 Option1 – Accept the ACV nomination for land known as White Elms Woodland, Mitre Way, Ipswich and include the land on the Council's list of ACVs.
- 4.2 Option 2 – Reject the ACV nomination for land known as White Elms Woodland, Mitre Way, Ipswich and include the land on the Council's list of unsuccessful ACV nominations.

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### **5. Consultations**

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- 5.1 On 19 October 2018, Executive members and Holywells ward councillors were notified that on 11 October 2018 IBC received an

application, from White Elm Woodland Limited, for land known as the White Elms Woodland, Mitre Way, Ipswich to be registered as an ACV.

- 5.2 On 29 October 2018, written notice of the ACV nomination was sent to the freehold owners and the leaseholders of the properties identified in the plan accompanying the nomination, details obtained from the Land Registry. In all, 16 separate Land Registry titles were identified as being included within the boundary on the nomination plan, and letters have been sent to all 16 registered owners. On 9 November 2018 a second letter was sent out to the registered owners, providing updated contact details should they wish to provide comments by email, and also notifying them of the date of the Area Committee.
- 5.3 On 10 November 2018 an objection was received from Mr Robert Appleton, the freehold owner of the majority of the site. A copy of the objection is included at Appendix 2.
- 5.4 On 21 November 2018, Holywells Ward Councillors will be consulted on the ACV nomination at Ipswich Borough Council's South East Area Committee.

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## 6. Risk Management

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Risk Description	Consequence of risk	Risk Controls	Probability of risk occurring taking account of controls (scale 1-6) 1 – almost impossible 6 – very high	Impact of risk, if it occurred taking account of actions (scale 1 – negligible; 4 – catastrophic)	Actions to mitigate risk
Land of community value is not listed as an ACV	The community loses the benefit of the land/property.	Listing land/property as an ACV where it meets the statutory definition of being land of community value.	2	2	Determining ACV nominations pursuant to The Localism Act 2011, The Assets of Community Value (England) Regulations 2012 and Ipswich Borough Council's adopted procedure.

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## **7. Environmental Impact Assessment**

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7.1 Not applicable

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## **8. Equalities and Diversity Implications**

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8.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.

8.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.

8.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.

8.4 An equality impact screening assessment has been carried out and there are no equality and diversity implications arising from this report.

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## **9. Financial Considerations**

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9.1 Property owners, and former owners, who believe they have incurred loss or expense as a result of their land being listed as an ACV may be able to claim compensation from the Council.

9.2 The DCLG: Community Right to Bid: Non-Statutory advice note for local authorities states that central government will meet the costs of compensation payments paid by local authorities of over £20,000 in a financial year (either for a single claim or a number of smaller claims).

9.3 The additional commitments contingency within the Medium Term Financial Plan includes an annual provision of £20,000 towards potential compensation claims.

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## **10. Legal Considerations**

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10.1 The Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 require a local authority, as more particularly detailed in the body of this report, to maintain a list of buildings and other land in

its area that are Assets of Community Value and ensure that when such land is to be sold local community groups have the opportunity to delay the sale to enable them to prepare a bid to buy it. The owner of the asset has a right to claim compensation attributable to the listing.

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## **11. Performance Monitoring**

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- 11.1 The regulations set down timescales by which local authorities must meet the various provisions detailed in the Assets of Community Value (England) Regulations 2012. For each nomination for listing, the Council will need to ensure that it meets the requirements of the Regulations and it is against these requirements that the Council's performance will be monitored.

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## **12. Conclusions**

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- 12.1 Ipswich Borough Council has received a nomination for land known as the White Elms Woodland, Mitre Way, Ipswich to be registered as an Asset of Community Value (ACV) under the Localism Act 2011.
- 12.2 The Head of People and Governance has the delegated authority to determine ACV nominations.
- 12.3 In determining the application, the Head of People and Governance must decide whether the White Elms Woodland at Mitre Way, Ipswich is land of community value as defined in section 88 of the Localism Act 2011.
- 12.4 Prior to the Council's Head of Resource Management making a decision on the nomination, Holywells Ward Councillors and the Portfolio Holder for Communities are being consulted as to whether the property should be listed as an ACV.

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## **13. Recommendations**

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- 13.1 That the comments of the South East Area Committee on the ACV nomination for land known as the White Elms Woodland, Mitre Way, Ipswich as detailed in this report, be taken into consideration by the Head of People and Governance in determining the nomination.**

Reason: In order to comply with the requirement to consult Ward Councillors in accordance with the Council's adopted procedure for determining ACV nominations.