

Land to rear of 96 High Street, Ilfracombe, known as the High Street Car park, EX34 9NH nomination as an Asset of Community Value (ACV)

Note: References to the “Act” are to the Localism Act 2011.

References to the “Regulations” are to the Assets of Community Value (England) Regulations 2012.

On 22 April 2021 a nomination was received under the provisions of the Regulations to list as a community asset consisting of land at rear of 96 High Street, Ilfracombe, comprising 0.88 acres known as High Street Car Park, Ilfracombe, EX34 9NH. The nomination was in the name of the Ilfracombe Town Council.

<p>Conclusion: Based on the available evidence the land known as High Street car park, Ilfracombe, EX34 9NH will be added to North Devon Council’s list of Assets of Community Value.</p>
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Consideration 1: Has the nomination been made by an appropriate body?

89(2)(b)(i) of the Act provides for a Parish Council in respect of land in England in the parish council’s area.

This criteria is therefore met.

Consideration 2: Is the nomination complete, including the necessary matters specified in paragraph 6 of the Regulations?

Paragraph 6 requires a description of the land, information on the owners and occupiers, reasons for believing there is a community value, and evidence that nominator is eligible. This has all been provided and so the nomination is deemed valid.

Consideration 3: Does the area of land known as High Street Car park, Ilfracombe, qualify as being of “community value”?

s88(1) of the Act specifies that land is of community value “*if in the opinion of the authority*

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(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 community; and

(b) it is realistic to think that there can continue to be” such use

Section 88(2) goes on to state that even if there is no current community use of the asset, for instance because the asset is currently closed, an asset might still be deemed to be of community value if the authority is of the opinion that

“(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 That would further (whether or not in the same way as before) the social wellbeing or social interests of the local community”

Section 88(6) defines “social interests” as including cultural, recreational and sporting interests but there is no definition of social wellbeing or any definition that limits the breadth of the meaning of social interests. There is also no definition of what constitutes the “local community” but various appeals have given some guidance.

It has been left to local authorities to determine this in the light of local circumstances. In the case of North Devon, the adopted policy states that:-

“A property that enhances the social interest and social wellbeing of the local community is one that in its absence would deprive the local community of a building or property which is essential to the special character of the local area and provides a place to meet and socialise, place to shop, recreational, sporting or cultural facility or a place used to provide a community service.”

The nomination is for an area of land approximately 0.88 acres, situated off the High Street, Ilfracombe, to the rear of 96 High Street, Ilfracombe. The area of land is known as the High Street Car park.

The site is owned by BS Squared (Leen Gate) Ltd, 14 Clarendon Street, Nottingham. The date when the site was acquired by the current owners is given as March 2021 in a letter from the owner’s lawyer, received 7th May 2021. As requested by Howes Percival LLP a copy of the nomination form was sent to them.

Following receipt of the nomination, emails and letters were sent to the owners, Ilfracombe Town Council and Ward Members (Councillors Campbell, Crabb, Fowler, Pearson and Turton) requesting any comments prior to 17th June 2021.

A letter was received on 7th May 2021 via email from Chris May, Partner, Howes Percival LLP on behalf of the owners of the site BS Squared (Leen Gate) Ltd requesting the Council consider not listing the Car Park on its register of Asset of Community Value with the following quote given for reason why not: “It is considered that the Car Park plays no role in furthering the social wellbeing or social interests of the local community and as such serves

no community use and has not done in the recent past. “Social Interests” are defined in section 88 (6) of the Localism Act as being “cultural interests; recreational interests; sporting interests”. The Car Park furthers none of these and as such, there is no current qualifying use. Whilst car parks can qualify as an ACV, the case of *C, S & D Trough v Shropshire Council and Another (First Tier Tribunal Case CR/2015/0002)* is distinguished here as the Car Park has no connection to any facilities which provide community uses: it is simply a place for members of the public and employees of local businesses to pay to park their vehicles to access the commercial premises on the High Street. It is also not realistic to think that there could be a future use which will further the social wellbeing or social interests of the local community in the next five years”

Ilfracombe Town Council at its council meeting on 8th March 2021 resolved that the land known as High Street car park is registered with NDC as an asset of community value. In the agenda report circulated at the time the following reasons for making this listing were given: “Car parking for the High Street is a key issue for shoppers and tourists who wish to park and visit the shops. Although there are 35 on street car spaces at street level they have a limited waiting. There is a District Council run car park some 100 metres up a very steep hill providing a further 35 spaces. If those figures represented the only provision for the High Street, that would be less than half a space per commercial premises. Those figures completely ignore any provision for central Ilfracombe residential units.” The report goes on to say; “The importance of this carpark is enforced by the Scott Wilson Movement and Parking Strategy commissioned by North Devon council in 2009. Little has changed since then in terms of the landscape of High Street parking and how movement and traffic flows around this area. Key points include:

- The need for car parking to support the high street so that a safer and better pedestrian experience can be developed in the High Street.
- A lack of off-street parking for properties in Central Ilfracombe – this is a most contentious issue for Ilfracombe Residents.
- The need for car parking to support businesses and the economy.

This is further enforced by the CACI study of 2010. The issues still remain. The lack of High Street car parking was cited as a negative point and with the correct signage this car park could be better utilised. Therefore, if this site was sold to a private developer who was looking to develop this area for housing the impact on the High Street and businesses/economy would be considerable.”

Community Use

It is necessary to consider whether the current use of this area of land is a non-ancillary use that furthers the social wellbeing or interests of the local community.

The nomination lists past and existing community uses of the land. It states that the land is currently operated as a car park used by local residents, High Street Traders and Tourists.

The site has been run as a car park for 45 years and this is the first time it has changed ownership in that time (information taken from the North Devon Gazette article dated 28 April 2021).

In relation to evidence, the Council does not require evidence in a particular form to be submitted.

There are approximately 14 car parks around the town of Ilfracombe but none that give access directly onto the high street. The North Devon Council owned car park at Wilder road runs parallel to the high street with another long stay, council owned, Car Park at Oxford Grove which is up a steep incline approximately 0.2 miles away. The Hillsborough Road car park is about five minutes' walk away or approximately 0.9 miles.

Ancillary Use

To be capable of being listed, the land must have a current community use, or a recent one, which is not an ancillary use.

It is clear from the evidence that the land is being used as a car park without limitation and available at any time. On that basis, it does appear that the land has a current community use which is not ancillary to another use.

Future Use

The nomination states that "protecting the use of the site for the community use as a car park (a business case has been completed) and with the potential profits being ploughed back into the community to aid supporting the health and wellbeing of the community, addressing social deprivation (Index of Multiple Deprivation rank 4381 taken from Ministry of Housing, Communities and Local Government's "The English Indices of Deprivation 2019 (IoD2019) statistical release) and supporting the many community driven projects usually initiated by teams of volunteers but with limited funds available.

The following argument from the owner's Solicitor regarding the relevance of social wellbeing: "Further the concerns raised at 4.1 of the Form centre on the lack of car parking to serve the shops on the High Street, the lack of parking for residents in Central Ilfracombe and the need for car parking to ensure the economic survival of the High Street. None of these are factors which have any relevance to furthering the social wellbeing or social interest of the local community. These concerns, which prophesise about what would happen if our client submitted an application to develop the Car Park into some other use, are concerns which would be material considerations pursuant to any planning application for redevelopment of the Car Park. They are matters for the decision maker, North Devon Council in the first instance, at the time in exercising their planning judgement and have no relevance to whether the Car Park should be considered an Asset of Community Value."

Decision

In my view, taking into account the evidence and representations submitted, there is a current use of the land that is not an ancillary use which furthers the social wellbeing or social interests of the community and it is realistic to consider that there can continue to be a non-ancillary use of the land which will further the social wellbeing or social interest of the local community. Ilfracombe is characterised by a number of steep hills, and to have a car park off the High Street with direct access to the High Street and its shops and facilities aids users of those facilities and allows them to access activities which better their social wellbeing. My conclusion is that, therefore, the land should be included within the list of assets of community value.

Trevor Blatchford
Senior Solicitor and Monitoring Officer
17 June 2021