

Lagoon View Community Orchard – 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 29 May 2024 a nomination was received under the provisions of the Regulations to list Lagoon View Community Orchard as a community asset. The nomination was in the name of the Lagoon View Community Orchard Association.

Conclusion:	Based on the available evidence the Lagoon View Community Orchard will be added to North Devon Council’s list of Assets of Community Value.
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Consideration 1: Has the nomination been made by an appropriate body?

89(2)(b)(iii) of the Act provides for a voluntary or community body with a local connection to nominate land in a Local Authority’s area; this is expanded upon in regulation 5 (g) of the Regulations.

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 nominated land, information on the owners and occupiers, reasons for believing there is a community value, and evidence that nominator is eligible. When submitted, the nomination contained an old plan and a more recent detailed plan was requested from the nominator. Following the receipt of a more recent detailed plan, the nomination was valid from that date which was 29 May 2024.

This criteria is therefore met.

Consideration 3: Does the Lagoon View Community Orchard, West Yelland 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(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.”

Background

Following the receipt of the nomination, an email was sent to the Ward Members and Fremington Parish Council, and a letter sent to the owners of the land in accordance with the information provided on the nomination form. These requested any comments to be made prior to the 24 July 2024. On 11 June 2024, a response has been received from the Executive Officer of Fremington Parish Council advising that the “Parish Council would support the application to list the Lagoon View Community Orchard as an Asset of Community Value, its an area of land that has been used successfully as a community orchard for a number of years and is an important asset for the community”.

On 23 July 2024, an email was received from Wollens Solicitors on behalf of Pearce Construction (Barnstaple) Limited) (which was originally dated 18 June 2024 and sent to an incorrect email address). This letter advises that Pearce Construction (Barnstaple) Limited) “strongly objects to the Land being listed as an asset of community value” and makes a number of comments which include “It should be noted that the Land forms part of a strategic link to adjoining land currently promoted and under consideration in the Torridge and North Devon local plan review of residential development. Consequently, the Land is of significant value.....” It goes on to also state that “The absence of land would not deprive the local community of a property which is essential to the special character of the local area. There is a further existing mature orchard within the Land which would provide alternative provision of the same amenity. The intention of our client has always been, in the event of planning being secured for the adjoining residential development, to transfer the alternative site to the Association”.

By way of background, the nomination states that site was designated as a children's play area when the Lagoon View housing development was built in 1988. Evidence was provided in the form of conditions attached to planning permission granted by North Devon District Council dated 31 December 1986. The nomination states that the children's play area was not progressed by the owner or the Parish Council and became overgrown. In 2014, following consultation with residents, the Lagoon View Community Orchard Association, was formed to turn the site into a usable local facility. The orchard is adjacent to the property 84 Lagoon View, West Yelland, EX31 3LE. It is now a community space with 21 fruit trees, a woodland walk, a herb bed and a wildflower area.

The nomination advises that the site is owned by the original developer of the site, Pearce Construction (Barnstaple) and that the site should have been handed over to the local authority (North Devon Council) in 1988. The Lagoon View Community Orchard Association lease the site from Pearce Construction, which was originally on a 10 year lease and now on a new 3 year lease which commenced on 1 November 2023. In relation to how the asset could be acquired and run for the benefit of the community, the nomination advises "that the site should be transferred to Fremington Parish Council, as was originally intended. We have attempted to do this in the past, and FPC (Fremington Parish Council) agreed that, given the original designation, they would hold it and LVCOA (Lagoon View Community Orchard Association) would provide the maintenance. This decision was given to Pearce's, but they declined to hand over the title."

The management of the orchard is undertaken by the Lagoon View Community Orchard Association committee and the maintenance is undertaken by volunteers. It is a non-profit organisation and all profits are used to maintain or develop the land.

The community orchard has been referenced in an Estate Agents listing for a property recently for sale at Lagoon View in its description of the area. Fremington Parish Council also receive annual reports from the Lagoon View Community Orchard Group, the latest one was presented to their Annual Parish Council meeting on 6 March 2023.

The area of land is located within the village of Yelland which is situated in the Fremington Parish and the district ward of Fremington. Yelland is located between the villages of Instow and Fremington. Yelland has a population of around 2,000. The village of Yelland has no village hall, church or anywhere to hold community events. There are no amenities in the village with the exception of a garage and a small industrial park.

Community Use

Section 88 (2) of the Act goes on to state that even if there is no current community use of the asset as a result of Section 88 (1), 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”

The nomination falls to be determined under section 88 (1) and to consider whether the actual current use of the land is non ancillary that furthers the social wellbeing or interests of the local community and it is realistic to think that there can continue to be such use.

The Council does not require evidence in a particular form to be submitted, however evidence of community use has been submitted as part of the nomination.

The nomination describes the asset as “a well used community space offering quietness and peace in a residential area on a site nominated for community use when the estate was developed in 1988”.

The nomination describes the asset as being used for holding several fundraising events each year including an annual BBQ, carol singing, Apple Blossom day and apple pressing, Remembrance Day and a Bat and Moth evening. It also states that “such events are attended by 40-80 local people, with residents and families of all ages”. The orchard is also used by dog walkers, mothers will strollers on their way to buses/shops and that the “fruit from the orchard is available to all, so that people can help themselves. This includes apples, pears, quince, medlar and figs! There are soft fruits, like raspberries, and there is also a herb bed that is well used”. A BBQ has been built which residents can use. It also goes on to state that the Association has undertaken a survey of orchard users and have received no negative comment and there are many compliments on the content of the orchard which included a circular path (suitable for wheelchairs), a picnic table, and several benches. Users had also commented on the peace and tranquillity. Many of the users came from the surrounding area and not just from Lagoon View. Upcoming events are published on their Facebook site. Orchard Working Parties are also held on the first Saturday of each month.

With regard to whether it is realistic to think that there can continue to be such use, in the letter received from Wollens Solicitors on behalf of Pearce Construction (Barnstaple) Limited), it advises “The Association’s occupation rights over to the Land are limited to those within a lease dated 1st November 2023. That lease has a 3-year contractual term with statutory security of tenure rights having been excluded. Our client will be terminating the lease upon expiry of the contractual term to end on 31st October 2026. As such, on any reasonable interpretation, it cannot be concluded that there is a “realistic prospect” of continued or future use (and certainly not for the 5 years as anticipated in the Asset of Community Value – Policy Statement issued by the Department for Communities and Local Government).”

In terms of if it is realistic to think that there can continue to be non-ancillary use of the land which will further the social wellbeing or social interests of the local community, the letter from Wollens Solicitors advises that the lease with the Association will end on 31 October 2026.

Considering these points in relation to the future and whether the requirements of section 88(2)(b) are met; it is established case law that whether something is realistic does not mean that it must be more likely than not to happen. A use may be “realistic”, even though it is one of a number of possibilities. No possibility needs to be the most likely outcome. Here the evidence provided indicates a level of community intent, with the nominating Association having the support of the Parish Council. There is no evidence to suggest that the community interest in this site is likely to diminish. I am not required to speculate whether the adjoining land will be considered for residential development in the Local Plan review nor whether such development and use of this land as a strategic link would subsequently receive planning consent. While it is more likely than not that the lease will not be renewed, given the landowner’s evidenced intention, there is no evidence of an established and developed plans for future use of the land and the support from the Parish Council and the local community for its current use makes it more than fanciful that the land could continue to further the social wellbeing or social interests of the local community. Accordingly it would appear “realistic” that the land will continue in its present use on terms to be agreed.

Cultural interests

The nomination also includes reference to the orchard being offered to local art and wellbeing groups as a suitable place for their activities.

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. The nomination makes no reference to any other use of the land. Evidence of its community use was provided in the form of conditions attached to planning permission granted by North Devon District Council dated 31 December 1986 included a condition stating that “details required by condition 2 shall include the detailed setting out of a substantial children’s play area within field Pt OS 0686 to be laid out and equipped to the adoptable standards of North Devon District Council

Taking the above evidence into account, my view is that it is not an ancillary use and that the use of Lagoon View Community Orchard does further the social wellbeing and interests of the local community.

Decision

The Decision is therefore that the Lagoon View Community Orchard should be added to the list of Community Assets held by the Council.

Simon Fuller
Senior Solicitor and Monitoring Officer
24 July 2024