

Cabinet Member Briefing Note

Nomination of Asset of Community Value Lydiard House and Park

**To: Cabinet Member for Deputy Leader and Cabinet Member for
Commercialisation, Education and Skills**

Date: 24th February 2021

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| Author: | Corporate Director of Finance and Assets |
| Wards: | Lydiard and Freshbrook |
| Parishes Affected: | West Swindon |

1. Purpose and Reasons

- 1.1 The purpose of this Briefing Note is to consult upon the proposed determination under delegated authority of the nomination of an asset by Lydiard Fields Action Group as an Asset of Community Value. The property nominated is Lydiard House and Park and an area known as Greendown Plantation. The extent of the property nominated is shown edged red on the plan attached as an Appendix ('the Nominated Property'). Most of the Nominated Property lies within the Borough of Swindon with the remainder being in Wiltshire County Council area.
- 1.2 The Localism Act 2011 places a duty on local authorities to maintain a list of Assets of Community Value in their areas. Assets are placed on the list as a result of community nominations. All validly made nominations must be considered and apart from certain categories of land which may not be listed, the local authority must decide whether the asset nominated meets the criteria for listing.
- 1.3 The purpose of the Legislation is to encourage community-focused, locally-led action by providing an important tool to help communities looking to take over and run local assets, an enabling function under the Locality pillar of Stronger Together.
- 1.4 Where a nominated asset lies within the areas of more than one local authority there is a duty to co-operate in the processing of the nomination and following liaison with Wiltshire County Council co-operation has been forthcoming.
- 1.5 On 12 December 2012 the Cabinet authorised the Board Director, Finance, Revenues & Benefits, and Property (now Corporate Director of Finance and Assets), in consultation with the Cabinet Member for Finance, (now Deputy Leader and Cabinet Member for Commercialisation, Education and Skills) (or such other Cabinet Member as may be nominated by the Leader of the Council) to determine any nomination for listing.
- 1.6 The Head of Property Assets has confirmed that, having regard to the requirements set down in the legislation, the nomination is validly made.

Further information on the subject of this report can be obtained from Helen Haines, Direct Dial Telephone Number 07824 550421, hhaines@swindon.gov.uk.

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2. Recommended Action to be taken by Officers Under Delegated Powers

Recommended that the Cabinet Member agrees to:

- 2.1 The Corporate Director of Finance and Assets will exercise the delegated authority granted by Minute 78(3) 2012/13 of the Cabinet to determine that the Nominated Property as shown for the purpose of identification edged red on the plan attached as an Appendix, with the exception of the electricity sub – station shown green, Brooks Cottage and St Mary’s Church, shown coloured blue on the attached, shall be included in the Borough’s list of Assets of Community Value to the extent that it lies within the Borough’s area and advise the applicant accordingly.

3. Detail

The Legal Framework

- 3.1 Part 5 Chapter 3 of the Localism Act 2011 (‘the Act’) and the Assets of Community Value (England) Regulations 2012 (‘the Regulations’) (together referred to as ‘the Legislation’) contain the relevant legal provisions.
- 3.2 The Legislation stipulates that, apart from assets which are excluded from listing, a building or land is land of community value if in the opinion of the local authority:-
- 3.2.1 The primary current use of the land furthers the social wellbeing or social interests of the local community, and;
- 3.2.2 it is realistic to think that the land can continue to be used in a way that will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- 3.3 If the asset cannot satisfy this test (‘the Current Use Test’) then there is a second possibility (‘the Past Use Test’) which states that a building or land is also land of community value if in the opinion of the local authority:-
- 3.3.1 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

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- 3.3.2 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
- 3.4 The Act defines “social interests” as including in particular each of the following:
- (a) cultural interests;
 - (b) local historical value
 - (c) recreational interests; and
 - (d) sporting interests
- 3.5 Assets which are excluded from listing include ‘operational land’ as defined in section 263 of the Town and Country Planning Act 1990. Residential property is generally also excluded although where a building is only partly used as a residence, and but for that use the land would be eligible for listing, it may be listed.
- 3.6 The nomination is required to include a description of the nature, current use and location of the nominated asset and the nominator’s reasons for thinking that the local authority should conclude that the asset is of community value.
- 3.7 The legislation contains qualifying requirements for a party wishing to nominate an asset for listing as an Asset of Community Value.

The Nomination

- 3.8 The nomination has been made by Lydiard Fields Action Group (LFAG). The Head of Property Assets has confirmed that LFAG is eligible to make the nomination, but there has not been independent verification of the purported twenty-five members of the group listed in the application as satisfying the membership threshold stated in the legislation. Apart from this qualification all of the required information has been provided and thus the nomination is therefore validly made.

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- 3.9 The Nominated Property straddles the administrative areas of Swindon Borough Council and Wiltshire County Council. The plan attached as Appendix shows the Nominated Property edged red, with the part within Wiltshire is hatched blue.
- 3.10 The Nominated Property is described by LFAG as (1) Lydiard House, including the stable block and walled garden, (2) Lydiard Country Park and (3) Greendown Plantation. For the avoidance of doubt it is expressly confirmed that St Mary's Church, and Brook Cottage are excluded from the nomination.
- 3.11 The Nominated Property includes an area which is ineligible for listing because it is operational land. This is the electricity substation shown coloured green on the plan attached as Appendix.
- 3.12 The reasons given by LFAG for believing that the Nominated Property should be listed as asset of community value are as follows:
- 3.13 'In respect of Lydiard House, other buildings within the park and the country park, (in other words the Nominated Property other than Greendown Plantation) the nominating group state that 'these have long been recognised and used by both the local community, residents of Swindon and beyond as one of Swindon's most valued cultural and recreational assets, providing-
- a hub for a wide range of cultural events for the public;
 - a place of recreation and relaxation;
 - a nature reserve;
 - an educational resource;
 - a link with Swindon's heritage;
 - a venue for a wide range of physical events encouraging a healthy lifestyle for the local community for over 70 years, since its purchase by Swindon Borough Council in 1943.'
- 3.14 The LFAG continues: 'more specifically:
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- The historic buildings and features of Lydiard House, Stable Block and Walled Garden all contribute to the wellbeing and interests of local people, whether through visiting these areas, from personal involvement in research, archaeology or gardening, or simply from valuing the sense of history or tranquillity created, or a combination of all these things.
- The country park designated as such since 1985 – 6 and lying mainly within a rural setting gives the benefit of fresh air, exercise and leisure opportunities, the enjoyment of wildlife and different ecological habitats, as well as appreciation of the historical nature of the park and the archaeological features within it.
- It should be noted that although the whole English Heritage registered park is not included in this registration (sic), it does nevertheless add to the importance and enjoyment of the park. The recognised national significance of the park is a considerable source of pride for local people and its protection and upkeep as a valued local asset, contributes to the community's sense of wellbeing.'

3.15 In respect of Greendown Plantation, LFAG states that it:

- 'believes that the ancient copse or plantation known as the Greendown Plantation, also fits the definition of an asset of community value, through both its current use, and its links with the park. It has been a constant feature of the landscape and can be clearly seen on maps as far back as 1828. It is appreciated by local people as part of the historic countryside setting for Lydiard House and Park, softening the views of Grange Park. It is linked to Lydiard Park via the hedgerow and green space, and is used as the start for one of the walking/cycling routes connecting local communities to the park. Furthermore, it benefits local people through its wild flowers, birds and wildlife, and for its ecological value as a small area of ancient woodland.'

3.16 LFAG concludes that it

- 'believes that the destruction, degradation or fragmentation of any of these assets would mark a considerable loss both to the local community and to Swindon as a whole, and lead to the impoverishment of the rural landscape and Lydiard Country Park itself.'

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Processing the Nomination

- 3.17 The Legislation allows a single nomination to be made in respect of an asset which lies within the areas of more than one local authority and in these circumstances requires the relevant local authorities to co-operate in processing the nomination. Council officers have liaised with officers at Wiltshire Council to this end.
- 3.18 Owners and occupiers of the Nominated Property and any parish council for the area in which the Nominated Property lies must be notified that the Council is considering the listing as an Asset of Community Value.
- 3.19 This Council is the freehold owner of the whole of the Nominated Property.
- 3.20 There are a number of lessees and occupiers of the part of the Nominated Property which lies within the Borough and notification has been sent to them. No response has been received. To the extent the Nominated Property is within the Borough it is parished to West Swindon Parish Council who have been notified of the application, no response has been received.
- 3.21 Council officers have contacted Wiltshire Council and invited them to send a letter drafted and supplied to them by our Legal Services to any lessees or occupiers of the part of the Nominated Property which is within Wiltshire's area. Wiltshire is understood to have given the necessary notices and also to their parish council[s]. There has been no notification by Wiltshire Council of any response from their lessors/occupiers (if any) and the only Parish Council response that they have forwarded was from Lydiard Tregoze, who was supportive of the application.
- 3.22 The Act requires a local authority to accept a validly made nomination of an asset in its area if in its opinion the property nominated meets the definition of land of community value. Provided that the asset is not excluded from listing this requires the application of the tests outlined in paragraphs 3.2 to 3.4 above.

Applying the Tests

- 3.23 The nomination in this instance is a composite one in that it relates to property which is used in a variety of different ways. The part of the Nominated Property which is within the Borough includes the Palladian house, the walled garden, an education centre, various facilities for refreshments, plant sales and formal and informal play areas. It also

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includes a conference centre and hotel as well as part of the parkland. The part which is in Wiltshire consists of parkland only.

3.24 As the freehold owner the Council has information about the user of the various parts of the property which can be summarised as follows:

3.24.1 Lydiard House - The House is heritage asset and a regional tourist attraction. The state rooms, which are on the ground floor, are open to the public and an admission fee is charged. These rooms are also occasionally used for what might be described as 'high end' functions.

3.24.2 Other parts of the ground floor of the house and also the upper floor are used, by the Council and operated as a conference centre and hotel, as function rooms and for administrative and ancillary purposes.

3.24.3 The Walled Garden - The Walled Garden, also a heritage asset, is open to the public and requires a separate admission fee.

3.24.4 The Parkland - The parkland is open to the public free of charge on an unrestricted basis except that one or more areas may be fenced off from time to time. Parts of the parkland are subject to agricultural tenancies or licences for grazing or mowing. The parkland is extensively used by local people for recreation, jogging, cycling, dog walking etc. There is also a traditional children's playground with slides swings etc. which is used by local families as well as people visiting as tourists.

3.24.5 The Stables - The ground floor of the former stables is now used as a tea room together with public toilets and an education room. There is also a mess room for the exclusive use of the staff gardeners. Upstairs is an estate office for Council staff use.

3.24.6 The tea room attracts local walkers as well as tourists estimated to be in an approximately equal mix. The education room is targeted at community use and is used by school parties and by the First Lydiard Park Scout Troup for their meetings. The adjacent church uses the education room for Sunday school. The education room can be hired for children's birthday parties and craft workshops are also held there.

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- 3.24.7 The Rickyard - Behind the Stables tea room is the former rick yard. This is used for plant sales and for additional outdoor tables and chairs.
- 3.24.8 Visitor Centre - The visitor centre comprises the 'Forest Café' with catering facilities, a separate ice cream kiosk, a First Aid room, Warden's workshop and compound, and public toilets.
- 3.24.9 Jungle Parc - This is a high wire aerial adventure facility in an area of woodland which is run by a commercial operator.
- 3.24.10 Hotel and Conference Centre - The hotel and conference centre are operated by the Council. These facilities are available for hire by the public at large and are used for conferences, corporate events, weddings and the like.
- 3.24.11 Greendown Plantation - The plantation is a small area planted with trees and in addition the nomination includes a narrow strip of planted land alongside an estate footpath which can be used as a route into the Parkland.
- 3.24.12 Electricity Substation - There is an electricity sub-station which is leased to the statutory undertaker.
- 3.25 In relation to the original nomination in 2015, because the application relates to composite property which is used in a variety of different ways a legal opinion was obtained from specialist external counsel.
- 3.26 The advice received is that there is no bar to a composite nomination of this type being made. As to how the tests should be applied to a disparate asset such as this, the advice then was that a local authority may, in appropriate cases, decide to list part or parts of the nominated asset and refuse to list the remainder; equally however, a more broad brush approach may be appropriate in other cases, particularly where the different areas are not discrete and severance would involve listing part only of a building.
- 3.27 In the original nomination situation the advice received was that the Nominated Property should be looked at as a whole and that, considered in that way, the current use of the Nominated Property (apart from the sub – station which is ineligible for listing because it is classed as 'operational land') meets the criteria for listing.
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- 3.28 Whilst it is for the Council to decide whether in its opinion the test is satisfied, the earlier external legal advice was that the Nominated Property, needed to be considered as a whole, and having regard to the information provided in the nomination, is of major importance to the local community and may be regarded as one of Swindon's pre-eminent cultural and recreational assets. As specialist external legal advice was taken by the Council specifically for the purpose of processing the earlier nomination, and there has been no significant change in relation to the Nominated Property or its use, it is believed that the earlier advice should continue to be followed.
- 3.29 Wiltshire Council has confirmed that subject to the Council doing the same that they will list the part of the asset within their boundary.
- 3.30 The recommendation therefore is that the Current Use test should be regarded as satisfied (except in respect of the electricity sub – station which is not eligible for listing) and that the Corporate Director of Finance and Assets will add the Nominated Property (in so far as it lies within the Borough, and apart from the sub -station) to the list of Assets of Community Value.

4. Alternative Options

- 4.1 There is no alternative option proposed as the Nominated Property has satisfied the test and account is being taken of the earlier legal opinion from specialist external counsel obtained.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 The report to Cabinet on 12 December 2012 outlined the financial implications of the Council's statutory duties in respect of Part 5 Chapter 3 of the Act (Cabinet Minute 78, 2012/13 refers).
- 5.2 There may be financial implications to the Council as trustee of the Nominated Property however these are not permitted to be considered when determining whether it meets the test for listing as an Asset of Community Value.

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Legal and Human Rights Implications

- 5.3 The Legislation imposes restrictions on the rights of property owners to dispose of listed assets. The Council has a statutory obligation to perform its duties under the Act.
- 5.4 Legal and Human Rights implications were taken fully into account in the preparation of this Briefing Note and it is believed the recommendations are compatible with Convention rights.

Climate Change Impact

- 5.5 The proposals would not bring a change in service delivery and Officers believe that there is no expected effect on the Council's carbon footprint

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.6 The purpose of the Legislation is to encourage community focused, locally led action by providing an important tool to help communities looking to take over and run local assets.
- 5.7 No other specific implications have been identified

Diversity Impact Assessment

- 5.8 A diversity impact assessment (DIA) formed part of the report to Cabinet on 12 December 2012.

Risk Management

- 5.9 This is dealt with in the report to Cabinet on 12 December 2012.

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

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8. Appendices

- 8.1 The Nomination Form and associated documents and a plan of the Nominated Property

9. Declarations of Interest

- 9.1 Cabinet Members are reminded to consider whether they have any known interests in any of the matters referred to in this Briefing Note. If such an interest exists this should be declared to the Monitoring Officer (or Committee and Member Services Manager), and they should take no part in the consideration of the Briefing Note and should refer the Briefing Note to the Leader of the Council instead for consideration.

10. Sign-off

- 10.1 The Cabinet Member is requested to respond with 5 days of the date of this report (by 1st March 2021).
- 10.2 The Cabinet Member is requested to indicate one of the following responses to the Recommendations set out in Section 2 of this report:

[To be signed electronically but the signature will be redacted on the published version.]