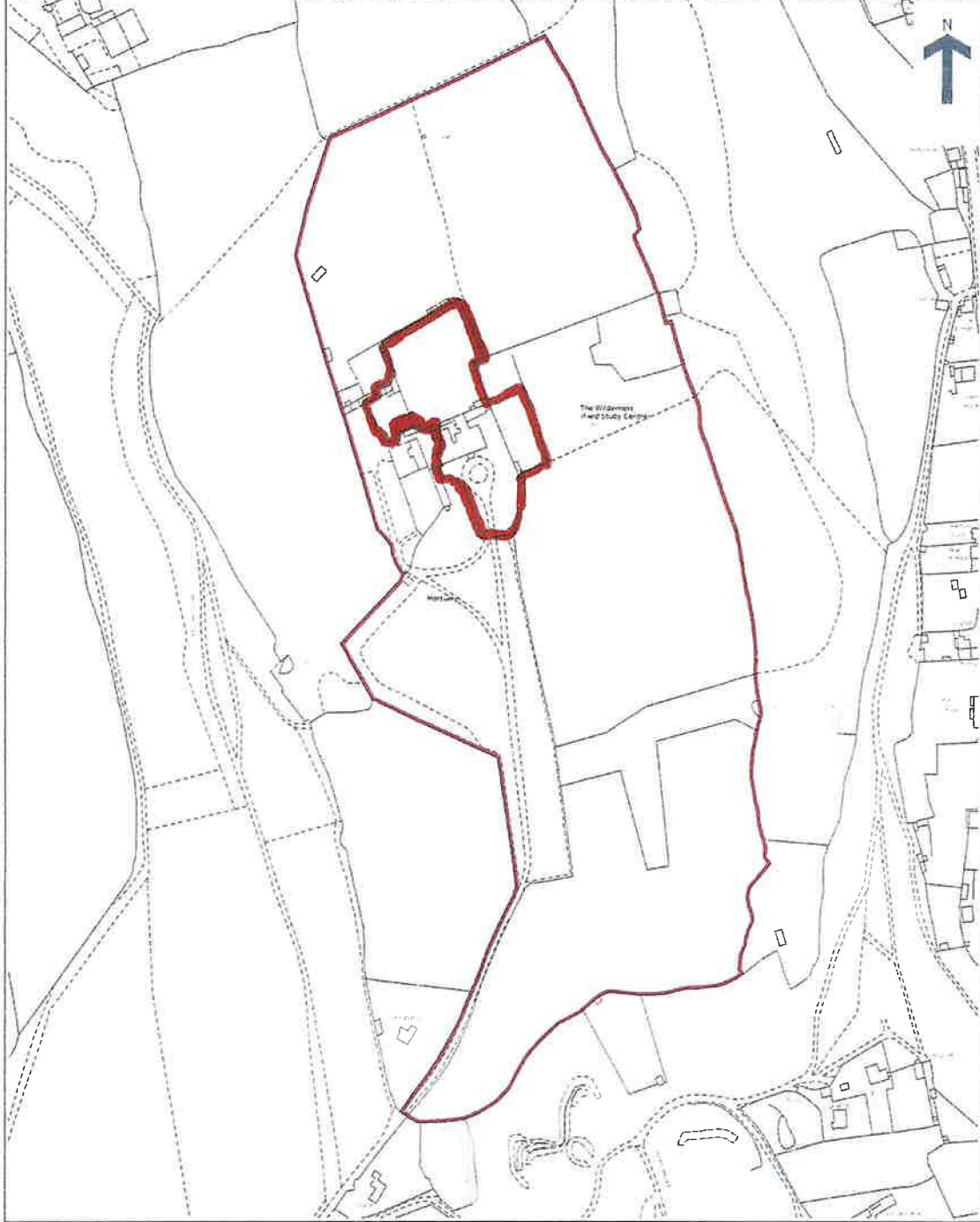


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**COMMUNITY RIGHT TO BID
THE WILDERNESS CENTRE, MITCHELDEAN**

1. BACKGROUND AND REASONS FOR RECOMMENDATION

- 1.1. The Localism Act 2011 (hereafter referred to as 'the Act') and the Assets of Community Value (England) Regulations 2012 (hereafter referred to as 'the Regulations') provides communities with an opportunity to ensure that buildings and amenities of community value remain in public use. The power was conceived for use in relation to assets such as the local pub, village shop, community centre, library building, etc. The aim of the Act is to help the community keep assets in community use and it should not be seen as a tool to block and/or delay developments.
- 1.2. The list of assets of community value is maintained by the Council and land may be entered onto the list in response to community nominations. The Council is obliged to place nominations on the list if it is within the Council's area and if it is, in the opinion of the Council, of community value.
- 1.3. The legislation provides two possible constructions of community value:
either:
- (a) the land and buildings have an actual current use that is more than ancillary and furthers the social wellbeing or interests of the local community and it is realistic to think that there can continue to be a more than ancillary use that furthers the social wellbeing or interests of the local community, be this in the same or another way.
- or:
- (b) the land or buildings were in the recent past used (and that use was more than ancillary) to further the social wellbeing or interests of the local community and it is realistic to think that there is a time in the next 5 years when the land and buildings could be put to a more than ancillary use that would further the social wellbeing or interests of the local community, be this in the same or another way.

In this context 'social interests' includes cultural, recreational and sporting interests.

- 1.4. To meet the test applicants should be able to demonstrate the community use by way of examples, e.g. shopping, sports, community clubs etc. They should also be able to identify how the community use would continue in the future e.g. will the asset continue to be a school or will be developed into a school with a hall and library element.
- 1.5. If the Head of Paid Service (Decision Maker), determines that the nominated land or buildings should be entered onto the community assets register, the owner of the land or buildings will be notified and a statutory procedure will apply before the owner is

able to make a 'relevant disposal' of the land. A relevant disposal includes a sale of the freehold or in certain circumstances, the grant of a lease. The owner is required to notify the Council of their intention to make a relevant disposal; there will then be a 6 week interim moratorium in which community interest groups can request to be treated as a potential bidder for the asset. If such a request is received, there will be a 6 month moratorium to allow the group to raise funds.

- 1.6. If the Head of Paid Service decides that the community value test has not been met, then the nominated land or buildings will be entered onto the list of unsuccessful community nominations.

2. NOMINATION

- 2.1. Wylderne Ltd (hereafter referred to as 'the Nominator') is a community benefit society and eligible to nominate properties as assets of community value as long as certain criteria are satisfied. It is stated within the Nomination Form that this organisation was created with the goal of purchasing the Wilderness Centre on behalf of the Gloucestershire Community. The two directors of the Nominator currently work at the Wilderness Centre and have knowledge of the day to day running of the centre.
- 2.2. Having considered the representations on behalf of the Nominator, I am content the organisation is eligible to make a Nomination in relation to the Wilderness Centre, Wysis Way, Plump Hill, Mitcheldean, Gloucestershire, GL17 0NA.
- 2.3. A Nomination Form and Covering Letter was submitted and is attached at Annex A. Within the Nomination Form, it is made clear at the start that the Wilderness is a 30-acre estate consisting of 24 acres of unimproved grassland meadow, 5 acres of ancient woodland and with approximately 1 acre making up the main house and walled garden (hereafter referred to as 'the Premises'). It is made clear within the Nomination Form that the extent of the nomination is restricted to the 29 acres of meadow and woodland only (hereafter referred to as 'the Nominated Land'). Although not determinative, it is noted the Premises had previously been added to the Council's List in September 2013.
- 2.4. The Nomination Form states the Nominated Land has operated in more or less its current capacity for over 50 years. It states over 1500 local school children visit annually with it in use every week of the year. The Nomination Form states the Nominated Land represents the Forest of Dean and serves the country of Gloucestershire as a whole. It states 95% of Schools, Community Groups and Organisations that visit the Nominated Land originate from or have strong connections with Gloucestershire.
- 2.5. The Nomination Form states that the Nominated Land operates as an Outdoor Education Centre. It is also stated a large majority of its use comes from Gloucestershire based schools which facilitates a developmental activity programme. The Nomination Form goes on to say the Nominated Land offers a chance to further understand our place in nature and realise both personal and collective potential. It

also goes on to say the use of the Nominated Land promotes personal wellbeing and builds connections to both the community and nature.

2.6. The current position is that the private ownership of the Nominated Land does deter some use of the estate. It is suggested that it is widely viewed the Nominated Land will have greater reach under community ownership. The Nominator is aware of current proposal to sell the Premises. There is a slight concern that the Premises may be sold to a person which may not provide for continued community use. The Nominator would like the opportunity of a moratorium period in order that they could make a bid for the Premises. It is suggested there is funding for the proposal, which includes a bid to the Community Ownership Fund. If Nominator was successful in their bid it is suggested there is a commitment to the continuation of the Wilderness Centre to how it was ran previously, to ensure retain the Premises as a valuable asset.

2.7. The Nomination was supported by testimonials from different organisations. A copy of representations on behalf of organisations and individuals can be found at Annex B. In summary they state:

- Puppy School Ltd – The organisation confirms the Nominated Land has been used for monthly activities. The Nominated Land has been used for people to come together to use the space to develop new skills with a number of dogs. The organisation makes clear the space has been used to build new relationships and develop mental wellbeing.
- St White's Primary School – The School confirms the Nominated Land is used for attendance of local children to grow their confidence in exploring skills. The children also learn about the environment and wildlife. They go on wildlife safari and build on methods to be able to save the planet through recycling and saving water. The children also would on team working exercises, use the Nominated Land for playing games and learn new skills such as bushcraft.
- The Blue Light Club CIC – This letter makes clear the Nominated Land was used in the past for teaching Police Officers mediation techniques. It was also used to support the wellbeing of all emergency workers, which includes the NHS, the serving and retired military and social car workers through meditation retreats. The Nominated Land is stated as being a perfect location for mediation practice.
- Blackbridge CCBS – Confirms that it is currently a valuable resource to the people of Gloucestershire and is a rite of passage of a school trip to the Nominated Land. It is a meeting spot for groups and connecting with nature.
- Cllr Roach – It is stated the proposed future of the development of the Nominated Land fits well with the Council's Plan.
- Mark Harper – Confirmed previous attendance at the Nominated Land and that it was used for invaluable outdoor learning experience to generations of children. It was understood by Mr Harper that attempts were being made to form an organisation that could apply to the Community Ownership Fund.

- Forest Food Network – Confirmed attendance at the Nominated Land for an event. Opportunities are being discussed about how their organisation could hold future events.
- Forest Volunteer Action Forum – This organisation expressed support with future community ownership. It was highlighted that the Nominated Land benefited the school children, families communities and business through lifelong learning.
- Grazing Management Ltd – It was stated this organisation was working with the current management and an Ecologies Ed Drewitt to deliver conservation grazing.
- Hempstead C of E Primary School – The Headteacher for this school confirmed attendance by her originally in 2008 when she visited with Abbeymead Primary School. She has attended the Nominated Land with other schools and organisations. The outside space is highlighted as being one the incredible experiences. The representative confirmed attendance was important to the children’s personal development. Night walks take place with a range of other activities.

3. OWNERS’ RESPONSE

- 3.1. The Nomination Form and evidence was redacted and provided to Dr Daniel Peter Faulkner Sturdy (hereafter referred to as ‘the Property Owner’) for his consideration and to determine whether he would like to make any representations.
- 3.2. A response was received and can be found at Annex C. Within these representations the Property Owner stated:
 - The Premises is currently occupied by Nature Schools Ltd.
- 3.3. Reference was made to a document entitled “Blighting of Development or Boosting the Local Community” (6th Edition) by Christopher Cant of 9 Stone Buildings. This note talks about the Assets of Community Value process in detail and the process.
 - It is understood the Property Owner agrees the Nominator was entitled to make a nomination.
- 3.4. The Property Owner stated that the Warden’s Cottage part of the Nominated Land could not be listed because it fell within the definition of ‘residence’ as defined by the Regulations. It is not stated on what basis Warden’s Cottage is a residence.
- 3.5. The Property Owner goes on to state that the Nominated Land is not used by the community as a whole, but specific customers who come from all over the UK.
- 3.6. The Property Owner states that the Nominated Land is used for a variety of reasons, but predominantly for educational purposes. He goes on to states that weekend users are sometime recreational but there is no sense in which these users either form a community or indeed have many local connections.
- 3.7. The Property Owner introduces what he considers to be the definition of “local community”. He goes on to state that the only characteristic most of the users of the

Nominated Land have is that they are predominately school children mostly aged between 10 and 12. His views is this does not make them a community.

- 3.8.** The Property Owner makes reference to a checklist used by another completely different local authority which presumably asks questions designed to determine whether something is furthering the social wellbeing. It is his opinion having referred to the checklist that the Nominated Land:
- Does not aid in community cohesion by bringing groups together;
 - Does not contribute to promoting equality for groups with protected characteristics;
 - Does not help maximise the wellbeing of people belonging to vulnerable groups;
- 3.9.** Does not contribute to improving or maintaining the local neighborhood;
- Does not contribute to local job creation or engagement; and
- 3.10.** Is not unique in that there are no other assets in the same area making similar contributions.
- 3.11.** The Property Owner goes on to state that school groups would loose out if the use ceases, but there are local alternatives nearby. It is made clear that there is no intention of the current owner to cease the usage.
- 3.12.** The Property Owner states in his opinion there is no local community which regularly uses the Nominated Land of either cultural, recreational or sporting interests.
- 3.13.** The Property Owner goes on to quote the Department for Communities and Local Government when the Act was created. He states the Nominated Land was sold by Gloucestershire County Council into private ownership. He goes on to say it continues to provide residential educational experience to schools across England and has no connection with 'local life' in Mitcheldean.
- 3.14.** The Property Owner repeats there is no local community which regularly uses the Nominated Land for either cultural, recreational or sporting interests.
- The Property Owner acknowledges there could theoretically be uses which would further the social interests of the local community but there have not been any to date.
- 3.15.** The Property Owner concludes the Nominated Land does not further the social wellbeing or interests of the local community and believes there are no grounds for accepting the nomination.

4. NOMINATOR'S RESPONSES

- 4.1.** The Nominator responded to the Property Owner's representations which can be found at Annex D. In summary he states:
- 4.2.** The Warden's Cottage is integral to the Nominated Land and has been for decades. It is vital to the security of the site and to those using it, especially vulnerable groups such as children. It also ensures the safety of life stock that are vital to the Nominated

Land and the conservation grazing that forms part of the experience for all those who visit.

- 4.3. Reference is made to a Government Policy Statement which was made before the Localism Act came into being. This states “the exception to the exclusion of residential premises will be premises which include living quarters which are integral part of a pub or shop and which are otherwise eligible for listing – these could still be listed as assets of community value.
- 4.4. The Nominator goes on to say that although the Nominated Land is not a pub or shop, the principles still apply. Reference is then made to another authority’s guidance note which states: “there are some categories of assets that are excluded from listing as assets of community value. The main one is residential property including land and outbuildings connected with that property. However, there is an exception to this where an asset which could otherwise be listed contains integral residential accommodation, such as accommodation as part of a pub or a caretaker’s flat.
 - In 2024, 80% of visiting school groups have come from Gloucestershire within 45 minutes of travelling distance.
- 4.5. A further representation was provided from a Headteacher at Isbourne Valley School to say that he has never visited a setting for a school residential as beneficial as the Nominated Land. He goes on to say that there are wide range of activities on offer for the children.
- 4.6. Reference is made to the other local authority’s checklist regarding “furthering social wellbeing”. The Nominator stated:
- 4.7. The Nominated Land did aid social cohesion by bringing groups together in that various groups use the site simultaneously. This includes Gloucestershire school groups with different cultural backgrounds brought together by the shared experience of the Nominated Land. It was stated they would plant and harvest food for each other, share spaces to play together and build mutual understanding. The Gloucestershire Police have been visiting the site and engaging with school groups demonstrating dog handling;
- 4.8. The Nominated Land does contribute to promoting groups with protected characteristics. This was because they were part of the Armed Forces Network and have veteran groups using the site as part of their continuing mental health. In the summer the Nominated Land was also hosting refugee children from Afghanistan.
- 4.9. The Nominated Land does help maximise the wellbeing of people belonging to vulnerable groups. In support of this it was stated 4 times a week there is specialist school visiting.
- 4.10. The Nominated Land does contribute to improving or maintaining the local neighborhood. An example is provided of litter picking in the neighboring forest.
- 4.11. The Nominated Land does contribute to local job creation or engagement. It is stated that all staff working at the Nominated Land are local.
- 4.12. The Nominated Land is unique and there are no other assets in the same area making similar contributions. It is stated this is the case and a further testimonial is put forward in support.

- The Nominator expresses concern surrounding the suggestion that the Property Owner does not intend to cease the usage. It is suggested that the Property Owner may be under pressure to sell because of various creditors.
- The Nominator makes clear that the Nominated Land has been serving the social wellbeing and interests of the local community since 1969.

- 4.13.** A copy of these representations was provided to the Property Owner for comment. There has been no further comment from the Property Owner.
- 4.14.** Since making those representations the Nominator has instructed a solicitor who attached further representations. These appear at Annex E.
- 4.15.** Within the letter the following relevant representations are made:
- 4.16.** Clear evidence has been provided at the nomination stage which illustrates that there has been an actual current use by the local community, both schools and others.
- 4.17.** There is clear evidence which demonstrates that much of the use of the Nominated Land has been by school from the local area along with use by other community groups from a wide range of backgrounds.
- That through access to nature and the unspoiled forest countryside, including the ancient woodland, this widespread use by local schools and by others would further the social wellbeing of the local community.
- 4.18.** In response to the Property Owner's representations that there is a residential dwelling, it was acknowledged that the Centre, rather than the Nominated Land, contained a residential dwelling. However, the writer goes on to say the website demonstrates the Centre also contains large public rooms, suitable for meetings, conferences or training, the largest of which holds 100 people. It also contains a fully equipped kitchen and a dining area seating 60. The only residential part of the Warren's Cottage which is a self-contained flat for the staff member that monitors the site. It was submitted that large parts of the building are available for booking by the public.
- 4.19.** Reference is made to Paragraph 1 of Schedule 1 to the Regulations. This letter summarises that the Regulations state, if the building is only partly used as a residence and that but for that residential use the whole of the land would be eligible for the listing, then the land may be listed as an ACV. It is suggested that the Nominated Land and additional buildings are only partly used as a residence and therefore could be listed.
- 4.20.** It is suggested on behalf of the Nominator that the definition of "community" should not be limited to a narrow or geographical or demographic group. It was suggested the Nominated Land is a key asset for the local community, for the local schools as well as many social groups, all of whom use the Nominated Land to further the social wellbeing and social interests of the local community.
- 4.21.** It is suggested on behalf of the Nominator that a conclusion can be reached that it is realistic to think that there can be a use of the Nominated Land that will further the

social wellbeing and social interests of the local community. This based on the representations that the Nominator intends to make a bid to purchase the Nominated Property and is sourcing the funds to do so.

4.22. Early on within the process there were initial representations made by the Nominator that the Georgian House and Walled Garden operate as the accommodation for the groups visiting and the House sleeps 60 and the Walled Garden sleeps 40. It wasn't clear whether this information was provided to the Solicitors. Further enquiries were made with the solicitor. The solicitor provided the following response:

- We had seen the original application.
- We were responding to the owner's point about residential status, which he had raised as an objection – we do not agree with his views for the reasons set out in our letter.
- On the arguments in our letter, we think the land is listable including the building.
- However, the original nomination stands for the land surrounding the building.

5. ANALYSIS OF THE STATUTORY TESTS

Can the Premises be Listed?

5.1. Before applying the tests, it is necessary to consider whether the Premises is a type of property that can be listed as an Asset of Community Value.

5.2. Under Regulation 3 of the Regulations "a building or other land within a description specified in Schedule 1 is not land of community value (and therefore may not be listed). Within Paragraph 1 of Schedule 1 it states the following:

(1) Subject to sub-paragraph (5) and paragraph 2, **a residence together with land connected with that residence.**

(2) In this paragraph, subject to sub-paragraphs (3) and (4), land is connected with a residence if—

(a) the land, and the residence, are owned by a single owner; and

(b) every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.

(3) Sub-paragraph (2)(b) is satisfied where a part of the land cannot be reached from the residence by reason only of intervening land in other ownership on which there is a road, railway, river or canal, provided that the additional requirement in sub-paragraph (4) is met.

(4) The additional requirement referred to in sub-paragraph (3) is that it is reasonable to think that sub-paragraph (2)(b) would be satisfied if the intervening land were to be removed leaving no gap.

(5) Land which falls within sub-paragraph (1) may be listed if—

- (a) the residence is a building that is only partly used as a residence;
and
- (b) but for that residential use of the building, the land would be eligible for listing.

Paragraph 2

For the purposes of paragraph 1 and this paragraph—

- (a) “residence” means a building used or partly used as a residence;
- (b) a building is a residence if—
 - (i) it is normally used or partly used as a residence, but for any reason so much of it as is normally used as a residence is temporarily unoccupied;
 - (ii) it is let or partly let for use as a holiday dwelling;
 - (iii) it, or part of it, is a hotel or is otherwise principally used for letting or licensing accommodation to paying occupants; or
 - (iv) it is a house in multiple occupation as defined in section 77 of the Housing Act 2004; and
- (c) a building or other land is not a residence if—
 - (i) it is land on which currently there are no residences but for which planning permission or development consent has been granted for the construction of residences;
 - (ii) it is a building undergoing construction where there is planning permission or development consent for the completed building to be used as a residence, but construction is not yet complete; or
 - (iii) it was previously used as a residence but is in future to be used for a different purpose and planning permission or development consent for a change of use to that purpose has been granted.

- 5.3.** As mentioned above, it was the Property Owner’s view that the Nominated Land could not be listed because the Warren’s Cottage fell within the definition of ‘residence’ because of the staff accommodation. It was acknowledged by the solicitor on behalf of the Nominator that the Cottage and House had parts to the Premises that could fall within the definition of ‘residence’. As also stated, there was information provided to suggest that the House was being used to accommodate visiting groups.
- 5.4.** In relation to the House, based on the facts of the case, it is my view that the visiting groups accommodating the House could not be described as being let for use as a holiday dwelling, for use as a hotel or that it was used “principally used for letting of licensing accommodation”. It is my understanding that the accommodation mentioned was just a small part or element to the experience of attending Premises by school children / groups. It is also my understanding that attention should be drawn to the specific words of the legislation, namely “let or partly let as a holiday dwelling”, “hotel”

and “principally used for letting or licensing accommodation to paying occupants”. Based on the facts of this case, I would not suggest forming the view that the Premises falls into these different categories. It is also my understanding that these parts do not form part of the Nominated Land.

- 5.5. In relation to the Warren’s Cottage, it cannot be denied that the Premises is being used as a residence by staff members on site, though again it is noted that this is also only one small part of the Premises.
- 5.6. Although it is noted that these parts of the Premises do not form part of the Nominated Land, it is also noted Paragraph 1(1) encompasses “a residence together with land connected to that residence. Given Paragraph 1(2) it has to be accepted that there could potentially be a part that falls within the definition of ‘residence’ as they are connected to the Nominated Land. It is therefore necessary to consider what is usually referred to as the exception to the exception set out in Paragraph 1(5).
- 5.7. Land can still be listed as an asset of community value if an eligible building is only partly used as a residence, and but for the residential use of the building the land would be eligible for listing.
- 5.8. This was designed to address buildings which could be listed but contained residential quarters. This would include pubs with an integral manager flat or village shops with an integral shopkeeper’s flat. When creating the legislation, the Government recognised that some assets of community importance have integral accommodation tied to the sites main function.
- 5.9. The case of Wellington Pub Company v Royal Borough of Kensington and Chelsea [2015] UKFTT CR/2015/0007 concerned the listing of a pub. The owner in this case was content the basement and ground floor were listed but took issue with the inclusion of the first and second floors comprising residential accommodation. The owner tried to argue that the residential accommodation was not integral to that part of the building which comprised the pub. Key points that came out of the case were:
 - The concept of a ‘planning unit’ in planning law was not determinative;
 - The question of what constitutes a building is one of fact and degree;
 - What constitutes the building for the purposes of Paragraph 1(5) is to be determined by deciding on all the relevant facts, whether there is (a) a sufficient physical relationship; and (b) a sufficient functional relationship, between the residential part of the building and the remainder of the Premises which are the proposed subject of listing.
- 5.10. The local authority in the above case had listed the property and based on the facts were found to have done so correctly.
- 5.11. It is clear from the representations that there is a number of activities taking place at this Premises and there are many parts to it. The Nominated Land is restricted to the 29 acres of meadow and woodland only. As stated by the solicitors on behalf the Nominator the main house, has been many different uses and the accommodation element is only one small part, which from what I understand is usually used sometimes by visiting schools / groups. The Warren’s Cottage is also used as a self-

contained flat by staff members and again only forms a small part. It is my view the “exemption to the exemption” was included to address parts of premises such as staff accommodation or where only a small proportion of a nominated asset could fall within the definition of residence.

- 5.12.** Based on the facts in this case, I consider the use of accommodating groups at the House does not fall within the definition of residence. Even if it could fall within that category of being a ‘residence’, I would suggest only part of the House and Warren’s Cottage are used as a residence and, if the Nominated Land meets the appropriate tests as set out in Section 88, then it could be listed under the exemption.
- 5.13.** I would therefore suggest the Nominated Land is a type which can be listed as long as it satisfies the criteria set out in Section 88.

Applying the Tests

- 5.14.** The basis of the Nomination is there is a present qualifying use of the Premises, as the Premises is currently open to the community for various activities, and it is stated this use will continue.
- 5.15.** Although the Nomination only considers the present qualifying use test the District Council must consider both tests as set out in s.88(1) and (2) of the Act namely:

Test 1 – s.88(1)

- (a) there is an actual current use of the Premises 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 Premises which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

Test 2 – s.88(2)

- (a) There is a time in recent past when an actual use of the Premises that was not an ancillary use furthered the social wellbeing and social 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 Premises that would further the social wellbeing and social interests of the local community.

- 5.16.** If the answer to both questions in either test is ‘yes’, then the Premises should be added to the Council’s List. If the answer to either question is ‘No’ within either Test, then the Premises should not be listed and should be added to the Unsuccessful list.
- 5.17.** It is a matter for the Decision Maker whether they consider it has met the tests set out in the legislation mentioned above.

'Present Qualifying Use' Test – S.88(1)(a)

- 5.18. The Act provides limited guidance on what constitutes 'social wellbeing or social interests'. The Act clarifies the term 'social interests' includes in particular 'cultural interests', 'recreational interests' and 'sporting interests'. It should be noted 'includes' means this is a non-exhaustive list. It is also noted these individual terms are also not defined. It is therefore a question of fact in each case for the District Council as to what constitutes these terms.
- 5.19. It is not disputed between the parties that children attend the Nominated Land and are continuing to do so today. The Nominator describes the use of the Premises as an 'Outdoor Educational Centre', and the Property Owner describes the use as being for "educational purposes". What is clear based on the representations (and the testimonials) is children from predominantly schools attend the Nominated Land for outside activities. This includes exploring wildlife, the environment and nature. The children are also taught new skills and use the grounds for playing games. In addition, there is also attendance by families to train dogs and mediation for adults within the emergency services sector.
- 5.20. It is not clear why the Property Owner considers the above matters to be outside the scope of "furthering the social wellbeing and social interests of the local community". It is my understanding that the Property Owner, in making his representations, has focused on whether the local community were actually benefiting from the Nominated Property. This is contrary to the views of those on behalf of the Nominator and organisations that have put forward representations.
- 5.21. The case of Higgins Homes plc v London Borough of Barnet [2014] UKFTT CR/2014/0006 (GRC) assists in relation to those representations. At Paragraph [15] the Tribunal rejected a submission that there had to be evidence that the members of the local bowling club actually came from 'the local community'. The Owner submitted that there was no evidence that a significant number of its members resided locally. The Tribunal rejected this argument and stated it did not impose upon the local authority a duty to inspect the books of a sports club to find out what proportion of its members come from the local community. It was stated the bowls club was active and had a number of members and that it was obvious that it was a use of bowling club land which furthered the social wellbeing and social interests of the local community.
- 5.22. Given the representations and conclusions, it seems clear that there is a current actual use of the Nominated Land, which is not an ancillary use, that furthers the social wellbeing and social interests of the local community.

'Anticipated Continuing Qualifying Use' Test – s.88(1)(b)

- 5.23. The Property Owner has made his position clear in that he does not consider that the first test has been satisfied. It is assumed from his representations that he must also be of the view the second test is not satisfied as, contrary to the views above, he does not view that there is any use to continue. However, he does somewhat give up ground on the s.88(2)(b) test in that there could theoretically be a community use of the Nominated Land in the future.

- 5.24.** Focusing still on the Section 88(1) test, it is clear from the representations that the Nominated Land is currently on the market for sale by the Property Owner. It is also clear that Premises is also still open to visiting groups whilst the sale is taking place.
- 5.25.** Given the facts of this case, it is my view that the matter described of, which have already been found to be relevant uses, are still continuing today. The Property Owner has made clear that there is no intention to cease the usage. Even with the possibility of a potential sale of the Premises, I would suggest forming the view that it is realistic that these uses can continue under different ownership. Even if the Premises was sold tomorrow, it would seem very clear that steps would be taken by the Nominator to convince the new owner of the previously worked business model or use of the Nominated Land. The Premises itself might even be purchased by the Nominator who again has suggested would pursue the business model currently in use and maintain it as an asset for use by the local community.
- 5.26.** When it comes to what is realistic the tribunals approach is to consider all the options that are realistic. In the case of Patel v London Borough of Hackney [2013] UKFTT CR/2013/0005 it was stated:

“16. On the material I have, it seems to me that must treat both the grant and the refusal of planning permission as realistic possibilities. One realistic outcome therefore is that the Chesham will be converted into flats. What if permission is not granted? A second outcome might be that the Chesham is rented out as one flat plus office space – but the current permission for office expires in two years’ time. A third outcome might be that refusal delivers a fatal blow to Mr Patel’s current investment strategy. It seems to me that he might realistically then decide to cut his losses and sell to someone interested in running the building as a pub. I agree with [the local authority] that all these three options are realistic. It follows that they were correct to list the Chesham as an asset of community value.”

- 5.27.** Although the Property Owner’s views are relevant to what could be considered realistic, even if there was a suggestion the Premises would be closed to the public to next week, it still would not be determinative of the matter. In the same case, albeit considering a different test, the Tribunal was faced with an owner who stated he would no longer allow further community use. In relation to the question of what is realistic it was states:

“11. If correct, it would seem to follow that the owner need only say ‘I have set my face like flint against any use of community value’ and listing will be avoided. This almost makes the scheme voluntary. I think it more reasonable to take into account Mr Patel’s intentions as part of the whole set of circumstances.”

- 5.28.** Based on the representations and the support of the Nominated Land, it is my view that it is realistic to think that there can continue to be non-ancillary use of the

Nominated Land which will further, whether or not in the same way, the social wellbeing or social interests of the local community.

5.29. Based on the above conclusions, I would therefore suggest the Nominated Land satisfies the tests and therefore should be added to the Council's List. Given this conclusion it is not necessary to consider the test set out in Section 88(2).

6. COMPENSATION

6.1. Private owners of land are able to claim compensation for any loss or expense that they would not have incurred, but for the listing of the land. In most cases where the land is in private ownership, they would be entitled to claim compensation from the Council if the land was listed.

7. RECOMMENDATION

7.1. It is recommended that the statutory test has been met and therefore the Nominated Land should be added to the Council's Assets of Community Value List.

8. ALTERNATIVE OPTIONS

None- The Council has a duty to determine the nomination by reference to the statutory test of Community Value.

Legal implications	It is a requirement under the Localism Act 2011 for the Council to have in place a Register of Assets of Community Value and determine nominations to include land on this Register. Should the nominated land be included on the Register of Community Assets, before the owner is able to make a disposal of the land a statutory procedure will apply. This procedure allows community interest groups to notify the owner that they wish to be treated as a potential bidder for the community asset. Following which there is a 6 month moratorium period to allow the group time to raise funds.
Financial Implications	Private owners of land are able to claim compensation for any loss or expense that they would not have incurred, but for the listing of the land. As this land is in private ownership the right to compensation would apply.