

Bath & North East Somerset Council

MEETING:	Cabinet	
MEETING DATE:	10th October 2012	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2473
TITLE:	Localism Act 2011 - Assets of Community Value	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
APPENDIX ONE: Summary of Listing Process for Assets of Community Value in Bath and North East Somerset		
APPENDIX TWO: Summary of Post-Listing process for Assets of Community Value in Bath and North East Somerset		

1 THE ISSUE

1.1 The Localism Act 2011 introduced new rights for local communities. These rights include the ability to nominate assets of community value for inclusion on a list maintained by the Council. If the owner of a listed asset wishes to sell it, the Council must be notified in order to give communities time to develop a bid for the asset. This report outlines the provisions relating to this and recommends a decision-making process for the listing of community assets in Bath and North East Somerset.

2 RECOMMENDATION

The Cabinet agrees that:

2.1 Decision-making in response to nominations for entry into the List of Assets of Community Value under the Localism Act 2011 be delegated to the Divisional Director, Policy and Partnerships (and, in the event of this Divisional Director having a conflict of interest, to a Divisional Director nominated by the Strategic Director- Resources), drawing on the decision-making guidance as set out in Appendix One.

2.2 The Divisional Director Policy and Partnerships be delegated decision-making with regard to updating this guidance, in consultation with the Council Leader, in response to experience of implementing the provisions, new regulations and emerging case law

2.3 The internal review process in relation to listing be undertaken by a Divisional Director not involved in the initial decision

2.4 The Divisional Director Property Services be delegated to make arrangements relating to the procedures following listing, including moratorium and compensation provisions, as set out in Appendix Two

2.5 An Annual Review of listing decisions be prepared

3 FINANCIAL IMPLICATIONS

3.1 The Government's "Community Right to Bid - Impact Assessment" estimates one-off costs for establishing the scheme nationally to be £379k, which would provide an estimate of circa £1k for Bath & North East Somerset. Scheme set-up in Bath & North East Somerset mainly requires staffing resources within Policy and Partnerships and Property Services. These have been absorbed within service area staffing budgets by reprioritisation of time with the value of staff time estimated to be c£4k. This is higher than the Government's assumption due primarily to the complexity of the final scheme as it has been introduced nationally.

3.2 The Government have also estimated that the scheme will cost £2.5m per year nationally in running costs, equating to circa £8k for Bath & North East Somerset. The current estimate of scheme running costs in Bath & North East Somerset is that this will follow the Government's assumption of £8k (primarily staff time in Policy and Partnerships and Property Services), but this is dependent on scheme take-up. This can be absorbed within current staffing budgets across relevant services by reprioritisation of staff time.

3.3 The compensation scheme has been estimated by the Government to cost £2k per property due to the costs of delay and £233k per annum nationally due to estimated loss of value (equating to circa £1k in Bath & North East Somerset). There are currently no estimates of the potential cost of operating the compensation scheme in Bath & North East Somerset as this will depend on a range of factors including take-up of the scheme, number of listed properties coming up for sale and the level of compensation determined in particular circumstances. The Government have stated that authorities will be indemnified to 2015 against any compensation claims over £20k (including a number of individual claims adding to more than £20k).

3.4 Cabinet set aside at its meeting of May 2012 a sum of £10k as a contingency for unresourced provisions of the Localism Act within the Community Empowerment Fund. This will be the first call for any specific additional resources required for implementation of the scheme including compensation. Any additional resources up to the £20k government compensation figure would be a further call on the Council's wider Community Empowerment Fund. The Government have also stated that funding for the scheme will be made available to local authorities through "new burdens" but no further information is available on this at present.

4 CORPORATE OBJECTIVES

4.1 Working with communities on local assets helps to deliver key aspects of the Council's Vision and Values, specifically

"A listening Council with active citizens that reaches every community and culture"

- *“Helping communities to develop shared solutions to solve their own local problems”*
- *An open and engaging Council that empowers Communities*
- *An enabling Council making things happen*

4.2 There is also the potential to build capacity to protect facilities that promote the following objectives:

- *Promoting independence and positive lives for everyone*
- *Creating neighbourhoods where people are proud to live*
- *Building a stronger economy*

5 THE REPORT

5.1 The Assets of Community Value provisions are contained in the Localism Act 2011, Part 5, Chapter 3. Regulations were laid on 20 September 2012 and the Right came into force 3 weeks earlier than expected, on 21 September 2012

5.2 The Government’s aim in introducing these provisions is to help local community groups to protect buildings or land which are of importance to their community's social well-being. The Act requires councils to maintain a list of public (including Council) and private buildings and land that are **assets of community value**, following nomination from their local communities.

5.3 A Council must list a nominated asset if it considers that it furthers the social well-being or social interests of the local community, or has done so recently, and it is realistic to think that it will continue to do so. The asset will remain on the list for up to five years. If the asset still meets the definition after five years, it can be renominated and relisted.

5.4 If the owner of a listed asset wants to sell it, “Community Interest Groups” (defined in the regulations and including the Parish or Town Council in which the asset sits) will have six weeks to lodge a non-binding expression of interest, in which case a window of opportunity of a further four and a half months-making a total of six months-will come into effect. This will give more time to prepare a Business Plan and raise the necessary capital. During this “window”, the owner may market and pursue discussions about the sale of their asset but may not exchange contracts although the owner may sell to a Community Interest Group during the moratorium period. At the end of the “window”, the owner is free to sell to whoever they wish and for a “protected period” will not again be subject to delay. Entry onto the list of assets of community value will be a land charge and non-compliant sales will be ineffective.

5.5 There is a compensation scheme enabling owners to claim for costs or loss incurred as a direct result of any delay in sale due to compliance with the procedures, including the result of the delay itself and any changes in values caused directly by it. There is also a right of internal officer review of a compensation decision and of appeal to an independent tribunal on a point of law against the review decision.

5.6 As can be seen, this new provision is a complex one which requires close working across many Council services, including Policy and Partnerships, Property Services, GIS, Land Charges and Planning Services. Although the asset owner is ultimately free to sell to any party at any price (so long as the process is followed),

the provision does give an opportunity to local groups to bid to own local facilities and, as such, links well with the Council's overall approach to localism, engagement and community assets. Appropriate support therefore will be made available to local groups, including development of governance arrangements and signposting to available sources of funds. In addition, it should be noted that change of use whilst the property remains in the same ownership is determined by planning policy, not by the assets of community value provision.

5.7 The key initial duty on the Council is to establish, maintain and publicise the List of Assets of Community Value as well as a list of assets where nominations have not been successful. If the nominated asset meets the statutory definition of an asset of community value, as set out below, the local authority must list it. Outside of certain exemptions, an asset is one 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.

OR

(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."

5.8 In determining whether a nominated community asset should be listed, the Council will therefore need to consider

- (1) The detailed provisions of the Act and subsequent regulations
- (2) Its general duty to take all and only relevant matters into consideration when making its decisions

5.9 The recommended approach is summarised as follows:

1. Officers will receive nomination forms and associated evidence based on the criteria and apply the technical criteria set out in the Act and regulations. These include:
 - The nominating body must be a voluntary/community body or parish council with a "local connection"
 - The use must not be an exempt one- eg residential, statutory undertakers' assets
2. Nominations that do not meet these initial criteria will not be taken further. However, for nominations meeting these initial criteria, the Government have

been clear that where the Act and regulations allow discretion it is for the Council to decide how the scheme will work in its area. Particular areas of discretion include:

- The definition of “non-ancillary” use – ie that the use is not simply “supporting” a main use
- The definition of “recent past” – the Government have stated that ““recent” might be viewed differently in different circumstances”. Officers have set out in the Guidance that a working definition for “recent past” for Bath & North East Somerset be adopted as “within the last 3 years”
- The assessment of how realistic the opportunity is for the use to continue (albeit in a different way)- this may include consideration of the “fitness for purpose” of the asset for its current use in the future

5.10 It is proposed that for these elements some working definitions be adopted as set out above and these have been included in Appendix One to act as guidelines for the decision-maker.

5.11 To help decide whether an asset “furthers the social interests or social wellbeing of the local community”, officers will then apply transparent criteria to assess the nominations. This will use evidence submitted from the applicant, including the nominator’s reasons for thinking that the authority should conclude that the land is of community value. It will also use relevant evidence gained from the owner/occupier of the land or parish council in response to notification and information and evidence held by the Council. Evidence from local ward councillors will also be applied. The use of these criteria is designed to allow for a degree of consistency of approach whilst recognising the differing contexts, needs and settings of local assets in our communities. For example, whilst certain assets such as community halls deliver social benefits directly, assets with an economic use (such as shop and pubs) may further social interests on account of functions they fulfil within particular communities in addition to the nature of their business.

5.12 The Divisional Director Policy and Partnerships will use this evidence to make a decision within 8 weeks of the nomination being made and enter this onto the public decision register. An owner will have the right to request a review of a decision to list a property within 8 weeks and for the review to be determined within 8 weeks (unless otherwise agreed with the owner). The provisions require that the review be undertaken by a senior officer not involved in the initial decision. The owner will also have the right to request an oral hearing and to be represented. There is a right of external appeal by an owner who is dissatisfied with the outcome of an internal review. This will be heard at an independent tribunal. This process for nomination, decision-making and review is set out diagrammatically in Appendix One.

5.13 The Council’s website provides detailed information on this new community right. This will include nomination forms and guidance as well as links to other information and help about community assets. To complement this, officers have been presenting on the new community rights to local partnership groups, including participation in a training session on the Localism Act organised by Avon Local Councils Association. Information will also be supplied to our Parish and Town Councils at the Parishes Liaison meeting on 17th October.

5.14 This is new legislation and the interpretation of some provisions may only be clarified by subsequent case law. It will be important therefore that those

administering the scheme have the flexibility to amend it to react to emerging regulations and case law. It is recommended that a review and analysis of the scheme take place following 12 months of operation.

- 5.15 As well as being responsible for notifying owners and occupiers of listings and receipt of notices, the Council will be required to publicise the possible sale of a listed asset in case of a “relevant disposal” (the sale of the freehold, or the grant or assignment of a lease for 25 years or more, but only where the disposal will give the new owner 100% vacant possession). Some disposals are exempt, including transfer through gift, within a family, inheritance, or where the listed community asset forms part of a larger estate. Owners will be entitled to claim compensation for loss or expense directly caused by operation of the moratorium procedures required by the scheme. It is proposed that the Divisional Director Property Services be responsible for implementing these aspects of the scheme and for determining applications for compensation. A summary of the process under these aspects of the Act is set out in Appendix Two.

6 RISK MANAGEMENT

- 6.1 The report author and Lead Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance. The most significant risks for the Council relates to the complexity of the process for listing assets, and this is addressed in the recommendation through the proposal for a clear, transparent set of guidelines for determining nominations. There is also a significant opportunity to use this process to protect local community facilities by working with local groups and parishes.

7 EQUALITIES

- 7.1 An EqlA has been completed and no adverse impacts on equalities strands have been identified. The Government's own EqlA for this aspect of the Localism Act identified that “there are no foreseeable adverse impacts on any single equality group”.
- 7.2 However, it is considered that the exercise of discretion by the local authority as a result of the new provision requires transparent guidelines to reduce the possibility of differential impact. Equalities considerations have been built into the suggested guidelines for assessing social interests included in Appendix One. In addition, the Council will help support groups and communities who need the most assistance to take advantage of the new community right.
- 7.3 It is also recommended that the process agreed for the listing of assets in Bath & North East Somerset be reviewed after 12 months of operation and an analysis of impacts be undertaken.

8 RATIONALE

- 8.1 The rationale for this report is that it is for Cabinet to agree the delegation arrangements and overall approach to the Assets of Community Value provisions set out in the Localism Act.

9 OTHER OPTIONS CONSIDERED

9.1 Two other options were considered:

- (1) The option of delegating decision-making on determining nominations for assets of community value to the Divisional Director, Policy and Partnerships without further processes and identification of some key relevant criteria has been considered. However, it is considered that this would not demonstrate how the Council plans to consider only relevant and proper criteria in its decision-making as well as the equalities impacts set out in 7 above.
- (2) The option of delegating decision making on determining nominations of assets of community value to a member panel has been considered. The Act is not prescriptive as to how the Council delegates its functions. However, the regulations reference a review being undertaken by an “officer of the authority of appropriate seniority who did not take any part in making the decision” which suggests that the intention is for the decisions to be delegated to officers.

10 CONSULTATION

10.1 *Cabinet members; Policy Development and Scrutiny Panel; Other B&NES Services; Section 151 Finance Officer; Chief Executive; Monitoring Officer*

10.2 Given that this process requires councils to follow central legislation and regulations, contained in the Act and regulations, no detailed consultation has been carried out on the operation of these provisions.

10.3 The Economic and Community Development Policy Development and Scrutiny Panel considered the approach and criteria set out in this report at its meeting of 27th September. The Panel in its discussion highlighted in particular the need to assess the impact of the new scheme, to inform Parish and Town Councils of the provisions and to provide support for groups wishing to use the new right.

11 ISSUES TO CONSIDER IN REACHING THE DECISION

11.1 *Social Inclusion; Customer Focus; Sustainability; Property; Young People; Corporate; Other Legal Considerations*

12 ADVICE SOUGHT

12.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

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Sponsoring Cabinet Member	Councillor Paul Crossley
Background papers	<u>Assets of Community Value (England) Regulations</u>
Please contact the report author if you need to access this report in an alternative format	

APPENDIX ONE: Summary of Listing Process for Assets of Community Value in Bath and North East Somerset

(1) Guidance for Divisional Director, Policy and Partnerships in determining applications for nomination for inclusion on the Bath & North East Somerset Council List of Assets of Community Value under the Localism Act 2011

STEP A- APPLY NON-DISCRETIONARY CRITERIA- derived from the Act and regulations	RELEVANT EVIDENCE FOR THIS CRITERIA
<p>A1. Is the nominating organisation an eligible body to nominate?</p> <p>The types of organisations eligible for making a nomination are currently defined in Regulation 5 of the Assets of Community Value (England) Regulations 2012 as below:</p> <p>(a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990(b);</p> <p>(b) a parish council;</p> <p>(c) an unincorporated body—</p> <p>(i) whose members include at least 21 individuals, and</p> <p>(ii) which does not distribute any surplus it makes to its members;</p> <p>(d) a charity;</p> <p>(e) a company limited by guarantee which does not distribute any surplus it makes to its members;</p> <p>(f) an industrial and provident society which does not distribute any surplus it makes to its members; or</p> <p>(g) a community interest company</p>	<p>Evidence that the nominator is eligible to make a community nomination could include Articles of Association, Constitutions, Terms of Reference, etc., relevant to the type of body</p>
<p>A2. Does the nominating body have a local connection to the asset nominated?</p> <p>“Local Connection” is defined in detail in Regulation 4 of the Assets of Community Value(England) regulations 2012</p>	<p>Evidence for this could include relevant documents and maps</p>
<p>A3. Does the nomination include the required information about the asset?</p> <p>This is set out in Regulation 6 of the Assets of Community Value (England) Regulations 2012 as follows</p> <p>(a) a description of the nominated land including its proposed boundaries;</p> <p>(b) a statement of all the information which the nominator has with regard to—</p> <p>(i) the names of current occupants of the land, and</p> <p>(ii) the names and current or last-known</p>	<p>The nomination form will be checked to ensure the required data is supplied</p>

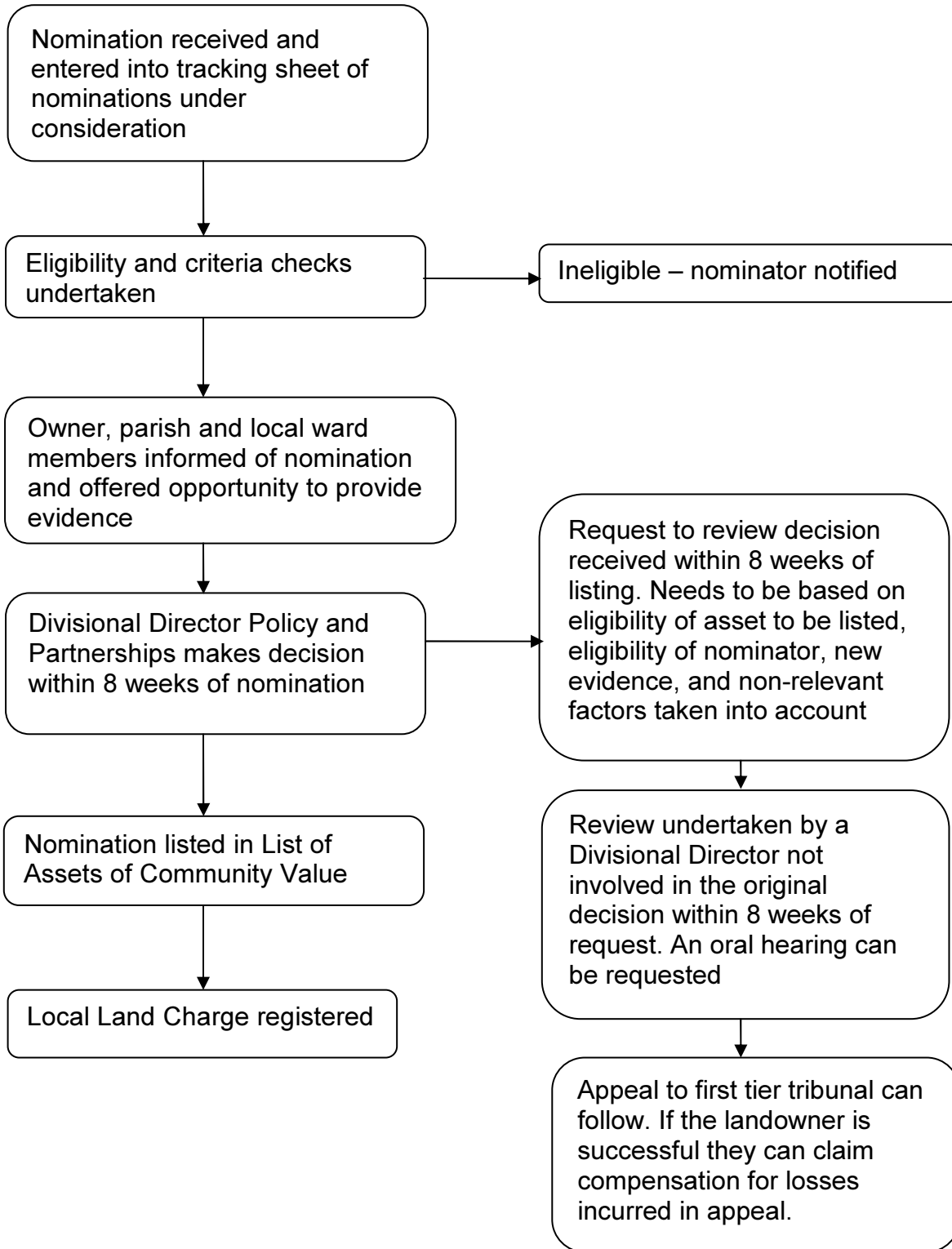
addresses of all those holding a freehold or leasehold estate in the land;					
A4 Is the nominated asset outside of one of the categories that cannot be assets of community value as set out in Schedule 1 of the assets of Community Value (England) Regulations 2012, as summarised below?: 1. A residence together with land connected with that residence 2. Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960 3. Operational land as defined in section 263 of the Town and Country Planning Act 1990(c).	Evidence of current and recent usage of the asset will be checked against known information including Planning history				
IF “YES” TO ALL OF PART A MOVE TO STEP B IF “NO” TO ONE OR MORE OF PART A, INFORM NOMINATOR THAT NOMINATION IS INELIGIBLE					
STEP B - ESTABLISHING THE NON-ANCILLARY USE THAT THE APPLICATION IS BASED ON					
B1. Is the current or recent usage which is the subject of the nomination an actual and non-ancillary usage ?	Evidence of actual/recent usage- eg numbers of people making use of the facility; session rotas for local groups, calendars, usage history etc. NOTE 1: A working definition of “recent past” is “within the past three years” NOTE 2. A working definition of “non-ancillary” is that the usage is not providing necessary support (eg cleaning) to the primary activities carried out in the asset, but is itself a primary, additional or complementary use				
If the current or recent usage that is the subject of the nomination is actual and non-ancillary, go to STEP C If not, PLACE ON LIST OF UNSUCCESSFUL NOMINATIONS					
STEP C – Determining whether the usage furthers social wellbeing or social interests	Note- nominations for “recent uses”, evidence will need to relate to the working definition set out above.				
Criteria	Evidence				
C1. Who benefits from the use? Does it meet the social interests of the community as a whole and not simply the	<table border="1"> <tr> <td>Weighting</td> <td>25%</td> </tr> <tr> <td></td> <td>• Policies/approach of organisation using the asset</td> </tr> </table>	Weighting	25%		• Policies/approach of organisation using the asset
Weighting	25%				
	• Policies/approach of organisation using the asset				

<p>users/customers of the specific service?</p> <p>Who will lose if the usage ceases?</p>	<ul style="list-style-type: none"> • Numbers of users/members/customers • Testimonials of service provided/outcomes • Accessibility of asset (eg DDA compliance) • Equalities impact • Number of volunteer hours drawn in by the facility • Positive impacts on health and wellbeing • Positive impact on local natural environment and wildlife • Positive impact on cultural, sporting or recreational activities • Involvement in the community in running/managing it 	
<p>C2. What aspect of the usage delivers a social outcome in the Council's Policy and Budget framework?</p>	<ul style="list-style-type: none"> • What services has the asset delivered to the community? • Are these services referred to in the following? <ul style="list-style-type: none"> ○ Sustainable Community Strategy ○ Corporate Plan ○ Local Development Framework ○ Local Transport Plan ○ Joint Strategic Needs Assessment ○ Plans relating to cultural, sporting and recreational interests ○ Other plans/policies 	<p>25%</p>
<p>C3. Why is the usage seen as having social value in the context of the community on</p>	<ul style="list-style-type: none"> • Impacts on community pride, 	<p>25%</p>

<p>whose behalf the application is being made?</p>	<p>cohesion and sense of place- eg hosting community-wide events</p> <ul style="list-style-type: none"> • Contribution of the usage to the specific community - eg to helping accessibility of services in that community • Positive impact on sustainable living • Positive impact on specific local communities and areas of need • Rural/urban differential impacts 	
<p>C4. How strongly does the local community feel about the usage as furthering their social interests?</p>	<ul style="list-style-type: none"> • Evidence supplied by local stakeholders to support the nomination request- eg surveys, petitions etc • Evidence of soundness of process for gathering community feedback and views. • Reference to and evidence from Parish Plan/Community Plan or other local document as to the importance of this asset locally • Evidence from Bath & North East Somerset local ward members 	<p>25%</p>
<p>If the above meets a minimum scoring of 55%, go to Step D</p>		
<p>STEP D – Realism of future usage</p>		
<p>D. Is it realistic to think (for “current” uses) there will continue to be social use of the building or other land or (for “recent” uses) that it is realistic to think that there will be community use again within the next five years?</p>		
<p>D1. Has the building/land-take/space/legal requirement for this usage changed</p>	<p>Evidence could include changes to service requirements as shown in national</p>	

significantly since its initial use so that the asset is not fit for purpose?	trends as well as market testing and planning history
IF NO to D1 above, PLACE ON LIST OF ASSETS OF COMMUNITY VALUE	
IF YES to D1 above, go to D2	
D2. Could the asset be made fit for purpose practically and within reasonable resource requirements and within timescales?	Outline Business Plans, survey reports, advice from Property Services, market intelligence; status and progress of proposals for taking over/managing the asset in future;
IF YES to D2 above, PLACE ON LIST OF ASSETS OF COMMUNITY VALUE	
IF NO to D2 above, PLACE ON LIST OF UNSUCCESSFUL NOMINATIONS	
Decision made by responsible officer	
Date decision made	
Date entered onto Decision Register	
Date entered onto GIS	

(2) Summary of Process for assessing nominations and review



APPENDIX TWO: Process for Disposal of Listed Assets

