

# Public Document Pack



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3 November 2020

Dear Councillor

**NOTICE OF DELEGATED DECISION (DD12 20) – DECISION NOT TO INCLUDE GLEBE FIELD, ST. MARGARET’S AT CLIFFE ON THE COUNCIL’S LIST OF ASSETS OF COMMUNITY VALUE**

Please find attached details of a decision taken by Roger Walton, Strategic Director (Operations and Commercial).

As a non-Key Officer Decision, call-in does not apply (paragraph 18(a) of Part 4 (Rules of Procedure) of the Constitution).

Members of the public who require further information are asked to contact Kate Batty-Smith on 01304 872303 or by e-mail at [democraticservices@dover.gov.uk](mailto:democraticservices@dover.gov.uk).

Yours sincerely

A handwritten signature in grey ink that reads "Rebecca".

Rebecca Brough  
Democratic Services Manager

ENCL

- 1 **NOTICE OF DELEGATED DECISION (DD12 20) APPLICATION TO INCLUDE GLEBE FIELD, ST. MARGARET’S AT CLIFFE ON THE COUNCIL’S LIST OF ASSETS OF COMMUNITY VALUE** (Pages 2 - 6)

## Decision Notice

## Delegated Decision

<b>Decision No:</b>	<b>DD12 (2020)</b>
<b>Subject:</b>	<b>APPLICATION TO INCLUDE GLEBE FIELD, ST. MARGARET'S AT CLIFFE ON THE COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE</b>
<b>Notification Date:</b>	<b>2 NOVEMBER 2020</b>
<b>Implementation Date:</b>	<b>2 NOVEMBER 2020</b>
<b>Decision taken by:</b>	<b>Strategic Director (Operations &amp; Commercial)</b>
<b>Delegated Authority:</b>	<b>Delegation 281 of the Scheme of Officer Delegations (Section 6 of Part 3 (Responsibility for Functions) of the Constitution)</b>
<b>Decision Type:</b>	<b>Executive Non-Key Decision</b>
<b>Call-In to Apply?</b>	<b>No</b> (Call-in does not apply to Non-Key Officer Decisions)
<b>Classification:</b>	<b>UNRESTRICTED</b>
<b>Reason for the Decision:</b>	An application has been received to include Glebe Field, St. Margaret's at Cliffe within the Council's list of Assets of Community Value
<b>Decision:</b>	That Glebe Field, St. Margaret's at Cliffe should not be added to the District Council's list of Assets of Community Value (ACV).

## 1. Introduction

- 1.1 In determining this application, I have been mindful that I need to determine the nomination in accordance with the provisions of Chapter 3 of the Localism Act 2011 and The Assets of Community Value (England) Regulations 2012.
- 1.2 This requires that community nominations to include a property within the District Council's list of Assets of Community Value meet a series of tests including:
- (a) That the provisions of section 89 of the Localism Act are met with regard to the validity of the nomination.
  - (b) Whether the actual current use (not an ancillary use) of the building or other land is one that furthers the social wellbeing or social interests of the local community; AND whether it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community (whether or not in the same way as the current use) and if not;
  - (c) Whether 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 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.

## **2. Matters considered in reaching the decision**

**2.1** In determining the nomination, I have taken the following into consideration in reaching my decision:

- (a) Chapter 3 of Part 5 of the Localism Act 2011;
- (b) The Assets of Community Value (England) Regulations 2012;
- (c) Nomination Form submitted by 5<sup>th</sup> Dover (St Margaret's) Scout Group, received by email on 7<sup>th</sup> September 2020;
- (d) Letter received from Girlings solicitors, dated 15<sup>th</sup> October 2020;
- (e) Decision Notice DD15 setting out the decision to include the Glebe Field, St. Margaret's at Cliffe on the Council's list of Assets of Community Value dated 3<sup>rd</sup> November 2015.
- (f) First Tier Tribunal General Regulatory Chamber Decision: 28 September 2016: *Bay Trust v Dover DC CR/2016/0002*

## **3. Review of application and submissions**

### **Context**

- 3.1** The 5<sup>th</sup> Dover (St Margaret's) Scout Group successfully applied for the Glebe Field to be added to the Council's list of Assets of Community Value in 2015. This decision was upheld at both a subsequent appeal by the owners (15<sup>th</sup> January 2016) and at a Tribunal (number CR.2016.0002, 28<sup>th</sup> September 2016).
- 3.2** In considering the 2015 application it was noted in the narrative accompanying Decision Notice DD15 that the applicant had stated: *'For many years this land has been used by the Groups based at the Scout Hut for many of their outdoor activities, being next door to the Scout Hut it provides a safe, easily supervised area for the children. The proximity to the Scout Hut ensures valuable meeting time is not taken up getting to and from the venue of the activity.'*
- 3.3** The application also stated that; *'For the past six years it has been the location of the very popular Village Fete (organised by the Scouts) after a long hiatus when no fete was held. Previous to 1998, there were regularly two fetes per year, one by the Scout Group and one by the Church';* and that; *'The Glebe Field has also been used as a casual play area for local children, which contrasts well with the formal play park and sports fields in the village. It's central location, tree-lined edges and modest size makes it a very welcoming place to hold activities, as well as being adjacent to the Scout Hut and Village Hall for the use of their facilities and mains services, and enhances the community atmosphere of events held there.'*
- 3.4** Turning to the current application, the applicant states that over recent years the owners (The Bay Trust) have renewed the fencing round the field, effectively preventing all casual use, and have repeatedly turned down requests by the Scout Group to use it for Scouting activities and for the Village Fête, despite it's inclusion on the Council's list of Assets of Community Value.
- 3.5** The applicant also alleges within the application; *"that The Bay Trust withdrew the use of this field with the intention of obtaining planning permission for housing and selling it to a developer. The Trust also withdrew it's use as overflow parking space for the Village Hall, which contributes to the major problem of lack of parking and congestion*

*in St Margaret's. The necessary cancellation of the Village Fête in 2015 has highlighted how valuable this field is to the social wellbeing and cohesion of our village community – a rural village without a fête is rather sad. Attempts have been made to continue staging a Village Fête on the cricket field, but this is not an ideal venue and it is not possible to recreate the same 'village' atmosphere, clearly reflected in the large drop in income from said fêtes, which then impacts on Scout Group activities. A planning application by the Trust was withdrawn in November 2016 and since then the Glebe Field has remained unused by its owners.”*

**3.6** The property has been included on the Council’s list of Assets of Community Value from 3<sup>rd</sup> November 2015 and is due to be removed from the list in November 2020 when the 5 year listing period expires in accordance with the provisions of Paragraph 87 (3) of the Localism Act 2011.

**3.7** In considering the nomination received from the 5<sup>th</sup> Dover (St. Margaret’s) Scout Group I shall now consider in turn whether each of the three ‘tests’ noted at paragraph 1.2 above are met:

**A. Validity of the Nomination**

3.1.1 Section 89(2)(b)(iii) of the Localism Act notes that “For the purposes of this Chapter “community nomination”, in relation to a local authority, means a nomination which... is made by a person that is a voluntary or community body with a local connection.

3.1.2 The 5<sup>th</sup> Dover (St. Margaret’s) Scout Group runs Beaver Scouts, Cub Scouts, Scouts and Explorer Scouts (Unit 3 Dover District) Group Sections from the Scout Hut on St George's Place, in conjunction with having the Brownie Guides and Guides using the Scout Hut for their group meetings. The Scout Hut is adjacent to The Glebe Field. I am satisfied therefore that 5<sup>th</sup> Dover (St. Margaret’s) Scout Group meets the definition of a voluntary or community body with a local connection.

**B. Does the actual current use (not an ancillary use) of the building further the social wellbeing or social interests of the local community; AND is it realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community.**

3.1.3 Glebe Field is currently a fenced off area of designated open space located within the centre of the village of St. Margarets-at-Cliffe. As outlined in the application, the land has been fenced for some years and so is not actively used by either the owners or the local community.

3.1.4 Clearly there is not an actual current use of the building or land which can be said to further the social wellbeing or social interests of the local community and the issue of whether there can be any prospect of there being any continuing non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community does not therefore arise.

3.1.5 I therefore consider that the requirements of the Localism Act 2011 as set out at Section 88(1)(a) and (b) are not met.

**C. Whether 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 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.**

- 3.1.6 With regard to (a) there is clear evidence provided within the application that the land has previously been used for activities which furthered the social wellbeing or interests of the local community.
- 3.1.7 The key question in relation to this nomination is whether this use can be considered to be 'in the recent past' given that this area of land has now been closed to active community use for several years, I note that some authorities have sought to restrict this definition to a maximum of 5 years, but that such an approach has not found favour with the court as for example in the case of *Scott .v. South Norfolk DC and Worthy Developments .v. Forest of Dean DC*. The effect of this case law is such that the concept of recent is to be a relative one and in answering the question, it is appropriate for me to have regard to the period of closure relative to the period of use. In this instance, there is strong evidence that Glebe Field had been used by the community for many years dating back to its acquisition by Frank Cleary in 1970 and that this use will have furthered the social wellbeing or interests of the local community.
- 3.1.8 As regards (b) the nomination sets out quite clearly the aspirations of the nominee for community use of the land to be re-established. The question to be answered though is whether it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community. On this point, the situation is less clear. The land has been fenced off for some while and there appears to be no intention on the part of the owner to re-establish community use. The letter received from Girlings sets out quite clearly that the owners have no intention of allowing community access in the near future. Equally, whilst the application sets out a proposal to involve the wider community in raising funds to support a bid to acquire the land I have doubts as to how realistic this proposal would be.
- 3.1.9 Accordingly, and on balance, I consider that it is not realistic to think that there is a time in the next five years when there could be non-ancillary use of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
- 3.1.10 I therefore consider that the requirements of the Localism Act 2011 as set out at Section 88(2)(a) and (b) are not met.

#### **4 Conclusion**

In conclusion, taking all these points into account I am satisfied:

- That the nomination meets the definition of a community nomination as set out in Section 89(2)(b)(iii) of the Localism Act 2011.
- That the test set out in section 88(1)(a) & (b) of the Localism Act 2011 as to whether an actual current use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, AND it is realistic to think that there can continue to 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 has not been met.
- That the test set out in section 88(2)(a) & (b) of the Localism Act 2011 as to whether (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, has not been met.

I have therefore decided that the property should not be included within the District Council's list of Assets of Community Value.

**D. Any Conflicts of Interest Declared?**

No

**E. Supporting Information**

None.