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Democratic Services
White Cliffs Business Park
Dover
Kent CT16 3PJ

Telephone: (01304) 821199
Fax: (01304) 872453
DX: 6312
Minicom: (01304) 820115
Website: www.dover.gov.uk
e-mail: democraticservices@dover.gov.uk

16 November 2022

Dear Councillor

NOTICE OF DELEGATED DECISION – (DD23 22) APPLICATION 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 Mr Roger Walton, Strategic Director (Place and Environment), to include Glebe Field, St Margaret’s-at-Cliffe on the Council’s list of Community Assets.

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 Democratic Services on 01304 872303 or by e-mail at democraticservices@dover.gov.uk.

Yours sincerely

A handwritten signature in black ink that reads "Kate Bailey - Smith". Below the signature is a short horizontal line.

Democratic Services Officer

ENCL

1 **NOTICE OF DELEGATED DECISION - (DD23 22) APPLICATION TO INCLUDE GLEBE FIELD, ST MARGARET’S-AT-CLIFFE ON THE COUNCIL’S LIST OF COMMUNITY ASSETS** (Pages 2-9)

Decision Notice

Delegated Decision

Decision No:	DD23 22
Subject:	APPLICATION TO INCLUDE GLEBE FIELD, ST. MARGARET'S-AT-CLIFFE ON THE COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE
Date of Decision:	3 November 2022
Notification Date:	16 November 2022
Implementation Date:	3 November 2022
Decision taken by:	Roger Walton, Strategic Director (Place and Environment)
Delegated Authority:	Delegation 281 of the Scheme of Officer Delegations (Section 6 of Part 3 (Responsibility for Functions) of the Constitution
Decision Type:	Executive Non-Key Decision
Call-In to Apply?	No (<i>Call-in does not apply to non-Key Officer decisions</i>)
Classification:	Unrestricted
Reason for the Decision:	An application has been received to include Glebe Field, St. Margaret's-at-Cliffe within the Council's list of Assets of Community Value.
Decision:	That Glebe Field, St. Margaret's-at-Cliffe should 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:
1. That the provisions of section 89 of the Localism Act are met with regard to the validity of the nomination.
 2. 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;
 3. 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:

1. Chapter 3 of Part 5 of the Localism Act 2011;
2. The Assets of Community Value (England) Regulations 2012;
3. Nomination Form and supporting information as submitted by St. Margaret's-at-Cliffe Parish Council and received on 16th September and 7th October 2022 respectively.
4. Decision Notice DD18 15 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 9th November 2015.
5. First Tier Tribunal General Regulatory Chamber Decision: 28 September 2016: *Bay Trust v Dover DC CR/2016/0002*
6. Decision Notice DD12 20, setting out the decision not to include the Glebe Field, St. Margaret's-at-Cliffe on the Council's list of Assets of Community Value dated 3rd November 2020

3. Review of Application and Submissions

Context

- 3.1** The 5th 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 request for review by the owners (15th January 2016) and at an appeal to the First-Tier Tribunal on 28th September 2016 (Appeal Reference CR/2016/0002,).
- 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** The property was included on the list of Asset's of Community Value in 2015 noting that:

- The nomination provides clear evidence that the property has a long history of supporting community activities within St. Margaret's at Cliffe and is thus furthering the social wellbeing or social interests of the local community.
- The nomination also provides clear evidence that it is realistic to think that there can continue to be non-ancillary use of the property that would further the social wellbeing or social interests of the local community.

3.5 In considering the application to list the property received in 2020 from the 5th Dover (St Margaret's) Scout Group, the decision taken to not include the property on the Council's list of Assets of Community Value, turned on two key points:

- Whether the community use of the land could be considered to be 'in the recent past' given that this area of land had by then been closed to active community use for several years.
- Whether it is realistic to think that there was 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.

3.6 With regards to the first point, it was considered appropriate 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.

3.7 However, with regards to the second point, the situation was less clear. A letter had been received from Girlings sent on behalf of the owners, which set out quite clearly that the owners have no intention of allowing community access in the near future. Equally, whilst the 2020 application set out a proposal to involve the wider community in raising funds to support a bid to acquire the land there were doubts as to how realistic this proposal would be. On balance therefore, the decision was taken not to include the property on the Council's list of Assets of Community Value.

4. Summary of Current Application

4.1 Turning now to the current application, the applicant has set out in some considerable detail it's case for including the property on the Council's list of Assets of Community Value.

4.2 With regards to the community use of the land, the applicant notes that:

"For many years, the Glebe Field has been used by the groups based at the Scout Hut for outdoor activities. The position therefore is that each week, subject to the weather being dry, a total of about 100 young people (Scouts, Cubs, Explorers, Brownies, Guides and Beavers) would take part in a range of activities and sports under the supervision of the various scout leaders responsible for each of the groups. In addition, there have been uses for which explicit permission has been sought, whether it be for an overnight camp or the annual village fete. The proximity of the field to the Scout Hut has provided a safe, easily supervised area for children to play and ensures valuable meeting time is not spent on taking children to and from venues.

Other continuing recreational uses were equally accepted by The St Margaret's Bay Trust, which provided children with a choice and complemented more formal play and sports offerings in the village. Specific permissions were also given over the years for more intensive recreational uses, such as village fetes, dance shows, may pole dancing and dog shows. The Parish Council believes that due to the passage of time,

the community has prescriptive rights over the land and that the freehold owner of the burdened land acquiesced in the use of the land by community.”

- 4.3** As regards whether community use could be re-established, the applicant has set out very clearly the views of the Parish Council on the matter within their application noting in particular the following statements:

“The Glebe Field’s central village location and proximity to the adjacent to the Scout Hut and Village Hall ensures external benefits from co-location. Coupled with the modest and intimate scale of the field and its well-established tree-lined enclosure, all of which are now protected by Tree Protection Orders, undeniably enhances community atmosphere, and makes it an ideal venue to host community activities and ensure continued social cohesion in the village.

There are no similar assets in the village. Whilst St Margaret’s-at-Cliffe has two other open spaces near the centre of the village, namely, King George V Field and Alexander Field, these are classed as recreations grounds and they are used mostly for active (not passive) recreation and sports, including tennis, cricket and football and are therefore unavailable for general community use for much of the time. In summary, there are no passive open space areas in the village to hold fetes, events and/or scouting activities.

Attempts have been made to continue staging a village fete on the cricket field, but it has insufficient facilities for large crowds. The Glebe Field’s position adjacent to the village hall means toilets, refreshments and even an inclement weather backup venue is on hand. In previous years some stalls have been held in the hall and in the Scout hut which have complimented the activities happening in the field, allowing a free flow between outside and inside space.

In any event, the cricket grounds (with tennis courts and children’s play area) and football grounds would not make for an alternative venue given they are fully booked for matches and training most of the season – evenings and weekends. There is very limited vehicular access, pedestrian access is difficult and there are high maintenance schedules associated to these sports.”

“The Parish Council believes that the Glebe Field will contribute to these aims as long as it remains a protected open space. The Parish Council, spurred on by its community, feels it must act now to protect this bequeathed asset, correct this malfunction, and ensure the field can be enjoyed again for the next 100 years by the future generations. The fact that the Trust already seeks to sell the Glebe Field to a developer indicates that a sale option is most likely for this site.”

“The Parish Council has offered to acquire The Glebe Field from the Bay Trust to ensure its continuation for community use, its original intended purpose. Communications started to this effect beginning of 2020. If the Bay Trust’s planning application is not successful, then it will face the question as to how to advance its charitable purposes without the development. In such circumstances it is entirely conceivable that the Trust will adopt another approach that is consistent with continuing the use of the field for community use. Having the opportunity to bring the field into community ownership would secure the future of the asset in long term community use; allowing the Community to maintain and protect the land and use it for the propose it was intended for and has enjoyed for at least a century.”

- 4.4** I have also noted the supporting statement from the St. Margaret’s Village Hall Committee, forwarded by the applicant, which states:

“The future viability of the Village Hall and the many village community organisations that use it are under considerable threat from the proposals to build a housing estate on the Glebe Field. In 2015 The Bay Trust withdrew permission it gave to the hall in 2000 to use the Glebe Field for overspill parking. The Hall committee completely supports the Parish Councils aim to return the field to community use, as the historic venue for fetes, youth groups such as the Scouts and village gatherings.”

- 4.5 The property had been included on the Council’s list of Assets of Community Value from 3rd November 2015 and was removed from the list in November 2020 following the 2020 decision not to list.
- 4.6 In considering the nomination received from the St. Margaret’s-at-Cliffe Parish Council 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

- 4.6.1 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.
- 4.6.2 St. Margaret’s-at-Cliffe Parish Council is a Parish Council, and Glebe Field, St. Margaret’s-at-Cliffe is within the boundaries of the Parish Council and so clearly this test is met.

B. Section 88(1) of the Localism Act 2011 asks does:

- a) the actual current use (not an ancillary use) of the building further the social wellbeing or social interests of the local community; AND**
- b) 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.**
- 4.6.3 Glebe Field is currently a fenced off area of designated public 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.
- 4.6.4 The site is the subject of a current planning application (DDC 21/00936) for the erection of a three-storey building comprising 7no. self-contained flats, 4no. detached dwellings and 3no. terrace dwellings, new vehicle access, turning head, parking, and landscaping.
- 4.6.5 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.
- 4.6.6 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. Section 88(2) of the Localism Act 2011 asks 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.**
- 4.6.7 With regard to (a) there is clear evidence provided within the application that the land has previously been used in the past for activities which could be considered to have furthered the social wellbeing or interests of the local community.
- 4.6.8 However in considering whether the test at (a) is met, the key question 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, in considering the 2020 application it was noted 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*.
- 4.6.9 The applicant has also drawn attention in their application to the judge's decision in *Banner Homes v St. Albans (CR/2014/0018)*, when it was determined that it is not for an owner to veto a listing by erecting a fence around land; rather that is a matter of judgment by the listing authority.
- 4.6.10 The effect of this case law is such that the concept of recent is to be a relative one and, although community use has not been permitted for some years, 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 as stated within the application that Glebe Field had been: *"continuously used by the community without interruption for a period of at least 100 years. The land was originally owned by the church and there is evidence of fetes happening here in 1910. The St Margaret's Bay Trust acquired the land in 1972 and it was promoted at the time that the purpose of this was to protect it in the community interests and for recreational purposes."* I note that although the history of nominations reviews and the appeal is punctuated by reference to many years use, this is the first occasion on which evidence has been put forward that the community use began anything like as early as this.
- 4.6.11 I am therefore content to conclude that 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.
- 4.6.12 As regards (b) the nomination as submitted sets out quite clearly the aspirations of the Parish Council for community use of the land to be re-established.
- 4.6.13 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.
- 4.6.14 On this point, the situation is much clearer that was the case in determining the application received in 2020. At that time, the submission received on behalf of the owners, made it quite clear that they had no intention of allowing community access in the near future. In addition, the approach proposed by the applicant

to raise funds to support a bid to acquire the land left some doubts as to whether it was realistic.

- 4.6.15 So, has anything changed since 2020? Firstly, it would seem to be clear that the owners of the property have continued to prevent community use of the land and have progressed with their plans to develop the site by submitting a planning application, which has still to be determined and has attracted some 400 objections. There must remain some doubt therefore as to whether these plans will be agreed and even if they are agreed whether they will be implemented. It is therefore realistic to contemplate a range of possible outcomes, some of which could yet allow community use to be re-established.
- 4.6.16 However, in one particular respect the situation has changed significantly. The current application to list has been submitted by the Parish Council on behalf of the whole community and sets out quite clearly their aims for the land and their willingness to purchase the site from the owners. This, in my view, strengthens very significantly the potential for community use of the land to be re-established.
- 4.6.17 Accordingly, on the basis of the evidence currently before me, I consider that it is now 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.
- 4.6.18 I therefore consider that the requirements of the Localism Act 2011 as set out at Section 88(2)(a) and (b) are met.

5. 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 been met.

I have therefore decided that the property should be included within the District Council's list of Assets of Community Value.

6. Any Conflicts of Interest Declared?

No.

7. Supporting Information

None.