

Decision Notice

Delegated Decision

Decision No:	DD22
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Subject:	APPLICATION TO INCLUDE THE HOPPERS' GATE WITH THE WEIGHT (LOCATED ON PROW EE190 AT GOODNESTONE) ON THE COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE
Notification Date:	11 November 2022
Implementation Date:	11 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 the 'Hoppers' Gate with the Weight', located on PROW EE190 at Goodnestone, within the Council's list of Assets of Community Value.
Decision:	That the 'Hoppers' Gate with the Weight' 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:
 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 the Claypits Historic Society dated 22nd September 2022.
4. House of Commons Briefing Paper, entitled Assets of Community Value, dated 10th March 2022.
<https://researchbriefings.files.parliament.uk/documents/SN06366/SN06366.pdf>

3. Review of Application and Submissions

3.1 The Hoppers' Gate with the Weight is a timber gate located on the public right of way EE190 northeast of Goodnestone in Kent.

3.2 The path runs from opposite the church of St James the Great on The Street, Staple. It passes south-southwest along a track, initially metalled and known as Church Lane, to the junction with footpath EE191 to Buckland Lane and Summerfield, then continues southwest across two arable fields towards Twitham Hill to a junction with public bridleway EE28. It then continues in the same south-westerly direction over further arable fields to Claypits Farm, then following an enclosed path between hedges to emerge on Cave Lane at Claypits opposite the junction with Boyes Lane, Goodnestone. Beyond Church Lane, the path follows an almost direct bearing across arable fields all the way to Claypits.

3.3 The gate is located in the middle of a field, its coordinates are 51 degrees,15'15"North;1 degree,14'19"East (Goodnestone, Kent).

3.4 The nomination submitted by the Claypits Historic Society indicates that their interest in 'The Hoppers' Gate with the Weight' is social and cultural. They state that it was the original gate to one of the many hop gardens in the area (now accessible to the public by footpath) and is a quintessential relic of the agricultural hopping history of Claypits, epitomised by the nearby Oast and Malthouse and their distinctive white cows.

3.5 The nomination goes on to suggest that: *“properly preserved and restored (possibly with a sign for explanation), ‘The Hoppers’ Gate with The Weight’ could become a historic marker en-route to Staple and enhance the experience of this ‘Visit Kent’ walk. It would give a hands-on understanding of the social history of the area, its centuries-old inventive mechanism of wires and weights demonstrating the simple technology of the past”.*

3.6 The nomination concludes by noting that the application is being made to ensure the gate's preservation as they expect that it will always be used as a gate with existing public access.

3.7 In considering the nomination received from the Claypits Historic Society 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

- 3.7.1 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.
- 3.7.2 The nomination form records that the Claypits Historic Society is an unincorporated neighbourhood forum, which it is stated: *“was formed to celebrate the heavy, sticky earth that gave the hamlet of Claypits its name, and to highlight and preserve the artefacts that are inextricably bound with its clay-ey history.”*
- 3.7.3 The nomination form includes a list of 27 members, 23 of whom are stated as being registered to vote within the Dover District area.
- 3.7.4 I am satisfied that the Claypits Historic Society meets the test set out in Section 89(2)(b)(iii) of the Localism Act and therefore the nomination is valid.

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.**
- 3.7.5 The ‘Hoppers’ Gate with the Weight’ is a timber gate located on the public right of way EE190, situated northeast of Goodnestone in Kent.
- 3.7.6 The Briefing Paper on Assets of Community Value, as prepared for the House of Commons in March 2022, states quite clearly at Paragraph 1.1 that the asset must be a building or land, as defined in the test set out at Section 88 of the 2011 Act.
- 3.7.7 By virtue of section 108(1) Localism Act 2011 “land” is given an extended meaning so as to include: (a) part of a building; part of any other structure, and (c) mines and minerals whether or not held with the surface.
- 3.7.8 Further, I am of the view that properly construed, the application should be treated as relating to the gate and the land upon which it immediately stands. I am therefore of the view that the ‘Hoppers’ Gate with the Weight’ can fairly be regarded as ‘land’ for the purposes of Chapter 3 of Part 5 of the Localism Act 2011.
- 3.7.9 It therefore seems to me that, as submitted, the nomination invites me to consider the value of the features as deriving from its heritage, social and cultural contribution to *“give a hands-on understanding of the social history of the area”*. No evidence has been put before me as to its actual use in a physical sense. I regard this as problematic to the success of the nomination.
- 3.7.10 This point arose for consideration by Judge Simon Bird QC in the case of *Astim v Bury CC* CR/2015/0022. At paragraph 6, he said:

“Whilst the First Respondent’s review of the listing concluded that the Bowling Green satisfied the criteria for listing under both section 88(1) and (2), I am not satisfied that the conclusion in relation to section 88(1) was soundly based. The basis for the First Respondent’s conclusion that the actual current use of the Bowling Green furthered the social wellbeing or social interest of the local community was that it formed an integral part of the town’s civic area with historic and architectural interest and thus furthered the cultural interest of the local community. In my view, to extend the term cultural interest and thus furthered the as used in section 88(1) to embrace the enjoyment of the historic environment from public vantage points extends the term

beyond the intention of the legislation. That conclusion is consistent with the approach of the Tribunal in *Banner Homes Limited v St Albans City and District Council* CR/2014/18.

3.7.11 A similar point was also considered in *Gullivers Bowls Club v Rother DC* (CR/2013/0009). In that case Judge Warren considered whether a visual amenity for the local community could be considered to further its social wellbeing. He concluded that it could not.

3.7.12 I adopt a similar view to that of the judges in the *Astim* and *Gullivers Bowls Club* case. In my view the fact that the feature the subject of this nomination may be said to further social cultural and heritage interests is not sufficient to satisfy the requirements of section 88(1) (a) of the Localism Act. Something more is required in the nature of an active physical enjoyment of the feature.

3.7.13 As I do not find the requirements of either sections 88(1)(a) or 88(2)(a) to have been met I do not need to consider whether the requirements of sections 88(2)(b) or 88(2)(b) have been met and do not do so.

3.7.14 On the basis of the above, I do not consider that the nomination meets the requirement of section 88(1) of the Localism Act.

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.**

3.7.15 As I do not consider that the nomination meets the requirements of section 88(1) of the Localism Act 2011, I have considered whether the requirements of section 88(2) are met. I consider that they are not, for the same reasons.

4. Conclusion

4.1 In conclusion, taking all these points into account I have determined:

- That the nomination meets the definition of a community nomination as set out in Section 89(2)(b)(iii) of the Localism Act 2011 and is otherwise valid.
- That there is not an actual current use of the building or other land that is not an ancillary use and furthers the social wellbeing or social interests of the local community – section 88(1)
- That there is not 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 – section 88(2).

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.