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Date: 26th July 2023

FAO Simon Day (Performance & Service Development Manager)

Nomination of Corsham Family Health Centre, Beechfield Road, Corsham, SN13 9DN to be listed as an Asset of Community Value

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1. NHS Property Services ("NHSPS") is the registered owner of Corsham Family Health Centre, Beechfield Road, Corsham, SN13 9DN ("the Site").

2. We write in reply to your letter dated 3rd July 2023. We understand that a nomination was made by Corsham Town Council to register the Site as an Asset of Community Value ("ACV").

3. Please find below correspondence outlining our objection to this nomination, and why the nomination fails to meet the legislative criteria set out in sub-section 88(2) of the Localism Act 2011 ("Act") and the Asset of Community Value (England) Regulations 2012 ("Regulations).

Legal framework

4. The legislation that governs the listing of ACVs is set out in Sections 87 to 108 of the Localism Act 2011 ("ACV Legislation") with more detail being set out in the Assets of Community Value (England) Regulations 2012 ("2012 Regulations"). An ACV is not defined specifically in the 2011 Act or the 2012 Regulations but "land of community value" is defined in section 88(1) of the 2011 Act as:

> *"……a building or other land in a local authority's area is land 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.*

5. "Social interests", as described in section 88(6) of the Act, includes cultural, recreational and sporting interests.

6. The Site is currently vacant and has been since at least 2016, so there is no "actual current use" which the Council could conclude furthers the social wellbeing or social interests of the local community. Section 88(2) of the 2011 Act provides alternative criteria as follows:

> *"…land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—*
>
> 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."*

7. The relevant test for the Council to consider is the test at section 88(2) of the 2011 Act ("the Relevant Criteria"). Both of the criteria must be fulfilled in order for the Council to list the Site as an ACV.

Healthcare facilities under the ACV Legislation

8. The ACV Legislation was intended to capture facilities that genuinely contribute to the cultural, recreational or sporting interests of the community (e.g. facilities such as village halls, local shops and post offices, buildings or land of local historical value, public houses, sports grounds, local parks and libraries). Classification of a healthcare facility as an ACV would be out of keeping with the inherently social characteristics of other types of ACV.

9. Parliament and the House of Lords have given extensive consideration to the types of facilities that would fall within the ACV Legislation, and NHS-owned healthcare facilities were not mentioned in those deliberations. It is therefore reasonable to conclude that Parliament did not intend healthcare facilities to fall within the ACV Legislation.

10. Social interests and social wellbeing are limited to the interaction of people and relationships with each other within a community. The Site's primary purpose was to provide healthcare functions, and accordingly limited social interaction takes place. To the extent that any social interaction can be evidenced, this is ancillary to the primary healthcare use of the Site.

11. We would submit that the most recent use of the Site, as an operational healthcare facility, does not have the necessary "social" dimension required to further the social wellbeing or social interests of the local community.

Recent Past

12. There is no statutory definition of this term, but it is necessary for any qualifying use to have occurred in the “recent past”.

13. Other comparable decisions (see appendix 4) have referenced ‘within 5 years’ as the “recent past” in aligning with Part B of Section 88(2).

14. However, in this instance, the Site has now been wholly vacant since at least 2016 when the property transferred to NHSPS.

15. We are not aware of any basis upon which any qualifying use of the Site could be described as occurring in the “recent past”, where the site has been vacant for this extended period of time.

16. We are therefore of the view that no qualifying use of the Site occurred in the “recent past”, and therefore the site does not meet the requirements of Section 88(2) of the Act.

ACV Listing Criteria

17. As above, we are of the view that that no qualifying use of the Site occurred in the “recent past”, and therefore the site does not meet the requirements of Section 88(2) of the Act.

18. Without prejudice to this position, Section 88(2) of the Localism Act (2011) defines land of community value as that which *“furthers the social wellbeing or social interests of the local community”.*

19. Section 88(6) defines social interests as including each of the following –

    - *Cultural interests;*
    - *Recreational interests; and*
    - *Sporting Interests*.

20. The examples given are primarily leisure activities and therefore only similar activities are capable as being considered within the definition of social interests. For this reason the property’s use for the delivery of health services does not further the ‘social interests’ of the local community as defined within the Localism Act (2011).

21. A review of definitions for social wellbeing confirms that the construct relates to the interaction and relationships with others within a community.

22. This view is reinforced by the plain English guide to the Act (2011: Page 8) which specifies buildings or amenities which play a vital role in community life and cites examples such as community centres, libraries, swimming pools, village shops, markets or pubs.

23. Contrary to these definitions, the site comprises an operational healthcare facility that is used for delivering NHS healthcare services. This use cannot reasonably be construed to be one which furthers 'social wellbeing' or 'social interests' in the context of the 2011 Act. Therefore, the Site does not meet the criteria for land or sites that can be nominated for listing as an ACV.

24. We would submit that the Site, as an operational healthcare facility, does not have the necessary "social" dimension required to further the social wellbeing or social interests of the local community, in accordance with the ACV legislation.

Recent Comparable Decisions

25. We draw your attention to a recent decision by East Devon District Council (see appendix 1) to place Honiton Hospital on the unsuccessful list of nominations. The Decision particularly states that;

> *"The facility is clearly a valuable resource to many and does serve the wider community with healthcare, but it does not serve the social wellbeing of the community and its primary use is for healthcare purposes."*

26. We also draw your attention to a decision by Derbyshire District Council (see appendix 2) to place Newholme Hospital on the unsuccessful list of nominations. The Decision states that;

> *"Taking all of the above into account it is my opinion that Newholme Hospital does not play a role in promoting cultural, recreational or sporting interests and as such does not meet the test that it furthers the social interests of the community. Whilst the list of activities is not exhaustive I agree with the principle that since the activities listed are primarily leisure ones it follows that only similar activities would fall within the definition of "social interests".*
>
> *There is no statutory definition of "social wellbeing". However, the Plain English Guide to the Act cites buildings or amenities that play a vital role on community life and lists as examples community centres, libraries, swimming pools, village shops, markets or pubs. The list does not include health care facilities.*

Therefore I am of the opinion that there is no evidence that Newholme Hospital has an actual current use, that is not an ancillary use that furthers the social wellbeing or social interests of the community."

27. We also draw your attention to a decision by Uttlesford District Council to review the listing of Saffron Walden Community Hospital as an ACV (see appendix 3). That property was listed as an ACV by the Council, but the listing was subsequently removed, upon review. In the decision to remove the property from the Council's list of ACVs, it states:

    "With regard to "social welfare" I am persuaded by the submission of the owner's representative that this relates to interaction and relationships within the local community. This view is re-inforced by the quote from the plain English guide to the Act referred to in paragraph 5.5 above. The Land provides a health care facility. There is no evidence that the Land plays "a vital role in community life" nor is it similar to any of the categories of use referred to in that passage. In short there is no evidence of any social interaction taking place on the Land which could be construed as furthering the social wellbeing of the local community."

28. We also draw your attention to a decision by Malvern Hills District Council (see appendix 4), to place the Old Malvern Community Hospital on the unsuccessful list of nominations. This decision found that no evidence was provided to suggest the site has ever further the 'Social Wellbeing or 'Social Interests' of the local community, and considered the "recent past" to be "*within 5 years of the nomination date and, therefore, consistent with the 5 years hence guidance".*

29. The examples above rightly concluded that a site used for the delivery of healthcare services does not further the social wellbeing or social interests of the local community.

Bath & North East Somerset, Swindon and Wiltshire Integrated Care Board (ICB)

30. During 2022/2023 the ICB has been looking to determine if the site is surplus to Health requirements and discussing with a number of providers, if the site could be reopened to provide clinical services from.

31. A number of options have been explored including the potential to use the site to provide a Community Diagnostic Hub in the local area, but this was not approved and was not felt to be in the right location for this service and there has been no other interest in the building from a clinical perspective.

32. There has been some interest in potential use of the premises to provide administrative services from for the local Primary Care Network, but the proposed amount of use would not fully utilise the whole building. The ICB is therefore exploring this use with other partner organisations to see if there is additional demand for administrative space that may make this a viable option for consideration.

33. The ICB will over the next couple of months undertake a final consultation with health providers in the area to determine if there is any other identified use for the site that would justify it being reopened and invested in or if it is indeed surplus to requirements based on what we know today. Should the outcome from these discussions result in the site being declared surplus by the ICB, then NHSPS who own the freehold to the site will look to dispose of the site.

34. If the ICB does declare the site surplus, there is an agreed national process which NHSPS must follow, which is both open and transparent; where NHSPS aim to sell properties for best value, to generate vital capital the NHS needs, as well as support the governments targets on releasing public land for alternative uses, where appropriate.

35. As part of this process, any property to be disposed of is first listed on the Property Information Mapping Service (ePIMS) website - the central database of Government Central Civil Estate Land - which provides an opportunity for other public-sector bodies to bid for a site before they are put onto the open market, should Wiltshire Council or the Corsham Town Council wish to look to pursue this route in the future.

Conclusion

36. In conclusion, whilst recognising the local connection to the sites historic use, the Site does not satisfy the statutory requirements of sub-section 88(2), where the site has been vacant since at least 2016 when the site transferred to NHSPS, and there is therefore no evidence of a qualifying use in the “recent past” in accordance with the legislation.

37. The Site is therefore not an asset which is capable of being listed as an ACV.

38. Notwithstanding the above, we would submit that the Site, as an operational healthcare facility, does not have the necessary "social" dimension required to further the social wellbeing or social interests of the local community, in accordance with the ACV legislation and 88(6) of the Act. The Site is therefore not an asset which is capable of being listed as an ACV.

39. Comparable decisions (see appendices 1, 2, 3 and 4) have been provided that reinforce this this position.

40. We therefore request that the application to list the property as an asset of community value be refused and the property be placed on the ‘unsuccessful list of nominations’.

41. As highlighted at paragraph 35 above, other public sector organisations can already look to bid for the site before it is placed on the open market, through the Governments Property Information Mapping Service (ePIMS) website.

For any further clarification, or to discuss further please do not hesitate to contact.

Yours sincerely

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Appendix 1. East Devon DC Nomination Decision – Honiton Hospital
Appendix 2. Derbyshire DC Nomination Decision – Newholme Hospital
Appendix 3. Uttlesford DC Review Decision – Saffron Walden Community Hospital
Appendix 4: Malvern Hills District Council – Old Malvern Community Hospital