

Meeting: Cabinet **Date:** 14 May 2024

Wards affected: St Peters with St Marys, Brixham

Report Title: Nomination to list Breakwater Car Park, Berry Head Road, Brixham TQ5 9AF as an Asset of Community Value

When does the decision need to be implemented? As soon as possible

Cabinet Member Contact Details:

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1. Purpose of Report

- 1.1 The Council has received a nomination to list Breakwater Car Park as an Asset of Community Value. The Asset of Community Value regime provides communities a right to identify a building or other land that they deem to be of importance to their community's social wellbeing.
- 1.2 To be listed, the land must be nominated by an organisation with a local connection. This application has been made by an unincorporated group of 21 Torbay residents known as the 'Breakwater Beach Community Group' and must be determined by the Cabinet in accordance with the requirements of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
- 1.3 The nomination has been assessed by Officers who recommend approval of the application and the designation of Breakwater car park as an Asset of Community Value.

2. Reason for Proposal and its benefits

- 2.1 Assets of Community Value form part of the Community Right to Bid initiatives introduced under the Localism Act 2011. One of the key policy goals of these provisions was to give communities more power to become involved in the way local services are delivered and to counteract the damage that can be done to communities when buildings or other amenities are closed or sold. Types of assets awarded Asset of Community Value status include community centres, village halls, hospitals, local pubs, car parks, green spaces, or other places which hold significance to the community. Subject to exceptions, virtually any land or building can be nominated, whether in public or private ownership.
- 2.2 Every local authority is required to maintain two lists in relation to Assets of Community Value in its area, one list containing a list of land that is deemed to be of community value and a second list of unsuccessful nominations. Where land has been included on a local authority's list of assets, it will remain on the list for five years. Both lists are available for public inspection on the Council's website.
- 2.3 Land or a building will be considered of community value if, in the opinion of the Council, the actual current (or recent) use of the land furthers the social wellbeing or social interests of the local community, and it is realistic to think that the future use of the asset land will continue to be used in a way that will further the social wellbeing or social interests of the community.
- 2.4 If a community group nominates land or buildings that meet the definition of an Asset of Community Value, and a valid nomination is made, then the local authority must include the asset on its list of Assets of Community Value.
- 2.5 If an asset is placed on the list, a moratorium period will be applied from the date on which the local authority receives notification of any proposed disposal of the land. During this moratorium period (of up to six months) local community groups have the opportunity to raise finance, to make a bid to buy the asset on the open market. Whilst the community group will be given opportunity to bid, the owner is not bound to accept it.
- 2.6 We want Torbay and its residents to thrive, and consideration should be given to safeguarding amenities which are of great local significance to the places where people live and work.

3. Recommendation(s) / Proposed Decision

1. That Breakwater car park be designated as an Asset of Community Value.

Appendices

Appendix 1: Application to list Breakwater Car Park as an Asset of Community Value submitted by Breakwater Beach Community Group who are an unincorporated group of residents.

Appendix 2: Location Plan

Background Documents

Torbay Council Assets of Community Value Policy:

<https://www.torbay.gov.uk/planning-and-building-control/local-land-charges/assets-of-community-value/>

Asset of Community Value legislation is supported by non-statutory guidance issued to local authorities in 2012. This guidance is intended to assist local authorities implement the Asset of Community Value legislation and provides guidance on procedural matters.

<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>

Glossary

Asset of Community Value	<p>A building or other land is an asset of community value if its main use has recently been or is presently used, to further the social wellbeing or social interests of the local community and could do so in the future.</p> <p>Social interests are defined to include cultural, recreational, or sporting interests of the local community.</p>
Community group/organisation	<p>The following groups are eligible to nominate, Parish Councils, a body with a local connection such as neighbourhood forums, charities, unincorporated groups comprising of at least 21 members with a local connection, companies, including not-for-profit companies.</p>
Disposal	<p>in the context of the Community Right to Bid, the legislation defines disposal as the sale of the</p>

	freehold, or the grant or assignment of a leasehold estate for a term of 25 years or more.
First Tier Tribunal	an independent body to decide appeals made by owners against assets being listed, and decide compensation claims.
Judicial review	is a legal process that allows individuals to challenge the decisions or actions of public bodies where they have not acted lawfully and fairly.
Moratorium period	when buildings or land listed come up for sale, a moratorium of up to six months can be invoked, providing local community groups with an opportunity to bid to purchase the asset on the open market.
Not-for-profit company	companies whose activities benefit the community and who reinvest surplus made from trading back into the community (often called Social Enterprises or Community Interest Companies).

Supporting Information

1. Introduction

- 1.1 On 02 April 2024, the application to list Breakwater Car Park as an Asset of Community Value, was validated. A redacted version of the application is appended to this report at Appendix 1. The application complies with the requirements set out in paragraph 6 of The Asset of Community Value (England) Regulations 2012.
- 1.2 A local authority considering whether to include land nominated on its Asset of Community Value list must take practicable steps to inform the owner or the holder of any leasehold estate in the land. In this instance, the Council is the freehold owner of the land; the asset is a pay and display car park managed by Parking Services.
- 1.3 The decision to list the nominated building or land will only occur where in the opinion of the local authority, it meets the statutory criteria set out in Section 88(2) of the Localism Act 2011 specifically that:

- 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 now or in the next five years there could continue to be a primary use of the building/land which will further (whether or not in the same way) the social, wellbeing or social interests of the local community.

1.4 Members' attention is drawn particularly to pages 8 and 9 of the application at Appendix 1 regarding the merits of the nomination and established community use. You will note that the car park, as depicted in the plan at Appendix 2, is a widely used amenity, given its proximity to the beach which is considered to enhance the quality of life for residents and visitors alike, promoting a happy, healthier community.

2. Options under consideration

2.1 Following receipt of a community nomination for Breakwater car park to be listed as an Asset of Community Value, the Council must decide whether to accept the nomination.

A nominated asset must be listed if:

- it is located within the local authority's area ✓
- is nominated by a voluntary or community body with a local connection as defined in Regulation 5 of the Asset of Community Value (England) Regulations 2012 ✓
- satisfies the definition of land of community value set out in Section 88 of the Localism Act 2011; ✓ and
- is not listed in Schedule 1 of the 2012 Regulations as an excluded asset type. ✓

The nominator is not required to prove that the asset should be listed on "the balance of probabilities", but the much lower test if, in the opinion of the local authority "it is realistic to think" that use of the building or land furthers the social wellbeing or social interests of the local community, and that the use can continue.

As a valid nomination which meets the criteria for listing has been received, it is proposed that Breakwater Car Park is designated as an Asset of Community Value.

2.2 The alternative option would be to refuse the application; in which case written reasons for refusal would need to be provided to the applicant.

3. Financial Opportunities and Implications

3.1 In recognition of the potential impact on landowners, the Assets of Community Value Regulations contain provisions for landowners to seek compensation from the local authority for any loss or expense suffered as a result of the listing. The provision of compensation is available to all owners except public authorities, consequently it does not apply in this case.

4. Legal Implications

- 4.1 There are no direct legal implications arising from this report however, for clarity, the community right to bid provisions do not restrict what the owner of a listed asset can do with the land, nor restrict to whom an owner of an Asset of Community Value can sell their land to or at what price.
- 4.2 Further information regarding the effect of a listing can be found in Torbay Council Assets of Community Value Policy:

<https://www.torbay.gov.uk/planning-and-building-control/local-land-charges/assets-of-community-value/>

5. Engagement and Consultation

- 5.1 Torbay Council is the freehold owner of the land and is the only party directly affected by the proposals.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 Not applicable

7. Tackling Climate Change

- 7.1 There are no direct climate implications.

8. Associated Risks

- 8.1 If the Council fails to determine the application by 28 May 2024, it will be in breach of its statutory duty to do so, which would leave the Council vulnerable to a potential ombudsman complaint.
- 8.2 The legislation does not provide a statutory appeal mechanism to an applicant. The only remedy available to the applicant if they were not happy with the decision, would be to challenge the Council's decision by way of judicial review.

9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

In exercise of its functions, the Council is required to have due regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010. It is considered that this nomination contributes positively to uniting individuals and groups from diverse backgrounds and thus contributes to fostering good relations between persons with

different protected characteristics and those who do not. The provision of an easily accessible and inclusive space for members of the local community to use further demonstrates the value of this particular asset.

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			No differential impact
People with caring Responsibilities			No differential impact
People with a disability			No differential impact
Women or men			No differential impact
People who are Black or from a minority ethnic background (BME) (Please note Gypsies / Roma are within this community)			No differential impact
Religion or belief (including lack of belief)			No differential impact
People who are lesbian, gay, or bisexual			No differential impact
People who are transgendered			No differential impact
People who are in a marriage or civil partnership			No differential impact
Women who are pregnant / on maternity leave			No differential impact
Socio-economic impacts (Including impact on child poverty issues and deprivation)			No differential impact
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			No differential impact

10. Cumulative Council Impact

10.1 None.

11. Cumulative Community Impacts

11.1 None.