

# **NOMINATION TO LIST LAND AND BUILDINGS AT HOME PARK, PLYMOUTH AS AN ASSET OF COMMUNITY VALUE**

**APPLICANT: ARGYLE FANS TRUST (formally the Plymouth Argyle Supporters Society Ltd)**

## **DETERMINATION**

### **1.0 Background**

1.1 The Localism Act 2011 (the 2011 Act) and the Assets of Community Value Regulations (the Regulations) set out the opportunities and procedures to follow for communities wishing to identify assets of community value and have them listed;

1.2 (a) The criteria for listing are set out in Section 88(1) of the 2011 Act whereby the City Council is required to list a nominated asset if, in its opinion:

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

It is realistic to think that there can continue to be non-ancillary use of the building or other land which will further the social wellbeing or social interests of the local community (whether or not in the same way as the existing use);

(b) Section 88(2) of the 2011 Act extended this clarification as follows:

There was a time in the recent past when an actual use (not an ancillary use) of the buildings and land is one that furthered the social wellbeing or social interests of the local community, AND

It is realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the building or land that would further the social wellbeing or social interests of the local community (whether or not in the same way as before);

1.3 In determining whether valid nominations meet the definition of an Asset of Community Value as set out in Section 88 of the 2011 Act, the Council have applied the period of 5 years to the term 'recent past' as referenced in Section 88(2)(a) above;

1.4 These definitions have been taken from the Government's Regulations. There is no national guidance as to what the key terms in these definitions mean. It is therefore for the nominating organisation in the first instance to argue why it considers the nominated asset meets the definition in the Regulations;

1.5 If the owner of the land and buildings being nominated objects to their land and buildings being placed on the list of Assets of Community Value, they have a right in the first instance to an internal review by the Council of this decision.

## 2.0 The Nomination

2.1 Argyle Fans Trust (formally the Plymouth Argyle Supporters Society Ltd) being a community interest company through a nomination dated 31 October 2015 nominated the Football Stadium at Home Park, Plymouth for inclusion as an Asset of Community Value. Following a period through which aspects of the nomination required clarification, the nomination was validated (that is the date upon which the Council were in a position to consider the nomination) on 9 December 2015. The nomination includes all ancillary land and buildings used on a match day and is shown edged in red on a plan attached to this determination;

2.2 Argyle Fans Trust, in its application, has argued that the buildings and land is of community value because:

- (a) Home Park has been home to Plymouth Argyle FC from 1901 until the present day;
- (b) The stadium is crucial in enabling the football Club to deliver social value and community benefit through sporting and social activities in which the Club needs a suitable home to host its matches;
- (c) The money invested into developing Home Park over the years from various sources – the Football Foundation, the Club (and its supporters), Plymouth City Council, etc – means that Home Park remains the only realistic and viable home for Plymouth Argyle FC;
- (d) Plymouth Argyle FC delivers both social value and community benefit to the City of Plymouth more broadly as an integral part of the local area. Senior football in Plymouth stretches back to 1886, as Argyle AFC, founded on the principal activity of the furtherance of local sporting interest;

(e) The Club:

- i Promotes the enjoyment of sport and exercise to local people throughout the community**, particularly young people, both through its own matches and through activities the clubs undertake through their various schemes and initiatives;
- ii Serves as a focus for community pride** as Plymouth's premier sporting Club, providing the City of Plymouth with a proud history and heritage through the achievements of the Club and the many celebrated players from its history, and regularly recognizing the contribution that the Club's non-player employees, volunteers and supporters make to the Club's success;
- iii Helps built a sense of community identify**, bringing together diverse elements of the City of Plymouth, across a range of ages, social and economic backgrounds on a regular basis for a shared purpose;
- iv Provides local people with an inclusive social environment** open to all members of the community which the Club works to foster such as PAFC's participation in the 'Kick it Out' campaign (an equality and inclusion campaign for football and the wider community);
- v Engages fans in the support of charitable causes**, recent examples include the Club's 'Armed Services Day', which recognised the contribution that the Services make to the City, and raising money for Armed Forces Charities'
- vi Provides economic benefits** to local businesses such as increased trade for nearby and associated pubs, restaurants and hotels during the course of the season as well as working to bring together a network of local businesses for mutual benefit;
- vii Is the subject of considerable local interest**, as attested to by the consequent significant coverage in the local media;
- viii Represents the City and area nationally**, for instance the Club has had matches broadcast live on both satellite and terrestrial television within the recent past. Most recently the Club's League 2 play-off fixtures against

Wycombe Wanderers was broadcast on the Sky network to a considerable national audience. The Club also features each week on the 'Football League Show' on Channel 5;

- (f) As well as acting as a focus for the people of Plymouth, the Club also works within the community operating a range of sporting, social and educational activities and programmes;
- (g) The main pitch is also used on occasion to host local football finals and community tournaments;
- (h) Home Park is also a facility used for non-sporting purposes of benefit to the City of Plymouth such as birthday celebrations, christenings, wakes, business conferences, meetings etc
- (i) Home Park is also a place that brings thousands of people from all over the country into our city each year where normally they would not consider visiting.

### **3.0 Response to Consultation**

- 3.1 Comments were received from the Council's Planning & Infrastructure Service that in their view, the proposal to list the site (as referenced in the application) as an asset of community value met with the criteria for listing as set out in the 2011 Act and the Regulations. In their response in support of the nomination, they commented that: 'Home Park clearly has community value at numerous levels and precedents do exist with football grounds elsewhere in the country, notably Newcastle United, Liverpool and Manchester United's grounds';
- 3.2 Two objections to the nomination have also been received, one from the Council's Economic Development Service, the other from the Owner of the Home Park Football Stadium.
- 3.2 (a) The objection from the Council's Economic Development Service is on the following grounds:
  - the Council would be forgoing potential future asset value;
  - the Council is better placed to have an overview of the impact of current or future uses of the land for the wider benefit of the City;
  - the Council needs to retain the assets as it will leave the Council better placed to have some control over the current and future uses.

On these grounds, it was considered by the Economic Development Service that the buildings and assets as referenced in the nomination ought not to be included in the List of Assets of Community Value;

- 3.2 (b) The objection from the owner of Home Park Football Stadium is on the following grounds:

#### **Stadium land at Home Park**

The Stadium is leased to Plymouth Argyle Football Club Ltd from the City Council and this land is subject to a buyback option agreed at the time of the Football Club's exit from administration in 2011. The option, it is argued by the owner of the Stadium, would serve to override the applicability of asset of community value status upon a sale, as detailed in paragraph 4(b) of Schedule 3 of the 2012 Assets of Community Value (England) Regulations. Consequently, the Stadium owner submits that they see little merit in including the Stadium within an asset of community value listing, particularly in view of the temporary (5 year) period for which it applies (accepting however that relevant organisations may reapply after this point in time);

#### **Car Park and temporary office accommodation at Higher Home Park (HHP Land)**

The owner of the Stadium and surrounding land has expressed surprise that the Council is contemplating an asset of community value listing in respect of land that is currently a surface car park and temporary office buildings. The owner contends that it is not clear to them how a car park can further the social wellbeing or social interests of the local community.

The owner goes on to contend that, notwithstanding this, given the existing car parking at Outland Road, which is used for supporter car parking, it is not clear why the HHP land should be the subject of an asset of community value listing. The owner contends that the land use is nothing more than ancillary to the Stadium, does not contribute to social wellbeing or social interests and, on a reasonable interpretation, cannot be regarded as being of community value.

The owner's objection further states that, the HHP land currently has planning permission for a range of alternative uses that, if implemented, would not qualify the site to be capable of being listed as an asset of community value.

Finally, the owner objects to the nomination commercially, contending that listing would adversely impact upon the value of any scheme to an investor/funder and the potential additional delay that arises in any sales

process and letting of commercial units in a future development may have an adverse costs/value/deliverability impact upon that project.

**3.3** Those consulted under the Regulations were as follows:

- HHP Nominee Limited;
- Plymouth Argyle Football Club Ltd;
- A.P. Wireless II (UK) Limited;
- Planning & Infrastructure Service, Plymouth City Council;
- Economic Development, Plymouth City Council;
- Ward Councillors;
- Cabinet Member with Portfolio Responsibility;

Apart from the comments reported herein, no further comments were received from any of those consulted.

#### **4.0 Assessment**

**4.1** I am satisfied that the nominating body is a Community Interest Company for the purposes of the 2011 Act and the supporting Regulations (The Trust is registered as an Industrial & Provident Society but under the Community Benefit Societies Act 2014, Industrial & Provident Societies are now known as Community Benefit Societies). Argyle Fans Trust is a Community Benefit Society and registered as such under the Co-operative & Community Benefits Societies Act 2014. It is clear that the activities of the Trust are to promote supporter and community engagement in Plymouth Argyle Football Club and represent the view of the Club's supporters. The Trust is run by an elected Board and is a full member of Supporters Direct which is a national body for supporters' trusts and supporters' community owned clubs. Supporters Direct assist fans to set up democratic cooperatives (known as supporters trusts) to gain influence in the running and ownership of their clubs.

**4.2** The Council has taken reasonable steps to notify relevant parties of the nomination, from which 3 responses were received. One was supportive, the other two objected to the listing. The grounds upon which the objection from the Council's Economic Development Service are based do not address the criteria listing as set out in the 2011 Act and the supporting Regulations. Accordingly, whilst I note those reasons, I must reject the submissions as they are irrelevant for the purposes of my assessment. Any further considerations of these objections for the purposes of this assessment are, therefore, otiose;

**4.3** The grounds of the owner's objection, firstly to this listing of the Stadium land at Home Park, are factually accurate in terms that the 2012 Regulations provide the owner with an exclusion from the Moratorium requirements in

Section 95(1) of the 2011 Act owing to the option to buy. However, this relates to a future possible event. There is nothing within the 2011 Act or the supporting Regulations which supports the owners' contention that the buyback option 'overrides' the criteria for listing land nominated as community value as set out in Section 88 of the 2011 Act.

Moreover, the Council is under a duty under Section 90(3) of the 2011 Act to accept the nomination if the land is in the Authority's area and is of community value (a matter I shall address shortly).

I am further supported that any reading of the 2011 Act and the supporting Regulations is correct in that there is a specific schedule (Schedule 1) of the Regulations which lists land which is not of community value and therefore may not be listed. Land that is subject to a legally enforceable option to buy is not contained within Schedule 1. Had it of been Parliament's intention for such land to be excluded, it would have appeared within that Schedule.

For those reasons I do not, therefore, uphold the objection that the 2011 Act or the Regulations override or (my words) exclude or prohibit the Stadium land from application of the criteria for listing under Section 88 of the 2011 Act.

For clarity, what this means is that in the event of the Stadium and non-ancillary land and buildings being listed, if the Owner exercised the buyback option with the Council, the Moratorium on Sale would not be engaged owing to the exclusion above referenced.

However, in the event of the Stadium and non-ancillary land and buildings being listed, if the Owner sought to sell these assets on the open market, the Moratorium on Sale for 6 months would be engaged to allow the community group to come up with an alternative proposal.

For further clarity, the Stadium and non-ancillary land and buildings is distinct from the Football Club. Accordingly, any listing of the Stadium and non-ancillary land and buildings under the Assets of Community Value Regulations would not prohibit any sale of the Football Club.

4.4

Accordingly, the primary consideration for me is whether the Football Stadium located at Home Park is currently a use that furthers the social wellbeing or social interests of the local community. It is a matter of fact that the Stadium is the home ground venue for Plymouth Argyle Football Club and has been for some considerable time (nomination refers to Home Park having been the home to Plymouth Argyle Football Club since 1901). The Argyle Fans Trust very clearly articulate in their nomination for listing the "social interests and social wellbeing" delivered by the Club at the

Stadium which evidently extends for wider than 90 minutes of football at home games. I concur with those submissions.

To that end, I am very much drawn by the words of Tribunal Judge NJ Warren in his judgement on 9 May 2014 upholding the decision of Oxford City Council to list Kassam Stadium (the home ground of Oxford United Football Club) following an appeal by the Stadium owners Firoka (Oxford United Stadium) Ltd and Firoka (Oxford) Ltd - Tribunal Reference Number: CR/2013/0010. In that decision, Tribunal Judge Warren, in supporting the submissions from the Supporter Trust, described the role of a local football club and its home ground in the following terms:

The existence of a home town football club, intrinsically linked to the use of its home ground fosters community pride, stimulates daily conversations in, for instance, pubs, work places, local media and social media; forges friendships and encourages the mix of generations.

I could not agree more and consider that this has parallel application to the nomination of the Stadium at Home Park. There are numerous football stadiums across the country that have also been listed for similar reasons. It is, therefore, without doubt that the Stadium meets the criteria of an Asset of Community Value in my opinion;

- 4.5 The question that the 2011 Act and the supporting Regulations now require me to assess is whether the remainder of the land or buildings nominated, that is those that are not the Stadium, and referenced within the owner's objection as HHP Land, similarly meets the criteria for listing as an asset of community value.
- 4.6 The owner argues that the car park is nothing more than ancillary to the Stadium so cannot be regarded as being of community value. No reference is made, other than as a sub-heading in the objection, to the temporary office accommodation located in the car park. However, I shall assume for the purposes of this assessment that when referring to the car park, the owner's objection and the reasons for the objection relate similarly to this temporary office accommodation. That temporary office accommodation houses: a shop which sells Argyle merchandise; a ticket office from where match day tickets can be purchased; a bar/function room from which I understand VIPs and guests can be entertained on match days and an administration office.
- 4.7 The question that the 2011 Act and supporting Regulations require me to assess is whether the land or buildings as referred above is a non-ancillary function.
- 4.8 The football club on match days makes use of the entire football stadium and the car park, together with various accommodation which is located within



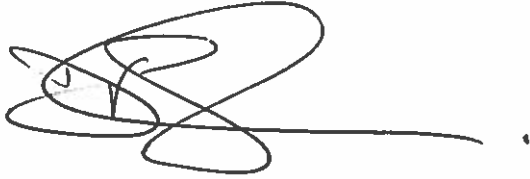
the car park. The land and buildings as a whole forms part of the coherent entity, even with the different components of inter-related use, so it therefore needs to be considered as a single entity. The car park, the shop, the ticket office, the administration office and the bar/function room support the activities of the football stadium as the home ground for Plymouth Argyle Football Club. Accordingly these must be seen as uses that are an integral part of the football stadium. To suggest that such uses are not related to, is entirely separate from and therefore a use that is ancillary is, in my opinion, illogical given its functionality and use by the local community.

- 4.9 I am, therefore, satisfied that the current use of the Football Stadium and the car park and various accommodation located within that car park are assets that further the social wellbeing and social interests of the local community.
- 5.0 Finally, the owner further objects that the Stadium and car park has planning permission for a range of alternative uses that, if implemented, the owner argues, would not qualify the site to be capable of being listed as an asset of community value.
- 5.1 A grant of conditional planning permission (subject to S106 obligation) was issued by the Council on 20 September 2013 (13/00942/FUL) which includes part of the land within the nomination for listing. The redevelopment, for which the planning permission was granted, includes the provision of a new south grandstand incorporating ancillary club retail and hospitality facilities, the erection of a 10 screen multiplex cinema, ice arena, 121 bed hotel, medical centre, restaurant/café and retail floorspace, community facilities and associated car parking.
- 5.2 There is nothing within the planning permission which suggests that the current non-ancillary use of the Stadium and car park will cease. Indeed, it would appear to me that such redevelopment would enhance and extend further the social wellbeing or social interests of the local community as the facilities on offer at the Stadium.
- 5.3 I am, therefore, satisfied that it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further the social wellbeing or social interests of the local community, whether or not in the same way as the existing use.
- 5.4 The owner comments/objections on grounds that a listing would adversely impact upon the commercial value of the redevelopment scheme to investors/funders and thus cause delays to the development are noted. I must reject this submission as it is wholly irrelevant for the purposes of my assessment in applying the criteria for listing as set out in the 2011 Act and supporting Regulations.

## **DECISION**

I can confirm that,

**Nominated Asset:** The Stadium, Home Park, Plymouth, PL2 3DQ being the football stadium occupied by Plymouth Argyle Football Club including all ancillary land and buildings used on a match day and shown edged in red on the plan attached **SHOULD** be an Asset of Community Value and included on the City Council's Local Assets of Community Value Register and placed on the Local Land Charges Register.

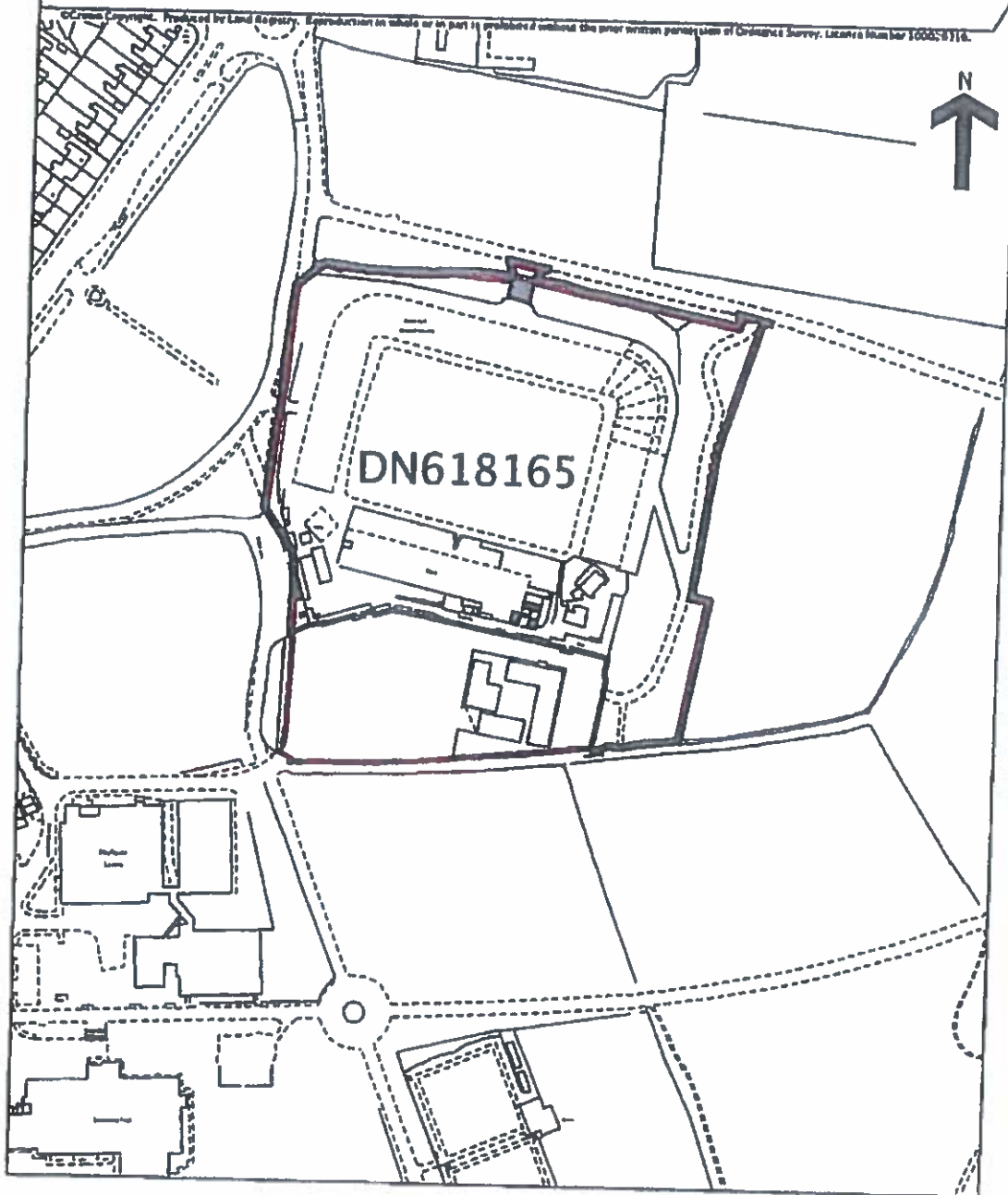
A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**David Shepperd MSc, Solicitor**  
**Assistant Director and Head of Legal Services**  
**Monitoring Officer**  
**Plymouth City Council**

**23 February 2016**

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