

SECTION 88 OF THE LOCALISM ACT 2011

DECISION REGARDING NOMINATION FOR THE ENTRY OF LAND KNOWN AS THE WINDSOR DAY CENTRE, IMPERIAL ROAD WINDSOR INTO THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE

1. This decision is taken in respect of the nomination of land to be registered as an asset of community value.
2. In the nomination form the land is referred to as the Windsor Day Centre, Imperial Road, Windsor and is described as a hub supporting people with disabilities and learning difficulties ("the Centre").
3. For clarity, whilst I understand from the occupier Optalis that the Windsor Day Centre was in fact providing until November 2021 facilities for older people rather than people with disabilities and learning difficulties as set out in the application, I have taken the decision to proceed with this application in this instance on the basis that that in my opinion there has been a community use of the Centre in the recent past and that this building is complicated by the adjoining Oakbridge Centre which is used for such purposes and linked to this Centre. I have taken this assessment based on the facts of this specific situation at hand.
4. I am firstly required to consider whether the community nomination is valid. I note that the nomination is submitted by the Windsor Muslim Association which is a charity registered with the Charity Commission under registered number 1143769. I am therefore satisfied that the requirements of regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012 ("the Regulations") have been met.
5. Moving to the appropriate statutory conditions to be satisfied before land may be listed as an asset of community value, those contained in section 88(1) of the Localism Act 2011 ("the Act"). Three categories of land are excluded from the operation of the listing regime in accordance with Schedule 1 to the Regulations namely residences, caravan sites and land held by a statutory undertaking for its operation. I am satisfied that the land in question is not residential land and therefore does not fall within any of the excluded categories
7. The freehold title of the nominated Land is BK5981 being land on the East side of Imperial Road, Windsor, and this whole title covers the Oakbridge Day Centre, Windsor Day Centre and Oakfield First School/Lawns Nursery.
8. In accordance with Regulation 8 of the Regulations, I have contacted those listed as the registered proprietors and the lawful occupant of the nominated land by email on 6 July 2023.
9. The freehold owner of the Centre is The Royal Borough of Windsor and Maidenhead (the "Council"), and the site is currently occupied by Optalis Limited under a lease dated 30 March 2017 for ten years from that date until 31 March 2027. I understand that the nominated land is situated in an unparished area of the Borough and thus the requirement to notify the relevant parish council did not arise.
10. In returning comments, the Council's Property Department commented that as with the recent nomination of the adjoining Oakbridge Centre they did not object to the listing and Optalis confirmed that the Centre was in use by them until November 2021 but that there has been consideration of future possible uses for the nominated land although in the early stages.

11. This decision is made, therefore, on the basis of the information provided by the nominator as set out in the nomination form annexed to this report with consideration of the comments raised by Optalis and the Council in their response to the nomination.

12. Section 88(1) of the Act provides that for a building or land in a local authority's area to be registerable as of community value the authority must be of the opinion that: (a) An actual current use of the building or other land that is not 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. In the context of this application, as noted above it is also relevant to consider that use can include the "recent past" which in my opinion, given the facts in this case, I have decided recent past to include 2021.

13. Section 88(6) of the Act provides that "social interests include (in particular) each of the following- (a) cultural interests, recreational interests, sporting interests"

14. In considering whether there is actual current use of the land which is non-ancillary and which furthers the social wellbeing or social interests of the local community (section 88(1)(a) of the Act), the test is applied on a case-by-case basis to the facts of each nomination.

15. It is clear from the information before me that the land has been used by the community as a day centre for older people in what I consider to be the "recent past" (such definition which the Department of Levelling Up, Housing and Communities leaves for individual Local Authorities to decide on a case by case basis and is not set out as a set term in the Act or Regulations) so I am satisfied that the evidence provided to me demonstrates that the land has been used for the social wellbeing and interests of the local community and thus the test set out in section 88(1)(a) of the Act is met and that such is the main use and not ancillary to the use of the nominated property.

16. The second part of the test to be satisfied in section 88(1)(b) of the Act is that the authority must be of the opinion that it is realistic to think that there can continue to be a use (whether the current use or a different use) which will further the social wellbeing or social interests of the local community.

17. I am mindful that this part of the test requires a determination of the realistic possible uses of the land going forward which furthers the social wellbeing or social interests of the local community and which is not an ancillary use. If there is such a possibility, that future use will suffice for registration. I am also mindful that that possibility need not be the probable outcome and that it is enough that it is one of a number of possibilities.

18. In reviewing the requirements of 88(1)(b) of the Act Optalis have mentioned that there is a possible future intention to build supported living at the nominated land and I can see there was an extensive consultation as to the future of the building put forward to the Council's Cabinet in November 2021. However, these references to my mind do not wholly outweigh the possibility that it is realistic overall to think that the Centre could continue to be used for some future social wellbeing or social interest in the local community still other than as its current use under the requirements of s88 of the Act in respect of assessing a nomination for the land to be added to the Council's register of assets of community value.

19. Having regard to the evidence provided in support of the nomination therefore, I find that the actual use of the nominated land is not an ancillary use and that it furthered the social wellbeing or social interests of the local community. I also conclude that it is realistic to think that there can continue to be non-ancillary use of the land which will further the social wellbeing or social interests

of the local community and thus according to the requirements of the Act the land should be added to the Council's register of assets of community value.

Dated: 17 August 2023

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