

Decision Maker: Claire Upton-Brown - Assistant Director of City Development

Date of decision: April 2017

Subject: Nomination for the Cricket Pitch at St James Hospital, to be placed of the Register of Assets of Community Value

Report by: Phil Dodshon - Principal Planning Officer Culture and City Development

Wards affected: Milton Ward

Key decision: No

Full Executive decision: No

1. Purpose of report

- 1.1 The Council received an Asset of Community Value (ACV) nomination (Nomination) in relation to cricket pitch land at the St James Hospital, Milton (the Nomination Land), from the Portsmouth & Southsea Cricket Club (PSCC). The nomination was received on the Friday 3rd March 2017. The nomination form, delineating the Nomination Land, is at Appendix B.
- 1.2 The purpose of this report is to make a recommendation to the Assistant Director of City Development in respect of the determination of the nomination of the Eldon Arms as land of community value, that is, land:
- a) Where an actual use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community (either at the time of the application or at a time within the recent past); and,
 - b) It is realistic to think that the use can continue (or that there is a time within the next five years that it would so resume).
- 1.3 The Council adopted a *Policy for Defining Social Interests/ Well-being* for determining ACV nominations on 4 February 2013. This policy is attached at Appendix A.

2. Recommendations

- 2.1 **The Assistant Director is recommended to ACCEPT the Nomination on the grounds that the cricket pitch furthers the social well-being or social**

interests of the local community, and is a recreational and sporting facility, essential to the special character of the local area as a place to meet and socialise.

3 Background

- 3.1 The Nomination was submitted by the Portsmouth and Southsea Cricket Club (the Cricket Club), an organisation that meets the eligibility requirement, in being an unincorporated body comprised of 21 members (all of whom live in the city), and which does not distribute any surpluses to its members. Further, the Nomination has been verified as complete.
- 3.2 The Cricket Club was founded in 1953, and the Nomination Land has been used as a cricket pitch since 1987.
- 3.3 This is the second nomination for the Cricket Pitch, the first having been received on the 24th November 2016. Extra information was requested on the 1st February 2017 and was returned on the 20th, the deadline for determination was reset to a further eight weeks, in line with legislation.
- 3.4 The original nomination area included a building known as the Country Cottage, the Cricket Club had the use of (as stated in a letter issued on behalf of NHS Property Services Ltd (NHS)) on an 'infrequent' and 'ad hoc' basis. The NHS said after the first Nomination came to us that this arrangement *'has recently ceased and there is no intention of formalising an agreement'*. They had also said: *'PSCC have no legal right to expect to continue access to Building 3'* (the Country Cottage).
- 3.5 Accordingly, the Cricket Club withdrew their first Nomination and submitted a new one excluding the Country Cottage.

4 Summary of the owners' comments

- 4.1 Montagu Evans LLP provided a response on behalf of the NHS in a letter received on the 27th March 2017, objecting to the Nomination. The letter in full is at Appendix C. They state that the Nomination should be refused because:

The Property forms an island in the middle of the site, accessed off private roads, with shared utility provision within the wider hospital site

- 4.3 They argue that the Cricket Club could not realistically acquire the site as its value is:

'Significantly in excess of the value assumed by PSCC [the Cricket Club] and it cannot easily be isolated from the rest of the St James' Hospital Site'. Anyone that wanted to acquire the Property may need to acquire the rest of the

development at the same time or compensate our client for the resulting inability to ring forward a comprehensive redevelopment of the St James and Langstone Area'.

4.4 In relation to the funding, they state:

. . . in terms of ongoing funding and an ability to acquire the Property, PSCC's proposals are entirely speculative and far from reaching the realism which is required for section 88(2) of the Localism Act 2011.¹

5 Summary of resident's comments

5.1 Six site notices for the first nomination were placed around the Nomination Land seeking a response by the 17th February. There was only one Email received in support of the Nomination until the Milton Neighbourhood Forum put it on social media. The Council then received 25 responses.

5.2 The bulk of the responses share a common view:

Portsmouth & Southsea . . . has a great reputation. It has a wonderful location. It has a real community feel that others don't have

As the boys don't have any grassy outdoor space at school, maintaining St James' as a cricket pitch is vital to them - as soon as the outdoor season takes hold, they will be up there wanting to practice

There are so few accessible places for our children to get involved in sport, either due to cost or due to sports clubs being non inclusive of all children/abilities.

There are no 'soft' areas in the Victorian school sites for children's play so access to this ground is a vital resource for more than just the club. The club assists us at our free-to-enter Picnic on the Green which has been held in the grounds of St James for 14 years.

This cricket field has been part of the local Milton community for many years and should be kept as such. It also has great value to local schools when they hold their sports day there.

The cricket pitch is in a densely populated city where open green spaces are at a premium and with the gradual nibbling away of these green spaces being given over to yet more housing, it is an essential area for both people and wild life.

¹ Localism Act 2011, s88(2)(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.*

Sport England are very anxious that Local Authorities encourage participation in all sports and particularly by the young. It should be a use consistent with the values of the NHS.

- 5.3 For the Nomination six A4 site notices were placed around the Cricket Pitch asking for a community response by the 26th March. Milton Neighbourhood Forum was notified that this was technically a new nomination, excluding the Country Cottage. However we stressed that previous respondents need not contact us again and that their earlier views would be taken into account.
- 5.4 5 responses were received supporting the Nomination. Extracts from them said:

It is an integral part of the area, giving a real village feel to the area

The St James ground has always been one of the stand out grounds in the SE Hants area, and visiting teams often comment on both the picturesque and quiet nature of the ground as well as the extremely well prepared pitch.

Portsmouth and Southsea are an amazing club with great members and community feeling

It is clear from their application that they are an established organisation that provide a place to meet and socialise and a recreational and sporting facility

The cricket field is a green oasis in an otherwise densely populated area and the cricket club have been a fantastic partner in giving children the chance to play sport

6 Consideration of the social interest and social wellbeing

- 6.1 The test is formulated in the Localism Act of 2011, which states that:

88 Land of community value

(1) For the purposes of this Chapter but subject to regulations under subsection (3), 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

- 6.2 Social interests in the Localism Act in Para 88(6) are defined as:

(a) cultural interests, (b) recreational interests and (c) sporting interests.

- 6.3 Appendix A to this report is the *Policy for Defining Social Interests*.

6.4 The Cricket Pitch is a place for recreational and sporting interests. It has also been used for other purposes. The Cricket Club have told us that aside from their own use (40 adult and 50 junior members) the following have used or make use of the Cricket Ground:

We have had Mayville High School, Meon Infants, Meon Junior, Mary Rose School and Copnor Junior School all use the ground over time. Whether for sports days, social events or cricket specific activities we have always been pleased to assist.

The British Heart Foundation have staged charity matches on the ground. Last year a fun day was held by a community group supporting Andrew 'Pepe' Bache (the Pompey fan grievously injured by Russian Fans at the World Cup). The Portsmouth Caribbean Association have held an annual event at the ground for many years.

For a number of years Solent Healthcare held a Summer Fete on the ground and the Club happily relocated matches to accommodate them. Although not in the immediate past, local hockey sides have overwintered on the ground and for a season or two Milton Football Club used the ground as a base. Over the years the ground and pavilions have been used for numerous family fun days, private parties and work events (Zurich Insurance regularly use the ground).

With cricket being the Club's main focus they have linked the sport to the wider community. For example, summer 2016 saw Hampshire County Cricket Club professionals bring a Roadshow to St James'. In addition to all members of cricket clubs across the city and the schools mentioned earlier, the Club invited and entertained pupils from Milton Cross, Priory, Admiral Lord Nelson, Mayfield, St Johns College, Portsmouth Grammar, Craneswater and Wimborne Schools.

The coming summer will see the Club offer a new ECB initiative - "Allstars Cricket" for 5-8 year olds. The program consisting of 8 weekly sessions will offer young players a grounding in fundamental movement and balls skills that can be transferred to many sports and is designed to encourage and support entire family development.

7 Purchase of the Asset

7.1 The Act does allow a moratorium period during which a sale cannot complete, and during which a community body may bid to acquire the Asset. While the Policy encourages a consideration of whether the continued or resumed use is commercially viable, and at this stage we do not know whether the Cricket Club could raise the funding, it is considered that a business case, or evidence of available funding is not needed at this time given the uncertainty around when the asset may be sold.

7.2 The Act also asks us to assess:

88 2(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.

7.3 The Cricket Pitch is located on land that is not registered as a town or village green but is protected as open space by Policy PCS13 in the current Portsmouth Plan. It is therefore unlikely that the site could be redeveloped, although it could possibly change use to another sporting facility. However as the Cricket Club has been in existence for over sixty years and located at St James' for thirty it seems well established and likely to continue.

7.4 We note that this part of the Section 88(2) of the Localism Act 2011 is one of the key objections lodged by the NHS, asserting that the Cricket Club would not be able to afford the land or would have to purchase all of the surrounding site. This is not an argument the Council can accept given the uncertainty over future land values, and wider land ownership. It should not defeat this application.

8 Consideration of the Portsmouth City Council Policies for defining social interests / wellbeing

8.1 The Portsmouth City Council Policy for defining social interests / well-being states the following criteria will be assessed:

The extent to which the approval of the nominated site would enhance the social interests and social wellbeing of the local community because in its absence the local community would be deprived of land or a building that is essential to the special character of the local area

8.2 Although a private Cricket Club they have demonstrated in Para 6.3 that they allow local schools and other members of the community and organisations to make use of the pitch, including the NHS itself.

8.3 As protected open space in a heavily urbanised city it is essential to the special character of the local area. The open quality of the land also enhances the views and setting of the Grade II listed building to the north of it and complements the open space of St James Green on the opposite side of The Driveway.

8.4 It is noted that the NHS in their response have stated:

Buildings 1 and 2 and the other land at the Property are used by PSCC in connection with their primary activity as a cricket club and such use could be defined as a "social interest" in the terms of section 88(6) of the Act.

- 8.5 It is a recreational and sporting facility and to a lesser extent as part of its sporting role it is a place to meet and socialise.

The definition of the extent of the local community will depend on the nature of the use and each case will be considered on its merits, with particular reference to the character and heritage of the local area, its community cohesion and its sense of belonging.

- 8.6 The Cricket Club use this pitch and that continued use is in part made more likely by the lack of alternative locations. Concomitantly, local schools depend on the Cricket Pitch as they have no facilities themselves, and other community groups also depend on it for other uses. The Nomination Land, therefore, promotes community cohesion and there is a sense of something that belongs in the area. It also complements the heritage building of St James'.

9 Conclusion

- 9.1 It is important to carefully consider the NHS response as landowner as part of our conclusions. Their earlier summarised comments are repeated below and followed by the Council response to the main thrust of their argument against the Nomination:

- 9.2 **The Property forms an island in the middle of the site, accessed off private roads, with shared utility provision within the wider hospital site**

This does not seem to be a relevant issue; it has not been a problem in the last thirty years for the Cricket Club and its visitors and is not a reason to refuse the Nomination. It also needs to be noted that the hospital site adjacent to the cricket pitch is likely to be redeveloped as a residential area and will not be an operational NHS facility.

- 9.3 **They believe PSCC could not realistically acquire the site as its value is 'significantly in excess of the value assumed by PSCC and it cannot easily be isolated from the rest of the St James' Hospital Site'.**

The Cricket Pitch does not have to be isolated from the rest of the St James' Hospital Site to be an Asset of Community Value. Its financial value is that of a Cricket Pitch and previous work carried out by the City Council leads us to believe the Cricket Club could afford it if it was for sale. It is assumed from this statement that the NHS has an inflated perception of the value of the site, possibly based on hope value for housing. In any event, the Council should not give much weight to speculation as to the purchasing power of a community body (which may include entities other than the Cricket Club) or as to land values, or the possible permutations of land ownership which may obtain at the time of the moratorium.

- 9.4 **Anyone that wanted to acquire the Property may need to acquire the rest of the development at the same time or compensate our client for the resulting inability**

to ring forward a comprehensive redevelopment of the St James and Langstone Area'.

This assumes the Cricket Pitch if placed on the register as an Asset of Community Value would somehow prevent the comprehensive redevelopment of the wider area. This is not the case, and as the land is protected open space it would not as an Asset of Community Value in any way affect the redevelopment going on around it. In any event, it is not relevant to the test.

9.5 . . . in terms of ongoing funding and an ability to acquire the Property, PSCC's proposals are entirely speculative and far from reaching the realism which is required for section 88(2) of the Localism Act 2011.

Section 88(2) does not ask for an assessment of the value of the Asset and whether it can be purchased, it asks if the land or building furthers the social wellbeing or social interests of the local community. That is what the Council must assess.

9.6 In summary the Cricket Pitch is a piece of land that is essential to the special character of the local area, provides a place to meet and socialise and furthers the social wellbeing and social interests of the local community. It is essential for local schools and something the community use and depend upon. It also seems commercially viable and is likely to be used and appreciated by the new residents of the St James' redevelopment.

9.7 Given how well it fits the definition for an Asset of Community Value as set out in the Localism Act and the Portsmouth City Council Policy there seems no reason not to support the Nomination and place the Cricket Pitch on the Register of Assets of Community Value.

11 Legal comments

11.1 Legal comments are incorporated into the body of this report.

The recommendation(s) set out above were approved/approved as amended/deferred/rejected by

Signed by:

Assistant Director of Culture and City Development

Appendix A - Policy for defining social interests / wellbeing

When assessing nominations for inclusion on the Register of Assets of Community Value the City Council will have regard to the following criteria:-

1. The extent to which the approval of the nominated site would enhance the social interests and social wellbeing of the local community because in its absence the local community would be deprived of land or a building that is essential to the special character of the local area, and provides:
 - i. a place to meet and socialise, or
 - ii. a place to shop, or
 - iii. a recreational, sporting or cultural facility.
2. The definition of the extent of the local community will depend on the nature of the use and each case will be considered on its merits, with particular reference to the character and heritage of the local area, its community cohesion and its sense of belonging.
3. The City Council will have regard to the realistic prospect of the continued or resumed use of the asset within the next five years, and in particular and where it is a matter relevant to that use, the commercial viability of the proposal (including the ability to raise funds) and the sustainability of that use.

Appendix B - The Nomination

List of Assets of Community Value Nomination Form

| | |
|---|---|
| 1A. Details of the voluntary or community body | |
| Organisation name: Portsmouth & Southsea Cricket Club | Organisation address: St James' Cricket Ground St James' Hospital Locksway Road, Milton, P04 8LD |
| Lead contact person name: Sean Kanavan | Contact email address: s.kanavan@sky.com |
| Contact person telephone number: 07890 323072 | Contact person address: 45 Locarno Road, Copnor, P03 5DG |
| Date of formation of organisation: 1953 | Place of formation of organisation: Portsmouth |
| <p>Please tick a box below to confirm the type of voluntary or community body you are:</p> <p><input type="checkbox"/> An unincorporated body whose members include at least 21 individuals, and which does not distribute any surplus it makes to its members</p> | |
| <p>1 b Further Details</p> <p>Please provide a full description of the applicant body, setting out name, address, lists of members (where an unincorporated body), confirmation that (where an unincorporated body, company or industrial provident society) the body does not distribute any surpluses: Portsmouth & Southsea Cricket Club is a sports club, established in 1953 under the name Portsmouth Enterprise Cricket Club, based since 1987 at St James Cricket Ground, Locksway Road, Milton, Portsmouth, P04 8LD. Current membership includes circa 55 adult and 50 junior members. (21 of the adult membership are listed on attached list). A full membership listing can be provided if required.</p> <p>The 2017 season will see our membership numbers increase from 40 adult playing members to around the 55 quoted above as Southsea Superkings (a nomadic community cricket club) are joining us this year.</p> <p>Members subscriptions, fund raising and match fees fund ground maintenance, playing affiliations, pitch and training venue hire. Our constitution does not allow for surpluses to be distributed. The club is not for profit with any surplus generated allowing an adjustment in the following years subscriptions or providing an improvement in facilities.</p> | |

1c Local Connection

Please explain how your organisation meets the requirements for "local connection". For the definition of a "local connection" please see paragraph 5.5 of the city council's guidance:

All members come from within the "PO" postcode area with the vast majority living on Portsea Island.

2. Description of property/land nominated

(a) A description of the property, the proposed boundaries and its current use. Please attach a site plan:

Long designated a cricket ground the property sits to the South West of the main reception to St James' Hospital. It is bounded by "The Driveway" to the East and "Solent Drive" to the West. Access is from the South via Locksway Road.

There are two buildings on the property that forms the Clubs current lease.

- 1) A temporary, albeit long established, prefabricated changing facility/club room.
- 2) A garage/ground equipment store (both built and maintained by Portsmouth & Southsea Cricket Club).

(b) The name(s) of the current occupants/users of the property (if known):

The playing facilities & buildings 1 & 2 are occupied by Portsmouth & Southsea Cricket Club. The lease runs until 22/03/2030 (next break 22/3/2020)

(c) The name(s) and current or last known addresses of all owners, i.e. those holding a freehold or leasehold in the property (if known):

Owners Portsmouth City Teaching Primary Care Trust of St James' Hospital,
Locksway Road, Portsmouth, P04 8LD

Tenants - Trustees of Portsmouth & Southsea Cricket Club, c/o 45 Locarno Road, Copnor,
P03 5DG

3. Statement of reasons

Please provide a statement of your reasons as to why the city council should conclude that the property is an asset of community value, providing as much information as you can to support your application.

For more information on this section please paragraphs 6.1, 6.2 and 6.3 of the City Council's guidance.

- (a) Please state your reasons as to why the current use of the property, or its use in the recent past, furthers the social wellbeing or social interests of the local community (social interests means cultural, recreational or sporting interests):

As one of very few independently managed cricket grounds in Portsmouth its use for cricket relieves pressure on PCC managed and maintained grounds aiding both Portsmouth & Southsea Cricket Club and other local clubs. Further, its independent nature allows a junior (Colts) section to be run, offering social and health benefit opportunities for new entrants to the sport

The club also support local schools by way of coaching and use of the ground for both cricket and other sports. We have had Mayville High, Mean Infant, Mean Junior, Mary Rose and Copnor Junior schools all use the ground over time. Whether for sports days, social events or cricket specific activities the Club has been pleased to assist.

In reaching out to the wider community the club has opened the ground to various groups. Most recent examples include staging charity matches for the British Heart Foundation and seeing a fun day held by a community group supporting Andrew 'Pep' Bache (the Portsmouth fan grievously injured at the Football World Cup). The Portsmouth Caribbean Association have held an annual event at the ground for many years. For a number of year Solent Healthcare held a Summer Fete on the ground and the Club happily relocated matches to accommodate them. Although not in the immediate past, local hockey sides have overwintered on the ground and for a season or two Meon Milton Football Club used the ground as a base. Over the years the ground and pavilions have been used for family fun days, private parties and works events (Zurich insurance regularly use the ground).

With cricket being the Club's main focus they have linked the sport to the wider community. For example, summer 2016 saw Hampshire County Cricket Club professionals bring a Roadshow to StJames'. In addition to all members of cricket clubs across the city and the schools mentioned earlier, the Club invited and entertained pupils from Milton Cross, Priory, Admiral Lord Nelson, Mayfield, St Johns College, Portsmouth Grammar, Craneswater and Wimborne schools.

The coming summer will see the Club offer a new ECB initiative - "Allstars Cricket" for 5-8 year olds. The program consisting of 8 weekly sessions will offer young players a grounding in fundamental movement and balls skills that can be transferred to many sports and is designed to encourage and support entire family involvement.

Without the ground Portsmouth & Southsea Cricket Club would be highly likely to fold as the attraction of playing for a club with a permanent base is strong. Playing at the level the club does requires it to meet particular benchmarks in pitch, outfield, changing and amenity facilities. This will be very difficult to provide without having control of pitch management. If the club were to fold undoubtedly some members would find alternative clubs (locally and further afield) but many would be likely to give up the sport. The loss of the colts section of the club would leave a considerable void in opportunities and facilities for cricket particularly for state educated Portsmouth children. Further, local opportunities for initiatives such as "Allstars" will be greatly reduced.

While our long term plan has been to build a fit for purpose "pavilion" to replace or augment the current prefabricated changing/club room building, the current uncertainty over our tenure at the ground is likely to preclude us from attracting funding to undertake any significant project. In the past we have enjoyed a number of small grants but even these will become more difficult to secure as any works will be undertaken in and around a temporary structure with an uncertain future. Any required maintenance and subsequent improvements are likely to be funded by the membership as has often been the case over the clubs history.

(b) Nominees must demonstrate that the continued (or the resumption of the) social wellbeing use, or social interests use (either current, or in the recent past), is realistic. Accordingly, where it is appropriate to the viability of that use, applicants must include a business plan projecting market demand, any necessary investment and expenditure (where appropriate), together with any information which would be a prerequisite for the use of the asset to be maintained or resumed. Although proof of purchase-funding of the asset is not necessarily required at this stage, nominees should outline how such a purchase may be financed:

Portsmouth & Southsea Cricket Club currently manages the playing facilities and temporary buildings. Subscriptions, match fees and fund raising provide income of between £16,000 and £20,000 which allows for maintenance and improvements. Should the ground become the Club's, the overheads would be unlikely to increase substantially. The existing track record supports the view that the Club could realistically continue to fund the ongoing activities as owners of the ground. Accounts are enclosed which demonstrate this point.

While some years show a surplus of payments over receipts this is simply due to the timeframes in which funds have been booked. The club has always worked with a surplus in the bank and undertakes projects only when cash is available.

Any additional cost and business planning for planning, building and managing a permanent replacement club room facility and any connected venture such as lettings and or instituting, running and managing a bar could be undertaken by appropriate club members. Within our membership we have access to licenced publican's and other professional support including lawyers, accountants, lenders and property professionals.

While not currently a necessity or part of any formal future plans, in the longer term



the potential to replace our current changing and club room building with a permanent, fit for purpose structure could provide the opportunity for lettings and potentially adding a bar would add further income to increase viability.

Any purchase would be funded by gifts or loans from members, specific fund raising and/or a loan or grant from Sport England/England & Wales Cricket Board or other likeminded bodies. In the knowledge that securing long term access to playing facilities is a key focus for these national bodies, we have had positive preliminary discussions with the Hampshire Cricket Board about the feasibility of accessing such assistance.

I confirm that this application form has been fully completed and that the information is, to the best of my knowledge, accurate to enable the Council to consider the nomination in accordance with the provisions contained in the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

Sean Kanavan
Date 3/3/17



Appendix C - the NHS Response in full

CHARTERED SURVEYORS
5 Bolton Street
London W1J 8BA
Tel: 020 7493 4002
www.montagu-evans.co.uk

24 March 2017
Assets of Community Value
Planning Services, Portsmouth City Council
Civic Offices, Guildhall Square
Portsmouth, Hampshire, P01 2AU

For the attention of Mr Phil Dodshon
By email and by post
planningpolicy@portsmouthcc.gov.uk

Dear Sirs,

Nomination to Register an Asset of Community Value Portsmouth & Southsea Cricket Club, St James' Hospital Locksway Road, Southsea, P04 8LD

1. Introduction

We write on behalf of our client, NHS Property Services Ltd, the owner of the land at Portsmouth and Southsea Cricket Club (the "Property"). We write further to our previous representations (18th January 2017) and your letter dated 6 March 2017 informing our client that Portsmouth City Council (the "Council") has received a new nomination to register the Property as an asset of community value ("ACV") under the Localism Act 2011.

2. Background

On 3 March 2017, Mr Sean Kanavan made a "community nomination" on behalf of an organisation known as Portsmouth & Southsea Cricket Club ("PSCC") which seeks the inclusion on the Council's ACV list of "Portsmouth & Southsea Cricket Club". The applicant did not contact the owner of the site before making the nomination. The applicant has previously submitted and withdrawn a community nomination which included the Property.

The Property as put forward for nomination comprises the following land and buildings:

- the Cricket Pitch including the pitch itself and the following two buildings as described in the nomination request:
 1. A temporary, prefabricated changing facility/club room (Building 1); and
 2. A garage/ground equipment store (Building 2).

The Property is owned by our client and leased to the Trustees of PSCC. The Property is located within the St James' Hospital site and cannot be accessed from the public highway without crossing private land that is in the ownership of our client.

3. The Owner's Intentions for the Property

As set out above, the Property cannot be accessed from the public highway and access to the Property is over private roads. Utility provision is shared with the wider hospital site.

The Council is aware of proposals in relation to the rationalisation and regeneration of the wider St James' Hospital site.

The Property sits in a prominent location in the middle of the site and is on the main access road. Accordingly it forms an important element of the scheme and its use, appearance and accessibility is an important part of the emerging development proposals. It is important to note that the overarching aim of the redevelopment is to improve healthcare facilities elsewhere in the area and that those improvements will be facilitated at least in part by the redevelopment.

4. Legal Background

The Localism Act 2011 (the "Act") provides at section 88 that a building or other land in a local authority's area may be of community value if, in the opinion of the relevant authority, either:

- a non-ancillary, actual and current use of the building or other land 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 which will further (whether or not in the same way) the social wellbeing or social interests of the local community (section 88(1) of the Act); or
- there is a time in the recent past when the 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 that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community (section 88(2) of the Act).

Section 90 of the Act provides that, on receiving a community nomination, the relevant authority must consider the nomination and accept the nomination if the building or other land nominated is in the authority's area and is of community value (i.e. meets the tests in section 88 of the Act).

5. Reasons that the Property should not be registered as an ACV

The relevant questions that the Council must consider are those set out in section 88(1) of the Act:

- does the actual current use of the building or other land that is not an ancillary use further the social wellbeing or social interests of the local community, and
- is it 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?

Buildings 1 and 2 and the other land at the Property are used by PSCC in connection with their primary activity as a cricket club and such use could be defined as a "social interest" in the terms of section 88(6) of the Act.

However as you are aware, the Property forms an integral part of the wider redevelopment proposals for St James' Hospital. The Property forms an island in the middle of the site and is accessed off private roads and there is no realistic prospect that the Property as put forward for nomination would be disposed of as a standalone site.

We acknowledge that the Property is identified as being located within an area of Open Space on the adopted Local Plan proposals map, however its presence within the main development site, together with its prominent location on the principal access point to the Hospital site, means that the Property is a critical component in the future delivery of a wider masterplan.

The value of the Property is considered to be significantly in excess of the value assumed by PSCC and it cannot easily be isolated from the rest of the St James' Hospital site. Anyone that wanted to acquire the Property may need to acquire the rest of the development site at the same time or compensate our client for the resulting inability to bring forward a comprehensive redevelopment of the St James and Langstone area.

Accordingly the test required by section 88(1) in relation to the nominated land and buildings that comprise the Property is not met.

Furthermore, the Property does not meet the second relevant test to be an ACV that the Council is required to consider under section 88(2) of the Act:

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

For the reasons explained above it is not realistic to think that there is a time in the next five years when there would be a non-ancillary use of the Property that would further the social wellbeing or social interests of the local community. The Property forms an island in the middle of the site, accessed off private roads, with shared utility provision with the wider hospital site. There is also no realistic prospect that the Property as put forward for nomination would be disposed of as a standalone site.

Accordingly the test required by section 88(2) in relation to all the nominated land and buildings that comprise the Property is not met.

6. Representations in Respect of the ACV Nomination

We do not consider that PSCC's nomination provides a convincing or certain case about the likely funding needed to acquire the Property. We have not been provided with any financial information or a business case.

The nomination form provides nothing more than a general indication of PSCC's ability to raise funding. No information is provided on the likely sum needed to acquire the Property or the amount needed to fund PSCC's plans. No detail is provided about the plan for raising money, other than in

vague and general terms. Nor is any indication given about how long it would take to raise funds. In our opinion the information is too speculative to be given material weight.

In the nomination form PSCC state that any purchase would be funded by loans from members, specific fundraising and / or a loan from Sport England / the England & Wales Cricket Board or other likeminded bodies. Unless there is substantive evidence being put forward to the Council that these bodies back the purchase of the entirety of the Property and potentially the wider site, the extent of the proposals are entirely speculative and far from reaching the realism which is required for section 88(2) of the Localism Act 2011.

First Tier Tribunal ACV decisions emphasise that what is "realistic" may admit a number of possibilities, none of which needs to be the most likely outcome. However, to quote Judge Lane, "*it should not be assumed that the requirement of section 88(2)(b) will necessarily be met, merely by a Micawber-like hope that something will turn up*" (CR/2014/0015).

Any group seeking to successfully list this asset must present sufficient evidence to satisfy the Council that a future community use is at least a realistic possibility. No such information that we are aware of has been submitted to indicate that PSCC, or any other organisation, might be in a position to make a bid for the Property with a realistic prospect of success. This weighs heavily against the nomination.

7. Conclusion

In the context of the Localism Act 2011, the site fails to meet the definition of 'land of community value' where there is no realistic prospect that the Property as put forward for nomination would be disposed of as a standalone site.

The Property forms an island in the middle of the site, accessed off private roads, with shared utility provision with the wider hospital site.

Further in terms of ongoing funding and an ability to acquire the Property, PSCC's proposals are entirely speculative and far from reaching the realism which is required for section 88(2) of the Localism Act 2011.

The tests are therefore not met in relation to the nominated land and buildings.

The Council should not list the Property as an ACV.

Please direct all correspondence on this matter to Sam Dalzell of this office.

Yours faithfully,
Montagu Evans LLP