

Allenstyle Orchard – nomination as an Asset of Community Value (ACV)

Note: References to the “Act” are to the Localism Act 2011.

References to the “Regulations” are to the Assets of Community Value (England) Regulations 2012.

On 17 January 2025 a nomination was received under the provisions of the Regulations to list Allenstyle Orchard, land east of Allenstyle Way, Yelland, as a community asset. The nomination was in the name of Fremington Parish Council.

Conclusion:	Based on the available evidence Allenstyle Orchard will be added to North Devon Council’s list of Assets of Community Value.
--------------------	---

Consideration 1: Has the nomination been made by an appropriate body?

89(2)(b)(i) of the Act provides for a parish council in respect of land in England in the parish council’s area to nominate land in a Local Authority’s area; this is expanded upon in regulation 5 (g) of the Regulations.

This criteria is therefore met.

Consideration 2: Is the nomination complete, including the necessary matters specified in paragraph 6 of the Regulations?

Paragraph 6 requires a description of the nominated land, information on the owners and occupiers, reasons for believing there is a community value, and evidence that nominator is eligible. When submitted, the nomination submitted by the Parish Council had the constitution of the Allenstyle Orchard group but not their own and no minutes of the Parish Council meeting, where the decision was taken to make the nomination, so this information was requested from the Parish Council. Following the receipt of this evidence in support of the nomination, the nomination was valid from that date which was 22 January 2025.

This criteria is therefore met.

Consideration 3: Does Allenstyle Orchard, Yelland qualify as being of “community value”?

Section 88(1) of the Act, specifies that land is 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 community; and

(b) it is realistic to think that there can continue to be” such use

Section 88(6) of the Act, defines “social interests” as including (a) cultural, (b) recreational and (c) sporting interests. There is no definition of social wellbeing or any definition that limits the breadth of the meaning of social interests. There is also no definition of what constitutes the “local community” but various appeals have given some guidance.

It has been left to local authorities to determine this in the light of local circumstances. In the case of North Devon, the adopted policy states that:-

“A property that enhances the social interest and social wellbeing of the local community is one that in its absence would deprive the local community of a building or property which is essential to the special character of the local area and provides a place to meet and socialise; place to shop; recreational sporting or cultural facility; or a place used to provide a community service.”

Background

Following the receipt of the nomination, an email was sent to the Ward Members and Fremington Parish Council, and a letter sent to the owners of the land in accordance with the information provided on the nomination form. These requested any comments to be made prior to the 19 March 2025. On 23 January 2025, a response was received from Fremington Ward member Councillor Biederman advising that he was in full support of the application to list Allenstyle Orchard as an Asset of Community Value.

On 22 January 2025, an email was received from the Legal team at North Devon Council confirming its ownership of the land east of Allenstyle Way, Yelland in this nomination called Allenstyle Orchard. The HM Land Registry title lists there being a public right of way footpath going through the land as well as the land being subject to rights of drainage and rights in respect of water, gas and electricity supply services.

By way of background, the nomination states that site was described as a community space/open area within an existing housing estate. Evidence was provided in the form of a red outline map. The nomination states that the site “was not occupied but looked after by residents of Allenstyle Estates”.

The area of land is located within the village of Yelland which is situated in the Fremington Parish and the district ward of Fremington. Yelland is located between the villages of Instow and Fremington. Yelland has a population of around 2,000. The village of Yelland has no village hall, church or anywhere to hold community events. There are no amenities in the village with the exception of a garage and a small industrial park.

Community Use

Section 88 (2) of the Act goes on to state that even if there is no current community use of the asset as a result of Section 88 (1), for instance because the asset is currently closed, an asset might still be deemed to be of community value if the authority is of the opinion that

“(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 That would further (whether or not in the same way as before) the social wellbeing or social interests of the local community”

The nomination falls to be determined under section 88 (1) and to consider whether the actual current use of the land is non ancillary that furthers the social wellbeing or interests of the local community and it is realistic to think that there can continue to be such use.

The Council does not require evidence in a particular form to be submitted, however evidence of community use has been submitted as part of the nomination.

The nomination describes the asset as “a community space that is used in a number of ways which contribute to the wellbeing of residents of Allenstyle Estates, as well as the more recent development of Sun Houses”.

The nomination describes the asset as being “a space for enjoying the natural world, exercise, dog walking and even provides produce from a mini orchard in the middle of the space”.

With regard to whether it is realistic to think that there can continue to be such use, the nomination states “the orchard area was planted in the early 21st century and enhanced in 2021 by Allenstyle Gardeners with new supports and mulch materials supplied by the Parish Council. A wildflower meadow was set up in 2022 again by the Allenstyle Gardeners group supported by the Parish council and advised by RHS. It is used daily by a number of dog walkers from the estate and informed paths have developed. The area has been used by the community since the estate was built in the 1950’s”.

Considering these points in relation to the future and whether the requirements of section 88(2)(b) are met; it is established case law that whether something is realistic does not mean that it must be more likely than not to happen. A use may be “realistic”, even though it is one of a number of possibilities. No possibility needs to be the most likely outcome. Here the evidence provided indicates a level of community intent. There is no evidence to suggest that the community interest in this site is likely to diminish. Accordingly it would appear “realistic” that the land will continue in its present use on terms to be agreed.

Cultural interests

The nomination also includes reference to the orchard being “a place for meeting and talking and proved especially important during the Covid-19 lockdown”.

Ancillary Use

To be capable of being listed, the land must have a current community use, or a recent one, which is not an ancillary use. The nomination makes no reference to any other use of the land.

Taking the above evidence into account, my view is that it is not an ancillary use and that the use of Allenstyle Orchard does further the social wellbeing and interests of the local community.

Decision

The Decision is therefore that the Allenstyle Orchard should be added to the list of Community Assets held by the Council.

Simon Fuller
Senior Solicitor and Monitoring Officer
19 March 2025