

CHAPTER 3, PART 5 OF THE LOCALISM ACT 2011
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012

NOMINATION OF BUILDING OR LAND TO BE INCLUDED IN
LIST OF ASSETS OF COMMUNITY VALUE

DELEGATED REPORT

Reference: PR86-033

Case Officer: Darren McBride

Site Address: Wye Methodist Church (including hall, garden and car park), Bridge Street, Wye, Ashford, Kent TN25 5DP

Title Number(s): K962352 (Freehold)

Nominating Body: Wye with Hinxhill Parish Council

Nomination Validated: 12 April 2022

Deadline Date: 14 June 2022

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Introduction

Under the Localism Act 2011 ('the Act'), the Council must maintain a list of buildings or other land in its area that are of community value, known as its 'List of Assets of Community Value.'

There are some categories of assets that are excluded from listing, the principal one being a residential property. There is, however, an exception to this general exclusion where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

Generally, buildings or land are of community value if, in the opinion of the Council:

- 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
- 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 community¹.

Buildings or land may also be of community value if in the opinion of the Council:

¹ Subsection 88(1) of the Act

- 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 social² 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 or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community³.

Buildings or land which are of community value may only be included in the 'List of Assets of Community Value' in response to a community nomination by certain specified bodies such as parish councils or voluntary or community organisations with a local connection.

A valid community nomination must contain certain information, including:

- a description of the nominated building or land including its proposed boundaries
- a statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current last-known addresses of all those holding a freehold or leasehold estate in the land
- the reasons for thinking that the Council should conclude that the building or land is of community value
- evidence that the nominator is eligible to make the community nomination

A valid community nomination must be determined within eight weeks. In this instance, the nomination was validated by the Council on 12 April 2022 and so the deadline for determination was 7 June 2022. However, given the sheer volume of material submitted, competing work commitments etc. the nominating body and the Borough Council agreed in writing to an extension of time until 14 June 2022.

If the Council accepts a valid nomination then it must be included on the 'List of Assets of Community Value.' If the Council does not accept that the asset nominated meets the statutory definition, or if it is one of the excluded categories, then the valid nomination must be placed on a 'List of Assets Nominated Unsuccessfully by Community Nomination.'

Procedure

Information about this community nomination has been sent to the following:

- Wye with Hinxhill Parish Council (nominating body)
- Freehold Owner(s)

² Note: the wording of this condition is different to all of the other conditions in that it refers to furthering 'the social wellbeing or interest of the local community' rather than 'the social wellbeing or *social* interests of the local community'. However, in *St. Gabriel Properties Limited v London Borough of Lewisham and another (2015)*, Judge Warren held that the word 'social' should be read in here (*para. 27*)

³ Subsection 88(2) of the Act

- Occupier(s)
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Portfolio Holder for Community Safety and Wellbeing)
- Cllr k Howard-Smith (Deputy Portfolio Holder for Community Safety and Wellbeing)
- Cllr N Ovenden (Ward Member)

If the Solicitor to the Council & Monitoring Officer includes the asset on the Council's 'List of Assets of Community Value' then the owner has the right to request, within eight weeks from the date when written notice of listing is given, the Chief Executive to review the decision.

If the owner is not satisfied with the outcome of the internal listing review then they have the right to appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

The property will remain listed during the review and appeal processes.

Consequences of Listing

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. If the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Council in writing.

Interim Moratorium

There is then a six week interim period from the point the owner notifies the Council. The Council must then inform the nominating community group who may then make a written request to be treated as a potential bidder. If they do not do so in this period then the owner is free to sell their asset at the end of the six week period.

Full Moratorium

If a community interest group does make a request during this interim period, then a full six month moratorium will operate. The community group does not need to provide any evidence of intention or financial resources to make such a bid.

During this full moratorium period the owner may continue to market the asset and negotiate sales, but they may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.

Protected Period

After the moratorium – either the interim or full period, as appropriate – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the Council of the intention to dispose of the asset).

Compensation

Private owners (not public bodies) may claim compensation for loss and expense incurred through the asset being listed. This may include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First-Tier Tribunal. The assumption is that most claims will arise from a moratorium period being applied; however, the wording of the legislation does allow for claims for loss or expense arising simply as a result of the asset being listed.

The Council is responsible for administering the compensation scheme, including assessing and determining compensation awards.

As with the listing itself, an owner may request an internal review of the Council's compensation decision. If the owner remains unsatisfied then they may appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012 ('the Regs').

The community nomination contains the information required by Regulation 6 of the Regs for it to be considered by the Council.

The community nomination form asked the nominating body to provide their reasons for thinking that the Council should conclude that the building/land is of community value.

Pausing here, it should be noted that this latest nomination is an extensively revised and expanded re-submission of a nomination which was submitted in 2021 ('the 2021 Nomination'). On 17 January 2022, the Borough Council declined the 2021 Nomination and instead included it in its *List of Assets Nominated Unsuccessfully by Community Nomination*.

The 2021 Nomination can be found on the Borough Council's website here (**WARNING: Before opening the link please note that the document size is 24.29MB**):

[Asset of Community Value Nomination Form - Wye Methodist Church \(ashford.gov.uk\)](#)

The January 2022 decision (in relation to the 2021 Nomination) can be found on the Borough Council's website here:

[Microsoft Word - 625033 - Wye Methodist Church \(Asset of Community Value Nomination\)\(Delegated Report\).docx \(ashford.gov.uk\)](#)

The January 2022 decision was not challenged by way of judicial review. Instead, the nominating body has submitted the new revised/expanded nomination ('the 2022 Nomination').

To clarify, the 2022 Nomination is comprised of the new nomination form itself which now runs to 57 pages (303 numbered paragraphs plus an extensive preamble) together with 32 separate appendices (many of which are themselves divided into sub-appendices). The 32 appendices to the 2022 Nomination are a little confusing but appear to be as follows:

- Appendices 1-26 are the same Appendices 1-26 as submitted with the 2021 Nomination form (link above).
- Appendix 27 is the 2021 Nomination form plus, again, its 26 appendices (link above).
- Appendices 28-32 (which follow the 2022 Nomination form in the link below) are all new documents.

The 2022 Nomination form and its Appendices 28-32 can be found on the Borough Council's website here:

[639632-2022-nomination-form-wye-methodist-church.pdf \(ashford.gov.uk\)](https://www.ashford.gov.uk/639632-2022-nomination-form-wye-methodist-church.pdf)

Finally, submitted with the 2022 Nomination (at Appendix 28) is an 'Advice' dated 12 March 2022 provided to the nominating body by Mr Christopher Cant of counsel. For the avoidance of doubt, the nominating body has waived legal advice privilege on this document and so it forms part of the 2022 Nomination and is thus in the public domain.

Moving on, clearly it would be inappropriate to reproduce in this report the entire 2022 Nomination (which now runs to over 500 pages excluding an extensive number of 'hot links' to additional online material). Instead, in order to keep this report as manageable as possible, I will confine myself to the nominating body's lengthy (303 numbered paragraphs plus preamble) written answers to the two questions contained in the 2022 Nomination form⁴. The full 2022 Nomination, including its appendices and 'hot links' can be found on the Borough Council's website using the links above.

In this case, the nominating body has confirmed that the nominated premises are currently closed. Therefore, the questions and answers state as follows⁵:

Q1. If the land/buildings(s) main use in the recent past furthered the social wellbeing or social interests of the local community please confirm that use and explain how it did that (including dates for when this was)...

Please consider this fresh nomination in the following context:

A. Wye with Hinxhill Parish Council (Wye Parish Council) nominated

⁴ To minimise the risk of corrupting this report I have removed the many 'hot links' contained in the nominating body's 2022 Nomination. Those links can instead be found in the 2022 Nomination documentation as published on the Borough Council's website (links above).

⁵ Unless otherwise indicated, all emphases, parentheses etc. are as contained in the original 2022 Nomination form. For the avoidance of doubt, all instances of '*emphasis added*' in [] parentheses are those contained in the original 2022 Nomination form. My only interventions are those in [] parentheses at the nominating body's paragraphs (13), (103), (154), (209), (236), (271) and (282).

Wye Methodist Church (the building) 22nd September 2021. After some delay, the Borough Council validated the nomination form and amended supporting evidence 15th November 2021

APPENDIX 27 ACV nomination validated 15th November 2021 reference number PR86-033/ 00609697) and appendices numbered 1 to 26.

B. As required, the nomination provided detailed reasons that showed why the building is of community value, and how in the recent past it furthered the wellbeing or social interests of the community.

C. The Parish Council also provided comprehensive evidence and third-party letters in support, in appendices numbered 1 to 26. The nomination and appendices extended to 385 pages.

D. The Borough Council decided that *'the nomination fails the test set down in section 88(2)(a) of the Act'* and published its decision and reasons 17th January 2022 in its Delegated Report ref PR86-033.

E. The Borough Council's website states that *'the nominated building /land did not meet the statutory definition.'*

F. The Localism Act 2011 does not provide the nominating body with any right of appeal against the local authority's decision. Therefore, the Parish Council sought Counsel's Opinion. This examined the process followed by the Borough Council, and its general duty to take all relevant matters into consideration.

G. In summary, Counsel concluded that:

a) the Borough Council erred in law on several points;

b) a fresh nomination is a proportionate response.

H. On the basis of Counsel's advice Wye Parish Council makes a fresh nomination, supported by new and updated evidence.

I. The Borough Council's opinion and decision relied on its interpretation of the General Conference of the New Church v Bristol City Council CR/2014/0013 (the New Church case).

J. In so doing the Borough Council ignored the:

a) striking differences in the facts between the New Church case and the nominated building;

b) rider that Judge Lane, who presided over the New Church case, emphasised that "the context is all" (para. 22);

c) facts in the New Church case, specifically that the community use of that church was minimal and declining, differ sharply from

the evidence of thriving community use of the nominated building in Wye;

d) clear evidence to the contrary from Dr Chapman, the Methodist Property Steward of the building, who confirmed its actual use and social value. His annual report in 2016 stated that it *'effectively functioned as a community centre;*'

e) actual community use, which continued until the day of closure. This use was significant in terms of the hours of use per room and the number of community users who participated;

K. Having evaluated the evidence of past use of the building, Counsel found that its community use was significant and concluded that this level of use alone was sufficient to satisfy the statutory condition in section 88(2)(a) of the Localism Act 2011.

L. Counsel also concluded that the ACV regime applies to places of worship and that, as a matter of law and in light of the evidence provided, the building merits listing as an ACV.

M. The Borough Council's decision concluded with the statement that *'in my view, including the nominated premises...could set a precedent for many other places of worship in the Borough.'* This point is extraneous.

N. Personal views about precedence and any conjectural consequences have no bearing on the required tests under the Localism Act. These tests must be applied to the specific facts of each case and the actual use of the nominated building.

O. Furthermore, the Borough Council was selective in its approach to its Public Sector Equality Duty under the Equality Act 2010 (S. 149). Although the Borough Council cited section 4 *'religion or belief'* as a protected characteristic, it then omitted to consider other protected characteristics in the evidence provided.

P. The omission shows that The Borough Council did not have due regard to the needs of all individuals with protected characteristics of disability, and especially those who are also isolated or have other health or socio-economic disadvantages.

Q. The Borough Council ignored the high level of need in Wye, despite evidence provided in the Our Place Wye Logic Model APPENDIX 25 a, and under the health and wellbeing headline figures (page 43, APPENDIX 25 b).

R. The Borough Council also neglected its related duty under the Equality Act to advance equality of opportunity and encourage people to participate in public life.

S. Instead, the Borough Council ignored the evidence provided which showed a significant level of actual use and its community value, and the

evidence of provision for the less able people (APPENDIX 5 a). In so doing it acted against the interests of people with protected characteristics.

T. In light of Counsel's Opinion, the Parish Council questions the Borough Council's process and decision not to list the building.

U. To assist the Borough Council the Parish Council provides its Counsel's Opinion as a public document, and for the avoidance of doubt waives its legal privilege.

V. Counsel's Opinion is attached in full as APPENDIX 28.

[The following text updates and clarifies the Parish Council's case for listing. In support of this nomination the appendices numbered 1 to 26 are attached again, supplemented by Council's Opinion (Appendix 27)⁶, and further evidence in appendices numbered 28 et seq.].

A1. Executive summary:

1. The evidence of extensive and sustained non-ancillary use of Wye Methodist Church (the nominated building) is strong, long established, recent and very well documented. The evidence in the attached appendices and online links confirms that the building, in its entirety furthered the social wellbeing or social interests of the local community for decades.
2. Significantly, the earliest known record of the non-ancillary use of the building as a 'Club room' is dated 23rd January 1915, (see APPENDIX 1(c). This use continued throughout World War One, until 1919. Other community uses continued after the war.
3. Post WW2, and into the 21st century until closure in March 2020, a variety of community uses flourished as the population of Wye grew alongside Wye College. In contrast the religious use of the building declined.
4. Dr Geoff Chapman, (the Managing Trustee and Property Steward directly responsible for the building for thirty years prior to its closure), summarised its actual use. He reported that: *'as is widely known, our building effectively functions as a community centre with 70-80 meetings per month'* (Report to the Wye Annual Parish Meeting, 2016) (See APPENDIX 5, APPENDIX 8, APPENDIX 13(a), (b), (c) and (e) and APPENDIX 18).
5. The Borough Council did not dispute Dr Chapman's statement. Nor at any time did the current managing trustees, nor the custodian Trustees for Methodist Church Purposes (TMCP). Having accepted Dr Chapman's statement that the building functioned as a community centre until the day it closed, and that its community use was established and

⁶ In fact, counsel's 'Advice' is at Appendix 28.

significant, it follows that the building furthered community social well-being or social interests.

6. Worship comprised a relatively minor and declining use of the building, when compared to the consistently high and sustained level of community use over decades. Based on the available evidence appended to this nomination, a ratio of 80:20 is a realistic approximation in terms of hours of use.

7. For evaluation purposes for some 80% of the hours that the building was open each year it was used for community activities. Unquestionably these actual uses were significant and furthered social wellbeing or interests of the community. The remaining 20% of its usage being for religious or ancillary purposes and connected secular social activities for the benefit of non-worshippers. Some or all of which also furthered social wellbeing or interests of the community.

8. The building was in active community use up to its forced closure at the start of the first COVID-19 lockdown, and the national prohibition of all gatherings. Until that point, as the South Kent Methodist Circuit's website acknowledged, it functioned as 'a social centre for all manner of organisations.' (APPENDIX 5a.)

9. Clearly, there are practical difficulties entailed in reopening churches safely. This places 'a particular burden on the local trustees' as stressed by Rev'd Helen Hollands, the South Kent Methodist Circuit Superintendent (APPENDIX 11). In the context of COVID-19 mitigations, there are additional physical difficulties associated with buildings with small spaces and narrow corridors. As the virus is airborne and persistent, ensuring that the ventilation is adequate is more challenging in these confined spaces.

10. The extent of these difficulties is evidenced in the South Kent Methodist Circuit's service diary and website. This recorded the lasting impact of COVID-19 on five (27.7%) of the Circuit's eighteen places of worship in use at the start of the pandemic.

11. As the MSKC Circuit Plan for September 2020 shows, only six of the 17 remaining churches in the Circuit reopened after the first lockdown, and they were only able to do so briefly.

12. A year later the South Kent Circuit news reported Sunday 5th September 2021 that '*the members of Charing Methodist Church were glad to return to worship in their redecorated building this morning. **This was their first service since the first Covid lockdown**, wonderful to see everyone, and to remember those who are no longer with us. A lively service was led by Mr Hugh Burnham.*' [Emphasis added].

13. In addition to the closure of Wye, Appledore Chapel remains closed to date (21 March 2022), and the twice-monthly services are now held at the Anglican church. This is particularly significant in the context of the 'recent use' test under Section 88 9b),(a) [*sic*].

14. Charing Methodist Church remained closed and did not reopen for some 18 months until Sunday 5th September 2021.

15. Headcorn Methodist Church also remains closed to date (March 2022). The Circuit website states that its members now *'meet for worship in Headcorn Village Hall. **Free of the responsibility for maintaining a building** we can devote all our resources to our calling.'* [Emphasis added].

16. Shadoxhurst Church is also significant in the context of the 'recent use' test under Section 88 9b) (a). The website also records that *'Having been closed for 18 months during the pandemic **we have only recently reopened for public worship** and hope to get back to a regular pattern of varied services...'* [Emphasis added].

APPENDIX 29 Screenshots of the South Kent Methodist Circuit website pages for Appledore, Headcorn and Shadoxhurst Churches, 2022-0324

17. In conclusion, in light of the evidence which shows that the:

- a) long history of actual secular and non-ancillary activities in the building by a wide variety of community groups, for cultural and recreational uses;
- b) self-evident outcome is that these numerous uses furthered the social wellbeing or interests of the local community;
- c) uses continued until the recent past, when they were interrupted by the public health and practical safety constraints imposed nationally by the COVID-19 pandemic, and Government restrictions on indoor social gatherings;
- d) Government guidance continues to place responsibility for risk management and public health onto building managers;
- e) wide and lasting impact of COVID-19, summarised by the fact that over a quarter of the places of worship in the Circuit either remain closed, or have *'only recently reopened'*;
- f) pandemic is a force majeure: the risk of infection is current and ongoing, and includes long covid following infection;
- g) long established community uses which furthered the social wellbeing or social interests of the local community continued in reality until the 'recent past';
- h) **nominated asset passes both tests under Section 88 (2) (a).**

Overview

18. To reiterate B2 above, the nomination site is the Wye Methodist Church (the building), defined as the freehold land and building under Land Registry title number K962352 (title extract and plan attached), within the red line ownership boundary tinted pink and blue (APPENDIX 1(a)).

APPENDIX 1(a) Land Registry title extract and plan dated 8 May 2021.

APPENDIX 1(b) For context, the Ordnance Survey extract centred on the site (scale 1,1,250 at A3) shows the internal ground floor division between the two main spaces within the building, much as it was built in 1869, i.e. the original place of worship (PW) and the adjacent Hall. The map does not show internal subdivisions and circulation spaces.

19. In 1980-1981 the trustees agreed to reduce the floor area of the Victorian chapel by about one third and change the shape from a rectangle to an octagon. The reordering created space for an atrium, additional meeting rooms, accessible WCs, kitchens, and stairs to the new mezzanine Thomas Berry Room. The layout included a secondary fire exit route via the Garden Room, internal circulation space, storage and public noticeboards.

20. The managing trustees instructed the architect Frank Lee Evans RIBA to redesign the layout explicitly to enable greater community use of the building. This showed the managing trustee's intent to further the social wellbeing or interests of the local community more effectively than, as Lee Evans termed it, the Victorian '*oblong box*' could with its hard fixed pews. The reordered layout adapted the building to meet a clear need in Wye for more community spaces and better facilities. These furthered the social wellbeing or interests of the local community. Looking ahead, the building can be used again for this purpose.

21. The Chapel is the largest of the five rooms. This was also used for community functions on weekdays and Saturdays. These five rooms are described verbatim in the text provided by the Property Steward Dr Geoff Chapman in the 'Halls and facilities for hire in Wye'. His text stresses that '*Our octagonal chapel, used for Sunday worship, **is available for ordinary meetings during the week.** There are comfortable chairs rather than pews and a movable projector screen is available on request. It seats 60 people and has a hearing loop.*' [Emphasis added].

22. The APPENDIX 1(b) map also shows the rectangular Garden Room, garden and car park to the south of the main building.

23. The APPENDIX 1(b) map has limitations as it does not show the internal layout. This is key to understanding how the building was designed to work, and how the rooms function and interrelate. Nor does the map show the Thomas Berry Room on the first floor above the atrium, the small meeting room and WCs. (Map reproduced under Wye Parish Council's Public Sector Geospatial Agreement, Licence number: Ref. 100051457, 6th July 2011).

24. As in any building with public access, fire safety is the paramount consideration. The need to comply with Building Regulations defines the layout and relationship between the rooms. They are interdependent in terms of the disabled access route and level fire escape route for the whole ground floor. Accordingly, the marked exit route leads through the Chapel and Garden Room. Although the Hall has a kitchen and the three

other rooms have basic tea making facilities, they share access to other facilities.

25. Wye Methodist Church (the building) is described in detail in *The History of Methodism in Wye (1810-2020) ('Methodism in Wye')*, a monograph by Dr C.P. Burnham completed in 2021, now in publication. This paper (para 15.) records the reordering project in (1980-1981) in detail and that *'the result was greeted with acclaim' and the building 'was immeasurably more attractive.'*

26. Dr Burnham also authored *'A Window on the Church of England: The History of Wye Parish Church 2015, (96 pp.)* published by the Wye Historical Society. This referenced the first known nonancillary use of the building by 300 troopers of the 3rd Hussars as a *'recreational facility'* In January 1915 the Wye Parish Magazine recorded that *'...it is evident that Anglican antagonism continued, for no mention whatever of the Wesleyan community can be found either in 19th Century Vestry minutes or in any issue of the Church magazine from 1889 (the first extant) until 1915, and then only to mention that the **Wesleyan Sunday school room had been made available as a recreational facility for soldiers billeted in Wye.**'* [Emphasis added].

APPENDIX 1(c) Wye Parish Magazine report, February 1915 (extract).

27. *'Methodism in Wye'* states that: *'the site of the new chapel was at the heart of the village. Just outside was the village pump, its main water supply, now marked by a plaque. This was chosen as the central point of the village during discussions on the recently prepared village plan. The chapel could not now be ignored as a significant part of community life'* [see APPENDIX 3a Objective 1. (page 30) Wye Neighbourhood Development Plan 2015-2030].

28. The building is located at the crossroads in the centre of Wye, where several desire lines intersect. This provides a natural meeting place for the community, close to shops and facilities.

29. The Parish Council located its original parish notice board on the adjacent wall, where it remained for some 70 years. High footfall and ease of access has enabled the building to flourish as a community hub. As such, the location conferred an advantage on the building and helped it to achieve a high level of daily community activity and social interaction. This in turn furthered the social wellbeing or interests of the local community.

30. Community use of the building also complemented the range of active sports and larger social functions held in the larger spaces at the Village Hall. This facility is also located in Bridge Street, but it is not as central, and does not have level access off the street. Clearly, as Wye Village Hall is approached via a steep slope it is harder to access for those with impaired mobility. Therefore, the Methodist building furthered the social wellbeing or interests of the local community, particularly disabled people.

APPENDIX 2 Ordnance Survey map at 1:5,000 site located at the centre of the 400m walkable village, as defined in the Wye Neighbourhood Plan, Objective 1 (page 30).

APPENDIX 3(a) Wye Neighbourhood Development Plan 2015-2030 (link to document stored on Ashford Borough Council's website)

APPENDIX 3(b) a PDF copy of the Wye Neighbourhood Development Plan 2015-2030 (2.4MB file).

Evidence of change and increasing non-ancillary use 1869 - 2020

31. Wye Methodist Church (the building) was built as a place of worship in 1869, and it was funded by public subscription. The adjacent Hall followed soon afterwards. (Originally built as the Sunday schoolroom, this is now also called interchangeably as the Wesley Room/Methodist Hall/Church Hall). The building was Listed Grade II in 1989 (post the reordering works in 1980-1981 to create additional community spaces). A Historic England photograph taken in 2003 shows the building as it stands today.

32. The entry includes photographs taken by Helen Morecroft Historic England Listing Systems Programme Manager. She noted in 2017 that *'on the wall directly in front of the church is a local history plaque which claims that near this spot from 1869 to 1911 stood the village pump. The date of the building of this church therefore potentially coincides with the installation of the village pump.'*

33. Until 1911 Wye residents would have converged on the pump in front of the building for the daily chore of collecting their drinking water. Inevitably, the location would have been a natural meeting point and thus a central part of community life.

34. Pre-lockdown, the building also provided, as the South Kent Methodist Circuit web page for Wye states succinctly, **'a social centre for all manner of organisations...'** [Emphasis added].

APPENDIX 4 Methodist South Kent Circuit webpages – profiles of all 17 churches in the Circuit, facilities, and preachers' guide to the weekly religious service (see page 33 for the Wye Methodist Church profile and APPENDIX 13(d) for service times in September 2020).

35. Indeed, though unplanned the social centre function responded to need. This proved so successful that after WWII it evolved naturally into the primary actual use of the building until 2020.

36. Dr Geoff Chapman (the Wye Methodist Church Property Steward for thirty years until 2021, and Trustee of the Methodist South Kent Circuit) was only stating the obvious when he reported that:

'As is widely known, our building effectively functions as a community centre with 70-80 meetings per month.'

APPENDIX 5(a) Annual Parish Meeting Report 2015-2016 (extract) given by Dr Geoff Chapman (published by the Parish Council for residents). The Annual Parish Meeting is a statutory requirement under the Local Government Act 1972 c. 70 SCHEDULE 12 Part III Parish Meetings 14.

37. Dr Chapman's previous annual parish meeting reports provide further confirmation of the building's role as a community centre. In 2012 he wrote that *'Many people cross our threshold in the course of any week including a number from well beyond Wye...**It is not unusual for us to host between 60 and 100 meetings per month with up to seven on a given day.**'* [Emphasis added].

APPENDIX 5(b) Annual Parish Meeting Report 2011-2012 (extract)

38. In 2011 Dr Chapman stated that *'Wye Methodist Church is at or near the centre of the village. In recent years this has come to have an additional meaning since **our building hosts so many community activities. In February and March 2011, for example, the number of bookings exceeded 100** which is remarkable for what, to outward appearance, is just a small country chapel.'* [Emphasis added].

39. Dr Chapman's report also mentioned that *'**A point particularly to stress is our gratitude for the care with which our hirers treat the building.**'* He also acknowledged that *'during the past year we have been grateful to Wye with Hinxhill Parish Council for a grant in aid toward the cost of new guttering.'*

APPENDIX 5(c) Annual Parish Meeting Report 2010-2011 (extract)

Timescale

40. As a place of worship, the building was in continuous recorded use for over 150 years. From the completion of construction until compulsory closure under the first of the COVID-19 'lockdown laws'. These came into force 26th March 2020, and effectively stopped the clock for most of the next 18 months.

41. The government did not lift the first legal restrictions on indoor meetings until 19th July 2021. Only to reimpose them in subsequent lockdowns. Currently, the responsibility for risk management and mitigation rests with building managers. The building remains closed to all, following the managing trustees' decision to cease worship, and sell the building.

42. The pandemic is not over: the public health risk is ongoing. For context the UK Coronavirus dashboard recorded six COVID-19 deaths in Ashford district in the seven days to 9th March 2022.

Changes in building use 1918 - 2020

43. Over recent decades, the extent of religious use of the building has remained fairly constant at about two to four hours per week. As the

congregation aged and the membership dwindled, the services became shorter, more informal and less frequent. In addition to the weekly services there were occasional funerals and wakes.

44. Looking back to 1984 the Wye Village Appraisal recorded that: *'Services are held every Sunday at 6.30pm and on other special occasions. The normal attendance is about 40. There is a prayer meeting on Wednesdays at 1.30pm and a Bible study class on Sunday evenings during term time the 15-20 year-olds meet at 8pm. **The hall attached to the chapel is used by several organisations for coffee mornings and fund-raising events, the Brownies meet here during term-time.**'* [Emphasis added].

APPENDIX 6 The Wye Village Appraisal 1984 (see page 35 for the profile of Wye Methodist Church)

45. 'Methodism in Wye' chronicled that from a low of only nine congregants in 1968, the early 1980s marked the post-war high point in the religious use of the building. The congregation *'grew to 28 in 1985'*, but nearly forty years later, *'the average attendance in 2004 was thirteen'*. By October 2020 the congregation had declined further to the point that *'there were now only seven remaining church members.'* [Emphasis added].

46. This level of membership appears marginal and unsustainable. Especially given the need for able volunteers to take day-to-day responsibility for building maintenance and user safety. COVID-19 imposed further public risks and responsibilities. Understandably, it was a critical factor in the decision to close and sell the building.

47. The Parish Council understands from its online meeting with Rev'd Hollands that the loss of letting income during the pandemic was a secondary consideration. However, there is no evidence that the managing trustees considered any alternative ways to mitigate the social and well-being impact of its loss on the community. Regrettably, the trustees did not ask the Parish Council for financial help or practical support as a way forward.

48. For the national context, a 2021 survey of the impact of COVID19 on a sample of 1,071 village halls provides reference points. This sample *'represents 10 per cent of all known village and community halls in England'. The survey found that '...some halls (1.4 per cent of our sample) will not open again, and this is likely to be a minimum figure. When grossed to the national level this could mean the closure of 140 individual halls...' The current financial health of halls is somewhat polarised, with around the same proportion having seen their finances improve or worsen. There appears to be a relationship between the size of the population served and a hall's financial health. Those serving bigger communities have generally seen a worsening in their financial position and heavier reliance on reserves, and this may reflect differing financial models and income streams.'*

49. Wye Methodist Church was not constituted as a community hall, but it 'effectively functioned' as one in terms of its actual use. Furthermore, it charged comparable room hire rates for its facilities. The Property Stewards faced similar day to day pressures and in 2020 confronted forced closure and loss of income, as did every other community hall. Appendix 30 indicates that the decision to close and sell up was a choice, not an inevitability.

APPENDIX 30 Archer, T. and Skropke, C. (June 2021), The impact of COVID-19 on village and community halls in England, Sheffield Hallam University Centre for Regional Economic and Social Research, 21pp.

50. As evidence of its goodwill and intent, the Parish Council has offered to either lease the building at a commercial rent, or buy it on the basis of an agreed commercial valuation. **[As this correspondence is commercially sensitive it is not appended].**

51. As an interim measure to protect the fabric during the winter of 2021-2022, the Parish Council also offered twice to cover the cost of heating and dehumidification. TMCP trustees have declined these constructive approaches and offers of financial help.

52. There are historical precedents, as the Parish Council has given financial and planning support for improvement works to the building, and made grants when requested by Property Stewards.

53. In giving these grants of public money (made under LGA 1972, s.133) the Parish Council recognised the high level of community use and the value of the building to community well-being and the wide range of social interests that it accommodated. (APPENDIX 13 (a) lists community groups that used the building).

54. The Ashford, Wye and District U3A provides a clear example of the wide range of social, cultural and recreational interests listed in Section 88 (6) of the Localism Act. This group formed in Wye in 2010, and met initially in the building, but outgrew this space as its popularity and membership expanded. A U3A Coffee Morning image shows the late David de Saxe, a former chair of Wye Parish Council and an active member of local organisations.

55. Similarly, the WEA Ashford and Wye Branch is another example. The WEA provided weekly adult education classes in the building for years until it closed. The last meeting being 17th March 2020 at 14.00 The ten-week spring music class was titled '*The mighty handful' An exploration of the lives of Borodin, Mussorgsky, Balakirev, Rimsky-Korsakov and Cui within the political, social and cultural context of the late 19th and early 20th c tsarist Russia.*'

56. In contrast, the South Kent Circuit Membership and Attendance Statistics confirm that the attendance for worship in Wye prior to the pandemic was consistently low. The total Methodist membership recorded for Wye (Circuit 25 South Kent) was 14. For comparison the statistics

recorded 12 members in 2018 and 2017. The estimated average attendance figures were similar, with 12 attendees in 2019 and 13 in 2018.

57. For context, pre-COVID-19 the total membership for all seventeen churches in the South Kent Methodist Circuit averaged only 300 members (2017: 299, 2018: 302, 2019: 299). The Circuit covers the whole of Ashford and Folkestone districts and part of Maidstone.

APPENDIX 7(a) 2018, (b) 2019 South Kent Circuit Membership and Attendance Statistics (published October 2019) and **(c) 2017** Summary

APPENDIX 7(d) South East District Circuit Membership and Attendance

Examples of community and religious uses

58. 'Methodism in Wye' draws on the Wye Parish Magazine archive to cite the first known record of non-ancillary use of the building as a recreation centre. This practice started during WWI.

59. *'Sadly the Wesleyan Sunday School lapsed during the 1914-18 War, probably in 1916 when the schoolroom was taken over as a **recreation centre** for Royal Flying Corps personnel stationed at the training airfield off Bramble Lane. But such Wesleyan contributions to village life were little regarded. A Parish Magazine had been started by the Anglican Church in 1889, but it contained no mention whatever of the Wesleyans or their local activities until 1923. So much so that when, in 1918, the Wesleyan **schoolroom was used for a function**, the Parish Magazine gave thanks not to the Wesleyans but to the Royal Air Force, whose use of the room had been interrupted!'* [Emphasis added].

60. The Wye Parish Magazine (APPENDIX 1(c)) recorded that the first troops to be billeted in Wye were 300 troopers of the 3rd Hussars reserve. Subsequently, Royal Flying Corps personnel were billeted in homes around Wye in 1916 until the aerodrome closed in 1919. Some will have occupied the bedrooms vacated by the sons and daughters of Wye who were serving overseas. Naturally these young men and women socialised and took part in village life (see APPENDIX 8(a)). Their involvement was recorded and it was clearly welcomed and actively encouraged by Wye residents.

61. Fifteen men were killed in training flights over Wye. Eight of these casualties remain buried in Commonwealth War Graves Commission graves in Wye churchyard. The names of all fifteen RFC and RAF casualties are recorded on a bronze plaque in Wye Church porch, dedicated in 2014 by the Bishop of Dover. In 2015 Wye Parish Council protected Churchfield Green in perpetuity as a Centenary Field and inscription on the memorial stone beside the village sign records that is 'dedicated to those who served at Wye Training Aerodrome Bramble Lane During World War 1'

62. As further evidence of the legacy of WWI and its impact on the community today a film records the history of Wye aerodrome in WWI and its significance in the relationship between residents past and present, and the air crew who were stationed in Wye.

63. There is a dramatic example of this interconnection. An aircraft from Wye Aerodrome crashed into the Kings Head Hotel in Church Street, Wye as the pilot flew low to celebrate a friend's wedding in the nearby parish church. Amazingly, the pilot survived the crash, as did the Kings Head.

64. Extracts from the war diaries of Cpl Gordon Tucker provide an intimate insight into one serviceman's close involvement with Wye residents and village life while he was billeted in Wye 1917-1919.

APPENDIX 8(a) Extracts from the war diaries of Cpl Gordon Tucker: his close involvement in village life.

65. Cpl Tucker's diaries provide evidence of this close relationship. The servicemen and women who served in Wye, though transient, still deserve to be considered as members of the resident community. Therefore, their contributions to village life form an integral part of the building's long history of non-ancillary use.

66. 'Methodism in Wye' does not shed light on the interwar period, but history repeated itself as it records that *'during the Second World War the schoolroom was used in the week as a canteen'*.

67. Post-war documentary evidence confirms that since WWII the whole building has been used for an increasingly wide range of secular activities, including the chapel, albeit to a lesser extent. Consequently, a wide range of cultural and recreational community activities furthered social wellbeing or interest, and these benefitted all age groups. These community uses continued until they stopped abruptly on the day the building closed in March 2020.

68. For further historical context, 'Methodism in Wye' provides insights into both the religious and community uses of the building since 1927, as the following excerpts highlight in approximately chronological order. For example, the monograph notes that: *'the earliest extant Circuit Plan, for October to December 1927, when the minister was the Revd. Arthur J. Summerfield, records that Wye Wesleyans had 27 members. The only Sunday Service was at 6-30, but there was a fortnightly weeknight service on Mondays at 7.'*

69. *'After the end of the War, the Sunday School continued to thrive. The Wye Guides and Brownies, the Methodist Women's Pleasant Hour (established in 1950), the Anglican Mothers' Union, and, at times, a Youth Club and various handicraft classes also met in the Schoolroom... In 1947 Mr. Buddle and Mrs. K. Bailey were Society Stewards and Mr. F.C. Smith was chapel steward, and there were 17 members.'*

70. 'On completion of the refurbishment there was a celebration on 16 November, 1949, ...and greetings were expressed by the Vicar of Wye, the Revd. J.N. Wells and the Principal of Wye College, Dunstan Skilbeck, So, by this time, the Methodist Church was well accepted as part of the Wye community, although there were **only 15 members**. From 1949 until 1954 there was a Sunday morning service at 11, in addition to the usual evening service at 6 p.m. There was a Young People's Fellowship and a Junior Club.' [These two activities have long ceased, emphasis added].

71. 'Between 1946 and 1952, Wye Methodist Sunday School was more active than at any other time in its history, reaching a roll of more than 70 children. **Its activities reached out into the whole village community**. For example, in May 1949, the Sunday School held a Flower Service in the village hall, during which children presented bunches of flowers to fifty of the oldest inhabitants of Wye.' [Emphasis added].

72. 'The morning service was discontinued from July 1954, leaving only an evening service, now at 6.30, as would remain the situation for many years. **During 1955 the membership roll was reduced from 23 to 14..** 'so the later 1950s were a difficult time for Wye Methodist Church. Nevertheless, the Women's Pleasant Hour was flourishing. There was still a Youth Club, under the leadership of Geoffrey Hunt, and the Sunday School continued, **albeit much reduced in size,**' [Emphasis added].

73. 'For such a small church, there were a good range of activities. On the third Sunday in the month, there was a Family Service at 9.45 a.m. otherwise Sunday School was at 10 a.m. The main Sunday service was at 6.30 p.m. The Women's Pleasant Hour met on the second and fourth Thursday at 2.45 p.m. **Brownies and Guides met regularly in the schoolroom;** a Church Youth Club existed intermittently. **However, although all these activities were reasonably well supported, the actual membership of the church was very small (only 9 in 1968).'**' [Emphasis added].

74. 'In 1971, Geoffrey and Mona Chapman joined the Church, following Geoff's appointment as a lecturer at Wye College. With Paul Burnham [the author of 'Methodism in Wye'] and Jeanne Ingram he started a '**Coffee Bar Youth Club**' in the Schoolroom on Monday evenings with **table tennis, billiards and table football accompanied by rather loud music**. Its somewhat turbulent history lasted until 1985.' [Emphasis added].

75. 'The 1980s also saw a great flowering of other activities connected with the church... The Women's Pleasant Hour flourished, with attendances sometimes exceeding 20, and continued through the nineties with much input from Joyce Haynes, who also served as a Communion Steward and pastoral visitor. The renewed building made an attractive venue for ecumenical activities. A united service with the other Wye churches was held in it on Ash Wednesday 1984, a Lent course of devotional meetings in 1985 and a service for the Week of Prayer for Christian Unity in 1987. **Village activities also made use of the building, such as the Brownies, a foot clinic and a dancing class. For a time a 'Pop In'**

session for lonely people drew in forty or fifty.' [Wye Brownies moved to the Village Hall over 30 years ago, but the foot clinic and dancing classes continued until March 2020, emphasis added].

76. 'Best of all the renewal of the building marked the beginning of a period in which the church grew and flourished. A membership of 23 in 1981 grew to 28 in 1985, and there was strong support from Wye College students, both undergraduate and postgraduate.' [The last students left Wye College in 2009].

77. 'With the departure of the Turners and the arrival of a new Ashford Baptist minister, the number of students attending services dropped to just one or two. **The average total Sunday congregation fell from about 30 in 1985 to 23 in 1993 and only 17 in 1997.**' [Emphasis added].

78. 'The buildings of Wye Methodist Church were comprehensively reconstructed in 1980-1, following the failure of one of the trusses in the roof, and the chapel became an attractive venue for occasions with small congregations. For about eight years united Lent services and some monthly services of the Anglican Wye and Brook Fellowship were held there. As **the only regular Methodist service was on a Sunday evening** and evensong [in Wye Parish Church] was by now only monthly, there were also several people who attended both churches.' Burnham CP, A window on the Church of England: the History of Wye Parish Church, (2015). [Emphasis added].

79. 'Methodism in Wye' describes the final 20 years, culminating in the pandemic, the unexpected death of the new Property Steward Les Johnson, and the trustee's final decision to 'cease worship' and close Wye Methodist Church in October 2020.

80. Les Johnson was a qualified building professional who had his office nearby in Wye. Had he lived and shouldered responsibility for managing the building during the pandemic, and added COVID-19 mitigations, the congregation may have felt able to reopen the building for community use and to continue worship.

81. The chapter headed 'Witness amid difficulties and decline in the twenty first century' is a detailed chronicle of events facts and figures. This provides evidence of the steady decline in religious use of the building in the twenty years, prior to the pandemic.

APPENDIX 8(b) In the final chapter headed 'Witness amid difficulties and decline in the twenty first century' 'Methodism in Wye' records how the use in the building has evolved and changed its emphasis since the building was first used as a recreation centre in 1916. '**when the schoolroom was taken over as a recreation centre for Royal Flying Corps personnel stationed at the training airfield off Bramble Lane.**' [Emphasis added].

82. Though even in the distant past recorded membership of the Wye Methodist Church was low relative to the active community use of the building during the week. The membership declined, despite the substantial growth in the resident population of Wye over the past century. Whereas the need for community facilities continues to grow along with the expanding population, the religious use declined to the point that its seven remaining congregants decided to 'cease worship' in October 2020.

83. In contrast to the gradual decline in religious use since WWII, by 2020 the building had evolved a new primary use. The building functioned as a lively and vital community centre, where many different social activities flourished all year round, alongside its residual use for worship and religious purposes.

84. Only on very rare occasions religious needs did take precedence over regular bookings. Indeed, the Parish Council can only identify one example of this. On the 19th September 2013 the Margaret Giles School of Dance notified parents that: *'unfortunately we are unable to have the hall on this day as it is being used for a Canterbury Diocese training event. I'm really sorry for this inconvenience. Therefore the Thursday Wye classes are for 10 weeks this term.'* (See APPENDIX 15).

Recent past

85. When defining the term 'recent past', please note that the pandemic intervened and prevented the normal pattern of room hire and community uses from happening. Up to the point of closure these uses furthered the social wellbeing or interests of the local community.

86. Practical obstacles aside, in England, the legal restrictions during the pandemic suspended the legal possibility of its use for most of the 18 months prior to the validation of the first ACV nomination.

87. In reality, the building manager and trustees found themselves confronted by force majeure.

Impact of COVID-19 and closure

88. The cumulative impact of lockdowns and restrictions, and the unexpected death of Les Johnson seems to have precipitated the Wye Methodist Church member's decision to cease worship, and not reopen the building for community use.

89. This decision in October 2020 was unexpected. Moreover, it was contrary to the optimistic announcement the previous month in the September 2020 edition of the Wye Parish Magazine.

90. The Rev'd Helen Hollands, the Superintendent stated that: ***'we are working towards reopening at the end of the year but the government guidelines are comprehensive and we do not have the capacity (in terms of people who are able to do the necessary***

work) to reopen. *These requirements are more challenging in smaller buildings.*' The article ending with the reassurance that 'we will keep you posted!' [Emphasis added].

APPENDIX 9 September 2020 Wye Parish Magazine (page 7) Methodist South Kent Circuit (MSKC) Superintendent Rev'd Helen Hollands' article states the trustees' intention to reopen Wye Methodist Church.

91. Rev'd Hollands reassurance proved misleading. There was no report in the October magazine and the second lockdown prevented publication of the November edition. Then, three months later Rev'd John Makey the supernumerary minister at Wye Methodist Church wrote a short piece in the Wye Parish Magazine. In this he announced the decision to close the building as a fait accompli.

APPENDIX 10 December/January 2021 Wye Parish Magazine article, by Rev'd Makey, and a sample of emails from residents in response.

92. Rev'd Makey opened his article by saying that: '*When earlier in the year Wye Methodist Church ceased worship and the chapel was closed also for **hosting the many village activities who used the excellent premises** it was hoped that once the lock down resulting from Covid 19 was over the premises would reopen and worship **and other activities would resume.** Sadly that will not happen.*' [Emphasis added].

93. To extract the key points in Rev'd Makey's article, he went on to state that: '*it was decided that ...the chapel be allowed to 'cease worship' 'Once approval for that has been granted it is **likely that the property will be sold.***' [Emphasis added].

94. Confronted by this unexpected announcement in the Parish Magazine (published by Wye Parochial Church Council, just before Christmas), the Parish Council met to consider its response. The Parish Council resolved first, to seek residents' views (see APPENDIX 10) and second, to open a constructive dialogue with the Methodist South Kent Circuit trustees to explore options and find a way to retain the building for community use.

95. In preparation for these negotiations, the Parish Council confirmed that it has the financial and other resources needed to acquire the building and bring it back into active community use. Subsequently, the Parish Council has kept residents informed.

96. For context, in January 2021 England was in the third lockdown, and COVID-19 related deaths were exceeding 1,000 a day.

97. Rev'd Hollands learned of the Parish Council's concern and her first email pre-empted the Parish Council's formal approach to her. She emailed the Parish Clerk as follows: '*I understand that you have been in touch **regarding our decision to close the Methodist church in Wye and to sell the building.** You may be unaware that we are hoping to worship alongside the Anglicans in the parish church so I am pleased to*

say that the worshipping community will not be lost to the village.'
[Emphasis added].

98. **'Of course the Methodist church has had a role in the village for many years and, in addition to worship, by providing a space available for lettings for various social and other groups....** 'We are sorry that this will be a loss to the village but it is simply unfair to expect a very small group of older people to manage the premises and **sadly we do not have the capacity in the Methodist circuit to manage it ourselves.'** [Emphasis added].

99. The Parish Council had had no previous contact with Rev'd Hollands prior to her first email. The following correspondence over two months is attached for reference (APPENDIX 11). This confirms that both parties recognise the value of community use of the facilities, and the loss as a consequence of closure.

100. Eventually the Rev'd Hollands, agreed to the Parish Council's requests for a meeting. The notes of this exploratory meeting held 13th April 2021 via Teams record the discussion in detail. This provides relevant evidence to support this nomination.

101. Rev's Hollands did not challenge the use or significance of the community use of the building, or by extension, that its use had furthered social wellbeing or interests of the local community.

102. The Parish Council provided Rev'd Hollands and Liz Talbot, the Senior Circuit Property Steward with these meeting notes, and neither disputed them as a record of the discussion.

APPENDIX 11 Correspondence between Rev'd Hollands and Wye PC

APPENDIX 12 notes of the online meeting 13th April 2021, with Rev'd Hollands and her colleague Liz Talbot, Cllr. Noel Ovenden the chair and Wye Ward member and Cllr Richard Bartley represented Wye Parish Council. The Parish Clerk attended to record the meeting.

Evidence that the building functioned as a centre where community activities that further 'social wellbeing or interest' flourished.

103. Externally the building has changed little in appearance since it opened in 1869[.] However, as discussed above, the managing trustees repaired and reordered the building in 1980-1981. This reduced the chapel in size, and the seating capacity from 100 to 60 to reflect the declining need for worship space.

104. The reordering replaced all the 19th C pews with chairs to create a flexible multi-purpose space. The works also provided heating and disability access to update the whole building, and included accessible WCs, and other modern comforts.

105. The reordering of the chapel in replaced the original 'oblong box' with the present-day five room layout. This major project and investment responded to both the rising need for more community spaces, and the parallel decline in church attendance and membership.

106. Form follows function: 'Methodism in Wye' describes the reordering and the building layout that we see today. The building gives physical expression to the shift in focus from worship as its main purpose towards more community uses.

107. In 'Methodism in Wye' Dr Burnham records that: *'the result was greeted with acclaim. The church was reduced in size by introducing a vestibule and a small extra room, but was immeasurably more attractive. It was carpeted, with space for 60 chairs, instead of very uncomfortable pews seating 100.'*

108. Throughout the following 40 years, and much thought and ingenuity, the dedicated volunteer Property Stewards made incremental improvements to these five spaces. They made the most use of the building, and continued to upgrade its facilities as funds allowed. For example, recent improvements include a hearing loop, and glass doors with hold-open door retainers for ease of wheelchair access and fire escape route purposes.

109. The recent fitting of acoustic panels in the Hall benefitted all building users, including those without impaired hearing. Wye Parish Council used the building regularly for meetings in public and was just one of many beneficiaries of this upgrade.

110. This transformed the Hall (Wesley Room) as a comfortable venue for the Parish Council's frequent meetings in public. 'Methodism in Wye' confirms that: *'the Wesley Room, and to a lesser extent the Thomas Berry Room, **were used almost every day of the week for community activities**, including Parish Council committees and exhibitions. Whereas 'the Church proper is used much less, although the Pentecostal Church has resumed using it for their Sunday morning service...'* [Emphasis added].

111. As further clear examples of public exhibition use, two Wye residents presented a pop-up gallery and the Parish Council provided a drop-in and Q&A in the Thomas Berry Room to supplement the online WYE3 Masterplan consultation 1st May to 6th May 2018 10.00 - 20.00. Taylor Wimpey used the Hall for a public consultation on its WYE1 housing development proposals. Being the largest development proposed in Wye since 2006 the consultation day attracted a large number of local people.

112. Wye Ground Force provides examples of social events as volunteers met in the building for crocus bulb planting events or regular litter picks, followed by refreshments. Another example is the Parish Council's invitation in a newsletter delivered to each household to attend a social drop-in in the building to say farewell to the retiring Parish Clerk, and to meet her replacement.

113. The Ashford Pentecostal Church referred to in 'Methodism in Wye' is peripatetic, and its membership has now outgrown the chapel in Wye. Though its website home page image still shows Wye Methodist Church, this congregation meets in larger premises in Stanhope. This venue also has over three times as many parking spaces. The risk assessment for the Stanhope venue (dated May 2019) states that *'the main hall can hold approximately 120 people standing (approximately 80 sitting)' furthermore, 'there is a car park to the front of the building, with space for approximately 15 cars (plus 2 disabled spaces).'*

114. Ashford Pentecostal Church is an example of a natural process where groups form and grow. First, there must be spaces for them to form. The building, with its mix of relatively small affordable rooms is an ideal 'nursery' for new community groups.

115. Looking ahead to B5.2 and (s.88 (2) (b)), a facility that enables new community groups to come together will further the social wellbeing or interests of the local community.

116. As evidence of how the building supported community life, the search engine behind the Parish Council's website shows 479 references to 'Methodist' 261 to 'Wesley' and 262 to 'Thomas Berry'. Inevitably, these search terms overlap, but it indicates the high level of activity in the building. The website only went live in 2015. Consequently, it only records the meetings and events held in the five years before the pandemic.

117. Furthermore, the Parish Council's online public diary understates the number of meetings held in the building. Many community events were not advertised on the website and some events e.g. job interviews, and working group meetings were never recorded either as there was no need or reason to do so.

118. In retrospect, over the past forty years the Property Stewards' investment of their time and limited resources shows their extraordinarily strong and sustained personal commitment to the future of the building.

119. The need for more community space was evident in the early 1980s and the reordering works responded to that need. In return, the room hire income has helped the Property Stewards to maintain and upgrade the building over the years.

120. **APPENDIX 13(a), (b) and (c)** Community group room users, derived from bookings in 2019-2020

APPENDIX 13(d) services in Wye across all three places of worship Wye Parish Magazine September 2020

121. 'Methodism in Wye' records the working relationship between the denominations in Wye and community users of the building as follows: *'rent income from outside users helped in funding further improvements to the buildings. In 2004 the kitchen was upgraded and*

two toilets, one for the disabled, were installed. In 2018, a sophisticated fire alarm system was fitted. **Wye Methodist Church has continued active community involvement**, for example, as a valuable weatherproof base for the annual Christmas Street Party and as a base for the village tidying sessions of Wye Ground Force.' [Emphasis added].

122. As an example of an 'outside user', Margaret Giles was a Wye resident. She founded the Margaret Giles School of Dancing just after WWII and ran ballet, tap and modern dance classes in Wye for many years. The Parish Council understands from the present and previous director (who took over the school from Margaret Giles), that it operated in the building for over 40 years. The MG Dance newsletters (APPENDIX 15) confirm that it ran classes for seven hours a week during term time, until lockdown.

123. Additionally, the generations of children who gathered for lessons in the building after school with their parents and siblings had thousands of hours of informal socialisation time while they changed in the atrium and small meeting room, or waited on the steps outside. There they mingled with the other parents and children waiting for the next class.

124. This incidental waiting time spent weekly in close proximity with other residents is unquantifiable, but it helped to reinforce social networks and friendships for generations of young families. As such, this waiting time spent in the civic spaces outside the dance classes also furthered social wellbeing or interests. The same benefit applies to many occasions when a group gathered in the atrium waiting for the preceding group to finish and leave.

APPENDIX 14 Letter from the proprietor of the Margaret Giles School of Dancing (MG Dance)

APPENDIX 15 MG Dance newsletters and 2019 timetable of Wye classes held in the building and Wye Village Hall (highlighted website extracts)

125. The weekly Pilates classes provide another example of a regular 'outside user' and this was long-established non-ancillary community use. Each class provided three hourly sessions for eight people for (as APPENDIX 16 confirms), at least twelve years.

126. In simple terms of the number of building users multiplied by the hours of use, each week there were numerically approximately twice the number of Pilates practitioners compared to the number of worshippers. The membership and average attendance for worship being only about twelve.

APPENDIX 16 Email from a Wye resident and Pilates practitioner for 12 years, and a web page confirming hours dates and hours of two of the regular Pilates classes held every week in the Hall.

127. Fear of crime is corrosive to social wellbeing, and a barrier to participation in community life.

128. Activities that could further the social wellbeing or interests of the local community, will not benefit vulnerable residents if they are too fearful to go out, especially in the dark evenings. Clearly low participation is not in the interest of the community. Conversely, if fear of crime is low, then a sense of greater safety and satisfaction will be positive for community wellbeing.

129. In response Kent Police held a local public engagement meeting in the Chapel (not the Hall as advertised), just before the pandemic. The Parish Council has a duty under the Crime and Disorder Act 1988 to prevent crime and the fear of crime. In mind of this duty, it paid for the room hire, as Kent Police did not have the necessary licence in place to book the room.

130. The Parish Council considered it essential that the meeting was held indoors if it was to attract older residents and provide effective engagement. The Parish Council supported the event with refreshments, advance publicity via its website and social media channels, and designed and printed posters. This event is an example of the Parish Council's general enabling role in supporting other bodies that work in the community's interest.

131. *'PCSO Aaron Newell will be holding a drop-in meeting at in Wye 26th November. This is to enable residents to raise concerns about crime and anti-social behaviour, face-to-face. **The meeting in the Methodist Hall, Bridge Street**, will start at 18.00 and include Neighbourhood Watch. ...Wye parish councillors will be providing refreshments during the evening, and be on hand to answer questions about other local matters.'* [Emphasis added].

APPENDIX 17 Letter from a Wye resident who attended the Police dropin 26th November 2019 in the chapel within Wye Methodist Church.

132. In making its decision to cease worship and close the building the Methodist Church considered its priorities and the resources of the church. The Rev'd Hollands confirmed to the Parish Council that the advanced age of the members of the Wye church community was a key factor in this decision to close.

133. In contrast to the dwindling and ageing congregation, the building supported a very healthy level of community use. Indeed, activities were often constrained by the practical matters of room availability, diary clashes and meeting time overruns.

134. The Police and Yoga class provides a clear example of this constraint. The Parish Council booked the Hall for this public meeting, but on the night a yoga class using the Hall overran so the Police moved the meeting to the chapel instead.

135. Consequently, the building was a lively, well used and valuable community asset. This facilitated a hive of social activity and supported

volunteerism and the building worked hard to further the social wellbeing or interests of the local community.

136. Furthermore, the central location of the building ensured that the whole village could access it on foot. This is a key consideration for people with needs and mobility constraints.

137. As an indication of the likely level of need in Wye the National Census 2011 recorded 421 people with a long-term health problem or disability, 220 households without access to a car or van (20.9% of all Wye households), and 230 single person households where the occupant was aged over 65.

138. Ease of access and the central location gives the building a significant geographical advantage as a social centre. This enabled the building to repurpose itself over time to function as a hub in the centre of community life: a busy part of the village where shops and services are concentrated, and paths cross, so people can access the building and other facilities on foot.

139. The inherent locational advantage applies to Section 88 (2) (a) of the Localism Act 2011. Moreover, it also ensures that the building can further the social wellbeing or interests of the local community in the future, and meet the test in Section 88 (2) (b).

140. Chance meetings of residents inside and outside the building are impossible to quantify, but they occur daily and further the social wellbeing or interests of the local community. As such these impromptu contacts and networking opportunities are a valuable part of everyday village life and aid social cohesion.

141. Daily networking opportunities are taken for granted in Wye. Chance opportunities for social interaction and contact are a particular benefit to the isolated, elderly and less mobile people in Wye and those without access to a car. Inevitably, these disadvantaged groups overlap.

142. Clerks and parish councillors past and present know how busy the building could be from their personal experience as frequent users. Within the living memory of retired councillors Wye Parish Council has met in the building for more than fifty years. Over that time the Parish Council held over a thousand meetings in public. As such, the building provided a civic space and regular meeting venue. This use for local democratic purposes furthered the social wellbeing or interests of the local community.

143. The building has served as a base for the development of community-led projects and initiatives which set out to further the social wellbeing or interests of the local community in various ways. For example, the Wye Village Design Group, Wye Millennium Project Group, Wye Parish Plan Group, the Wye Neighbourhood Plan Steering Group and Our Place Wye all met in the Hall, or Thomas Berry Room, and sometimes in the Chapel.

144. As the base for Parish Council meetings the building enabled local democracy to function, and thus it furthered the social wellbeing or interests of the local community.

145. In addition to its full meetings in public the Parish Council also has committees for delegated Resources and Staffing matters and leads several working groups. For example the Flood Working Group, the Planning Working Group, the Highways Improvement Plan Working Group and Wye Breathes. All these groups exist to further aspects of the social wellbeing or interests of the local community. As do other working groups and the many active community organisations listed in APPENDIX 13 (a). For example, the Wye Village Design Group, Wye Parish Plan Group and Wye Future Group all held their inaugural meetings in the Hall, and met in the building many times subsequently.

146. It is realistic to think that these and many other groups will need publicly accessible places in which to meet in future. This addresses the test under the Localism Act 2011 88 (2) (b).

147. The National Association of Local Councils website puts Wye Parish Council's local role in its national context: '*As the first tier of local government and the closest port of call for residents' local (parish and town) councils can play a huge role in ensuring that **our communities are stronger, healthier and thriving places to live.***' Clearly, this broad field of work furthers the social wellbeing or interests of the local community. [Emphasis added].

148. To stress this point, the NALC website quotes Duncan Selbie, chief executive of Public Health England, who told NALC that: "**What is clear is that local councils are indispensable to the solutions around keeping people in good health.**" Local Councils Review, November 2019 [Emphasis added].

149. In November 2019, National Association of Local Councils (NALC) '*launched a new webpage on health and wellbeing to support one of its key policy campaigns for 2020.*' NALC also published Health and wellbeing case studies. This abounds with examples of the action and best practice led by parish councils.

150. In common with thousands of other town and parish councils Wye Parish Council has several long-established responsibilities, and delivers services and projects. The overarching and shared objective being that these all further the social wellbeing or interests of the local community in some way. The Wye Revives project being a recent addition to the Parish Council's work programme.

151. In November 2021 the chairman Cllr Noel Ovenden informed residents via a newsletter that "*For over a hundred years this building acted as a centre of community life in Wye. **We need to keep it in community use, to support clubs and activities and the health and wellbeing of our residents.** As a first step, the Parish Council has asked the trustees in Manchester to meet and discuss options*" Feedback from

residents is strongly supportive of the Parish Council's approach. [Emphasis added].

152. From the Parish Clerk's perspective, given the increasing range of public responsibilities, projects and problems that the Parish Council must now deal with, the Clerk often needs to arrange meetings at short notice.

153. The Thomas Berry room has long been being particularly useful for these occasions. However, the high demand for meeting space in Wye and the very limited options remaining at Wye Village Hall means that the seemingly simple administrative task of booking a room is often problematic, especially for one-off meetings which are often called at short notice.

APPENDIX 18 Examples of recent Parish Council invoices for room hire for meetings open to the public between 2014–2019.

154. The constraint on meeting space in Wye increased in November 2015 when Telereal Trillium bought Wye College and closed the Wolfson Lecture Theatre. This modern and well[-]equipped facility built in 1989 had a Fire Regulations capacity of 90 people, but it was demolished in 2021.

155. For example, in 2015 Ashford Borough Council had a statutory duty to organise a public hearing for the Wye Neighbourhood Plan examination, but was unable to find an available venue in Wye. Consequently, the Borough Council arranged the hearing in the relatively inaccessible Julie Rose stadium in Kennington. This was contrary to the best practice guidance which is to hold hearings in the affected community.

APPENDIX 19 Examination in Public change of venue poster issued by Ashford Borough Council, Planning Department.

156. Afterwards Cllr Noel Ovenden's Parish Digest recorded in the Parish Magazine that: *'at the public hearing of the Wye Neighbourhood Plan held in December, Richard High, **the examiner, was impressed by the large turnout despite the hearing being held outside the village.** Both Ashford Borough Council and your Parish Council worked hard in an attempt to find a location, within Wye, that would meet Mr High's requirements. Unfortunately, all the usual venues were fully occupied or unsuitable. An enquiry was made with Telereal Trillium about the possible use of Wolfson Lecture Theatre – a location that historically would have been the natural venue. Sadly, the PC were informed that the buildings were now "mothballed" and as such, unable to be used.'* [Emphasis added]

APPENDIX 20 Cllr Noel Ovenden's Digest for the Wye Parish Magazine January 2016 issue.

157. Recent conversations with the Methodist leaders in Wye (Rev'd John Makey, Dr Geoff Chapman, Dr Paul Burnham and Mary Lambert) confirmed that the building continued to provide rooms for some 80 bookings a month regularly until lockdown. Furthermore, in exceptionally

busy months the number of bookings could exceed 100 (see APPENDIX 5(c)).

158. Rev'd Hollands kindly assisted the Parish Council by providing the most recent, pre-COVID-19 lettings income for Wye. This totalled £6,337 in 2019 and £6,874 in 2018.

159. Rev'd Hollands also confirmed that whereas most lettings were paid for, the meetings organised by Church members were not charged. This concession mainly benefitted the weekly Options Club and weekly Open House informal social drop-ins.

160. These events held every Thursday and Saturday morning provided about 250 hours of contact time a year, and valuable companionship for dozens of mainly elderly and mainly single Wye residents. Few of whom also attended Sunday worship.

161. Although organised by Church members, Options Club and Open House were both expressly non-religious weekly social events open to all. They were advertised as such in the monthly Wye Parish Magazine, as APPENDIX 13(b) confirms. The programme for the last full month of events and guest speakers in February 2020 was: Community Warden 'Some Tips' (6th); 'Our Kind of Music' (13th); 'John's Quiz' (20th), and finally Robert Graham's 'Kentish Poems' (27th). APPENDIX 13(b) also confirms that the cost for participants was '*£1.00 a week covers coffee and biscuits.*' The Options Club did not charge participants for the room hire.

162. The Options Club met in the Hall for the last time before lockdown 19th March 2020. The Options Club and Open House, being both advertised and run as expressly non-religious events, were non-ancillary in nature. They certainly succeeded in furthering the social wellbeing or interests of the local community, and did so between 2002 and 2020 in the case of Options Club.

163. Our Place Wye CIC is keen to re-start Options Club as it was well-liked and met an obvious community need for regular informal social contact time. However, Our Place Wye is obstructed by the lack of a suitable venue as Wye Village Hall has no availability. This point is relevant to the 'it is realistic' test under the Localism Act 2011 Section 88 (2) (b).

APPENDIX 31 Our Place Wye CIC statement, March 2022

APPENDIX 32 Kent Community Warden statement, March 2022

164. Options Club is a very clear example of a proven and successful format that meets a social need, but is stymied by the lack of a meeting space with a kitchen. This carries forward to the 'it is realistic' test under the Localism Act 2011 Section 88 (2) (b).

165. The Parish Council valued the high social and wellbeing benefits of these regular, but understated weekly gatherings, and gave thanks and public recognition for this in 2017 as follows: *'Congratulations and many thanks to Wye's Parish Award winners this year. At the Annual Parish Meeting Social Evening the Parish Council chairman Cllr Noel Ovenden announced the winners, and thanked them for their contributions to the quality of village life and the environment.'*

'The winners are: [The late] 'Aileen Makey - for the foresight to set up the Options Club over 15 years ago. This thriving social club meets in Wye Methodist Church Hall every Thursday at 10.30 to enjoy eclectic programme of speakers and music and each other's company. Options Club welcomes newcomers, especially those living alone. Aileen was too ill to attend the event, so the presentation will made to her at home instead.'

APPENDIX 21 Congratulations and thanks to Wye Parish Award winners

166. During her meeting with the Parish Council to explore alternatives to the sale of the building. Rev'd Hollands made the distinction between the (many) paying users and (the very few) non-paying users. However, in the context of an ACV nomination, this monetary distinction between users does not apply.

167. Regrettably, the Methodist booking secretary destroyed all the booking records before the closure announcement. However, an estimate of actual community use can still be calculated.

168. The audited accounts correlate to **over a thousand hours of secular community activities per year**. All of this use furthered the social wellbeing or interests of the local community.

169. To reiterate, the assembled evidence shows that the main secular uses by numerous community groups exceeded, by an overwhelming margin, the hours that the building was used for worship and related activities. For simplistic evaluation purposes based on the available evidence, a use ratio of 80:20 (nonancillary/ancillary) is a realistic estimate.

170. The hours of community use can be approximated by averaging the following annualised bookings income of £6,605.50 achieved across 2018 and 2019. These being audited figures kindly reported to the Parish Council by Rev'd Hollands.

171. This total income figure equates to an average room hire income of £18.10 per day, including Sundays) At a known hire rate of £7 per hour this multiplies up to an annual total of 943.6 hours of community room hire, or 78.64 hours per month.

172. The income received understates the actual level of community use, as Rev'd Hollands confirmed that some groups were either allowed a

reduced rate, or not invoiced at all, in the case of local charities (see APPENDIX 12).

173. Social events led by Methodist Church members are understood not to have paid room hire charges. Regardless of any financial concessions, the actual activities that took place furthered the social wellbeing or interests of the local community.

174. Notably Options Club and Open House did not pay for their use of the building. Had they done so at the standard rate of £7 per hour they would have contributed in total about £1,750 a year. This is potential income foregone, which carries forward to the 'it is realistic' test under the Localism Act 2011 S88 (2) (b).

175. On occasions such uses also had an opportunity cost for the church finances. For example, the Margaret Giles School of Dancing is obliged to hire Wye Village Hall for its classes on Saturday mornings as the Hall (and its piano) was always required for Open House coffee mornings at that time every week.

176. That said, and financial concessions aside, Open House meetings in the Hall furthered social wellbeing and interests of the community all year round, whereas the Margaret Giles School of Dancing only functioned in school term times.

Conclusion

177. The asset passes both tests under Section 88 (2) (a).

Q2. *How do you anticipate that the land/building(s) will be returned to that use or put to some other main use which will further the social wellbeing or social interests of the local community and when do you consider this will happen?*

Executive summary

178. The pandemic forced the Methodist managing trustees to close the building. It remained closed throughout 2020, though not because of any decline in the community need, or anticipated fall in demand for its facilities post pandemic. Rev'd Hollands cited the reason as 'the burden on local trustees.'

179. This 'burden' is a resource issue, but not a significant obstacle. The Parish Council can resolve it with a fresh and planned approach to facilities management that will be financially sustainable and provide increased public benefits.

180. Wye Parish Council has prepared a business plan and offered repeatedly to either lease the building from TMCP at a commercial rent, or buy the building on the basis of an agreed commercial valuation. The business plan contains commercially sensitive information. [As this nomination form and appendices will become public

documents, the business plan and correspondence is not appended as supporting evidence].

181. The Parish Council's stated aim is to return it to active use as a community centre, and to improve its range of facilities.

182. By default, as the intended outcome is a fully functioning community centre it is realistic to think that it would further the social wellbeing or social interests of the local community.

183. On this basis, Wye Parish Council is confident that although COVID-19 will remain in circulation, the risks will become more manageable within a five-year timeframe. The latent need for people to meet and take part in community life will rebound in that timeframe. This will justify a substantial capital investment in the building as an asset of community value.

184. Professional research commissioned for the Our Place Wye business plan in 2015 produced strong and clear evidence of unmet need for health and social wellbeing support in Wye. In particular the older and less able members of the community.

185. Local need has increased since 2015, along with the population. The legacy of the pandemic, increasing financial pressures on households, and the unknowns of a potentially protracted war in Europe are all compounding the stress on individuals and adding to the need to support social wellbeing.

186. Although the timing remains problematic, it is realistic to expect that the current threats to wellbeing posed by COVID-19, war and financial pressures will subside within the next five years.

187. It is also realistic to think that the suppressed elements of community life and social activities can resume safely within the same timescale of five years.

188. Under new management, and with the benefit of clearly defined aims and strong infection control measures and other necessary resources in place, the building can once again further the social wellbeing or social interests of the local community.

189. The pandemic continues to distort the level of need for community space. Thus, many residents who are clinically vulnerable continue to isolate, or avoid potentially risky indoor meetings. They are not participating in community activities in some cases from choice, or because event organisers consider the infection risk to be too high, or impracticable to mitigate.

190. The Wye Community Lunch is a good example. Having operated for over four years the organisers considered it unsafe to open for the past two years. Despite isolated people in Wye being clearly in need of some social contact during the pandemic.

191. **The effect of isolation and anxiety is certain to be harming community wellbeing. For some vulnerable and bereaved individuals that harm is likely to be great. Fortunately, Wye has some sixty established community groups and is a relatively resilient and well-connected community. For perspective and scale, Wye has some 1,092 (Band D equivalent) households.**

192. **The strong social networks and groups in Wye support individuals, and they have done so throughout the pandemic. They will also aid recovery and wellbeing at the community level, but crucially, many of these need facilities from which to operate.**

193. **Those individuals and community groups that have yet to emerge for safety reasons will once again need meeting and catering facilities. However, as the current booking diary shows, Wye Village Hall is already operating at near capacity, despite the high and now rising prevalence of COVID-19 and the increasing risk of infection.**

194. **Although Wye Village Hall is almost fully booked it serves a limited number of mainly regular user groups. These include the indoor sports and more active groups for young people and some specialist facility users, for example the Wye Arts Cinema Club.**

195. **The Wye Village Hall trustees' annual report for 2020 reported that '*bookings were strong*' for 2021 and lists in a 'normal year' that it had twenty-one regular users of its facilities. Whereas Wye has some sixty voluntary bodies and organisations in total.**

APPENDIX 22 Wye Village Hall booking diary, 13th September 2021, (when COVID-19 case rates and contagion risks were low).

196. **Furthermore, the constraint on meeting spaces is a longstanding problem in Wye which pre-dates the closure of the building. The closure of the Wolfson Lecture Theatre in November 2015 exacerbated an existing problem. (see APPENDIX 20 and 26).**

197. **The High Court ruled in 2021 that meetings held under the Local Government Act 1972 (LGA72) must be held in person, and in public, at a single specified geographical location. Councillors must attend in person to be recorded as being present and vote. This is significant in relation to LGA72 Section 86 (1) (c). To comply with this ruling the Parish Council needs suitable, publicly accessible premises in which to meet and carry out its duties.**

Need, context and locational advantages

198. **The building provided meeting spaces that suited small groups and community activities that complemented the larger Wye Village Hall**

facilities. All of which further the social wellbeing or social interests of the local community in their own way.

199. Typically, the building evolved to support many of the smaller, quieter and less physical community uses in Wye. This facility also enjoys a strong locational advantage and full accessibility which served the needs of older, single and less able residents well.

200. To reiterate, 'Methodism in Wye' states that: *'The site of the new chapel was at the heart of the village. Just outside was the village pump, its main water supply, now marked by a plaque. This was chosen as the central point of the village during discussions on the recently prepared village plan. The chapel could not now be ignored as a significant part of community life.'*

201. Being both central and accessible on foot the building encourages community life and social interaction to flourish. In the analogous context of town centre retail footfall, the building is located in a prime site as an engine for Wye's social economy.

202. As such, the building is well placed to further the social wellbeing or social interests of the local community. The need for such a facility is heightened by the pandemic and the rapidly deteriorating financial situation.

203. In summary, based on the strength of the evidence that a wide range of community social activities used the building before the pandemic, there is a clear need to retain the building for its use as a community centre. The resumption of community use is both realistic and sustainable, in both the practical and financial senses.

204. The building supported a range of community uses. These uses may change to reflect changes in community needs and interests. The Parish Council views this as an opportunity to innovate and adapt and thereby continue to further the social wellbeing or social interests of the local community in future.

205. The building was managed very simply and in much the same way for many years until its closure in 2020. Community users did not have access to free wi-fi, or the convenience of an online room booking system. Nor did the building have a website to promote its facilities and day-to-day room availability to potential users. Instead, the booking system relied on a landline number, answerphone messages and a paper diary.

206. To assist the trustees the Parish Council provided a simple web presence and published the text provided by Dr Chapman. However, a fresh and flexible approach to building management can reinvigorate the whole facility and increase its capacity and uses. By concentrating on the aim of providing community benefits more effectively, the building can, once again, further the social wellbeing or social interests of the local community.

207. Fortunately, with minimal adaptations and upgrades to the internal layout the building can perform this community centre role again, and do so more effectively than it achieved before the pandemic forced its closure.

208. Rev'd Hollands confirmed that the repairs identified in the recent quinquennial review were costed at some £20,000 over the next five years. This figure appears to represent a maintenance backlog on this building, which is Grade II listed. The Parish Council's business plan includes a reserve and a sinking fund to ensure that future maintenance will be timely.

209. The Parish Council has the option to fund this maintenance work from its existing free reserves. However, the Parish Council plans to borrow funds (subject to due process) to buy the building[.] The preferred route is to add the maintenance sum on top of the purchase price, and roll the backlog and refit costs into the capital repayment schedule. This will spread the cost over a long period, potentially up to fifty years (The funding mechanism is discussed in para. 250 to para. 255 under Viability (capital) below).

Viability (revenue) and outline business case

210. **Transition, phasing and constraints:** When the pandemic eases it will release a pent-up need for a variety of non-ancillary uses for the building. These community uses would return to further, albeit not in quite the same way as before, the social wellbeing or social interests of the local community.

211. Some activities, where the risk of infection can be managed at a low level, could resume as soon as the building is available to return to community use after maintenance work. The main constraints being lawful access and the time needed to bring the building back into a safe and fit condition for public use. The discussion below will expand the Parish Council's reasoning.

212. **Financial resilience:** Developing a sustainable mixed income stream is essential for financial resilience in the long term. Wye Parish Council calculates that the fresh approach outlined below will be sufficient to cover ongoing overheads and building maintenance costs, build a reserve to meet future repair costs and improvements, employ staff, and meet loan repayments.

213. **Cost comparator:** Chartham Hatch Village Hall provides a local comparator for income and expenditure budgeting purposes. This charity formed in 1968 and operates in a Victorian Gothic building, which is comparable in its age (built 1873) and construction to Wye Methodist Church. Albeit it was built as a village school. The financial history averaged over in the four years pre-COVID-19 is stable and it shows an average annual income of £11,660, and an average expenditure of £7,327.

214. Chartham's current hourly room rate is £8 (compared to £7 per hour in Wye in 2020). However, Wye earned £6,605.50 compared to Chartham's total income of £11,660. Tellingly the trustees of Chartham managed to bank 76% more income than the trustees of Wye, having provided similar facilities and services.

215. As Wye has approximately five times the population of Chartham Hatch, this marked performance differential suggests that the building in Wye has considerable latent potential.

216. To put this revenue comparison in context, a total annual outgoings liability of say, £10,000 (allowing for greatly increased energy costs, but excluding loan repayments) represents less than 7% of the Parish Council's current annual precept.

217. In summary, a proof of concept shows that this undertaking is needed, viable, affordable, manageable in scale and therefore realistic.

218. **Partnership working:** The Parish Council works closely with the managing trustees of the Wye Village Hall and Recreation Ground Charity, and manages the recreation ground and equipped play areas on their behalf under licence. Once the building is operational there are potential economies of scale and other benefits to gain from greater partnership working, and the two facilities have long complemented each other.

219. **Public health:** The pandemic is not going away, so the mix of income streams outlined below assumes that COVID-19 will become endemic, with epidemic waves and spikes as new variants appear periodically. In preparation for this reality the building will need layers of infection control measures installed, and keep them either in operation, or on standby. The Business Plan has a provision for a range of additional public health and energy conservation measures. For example, improved ventilation and heat exchanger, HEPA filters and upper air UVc.

220. **Climate change:** This is the overarching consideration in respect of all building works, revenue costs in the operational phase and overall project resilience. The Business Plan provides for improvements in thermal efficiency and other adaptations, and has options for carbon and energy cost reductions under review. These works will require planning permission and listed building consent. Furthermore, from June 2022 changes to Building Regulations Part L and Part F will apply to these works.

221. **Lettings:** enhancements to the established practice of licenced lettings will revitalise the building as a venue, and the space will be managed more efficiently and proactively, for community benefit. For example, the addition of public wi-fi, an integrated online booking system, active promotion in close coordination with the Wye Village Hall facilities, and contactless payment options for hirers. The Parish Council's prime aim being to offer users a wider range of modern, quality facilities, with greater capacity and flexibility for community use in the future.

222. **The chapel:** 'Methodism in Wye' acknowledged that 'the Church proper is used much less...' In practice, the largest and most attractive space in the building was left unused on most weekdays. Whereas the fresh approach envisaged by the Parish Council aims to change this situation and increase the earning potential of this premium space. Consequently, a significantly greater community use of this space will further the social wellbeing or social interests of the local community.

223. From its present low base line use per week, the chapel space has the potential to transform the letting income received. If hired for an average of say thirteen chargeable hours at £10, this would add some £6,760 in income per year. This modest level of chargeable use would double the historic total letting income for the whole building. This extra use would further the social wellbeing or social interests of the local community considerably.

224. An annual total of an extra 676 hours of community use for the previously little used chapel could compensate in some measure for the recent loss of the Wolfson Lecture Theatre and Latin School as valuable spaces for community use.

225. **Worship use retained:** All community uses aside, as Sundays are not usually a peak time for community activities there is the possibility of retaining a worship use alongside the extensive mix of secular community uses outlined in 5B above. The same could apply to any community centre with availability.

226. **Leases:** would be appropriate for parts of the building to enable one, or potentially two anchor tenants to underpin the income stream and provide financial resilience. A steady and reliable income would enable the Parish Council to keep room hire rates low for community uses, and underpin cash flow. This approach would encourage more community use and further the social wellbeing or social interests of the local community.

227. **Anchor tenants:** The tenants envisaged are Wye with Hinxhill Parish Council itself, and potentially KCC Arts and Libraries. The premises costs that the Parish Council pays for its leased office (currently £6,453 per year) could instead support the building and underpin the revenue budget, as discussed above. This is additional to the letting income for community use. As a base line in the two years before the pandemic closed, the building the average actual lettings income totalled £6,605.50.

228. **Cost savings:** the relocation of the Parish Council's office is a cash neutral reallocation within the Parish Council's budget. However there would be a clear financial advantage to KCC Libraries as the present library premises costs £16,538 to run. This figure covered the fixed costs of Wye Library (rates, rent, maintenance, cleaning, energy and security) in 2019-2020. The present library premises is also a smaller and less flexible space.

229. **Synergy:** the Parish Council's business plan is viable without the library income, but if added its co-location would increase footfall in the

building significantly and this would further the social wellbeing or social interests of the local community.

APPENDIX 23 KCC Libraries Use of Libraries statistics 2019-2020

230. The presence of one or two anchor tenants would complement, and extend the level of social activity and interaction in the building.

231. Furthermore, public libraries qualify for ACV listing in their own right. For example, The Royal Borough of Kensington and Chelsea listed the North Kensington Library on the ground that *'the current use of the building furthers the social wellbeing or social interests of the local community and it is realistic to believe that the future use of the building or land will continue to further the social interests.'* (Ref: ACV/16/08348)

232. The potential co-location of an ACV qualifying use within a building which already qualifies as an ACV can only amplify the benefits and this would further the social wellbeing or social interests of the local community.

233. KCC's statistics (APPENDIX 23) show that Wye Library received a total of 9,316 visits in 2019. Thus, if all that additional footfall and extra hours of community time is diverted to the building it will increase its active use overall. This will further the social wellbeing or social interests of the local community. Alternatively, even if Wye Library remains in situ some 50m away, its proximity to the building will help to increase community use.

234. A higher daily footfall through the building will also increase the number of chance social contacts made, and thereby reinforce Wye's already strong social networks and further social wellbeing or social interest of the local community.

235. **Working from home (WFH):** the combination of broadband and the pandemic have opened new alternatives to commuting, and the shock of 2020 has altered the whole concept of work. WFH also has environmental and social and health benefits. Many former commuters and the self-employed are now able to spend some, or all of their time working from home. However, isolation and loneliness can be harmful to wellbeing at any age.

236. Former commuters are a potential new user group for the building, with needs for social meeting spaces and new activities at different times. Whereas commuters will remain a hard-to[-]reach group within the community, there is now a choice.

237. For example, a monthly breakfast club with guest speakers would enable those people who used to chat together every morning on a train to catch-up, and continue to make new friends and local contacts over coffee.

238. In particular, this type of informal event will help newcomers to Wye who lack local contacts and opportunities to meet people. They can start to build their own network of local contacts and soon feel welcome and connected. Easy and informal contact will encourage them to take an active part in village life and this will further the social wellbeing or social interests of new and existing members of the local community.

239. **Kitchen:** the Hall has a large and well provided kitchen. However, like the chapel this facility was under used. In recent years it did little more than provide tea making facilities. For example, making better use of this as a working kitchen could provide the weekly Wye Community lunch with the secure facilities and income that it needs to be sustainable. Over time it will reach out and benefit more people. This stability will greatly further the social wellbeing or social interests of the community. (See APPENDICES 31 and 32)

240. There are further benefits as Wye Village Hall has a table seating capacity for 180, whereas the weekly Community Lunch only needs to cater for about 25 diners. Relocation will also free up the Village Hall for another group that needs the larger space.

241. **Meeting room IT facilities hire:** The Parish Council has operated successfully on a hybrid basis from its current premises since May 2021. When the Parish Council is not in session, this IT equipment has great potential for use by other bodies as an alternative to in-person meetings.

242. **Virtual meetings:** there is no remote meeting facility available for public use in Wye. If provided in the building it can generate further hire income to support the budget, and make better use of public money invested in the IT equipment.

243. **Wider scope:** The Methodist Church's national standard lettings licence to occupy (11.03.2020 v5) imposed a strict condition on community use of the facilities.

244. Condition (3.g) of the lettings licence prohibits any consumption of alcohol or gambling on the premises. This stops users from holding raffles, 100 Club draws, wine and cheese parties, and simple fundraisers that community groups use, typically to raise petty cash for their room hire costs. For example, the Wye Arts Cinema Club starts every film night with a raffle.

245. Once released from Condition (3.g) the building can offer terms comparable to the Wye Village Hall and other community centres, and all kinds of community celebrations will be in scope. This relaxation in the hire terms will further the social wellbeing or social interests of the local community.

246. As Rev'd Hollands confirmed during the meeting in April (see APPENDIX 12) the managing trustees allowed groups led by its Wye members to meet without paying room hire charges.

247. Ending this grace and favour practice will release about four hours a week for chargeable community activities. At the 2020 letting rate of £7 per hour this approach could raise annual income by at least £1,250, without any reduction in the scale of community activities in the building, and retain social benefits.

248. The Parish Council has its own room hire needs. If these meetings use the building it will raise a similar sum per year.

249. In practice, regular users of the building had their own keys and came and went without any direct involvement from either the Property Steward or the Bookings Secretary. Consequently, the relationship between hirer and community user groups was remote and transactional (see APPENDIX 18 for invoice examples).

APPENDIX 24 Methodist Church standard room lettings licence to occupy Document, reference 11.03.2020 v5.

Viability (capital)

250. **Funding sources:** To augment any available capital grants, Wye Parish Council is eligible to access low, long-term fixed rate funding from the Public Works Loan Board (PWLB) for capital regeneration works. This borrowing facility, is subject to PWLB rules and evidence of public support.

251. The PWLB offers fixed rate loans repayable over fifty years. Once the loan is in place, it will enable the Council to improve the structure and flexibility of the building and increase its ability to function as a vibrant and financially self-sustaining village asset.

252. As a precedent to match fund the Wye Village Hall upgrade the Parish Council (as custodian trustee) borrowed £100,000 on a fixed rate loan from PWLB to part finance the works. This initiative enjoyed strong public support, backed by consultations and policy support in the Wye Neighbourhood Plan.

253. This borrowing was necessary to compensate for the absence of any Community Infrastructure Levy scheme in the district, or s106 funding secured from housing developments.

254. The Parish Council's current business plan has structured the finance to ensure that no additional precept contribution will be required during the whole loan period. The Parish Council's £100,000 loan to complete the Wye Village Hall project set this precedent as it covered repayments without any need to raise the precept. The budget for 2022-2023 takes the same approach.

255. In summary, Wye Parish Council has the necessary reserves, borrowing capability and track record to acquire, upgrade and manage this asset for community benefit.

256. **VAT:** Subject to HMRC rules, there is potentially a further efficiency in that the Parish Council may be able to reclaim VAT on some premises repair and renovation costs. The detailed business plan will consider the options and use this tax efficient advantage where possible.

257. **Structure:** For speed and simplicity, the Parish Council makes this ACV nomination in its capacity as a local authority and incorporated body.

258. **Operational phase:** looking ahead, the Parish Council is mindful of the Localism Act and the day-to-day practical difficulties of managing a charitable village hall as a sole charity trustee. The choice and formation of the most appropriate structure to own and manage the building is under review.

Policy support

259. The Care Act 2014 has a direct bearing, as wellbeing covers a range of outcomes, such as physical and mental and emotional wellbeing. This wide definition of wellbeing also covers participation in work, education and training and social and economic well-being, and relates to the different needs of all age groups.

260. In response to an extensive community consultation the Parish Council initiated the Our Place Wye programme in 2014 and obtained funding from MHCLG as a national pilot. This social research work informed the Wye Neighbourhood Development Plan, and shaped in particular 5.1 Community and wellbeing and its Policy WNP7 Community support.

261. Policy WNP7 Community support states that: *'Where new housing development takes place, developer contributions through CIL and Section 106 agreements where the legal requirements in paragraphs 203 and 204 of the NPPF are met having regard to the development proposed, will be directed towards;*

- *improvements to the village hall complex,*
- ***the provision of a day care facility for elderly residents in Wye.*** (Emphasis added)

262. The Wye Neighbourhood Development Plan provides planning policy support for the community projects that need physical space in which to operate, and the spare capacity to enable new groups to form and develop.

263. The Our Place Wye Business Plan Logic Model – What does good look like? identified *'Reducing incidence of loneliness and isolation'* as one of its top twenty outcomes.

APPENDIX 25 Our Place Wye Business Plan Logic Model, (approved by the Ministry of Housing, Communities and Local Government, now DLUHC) Intended outcomes – What does good look like?

Research and evidence of need

264. The broad vision of the Our Place Wye programme is to develop a complementary, asset-based approach that promotes community health and wellbeing. The first aim is to promote wellbeing, and raise the quality of life for older residents, those of working age with disabilities, and their carers and families.

265. The Our Place Wye Business Plan (2015) states that: *'Our aims are to nurture a more inclusive, integrated community, which is more resilient and responsive to individual needs, age and social profile, and stimulates a healthy, caring and sustainable community in Wye and the surrounding areas.'*

266. The Business Plan identified a set of activities to address social, health and wellbeing deficiencies in Wye. In particular, the needs of one third of the parish population who were aged over 60 (787 people 2011 Census) Over 16 % of the population are aged over 75 (373 people) and 54 of whom are aged over 90.

267. From one-to one community research interviews the clear priority for this large demographic is an affordable community café. This is needed and prioritised partly for its nutritional benefits as these are important, but primarily as an affordable place for people to meet and be sociable, and counter loneliness.

268. Wye used to benefit from just such a facility until 2009, but lost this with the final closure of Wye College and its kitchen and dining hall. Clearly, a replacement community café located in the building will further the social wellbeing or social interests of many in the local community, and Our Place Wye CIC continues to support this aim. (See APPENDIXES 31 and 32)

269. The Business Plan identified key indicators of social and wellbeing need, notably that over 10% of the population are widowed and a further 7% are either separated or divorced. Whereas the district average of elderly on state support is 2.5%. Wye is around 13.5%. And that just over 9% of the population report that their day-to-day activities are limited a lot by their health. Again, this correlates to the level of wellbeing across the community and it is a priority concern for the Parish Council.

270. In response to this data, and evidence from interviews Our Place Wye CIC developed activities to address needs in Phase Two, which depend on the availability of premises.

271. Therefore, use of the building as a community centre would enable to range [*sic*] of activities to further social wellbeing and social interests. The Our Place Wye Business Plan outlines these as follows:

272. '1. Community Cafe (food - eating & socialising)

'As highlighted by the informal study undertaken last year, there are no opportunities for people to gain access to nutritious, value for money lunches aimed at "older people". There have been a range of initiatives in the past in the village, including voluntary lunch clubs, meals delivered akin to "meals on wheels" from the local primary school, even concessionary meals for seniors provided by local public houses. Each of these has now ceased to operate.

273. *'It is firmly believed that opportunity for eating in a social context, access to nutritious, value for money meals is a crucial element of the programme. It helps reduce social isolation, encourages social inclusion, and provides a focus, and is in essence, another social space, but with a clear purpose. Many people living alone often do not go to the trouble of cooking proper meals. The report also indicated the number of people without access to cars; and frailty does not make it easy to shop by public transport. We have reviewed existing arrangements and intend to research different models and opportunities, which are realistic and cost effective.*

274. *'There is strong local support for this area of activity; many people recall that Imperial College (currently closed and disused) allowed the local community access to its dining rooms. The emerging vision of this venture is to establish a 'community cafe' (emphatically not an older people's lunch club); to strive to create a vibrant 'age inclusive' space that people wish to be part of and visit, as the heart of village life.*

275. *'NHS colleagues also take the view that the healthcare cost of managing malnourished patients was more than twice that of managing non-malnourished patients, due to increased use of healthcare resources¹³. After adjusting for age and comorbidity, malnutrition remained an independent predictor of mortality. Malnourished people saw their GP twice as often, had three times the number of hospital admissions and stayed in hospital more than three days longer than those who were well nourished.'*

276. Our Place Wye provided a weekly Community Lunch for a capacity of 24 residents until lockdown in 2020. The risk to elderly residents prevented it from restarting until 16th March 2022.

277. Although the Community Lunch was highly successful and much appreciated by the elderly residents for over four years, the project is dependent on the availability of suitable premises. Crucially the Community Lunch needs access to a good kitchen if it is to reopen as a safe and reliable facility that furthers the social wellbeing or social interests of the local community.

278. Our Place Wye is also anxious to re-start the successful Options Club, but again, it lacks a suitable venue. The Village Hall has no availability. (See APPENDIXES 31 and 32).

279. **3. Community Hub (Information/Information technology)**

'Currently the branch library provides some aspects but is severely constrained by space. The library has been a keen partner to examine what might be possible; this is closely aligned with its own future development. The emerging vision is to explore how to draw together the existing programmes of support, and re-shape the current facilities to promote more digital inclusion amongst older people.'

KCC Arts and Libraries

280. The Parish Council has discussed the issue of premises with KCC Arts and Libraries at intervals over the past 25 years. Most recently in 2019. The reason being that the KCC rents its library premises in Wye and keeps its property portfolio under review.

281. The following discussion is for information and does not form part of the Parish Council's business plan.

282. These discussions revealed that the lease is expensive per square foot relative to other rented libraries in Kent, and the space is too small to enable provide [*sic*] a range of modern library services. Space for IT access is also severely constrained. The Parish Council is acutely aware of the rising cost pressures on KCC's budget and is most anxious to help to retain a library in the centre of Wye, and offer an improved range of modern services.

283. KCC has remained open and interested to the principle of shared premises in a community centre in Wye, confirmed most recently in the context of access and re-use of Wye College.

284. The option to relocate Wye Library to the building would provide social benefits as a meeting place during and out of library hours, a larger and more flexible facility for the community. Relocation would also provide potentially lower rent costs for KCC for a larger and more flexible space, with the added benefit of better natural light for reading as the present library faces north.

285. While the option of this partnership is speculative **(and commercially sensitive)**, it is based on the solid evidence of the Parish Council's previous engagements and discussions with KCC managers, officers and property advisers over the past 25 years.

286. Relocation of the library would enable the present library building to be repurposed. It could revert to residential use, and provide an additional ground floor home in the centre of Wye. Accessible accommodation of this size is very scarce in Wye.

287. Although constrained currently by the lack of space in normal times Wye Library is popular and well used. In September 2019 it increased its opening hours by ten per week. Within its space constraints it provides events and activities that further the social wellbeing or social interests of the local community.

288. These community activities include weekly Storytime, Rhyme Time for under 5s, Digital Dens meetings, and quarterly HIKent drop-ins for the hearing impaired. These groups were suspended as a COVID-10 safety measure, and Talk Time for elderly people and Hi-Kent have not restarted.

289. In September 2021 KCC stated that it is 'slowly reintroducing events and activities at some of our libraries where possible.' However, the lack of space was a severe constraint in Wye Library pre-pandemic and it remains so.

290. Co-location of the Wye Library in the building would provide it with a larger and more flexible multi-purpose space, suitable for a wider range of activities than its present site permits.

291. Those people who have been most disadvantaged by COVID-19 and most isolated by lockdowns and the loss of daily social contact could gain the most from the co-location of the Wye Library. The range of services would reach more people, and further the social wellbeing or social interests of the community.

Other community activities and unmet space needs

292. In January 2021 the Parish Council responded to a request from Ashford Borough Council for a paper to justify the retention of the Latin School for community use. The following discussion is also provided for information and it does not form part of the Parish Council's business plan.

293. In January 2021 Ashford Borough Council withdrew its support for the retention of the Latin School for community use and did not defend its Planning Committee's decision at appeal. Consequently, the community of Wye is losing that valuable 50m² historic building to an exclusive private residential use.

294. The planned replacement for the Latin School is a 'Heritage Centre' of some 75m². This change of location will, at best, make little difference to the status quo in terms of community space availability. Furthermore, the timing of this relocation, booking arrangements, the terms of use, hire costs and any other constraints on users are all unknown factors. The managing body does not exist, so the governing memorandum and articles and shareholder structure remains undefined.

295. Given the continuing uncertainty regarding the relocation of the Heritage Centre and any community use that may be permitted and the established constraints on the remaining meeting spaces in Wye, there is an even more compelling case for retaining the former Methodist Church in community use.

296. Some possible uses for the building are described in the three extracts from the Executive Summary, Uses of the Latin School in Parish Council stewardship (January 2021) as follows:

297. **3.** *'Given the Latin School's central location and ease of access, the range of community uses to which it could be put are legion, even with restrictions on type and hours of use. The likely users would include: the PC, both as an office and for face-to-face engagement with residents; the community support group Our Place Wye (OPW); community groups; and possibly a Visitors Centre.'*

298. **4.** *Pre-COVID19 the Village Hall was fully booked during the week, and the two other facilities, the Methodist Hall and the church, were equally busy. Demand for community space will rise proportionally with the expected population expansion. Post COVID19 demand for greater 'localness' is also likely to increase demand.'*

299. **28.** *Methodist Hall. The Methodist Hall houses 5 rooms: the Thomas Berry Meeting Room (on first floor), (capacity 15), The Worship Room, (60), the Vestry and Garden Room (10), the Small Fellowship Room (10), and the Wesley Activities Room (30). There are coffee facilities and an en-suite kitchen. The Methodist hall facilities between them take over 80 meetings per month.'*

APPENDIX 26 Wye Community use of the Latin School December 2020

300. The Latin School paper identified several community uses for this facility that are either current, or occurred in the recent past. This shows a clear need for additional space at a time in December 2020 when the Methodist Church was closed.

301. Crucially the paper presumed that the Methodist Church would reopen when it became safe to do so. (see APPENDIX 10).

302. The case made for the Latin School can be reapplied to reinforce the case made above for the return of the Methodist Church building to a community centre role. This use will further the social wellbeing or social interests of the local community.

Conclusion

303. **In light of the evidence, it is realistic to think that the:**

- a) actual past community use;**
- b) continuing need for community facilities in future;**
- c) increasing population of Wye;**
- d) indications of latent potential to increase community use;**
- e) viability and robust business plan;**
- f) reliability of cash flow and fall-back funding from reserves;**
- g) reassurance of the precept to cover unforeseen liabilities;**
- h) ability of the nominating body to deliver this outcome;**
- i) timeframe over five years is realistic;**
- j) building is well placed to further the social wellbeing or social interests of the local community in the future.**

Therefore, it is reasonable to think that the nominated asset passes both tests under Section 88 (2) (a) and Section 88 (2) (b) of the Localism Act 2011.

*

The Borough Council cannot list buildings or land on its own initiative – they must be nominated. Therefore, the onus is on the nominating body to give their reasons for thinking that the Borough Council should conclude that the building/land is of community value.

There is little guidance on the criteria a local authority should consider when deciding whether an asset is of community value. When the Act was at the Bill stage, the Minister stated that:

'...We have suggested that one of the criteria for assessing what is an asset of community value could be evidence of the strength of community feeling about supporting the asset's being maintained for community use'

In this case, the nominating body is a parish council and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that the Parish Council is representing the views, or is expressing the general wishes, of a significant percentage of their local community.

For a building or land to be included in the 'List of Assets of Community Value' its main use – not 'an ancillary use' – must further the social wellbeing or social interests of the local community.

Before turning to the 2022 Nomination it is necessary to briefly touch upon the Borough Council's January 2022 decision in relation to the 2021 Nomination. Submitted with the 2022 Nomination (at Appendix 28) is an 'Advice' dated 12 March 2022 provided to the nominating body by Mr Christopher Cant of counsel.

Mr Cant states⁷:

'The reasons for the refusal set out in the Council's delegated report prepared by Mr. McBride sought to follow the decision of Judge Lane in the General Conference of the New Church v Bristol City Council CR/2014/0013 ("the New Church case"). The Church was not listed because it was considered that it failed the test in section 88(2)(a) of the Localism Act 2011 which requires that "there is a time in the recent past when an actual use of the Church or other land that was not an ancillary use furthered the social wellbeing or interests of the local community." In consequence it was considered that it did not have to be determined whether the test in section 88(2)(b) was satisfied.

'My view is that Judge Lane was wrong in the New Church case if it is taken to mean that a place of worship can never be listed as an ACV...'

⁷ Page 1 of Mr Cant's Advice.

In short, Mr Cant considers that the Borough Council's January 2022 decision in relation to the 2021 Nomination was incorrect.

It would be inappropriate to provide in this report a point-by-point response to the many points contained in Mr Cant's 24 page Advice. Nevertheless, with respect, I find the Advice to be unpersuasive for the most part as Mr Cant appears to have misunderstood and/or mischaracterised certain key passages of the Borough Council's January 2022 decision. Moreover, Mr Cant's reliance in aid to interpretation on a wide range of concepts/devices contained in unrelated legislation and/or developed by the Courts for entirely different purposes (and even in relation to the interpretation of entirely different terms/expressions to those contained in the Act), is generally unhelpful⁸.

Taking one central point as an example, Mr Cant suggests that the Borough Council concluded that churches (i.e. church buildings) can never be listed as assets of community value. This is incorrect. The Borough Council made no such conclusion. The building itself is not the issue – it is how that building is/was used which is key. Taken collectively, the eight factors set out at pages 41-44 of the January 2022 decision explained why it was reasonable for the Borough Council to conclude, in relation to the 2021 Nomination, that 'the dominant main **use of the** nominated church **building** was as a place of worship.'

The Borough Council respectfully suggests that Mr Cant seems to have conflated two separate issues – the church building itself as a structure being categorised as a 'place of worship' no matter what its current/most recent use; and the use of a building (whether it be a church building or not) as a 'place of worship.'

In the 2021 Nomination the main *use* of the building as a 'place of worship' is what took it outside the scope of uses that further the social wellbeing or social interests of the local community and not that the church building itself was categorised as a 'place of worship' no matter what its actual use.

In any event, Mr Cant appears to contend that the use of a building as a 'place of worship' would itself be a qualifying use under the asset of community value regime. In doing so, he refers to the Regs and to their 'Explanatory Memorandum.' Schedule 3 to the Regs relates to 'relevant disposals to which section 95(1) of the Act does not apply' and paragraph 12, Schedule 3 to the Regs states as follows:

'A disposal of a church, together with any land annexed or belonging to it, pursuant to a scheme under Part 6 of the Mission and Pastoral Measure 2011'

Mr Cant considers that:

'It is highly relevant to this issue that in paragraph 12 of Schedule 3 a disposal of a church pursuant to a scheme under Part 6 of the Mission and Pastoral Measure 2011 is not subject to the moratorium provisions. There

⁸ I note the caution of Judge Lane in the *General Conference of the New Church* [at para 18] in translating planning law concepts into asset of community value cases. I also note Judge Warren's similar reluctance [at para 7] in *Gullivers Bowling Club Limited v Rother District Council [2014] UKFTT CR_2013_009 (GRC)*.

would be no need for such a provision if places of worship cannot qualify as an ACV. Schedule 3 only applies to assets which can qualify as an ACV. In consequence this strongly indicates that places of worship can be listed as an ACV as otherwise such a provision would be unnecessary and meaningless.'

It should be noted that Part 6 of the Mission and Pastoral Measure 2011 relates to 'buildings closed for regular public worship' i.e. to buildings where 'worship' is **not** taking place. That being so, there may be instances of a church building where the 'worship' use has ceased entirely but where the building is now (or was last) used for another purpose as, say, a community centre⁹. If that were the case then, naturally, that church building might qualify for listing under the asset of community value regime with its relevant disposal then being governed by Schedule 3 to the Regs.

The question remains, however, about whether a building – even a building which is structurally considered to be a church building, a mosque, a synagogue etc. – should be added to a List of Assets of Community Value *on the basis that its use for the purposes of worship is a use which furthers the social wellbeing or social interests of the local community?*

Section 88 of the Act relates to 'land of community value' and subsection 88(6) states that in this section:

"social interests" includes (in particular) each of the following—

- (a) cultural interests;
- (b) recreational interests;
- (c) sporting interests.

The three examples are, of course, not exhaustive but the Borough Council considers that it is unlikely that the act of worship would ever be considered as being either a cultural, recreational or a sporting activity. It is unnecessary to reproduce here dictionary definitions in order to demonstrate this point.

Mr Cant's Advice suggests interpretations of the terms 'social wellbeing' and 'social interests' which are, again, with respect, so wide as to almost disregard the restraining intention of the word 'social' in each instance and instead posit an interpretation more akin to *general wellbeing* or *general interests*.

True, the word 'social' does, of course, have a wide interpretation but it is not boundless. The interpretations relevant in this context (as opposed to interpretations relating to, say, the organisation of civilisations, status and ranking in society, social media etc.) include the following¹⁰:

- 'relating to leisure activities that involve meeting other people'
- 'a party, dance, or informal gathering that is organised for the members of a club or institution'

⁹ As might be agreed in Church of England matters by the Church Commissioners: see *paragraph 4.19 of the 'Explanatory Memorandum' as it relates to paragraph 12, Schedule 3 to the Regs.*

¹⁰ Source: Collins English Dictionary (Online edition)

- 'live in groups and do things together'
- 'relating to, or characteristic of the experience, behaviour, and interaction of persons forming groups'
- 'relating to or having the purpose of promoting companionship, communal activities, etc.'
- 'relating to or engaged in social services'
- '(especially of certain species of insects) living together in organised colonies'
- 'an informal gathering, especially of an organised group, to promote companionship, communal activity, etc.'

On the other hand, the word 'worship,' so far as relevant in this context, includes the following interpretations¹¹:

- 'to show profound religious devotion and respect to; adore or venerate (God or any person or thing considered divine)'
- 'to be devoted to and full of admiration for'
- 'to have or express feelings of profound adoration'
- 'to attend services for worship'
- 'to honour'

In my view, even the most generous interpretations of these two words would not result in any meaningful overlap beyond a general acknowledgement that, on occasions, people may be present in the same location. The act of worship – which also includes, it should be added, private prayer and contemplation (an undoubtedly solitary and non-social activity)¹² – would not be classed as a 'social' activity for the purposes of the Act. Instead, it could perhaps be better described as an activity which furthers the *spiritual* wellbeing or *spiritual* interests of the individual partaking in the activity or the *spiritual* wellbeing or *spiritual* interests of the community participating in any collective form of worship. Naturally, this does not preclude friendships being formed within the congregation and purely social activities then flowing from that friendship, but that would be incidental to the primary purpose of worship.

The decision of the General Regulatory Chamber of the First-Tier Tribunal in the *General Conference of the New Church*, although non-binding, remains the only

¹¹ Source: Collins English Dictionary (Online edition)

¹² It is unclear in this case whether the church building was open outside of public services for private prayer and contemplation. However, generally, I would suggest that the amount of time when a church building is used for private prayer and contemplation is unlikely to figure in any estimations of usage of the church building.

decision to grapple with this issue as it applies to the asset of community regime. Mr Cant believes that 'Judge Lane was wrong in the New Church case if it is taken to mean that a place of worship can never be listed as an ACV.' In my view, it is self-evident that Judge Lane did not 'mean that a place of worship can never be listed as an ACV.' This is made clear at paragraph (15) of Judge Lane's decision, which was reproduced (and even emphasised) in the Borough Council's January 2022 decision. The concluding sentence of paragraph (15) states:

'...I nevertheless consider that the expression "social wellbeing and social interests of the community" in section 88 does not encompass religious observances in a church, mosque or synagogue etc, and that such a building will not in practice fall within section 88 **unless there is some other non-ancillary use being made of it, which does further social wellbeing/social interests of the local community.**' [my emphasis]

Therefore, Judge Lane (and the Borough Council) clearly recognised that a church building could fall within the scope of section 88 of the Act provided that there is/was 'some other non-ancillary use being made of it, which does[/did] further social wellbeing/social interests of the local community.'

The Borough Council is satisfied that its January 2022 decision in relation to the 2021 Nomination was consistent with Judge Lane's conclusions and that there is no reason to consider that Judge Lane's conclusions and/or the Borough Council's January 2022 decision were/are incorrect on this point. This is reinforced by the fact that (a) the nominating body did not, as it was entitled to do, challenge the January 2022 decision¹³; and (b) the nominating body has instead submitted an extensively revised and expanded new nomination in an attempt to overcome the issues which resulted in the 2021 Nomination being unsuccessful.

For the reasons set out above, the Borough Council remains sceptical about whether the use of a building as a 'place of worship' would be considered a use which furthers the social wellbeing or social interests of the local community. In the January 2022 decision relating to the 2021 Nomination, the Borough Council stated that it was concerned that:

'...including the nominated premises in the Council's List of Assets of Community Value could set a precedent for many other places of worship in the Borough. This is because many such premises may also host outside ancillary secular/community events and yet the infrequent main use of the premises for religious purposes (which may be attended by a small congregation) could appear, when relying on numbers alone, as a secondary use when compared to the frequency of the various ancillary secular/community uses of the premises, especially if those ancillary uses were well attended.'

¹³ In paragraph (F) (in the preamble) of the 2022 Nomination form, the nominating body states that: 'The Localism Act 2011 does not provide the nominating body with any right of appeal against the local authority's decision.' The nominating body did, however, have a right of challenge by way of judicial review which they chose not to exercise.

This concern remains in relation to the 2022 Nomination because to include a building whose main use was as a 'place of worship' would be contrary to the only decided (albeit non-binding) case. This is the precedent the Borough Council was/is hesitant about setting.

The issue, therefore, is whether the evidence in the 2022 Nomination demonstrates that the main use of the church building was not as a 'place of worship' at all or, if its main use was as a 'place of worship,' that, having regard to Judge Lane's point at paragraph (15) of his decision in the *General Conference of the New Church* case, there was 'some other non-ancillary use being made of it, which [did] further [the] social wellbeing/social interests of the local community' i.e. that there was another non-ancillary use of a secular/community nature that did satisfy the test in subsection 88(2) of the Act.

As mentioned above, the nominated premises are currently closed and so the Council must consider whether:

- (a) there is a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social 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/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

There is a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social interests of the local community

First, unfortunately it is necessary to repeat here much of what was said in the January 2022 decision in relation to the 2021 Nomination. This is because this latest decision may be subjected to a review, appeal and/or challenge and so I consider that it is appropriate that the Borough Council's conclusions on the 2022 Nomination be spelled out in full within the four corners of this report rather than by reference to any extraneous material (such as the January 2022 decision), so as to avoid any confusion in what is already a vast and hugely complicated matter.

Second, there is an obvious issue with the way in which the 2022 Nomination has been presented. The nominating body has substantially revised and expanded their latest nomination in order to overcome the perceived shortcomings of the 2021 Nomination. However, the 2021 Nomination form and its appendices are all included as appendices to the 2022 Nomination. As a result, there are certain clear tensions between what is now being claimed in the 2022 Nomination form and what was claimed in the 2021 Nomination form. For example, in the 2021 Nomination form the nominating body itself stated that:

'Prior to closure the designated main use of the building was as a place of worship.'

This statement and other similarly problematic passages have now been removed from the 2022 Nomination form and yet the original statements remain within the documentation appended to the 2022 Nomination.

For the purposes of this report, I do not intend to dwell on these tensions and contradictions. Where they do arise, I have just had to take a view on the likely veracity of each point whilst having regard to the wider evidence (re)submitted.

Moving on, there is no statutory definition of 'recent past.' The Department for Communities and Local Government's guidance¹⁴ provides the following comment on the meaning of 'recent past':

'With regard to "recent past", our current view is that we will leave it to the local authority to decide, since "recent" might be viewed differently in different circumstances. For example, "recent" might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter.'

I understand that some authorities have treated the 'recent past' as being the five year period preceding the nomination but in *Scott v South Norfolk District Council (2014)*¹⁵, Judge Warren in the General Regulatory Chamber of the First-Tier Tribunal said that the phrase 'in the recent past' was deliberately loose in contrast to the five years in the second condition and that it was 'not the Tribunal's role to undermine that by giving the phrase a meaning which is certain.'

In *Worthy Developments v Forest of Dean District Council (2014)*¹⁶, Judge Warren (again) stated that:

'It seems to me illogical to seize on the period of five years, as some suggest, when applying the past condition. This figure is chosen because it is the length of time specified by Parliament over which the future condition is to be assessed. It seems to me, however, that Parliament's failure to specify the precise period of five years when defining the past condition, cannot be taken as intending that the more precise period used in the definition of the future condition should be imported'

In *Crostone v Amber Valley Borough Council (2014)*¹⁷, Judge Lane stated that:

'The "recent past" is not defined in the Localism Act 2011 or any relevant subordinate legislation. What constitutes the "recent past" will depend upon all the circumstances of a particular case. To that extent, the expression is a relative concept. In this regard, it is relevant that the Black Swan operated as a public house for almost 200 years, until its closure in 2012...'

¹⁴ Assets of Community Value – Policy Statement (2011)

¹⁵ CR/2014/0007

¹⁶ CR/2014/0005

¹⁷ CR/2014/0010

Accordingly, although what constitutes the 'recent past' will depend on all the circumstances in a particular case, Judge Lane's conclusion that 'the expression is a relative concept' suggests that the length of time that the building had been used is relevant (in *Crostone* it was nearly two hundred years). Therefore, the implication seems to be that the longer the period of use furthering a community benefit the longer the period which will constitute the 'recent past.'

In this case, according to the nominating body, the nominated church building was erected as a place of worship in 1869 and operated continuously as a place of worship until its closure in March 2020. Therefore, prior to its closure, the church building was used continuously for over 150 years. In my view, having regard to the relative concept of 'recent past' as outlined by Judge Lane in *Crostone* (above), March 2020 would be viewed as the 'recent past' when viewed in the context of over 150 years' of continuous use prior to that date¹⁸.

Before considering whether the non-ancillary use of the nominated church building furthered the social wellbeing or social interests of the local community, it is useful in this case to once again consider the judgment of Judge Lane (Chamber President) in the General Regulatory Chamber of the First-Tier Tribunal's decision in *General Conference of the New Church v Bristol City Council (Localism Act 2011) (2015)*¹⁹. Again, the relevant passages of the judgment state as follows:

1. *The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. The effect of listing is that, generally speaking, an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period, known as "the moratorium", will allow the community group to come up with an alternative proposal; although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.*
2. *The property in question in the present proceedings is a building and small area of surrounding land. **The building comprises a church of the Bristol Society of the New Church, who used it for religious purposes from its construction in 1899 until its closure in November 2013.** The church is owned by the General Conference of*

¹⁸ I appreciate that the nominated church building was forced to close its doors in March 2020 at the outset of the Covid-19 pandemic but the decision to close the church building permanently was not announced until December 2020/January 2021 (Appendix 10). I do not consider that the forced temporary closure in a national emergency should be viewed as the formal date when the use of the building ceased. It would perhaps be better to describe the formal closure date as October 2020 (*see, for example, paragraph (74)*) or December 2020/January 2021 when its closure was announced. However, I have retained the dates as set out in the evidence submitted to avoid any further confusion and, also, as I do not consider that this small anomaly would make any material difference to my overall conclusions regarding the 'recent past.'

¹⁹ UKFTT CR_2014_0013 (GRC)

the New Church, an incorporated body, formed for the Religion of the Receivers of the Doctrines of the New Church, as contained in the Theological Writings of the Honourable Emanuel Swedenborg. The church is on the corner of Claremont Road and Cranbrook Road. The adjoining land is approximately quarter of an acre and contains a number of large trees.

3. The church was nominated as an asset of community value by an unincorporated association entitled "Protect Redland and Bishopston from Over-Development" ("PROD"). Listing took place on 3 April 2014. The General Conference requested a review by the city council of that listing. The result of that review, on 3 July 2014, was to maintain listing. The General Conference appealed against that decision to the First-tier Tribunal, pursuant to regulation 11 of the Assets of Community Value (England) Regulations 2012 (SI 2012/2421).
4. [...]
5. At the hearing, the General Conference was represented by Peter Wadsley of Counsel, instructed by Harris and Harris Solicitors. Ms (Jennifer) Zoe Brooks, Trustee, Director and Company Secretary of the General Conference, gave evidence. Mrs Siusaidh Hall, Secretary of PROD, also attended and spoke.
6. Ms Brooks explained that the General Conference was enrolled in chancery in 1822 and incorporated as a company in 1872. Although the General Conference owns the church, responsibility for maintaining and running it is in the hands of the Bristol Society. It was the Bristol Society that decided the church should close in October 2013. **By that time, the congregation consisted of only three regular members, only one of whom lived in the area served by the church. Four other members attended less regularly.** It was also used as a church by the Holy Celtic Church.
7. **A number of other activities also took place in the church.** Bristol City Council uses the church from time to time as **a polling station**. A group of **Brownies** used it weekly until February 2013, when they moved to other premises. **Dance classes** were held occasionally until May 2013. Two **meditation groups**, which used the church infrequently, ceased to do so in November 2011 and October 2012 respectively. Apart from the religious use of the church, the only group making use of it at the time of closure was "Music with Mummy and Jolly Babies", which used it twice-weekly. It appears that this group has, since closure, found an alternative venue.
8. Ms Brooks also gave evidence regarding the costs of running and maintaining the church and of the income received from uses other than by the Bristol Society. In the period 2008-2013 inclusive, costs of **maintenance totalled £80,000; insurance £12,000; and gas and electricity £12-18,000.** The total income over those six years was only £3-4.5,000.

9. I find **these figures paint a stark picture of the difficulties facing the congregation, leading to the decision that the church had to be closed.**
10. I accept Ms Brooks' evidence that no local or community bodies have ever shown any interest in the church as a place of worship and that, prior to the premises being put up to sale (with a guide price of £600,000) no individuals or groups ever offered any support for the church or for any of the non-religious activities carried on there.
11. PROD is concerned about what it sees as the threat of over-development in Redland and Bishopston. As can be seen from the written materials, and as Mrs Hall made plain in her remarks at the hearing, PROD is particularly concerned at the possibility of any purchaser building on all or part of the grounds. Mrs Hall told me that PROD's hope is that the ground could be retained in some form as a "green oasis", since people like looking at it. As well as bats roosting in the church structure, slow worms and a sparrow colony were to be found in the grounds and the trees (which were, she said, subject to Tree Preservation Orders).
12. Section 88(1) and (2) of the Localism Act 2011 read as follows:-

"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, 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.*

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

- (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 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."

13. Mr Wadsley submitted that the use of a building as a place of religion, such as a church, does not fall within the scope of the uses that further "the social wellbeing or interests of the local community". He pointed to section 88(6) of the 2011 Act, which provides that "social interests" include, in particular, each of the following –

- "(a) cultural interests;**
- (b) recreational interests;**
- (c) sporting interests"**

14. Mr Wadsley said that, had it been the legislature's intention to include religious interests within the scope of section 88, one would expect to find express reference to them in section 88(6). Although the definition of "social interests" in that subsection is not exhaustive, the absence of any reference to religious interests is significant. In this regard, Mr Wadsley drew my attention to the Equality Act 2010, where section 4 (protected characteristics) specifically includes "religion or belief", thereafter specifically defined in section 10 (religion or belief), thereby highlighting, in his view, the discrete nature of religion. Religious interests, Mr Wadsley said, could not be properly said to be "cultural interests" or "recreational interests". Further evidence of the particular nature and character of religion was to be found in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. In its review, the city council's solicitor considered "that religious worship is for the social wellbeing and social interests of the community", although she conceded that she might be wrong about that. Given that the city council has not chosen to take any further part in these proceedings, their views on this issue have not been developed in argument. I am, therefore, cautious about making any definitive finding. On the basis of Mr Wadsley's submissions, I nevertheless consider that the expression "social wellbeing and social interests of the community" in section 88 does not encompass religious observances in a church, mosque or synagogue etc, and that such a building will not in practice fall within section 88 unless there is some other non-ancillary use being made of it, which does further social wellbeing/social interests of the local community.

16. The city council, in its review, considered that the other activities which had taken place in the church in recent years, namely "brownies, meditation, elections, dance, singing [and] mothers and babies meetings" were "non-ancillary" and furthered the social wellbeing or interests of the local community.

17. **Mr Wadsley did not challenge the latter conclusion but he vigorously contended that those uses were, in fact, ancillary to the church's use as a place of religious worship.**

18. The expression "ancillary use", which occurs in several places in section 88, is undefined. I agree with Mr Wadsley that, in the circumstances, it may be helpful (to put it no higher) to look at how the concept of primary and ancillary uses is dealt with in planning law. In volume 2 of the Planning Encyclopaedia (Planning R.184: April 2014) one finds at P55.39 that:-

"In many cases it is possible to identify a single primary use for a site overall, such as "private dwelling", "retail shop", "hotel", or "farm". That description may in any given case describe the sum of a number of "incidental" or "ancillary" uses of quite different character.

19. At P55.42, we find:-

"Much analysis in this area relies upon subjective judgements as to the type and scale of activity which may ordinarily be regarded as ancillary to a particular primary use. It is a test of functional relationship rather than extent."

20. Mr Wadsley submitted that churches are places of assembly and, as such, can also be useful as a meeting place for others who may not share the religious purpose for which the church was created. In this way, meetings for the other groups that used part of the church (the evidence is that they were not allowed to use certain areas) were in the category of meetings or assemblies. There was, accordingly, a functional link between those meetings and the principal or main use.

21. In the alternative, **Mr Wadsley drew attention to paragraph 7.6 of the Explanatory Memorandum to the 2012 Regulations, which speaks of the "main purpose of the building or land". Mr Wadsley submitted that, on this approach, the answer one arrived at was the same: namely, that the main purpose of the church was as a church and the other uses were subsidiary to that.**

22. As the Tribunal stated in Dorset CC v Purbeck DC (CR/2013/004), in determining for the purpose of section 88 whether a use is ancillary, "there is no certain guidance or touchstone". In some cases, the position "on the ground" may be such that a single primary use is such that other uses fall properly to be regarded as ancillary to that primary use, whether or not one uses the test of functional relationship. **In other cases, there may be a number of discrete uses, where none is properly to be regarded as ancillary, even though one particular use may be more significant than the others (whether in terms of intensity or otherwise). Neither planning**

law nor explanatory memoranda provide definitive answers; the context is all.

23. **In the present case, the original and sole purpose was as a church. That remained the position, even when other non-religious groups were permitted to make use of the church.** On the facts, I find that the primary use was as a church. Again, on the facts, **I find that the evidence discloses that the other uses did not have a more than ancillary character.** They were disparate, largely ad hoc and even before closure had dwindled to the point where only one group was using the church on a regular basis. **In short, immediately before its closure, the reality was that (despite the decline in congregations) the church was still a church; not a community or social centre. The other uses were ancillary.**
24. **The result is that I find section 88(2)(a) is not satisfied. There has not been in the recent past (indeed, ever) "an actual use of the building or of the land that was not an ancillary use [which] furthered the social wellbeing or interests of the local community".**
25. **But even if I am wrong about that, I find as a fact on the evidence before me that the requirement of section 88(2)(b) is not satisfied. It is not "realistic" to think that there is a time in the next five years when there could be non-ancillary use of the building or of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community"... [my emphasis]**

The appeal succeeded and the premises were removed from the List of Assets of Community Value.

Decisions of the First-Tier Tribunal do not constitute judicial precedent and, as always, the issues are fact-specific. Nevertheless, the similarities between the facts in the *General Conference of the New Church* case and those in the 2022 Nomination are clear and it is appropriate to have regard to the findings of the First-Tier Tribunal, which is responsible for determining appeals in relation to the assets of community value regime. That said, there are also in the 2022 Nomination some distinguishing factors which I will come to shortly.

Regarding the 2022 Nomination, given that the nominated premises are closed, the first thing to establish is what was the main use of the church building before it closed?

The nominating body itself stated in the 2021 Nomination form that:

'Prior to closure the designated main use of the building was as a place of worship.'²⁰

²⁰ See the nominating body's comment reproduced on page 4 of the January 2022 decision relating to the 2021 Nomination (see link above).

In my view, this statement (which has been dropped from the 2022 Nomination form) cannot be overlooked.

However, in the 2022 Nomination form the nominating body also states that:

'...by long established custom and practice, the evidence shows that the building functioned mainly as a community centre...'²¹

Elsewhere, the nominating body states that:

'...the social centre function... proved so successful that after WWII it evolved naturally into the primary actual use of the building until 2020.'
(*Nominating body's paragraph (35)*)

'...since WWII the whole building has been used for an increasingly wide range of secular activities...'
(*Nominating body's paragraph (67)*)

'In contrast to the gradual decline in religious use since WWII, by 2020 the building had evolved a new primary use. The building functioned as a lively and vital community centre, where many different social activities flourishing all year round, alongside its residual use for worship and religious purposes.'
(*Nominating body's paragraph (83)*)

'...the main secular uses by numerous community groups exceeded, by an overwhelming margin, the hours that the building was used for worship and related activities...'
(*Nominating body's paragraph (169)*)

'...there is a clear need to retain the building for its use as a community centre ...'
(*Nominating body's paragraph (203)*)

Notwithstanding its previous concession that '*prior to closure the designated main use of the building was as a place of worship,*' the nominating body is suggesting that at some point from WWII onwards or, in any event, before its closure in 2020, the main use/non-ancillary use(s) of the church building changed from a use as a place of worship to use as a 'community centre.'

The term 'not an ancillary use' (or 'non-ancillary use') is key. The term 'ancillary' means 'secondary,' 'supplementary,' 'subordinate' etc. to the main use, whereas 'non-ancillary' for the purposes of the asset of community value regime could perhaps be more clearly described as *intrinsic to, essential to, part and parcel of* etc. the main use.

As such, for the purposes of the 2022 Nomination, the nominating body needs to demonstrate that the main use of the church building was as a 'community centre' and that the various community activities described by the nominating body as 'non-ancillary' uses were *intrinsic to, essential to, part and parcel of* etc. of the main use of the church building as a 'community centre.' Alternatively, having regard to Judge Lane's point at paragraph (15) of his decision in the *General Conference of the New Church* case, if the main use of the church

²¹ See paragraph (1) of the 'Executive Summary.'

building remained as a 'place of worship,' then the nominating body needs to demonstrate that the 'community centre' use was so significant as to amount to something more than an ancillary use i.e. it needed to be a non-ancillary use which furthered the social wellbeing or social interests of the local community.

The nominating body's primary reason for considering that the main use/non-ancillary use(s) of the church building changed from a use as a place of worship to use as a 'community centre' seems to be that the number of outside secular/community events (and the number of attendees of those events) exceeded those of the religious events. For example, the nominating body states that:

'To reiterate, the assembled evidence shows that the main secular uses by numerous community groups exceeded, by an overwhelming margin, the hours that the building was used for worship and related activities. **For simplistic evaluation purposes based on the available evidence, a use ratio of 80:20 (nonancillary/ancillary) is a realistic estimate.** [my emphasis](*Nominating body's paragraph (169)*)²²

The passage in parenthesis – 'nonancillary/ancillary' – suggests that the nominating body is claiming that the 20% use of the church building as a 'place of worship' was merely an ancillary use i.e. 'secondary,' 'supplementary,' 'subordinate' etc. to the main use of the church building as a 'community centre.' In fact, at paragraph (83), the nominating body now describes the use of the nominated building as a place of worship at the time of its closure to be nothing more than 'residual.'

At paragraph (7) of the preamble, the nominating body states that:

'For evaluation purposes for some 80% of the hours that the building was open each year it was used for community activities. Unquestionably these actual uses were significant and furthered social wellbeing or interests of the community. The remaining 20% of its usage being for religious or ancillary purposes and connected secular social activities for the benefit of non-worshippers. Some or all of which also furthered social wellbeing or interests of the community.'

The final two sentences are a little confusing but appear to suggest that the religious use formed just *part* of the 20% of usage with some other unspecified 'ancillary' uses and further 'secular social activities' making up the balance. This 20% (or even less) estimate of religious use is based, it would seem, on public services alone and does not appear to take into account the use of the church building for private prayer and contemplation which may also have occurred.

The nominating body has provided examples of a number of uses/events that were held in the nominated church building during war time, such as:

- use by 300 troopers of the 3rd Hussars as a 'recreational facility' (Circa 1915) (*Nominating body's paragraph (26)*)
- use as a recreation centre during WWI (*Nominating body's paragraph (58)*)

²² A similar estimate is set out at paragraph (6) of the preamble.

- use as a recreation centre for Royal Flying Corps personnel stationed at the training airfield off Bramble Lane during WWI (*Nominating body's paragraph (59)*)
- use during the week as a canteen during WWII (*Nominating body's paragraph (66)*)

In my view, setting aside that these activities (and other similar activities during war time) took place between 77-108 years ago, the activities themselves were clearly extraordinary and resulted from national emergencies. As such, I give them little weight in establishing the actual use of the nominated church building in the same way that, when reaching my conclusions regarding the 'recent past,' I have disregarded the forced closure of the nominated church building in March 2020 at the outset of the COVID-19 pandemic.

The nominating body has provided other examples of a number of uses/events that were held in the nominated church building:

- use by Wye Guides and Brownies (*various*)
- use by Ashford, Wye and District U3A (*Nominating body's paragraph (54)*)
- use by the WEA Ashford and Wye for adult education classes (*Nominating body's paragraph (55)*)
- use for various handicraft classes (*Nominating body's paragraph (69)*)
- use as a foot clinic, a dancing class and for a time as a 'Pop In' session for lonely people (*Nominating body's paragraph (75)*)
- use as a pop-up gallery (*Nominating body's paragraph (111)*)
- use by Wye Ground Force (*Nominating body's paragraph (112)*)
- use for ballet, tap and modern dance classes (*Nominating body's paragraph (122)*)
- use for Pilates classes (*Nominating body's paragraphs (125) and (126)*)
- use by Kent Police to hold a local public engagement meeting (*Nominating body's paragraphs (129) to (131)*)
- use by the Wye Village Design Group (*Nominating body's paragraph (143)*)
- use by the Wye Millennium Project Group (*Nominating body's paragraph (143)*)
- use by the Wye Parish Plan Group (*Nominating body's paragraph (143)*)
- use by the Wye Neighbourhood Plan Steering Group (*Nominating body's paragraph (143)*)
- use by Our Place Wye (*Nominating body's paragraph (143)*)
- use by the Flood Working Group (*Nominating body's paragraph (145)*)
- use by the Planning Working Group (*Nominating body's paragraph (145)*)
- use by the Highways Improvement Plan Working Group (*Nominating body's paragraph (145)*)
- use by Wye Breathes (*Nominating body's paragraph (145)*)
- use by Wye Village Design Group (*Nominating body's paragraph (145)*)
- use by Wye Parish Plan Group (*Nominating body's paragraph (145)*)
- use by Wye Future Group (*Nominating body's paragraph (145)*)
- use for the Options Club and Open House informal social drop-ins (*Nominating body's paragraph (159) to (164)*)
- use for a Yoga class (*Nominating body's Appendix (13)*)
- use by Wye Singers (*Nominating body's Appendix (13)*)
- use by Bridge Club (*Nominating body's Appendix (13)*)
- use by Chiropody clinic (*Nominating body's Appendix (13)*)

- use by Wye Footpath Preservation Society (*Nominating body's Appendix (13)*)
- use by a Cycling Group (*Nominating body's Appendix (18)*)
- use for various meetings/events of the nominating body itself

Whilst some of these activities took place many years ago and had ceased long before the church building was closed it is nevertheless clear that a large number of outside secular/community uses/events were taking place in the church building up until its closure in 2020.

Furthermore, I consider that most of the events listed above would be categorised as secular/community events often associated with the use of a building as a 'community centre.' They would not be events categorised as non-ancillary (i.e. *intrinsic to, essential to, part and parcel of* etc.) to the main use of a building as a place of worship.

In my view, however, the frequency of religious events versus outside secular/community events and/or a head count of the number of attendees at those events alone, would be an inappropriate method to establish which of those uses constituted the primary use of the church building. This is because, by their nature, even vibrant and well-attended buildings used as places of worship will often have a limited number of religious services (perhaps dictated by the liturgical calendar) which will often be outnumbered by other ancillary outside secular/community uses which may be permitted to take place on the premises. Also, the use for private prayer and contemplation is unlikely to figure in any time/head count estimations. This would be a normal occurrence in most buildings used as places of worship where ancillary uses of the premises are often allowed. However, this would not necessarily mean that the main use of the premises would change from a place of worship to a 'community centre' use where the religious purposes for which the building was originally erected/adapted would, in effect, be relegated to a secondary or an ancillary use.

There are, in my view, a number of other important factors to be considered:

First, the nominated building is a church. To clarify, that the nominated building is structurally considered to be a church building is not the deciding factor; it merely underlines why, when taken with the other factors, it is reasonable for the Borough Council to conclude that its use was as a place of worship.

Second, the nominated church building was erected as a place of worship in 1869 and operated continuously as a place of worship until its closure in March 2020. This is confirmed by the nominating body:

'As a place of worship, the building was in continuous recorded use for over 150 years' (*Nominating body's paragraph (40)*)

Third, the owners of the church building are the Trustees for Methodist Church Purposes²³. The nominating body's paragraph (98) contains a short extract from an e-mail it received from Rev Helen Hollands²⁴ dated 15 February 2021. However, the full text of the relevant sections of that e-mail²⁵ explains the reasons for the closure of the church building:

'Of course the Methodist church has had a role in the village for many years and, in addition to worship, by providing a space available for lettings for various social and other groups. **However, the building has always been managed and maintained by the Methodist church and this has placed a particular burden on the local trustees in terms of maintenance requirements, health and safety and safeguarding. We have always taken these responsibilities very seriously. Over the years this burden has fallen on the shoulders of fewer people and as the membership of the church has decreased they have reached the time when this burden has become too great.** They have prayerfully considered the future and concluded that to close the building is the best course of action and to meet alongside others elsewhere.

'We are sorry that this will be a loss to the village but it is simply unfair to expect a very small group of older people to manage the premises and sadly we do not have the capacity in the Methodist circuit to manage it ourselves.

'We are of course bound by charity law in the sale. This means that we are required to sell the premises to the highest bidder even if we would prefer for the premises to be retained for the community. This is a legal requirement and it has been widely tested elsewhere. We will be happy to have further conversation with the parish council about the future of the building but please be aware that we are bound by these requirements as we move forwards. I hope this helps to explain the situation more fully.'
[my emphasis]

In a letter to the nominating body dated 28 February 2022²⁶, Rev Hollands offered some further clarification:

'We are sorry that the Methodist church building is closing in Wye and we also regret the loss of the facility to the community. **This decision was not made lightly but after careful thought by the church members, the local circuit and the Methodist district.** We understand that the building has been appreciated and used by the community for many years and it has been our privilege and pleasure to provide such a community space. However, **I am sure you will understand that the primary**

²³ Again, to clarify, the ownership of a church building is not the deciding factor. However, in this case, the ownership (by a religious organisation) underlines why, when taken with the other factors, it is reasonable for the Borough Council to conclude that the use of the nominated church building was as a place of worship.

²⁴ Superintendent Methodist Minister in the South Kent Circuit and Assistant Chair Methodist South-East District

²⁵ See the nominating body's Appendix (11).

²⁶ See again the nominating body's Appendix (11).

purpose of the building is as a church, not as a community facility.

I am saddened to note that your letter makes no reference to the loss of the church community, nor indeed the difference they have made to the village over many years. It is this loss which is felt most keenly by the local church members.

'It may be useful to explain the background of the decision to close the church building and how governance operates within the Methodist church. Each local church has a set of local managing trustees who, along with the minister in pastoral charge, look after the day to day running of the church, ensure the premises are well maintained and enable the worshipping life and other activities of the congregation. Methodist governance also requires a number of local officers who hold responsibility for safeguarding, property, finance etc. I am sure you will be pleased to know that these roles are taken seriously and cannot simply be filled by others from outside the church however well-meaning those people may be. One illustration might be that the church was struggling to find a Safeguarding officer, who must be a church member. This is not a role that could have been filled by another person outside the Methodist church but of course it is vital.

'The building is not in public ownership and our letting fees (deliberately kept low) have always fallen short of maintenance and other church costs.

'Each local Methodist church functions within a Methodist circuit, in our case, the South Kent circuit and the circuit is another decision-making body with oversight over all the local churches. However, church buildings are not owned by local bodies or by circuits, they are owned by the national Methodist church. As a charity the church is bound by charity law and by our own internal governance rules, known as Standing Orders...'

Rev Hollands made broadly the same points again in a meeting with the nominating body on 13 April 2021²⁷.

It would seem that the church's congregation throughout its 150 year history had always been modest. However, when the membership diminished to a point where the continued operation of the church became unsustainable, the church building was closed. This was recognised by the nominating body in the 2021 Nomination but has been removed from the 2022 Nomination form. The 2021 Nomination form stated:

'Clearly, this low level of membership was unsustainable. Especially given the need for able volunteers to take day-to-day responsibility for the building maintenance and the safety of users. Understandably, it was a critical factor in the decision to close...' (*Nominating body's paragraph (31)*)

²⁷ See again the nominating body's Appendix (11).

In the same paragraph (also now removed from the 2022 Nomination form), the nominating body stated:

'The Parish Council understands that loss of letting income during the pandemic was a secondary consideration...'²⁸

Therefore, even the nominating body recognises that the diminishing congregation was the main reason the church building was closed.

Fourth, the church building was always managed and maintained by the Methodist Church²⁹. In fact, it would seem that the Methodist Church's governance dictated that certain roles could only be carried out by local officers and could not be filled by persons outside the church.

Fifth, in the 2021 Nomination form (*paragraph (139)*) the nominating body stated:

'...The Methodist Church's national standard lettings licence to occupy... imposes a strict condition on permitted use **that differentiates the building from other community halls...** [my emphasis]

This statement has now been revised in the 2022 Nomination form to state that:

'The Methodist Church's national standard lettings licence to occupy (11.03.2020 v5) imposed a strict condition on community use of the facilities.' (*Nominating body's paragraph (143)*)

In the 2021 Nomination form (*paragraph (140)*) the nominating body stated:

'Condition (3.g) of the lettings licence prohibits any consumption of alcohol or gambling on the premises. This stops users from holding raffles, 100 Club draws, wine and cheese parties, and simple fundraisers that community groups use, typically to raise petty cash... **the condition inhibits social interaction and wellbeing...** [my emphasis]

This statement has also been revised in the 2022 Nomination form to state that:

'Condition (3.g) of the lettings licence prohibits any consumption of alcohol or gambling on the premises. This stops users from holding raffles, 100 Club draws, wine and cheese parties, and simple fundraisers that community groups use, typically to raise petty cash for their room hire costs. For example, the Wye Arts Cinema Club starts every film night with a raffle' (*Nominating body's paragraph (144)*)

I note how the problematic passages from the 2021 Nomination form, which suggested that the owner's conditions on use inhibited the 'social interaction and

²⁸ This latter point is still conceded by the nomination body: see *paragraph (47) of the 2022 Nomination form*.

²⁹ Again, to clarify, the management/maintenance of a church building is not the deciding factor. However, in this case, the management/maintenance (by local officers of a religious organisation) underlines why, when taken with the other factors, it is reasonable for the Borough Council to conclude that the use of the nominated church building was as a place of worship.

wellbeing' that could be attained in 'other community halls,' have now been erased from the 2022 Nomination form. Nevertheless, the evidence clearly demonstrates that the religious principles of the Methodist Church took precedence over the secular wishes of the community groups and had to be respected by all those hiring the church building.

That said, I do acknowledge that many secular/community activities were still able to take place within the church building as they would not have contravened the Methodist Church's letting standards.

Sixth, in the 2021 Nomination form (*paragraph (60)*) the nominating body stated that:

'Only on very rare occasions religious needs did take precedence over regular hall bookings. For example, in 19th September 2013 the Margaret Giles School of Dance notified parents that: 'unfortunately we are unable to have the hall on this day as it is being used for a Canterbury Diocese training event...'

This statement has also been revised slightly in the 2022 Nomination form to state that:

'Only on very rare occasions religious needs did take precedence over regular bookings. Indeed, the Parish Council can only identify one example of this. On the 19th September 2013 the Margaret Giles School of Dance notified parents that: 'unfortunately we are unable to have the hall on this day as it is being used for a Canterbury Diocese training event...' (*Nominating body's paragraph (84)*)

The nominating body now states that it can only identify one such occasion when a secular event had to be cancelled/rearranged because it clashed with a religious event. However, there is no evidence to suggest that there would have been a different outcome if clashes had occurred on other occasions. In my view, this again demonstrates that when a secular event clashed with a religious event it was the religious event which would always have taken precedence.

Seventh, while secular/community events organised by the outside community attracted a letting fee, events organised by church members were free³⁰. Again, this demonstrates that religious/church members' events took precedence over secular events.

Finally, there were a number of other activities described by the nominating body that would probably be considered non-ancillary to the religious use of the church building rather than as examples of outside secular/community uses: Sunday School (*nominating body's paragraph (73)*), Church Youth Club (*nominating body's paragraphs (73)*), as a venue for ecumenical activities (*nominating body's paragraph (75)*) etc.

Taking as a whole, these factors suggest that the dominant main use of the nominated church building was as a place of worship.

³⁰ See, for example, the nominating body's paragraphs (159) and (173).

In my view, for the reasons set out above, including the nominated premises in the Council's List of Assets of Community Value *on the basis that its use for the purposes of worship is a use which furthers the social wellbeing or social interests of the local community* – in direct conflict with the decision of the First-Tier Tribunal in the *General Conference of the New Church* case – would be incorrect and could set a precedent for many other buildings used as places of worship in the Borough. This is because many such premises may also host outside ancillary secular/community events and yet the infrequent main use of the premises for religious purposes (which may be attended by a small congregation) could appear, when relying on numbers alone, as a secondary use when compared to the frequency of the various ancillary secular/community uses of the premises, especially if those ancillary uses were well attended.

Therefore, again, for the reasons set out by the appellant in the *General Conference of the New Church* case and accepted by Judge Lane and for the further reasons I have outlined/clarified above in response to Mr Cant's Advice, I consider that Parliament did not intend for buildings used as places of worship (and without any other non-ancillary compliant use) to fall within the scope of the uses that further the social wellbeing or social interests of the local community.

It follows, therefore, that I still consider that in this case the main use of the nominated church building for its entire history was as a place of worship.

Turning to whether there was another non-ancillary use of the nominated church building, in *General Conference of the New Church* Judge Lane stated (at paragraph 22) that:

'As the Tribunal stated in *Dorset CC v Purbeck DC* (CR/2013/004), in determining for the purpose of section 88 whether a use is ancillary, "there is no certain guidance or touchstone". In some cases, the position "on the ground" may be such that a single primary use is such that other uses fall properly to be regarded as ancillary to that primary use, whether or not one uses the test of functional relationship. **In other cases, there may be a number of discrete uses, where none is properly to be regarded as ancillary, even though one particular use may be more significant than the others (whether in terms of intensity or otherwise). Neither planning law nor explanatory memoranda provide definitive answers; the context is all.** [my emphasis]

For the reasons set out above, I consider that the use of the nominated church building as a 'place of worship' was 'more significant' than the other secular/community uses. Judge Lane states that significance may be deduced from 'intensity or otherwise.' My conclusions about the dominance of the religious use would probably fall within the latter category.

Section 88(2)(a) of the Act states:

'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' [my emphasis]

In my view, the word 'an' suggests that there could be more than one use (or more than one use which is not ancillary to a main use) which could satisfy the requirements of the legislation. This correlates with Judge Lane's comments in *General Conference of the New Church* (paragraph (15)) that:

'...I nevertheless consider that the expression "social wellbeing and social interests of the community" in section 88 does not encompass religious observances in a church, mosque or synagogue etc, and that such a building will not in practice fall within section 88 **unless there is some other non-ancillary use being made of it, which does further social wellbeing/social interests of the local community.**' [**my emphasis**]

Idsall School v Shropshire Council [2015] UKFTT CR-2014-0016 (GRC) (16 March 2015) related to playing fields in use by both a school and a sports centre under the terms of a Joint User Agreement. The playing fields had been included in the local authority's List of Assets of Community Value on the basis that the local authority had concluded that the use of the playing fields by the community (rather than by the school) was more than an ancillary use and so satisfied the test set down in the Act. The school appealed the decision to list the playing fields. Paragraphs (16) and (17) of the decision of Judge Lane (again) state as follows:

'16. ...The issue of what is "ancillary" for the purposes of the 2011 Act is essentially fact-specific. **I see nothing in the Act which compels the conclusion that there must always be only one primary use of the land or buildings** in question, to which any other use must necessarily be ancillary. If use A is, in reality, no more than supportive or otherwise serving the purpose of use B, then use A will be ancillary to use B: as Mr Bircher observed, the word "ancillary" comes from the Latin ancilla = maidservant. I also agree with Mr Hopkins that there may be cases where, even though there is no functional relationship between uses A and B, use A may properly be said to be ancillary to use B if a comparison of the two reveals use A to be so minor or minimal as to make it unreal to equate the two uses for the purpose of section 88. Accordingly, like Judge Warren in the Dorset case, **I reject the submission that the quantum or amount of a use cannot be determinative, at least in certain situations.**

17. The Council contends that the number of hours designated for community use, pursuant to the Joint User Agreement is more than the number allocated for School use. The School counters that, in reality, the playing fields, (not being floodlit) are unavailable for community use during the winter months, given that it will be dark by 5pm. Both sides have a point. **The reality, however, is that the usage figures for the playing fields demonstrate what in my view is very significant community use,** which is plainly not supportive of the School's use.

The appeal was dismissed and the playing fields remained listed.

Clearly there are issues which distinguish the 2022 Nomination from the facts in *Idsall School* – the Joint User Agreement in *Idsall School* being an obvious

example which would have given extra weight to the status of the community use of the playing fields.

Nevertheless, setting aside that the nominating body in the 2022 Nomination had no legal rights to, or any control over usage of, the nominated church building, the evidence of secular/community usage of the building does appear to demonstrate 'a very significant community use.'

The nominating body's lack of any rights or control does suggest that the secular/community usage might not have been a 'primary use' equal to that of the use of the church building as 'place of worship.' Nevertheless, on balance I feel that the evidence in the 2022 Nomination does suggest a level of secular/community usage that would have been more than ancillary. The garden and car park are clearly intrinsically linked to the church building and so they too are considered to have had a usage consistent with that of the church building itself.

This approach is consistent with the decisions in both the *General Conference of the New Church* and the *Idsall School* matters and creates no precedent in conflict with the existing (albeit non-binding) case law. Accordingly, for the reasons set out above, I consider that the 2022 Nomination satisfies the test set down in section 88(2)(a) of the Act.

Before moving on, I should make it clear that in arriving at this view I have not relied upon the concept of 'mixed use' as it applies in planning law and my conclusions should not be taken as the Borough Council's view on the use of the church building for planning purposes. That is an entirely separate matter governed by different legislation and principles and would be a matter for the Borough Council as local planning authority.

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/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community

The central government guidance is silent on the question of whether there is a realistic prospect that there could again be a community use of a nominated building/land. The case law suggests that the test does not require the likely future use of the building/land to be determined but rather to determine whether future community use is a realistic prospect³¹.

In this case, the nominated church building has been closed since 2020 and the owner has indicated an intention to sell. In fact, I understand that the premises had even been listed for auction in 2021 only for it to be pulled by the owner at the eleventh hour when contacted by the nominating body.

The resumption of the previous use(s) of the church building is not the issue here. The issue is whether it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the church building that

³¹ See again: *Worthy Developments v Forest of Dean District Council (2014)*(para. 19)

would further (*whether or not in the same way as before*) the social wellbeing or social interests of the local community?

I have received no evidence to suggest that use of the church building is unable to resume because, say, it is derelict. The nominating body states that the church building is in a prime central location for the local community (*paragraphs (29), (136) and (138)*) and has the existing facilities (or facilities that could be repurposed) and could function as 'a hub in the centre of community life' (*paragraph (138)*). The evidence suggests that a wide range of community uses – including the resumption of previous uses and the introduction of new uses – could be hosted at the church building.

Regarding future viability, the central government guidance is again silent. In *Worthy* (mentioned above), the Court considered detailed financial appraisals which indicated that it would not be economically viable for the public house in question to return to community use. However, Judge Warren stated that:

"...It is important, however, not to confuse commercial viability with what altruism and community effort can achieve. The calculations advanced by Worthy Developments Ltd do not, in my judgment, ...demonstrate that the committee's plans are not realistic. Although there was some discussion of the figures at the hearing, it does not seem to me necessary to go into further detail on this point. The legislation does not require a detailed business case at this stage" [emphasis in original]

Other cases appear to support this stance³² and so it does not seem to me to be necessary for the Borough Council to consider the viability of some future community use of the church building. The test seems to be simply whether 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 the social wellbeing or social interests of the local community.

That said, the nominating body has provided a significant amount of evidence to suggest that adequate financial resources are (or would be made) available. The nominating body has already 'offered to either lease the building at a commercial rent, or buy it on the basis of an agreed commercial valuation' (*paragraph (50)*). The nominating body has, it is claimed, 'the financial and other resources needed to acquire the building and bring it back into active community use' (*paragraph (95)*) and has even prepared a 'business plan' (*paragraph (180)*).

The nominating body's 'stated aim is to return [the nominated church building] to active use as a community centre, and to improve its range of facilities' (*paragraph (181)*).

It is stated (*at paragraph (208)*) that 'Rev'd Hollands confirmed that the repairs identified in the recent quinquennial review were costed at some £20,000 over the next five years. This figure appears to represent a maintenance backlog on

³² See for example: *Gibson v Babergh District Council (2015)*(CR/2014/0019); *Sawtel v Mid-Devon District Council (2014)*(CR/2014/0008); *St. Gabriel's* (above) etc.

this building, which is Grade II listed. The Parish Council's business plan includes a reserve and a sinking fund to ensure that future maintenance will be timely.'

Furthermore, the nominating body 'has the option to fund this maintenance work from its existing free reserves...' (*paragraph (209)*).

Again, it should be noted that the previous use(s) would not need to resume and any new compliant use would not even necessarily need to be economically viable in the sense that it would have to make a profit for its operator. This is because it could be run as a not-for-profit co-operative by local community volunteers.

In my view, it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the nominated building/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

Conclusions

For the reasons set out above there is, in my view, a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social interests of the local community; and it is, in my view, realistic to think that there is a time in the next five years when there could be non-ancillary use of the building/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

I have taken into consideration the potentially adverse impact that listing could have on the owner(s) of the building/land (as summarised above under the sub-heading *Consequences of Listing*) but the internal listing review process and appeal do allow the owner(s) the opportunity to challenge the decision to list.

Accordingly, in my view, this building/land should be included in the Council's 'List of Assets of Community Value.'

Recommendation

That the Solicitor to the Council & Monitoring Officer accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value.'

*

AUTHORITY

In accordance with the functions delegated to me, I hereby accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value', for the reasons set out above.

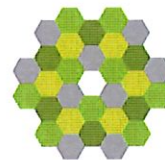


.....
Solicitor to the Council & Monitoring Officer

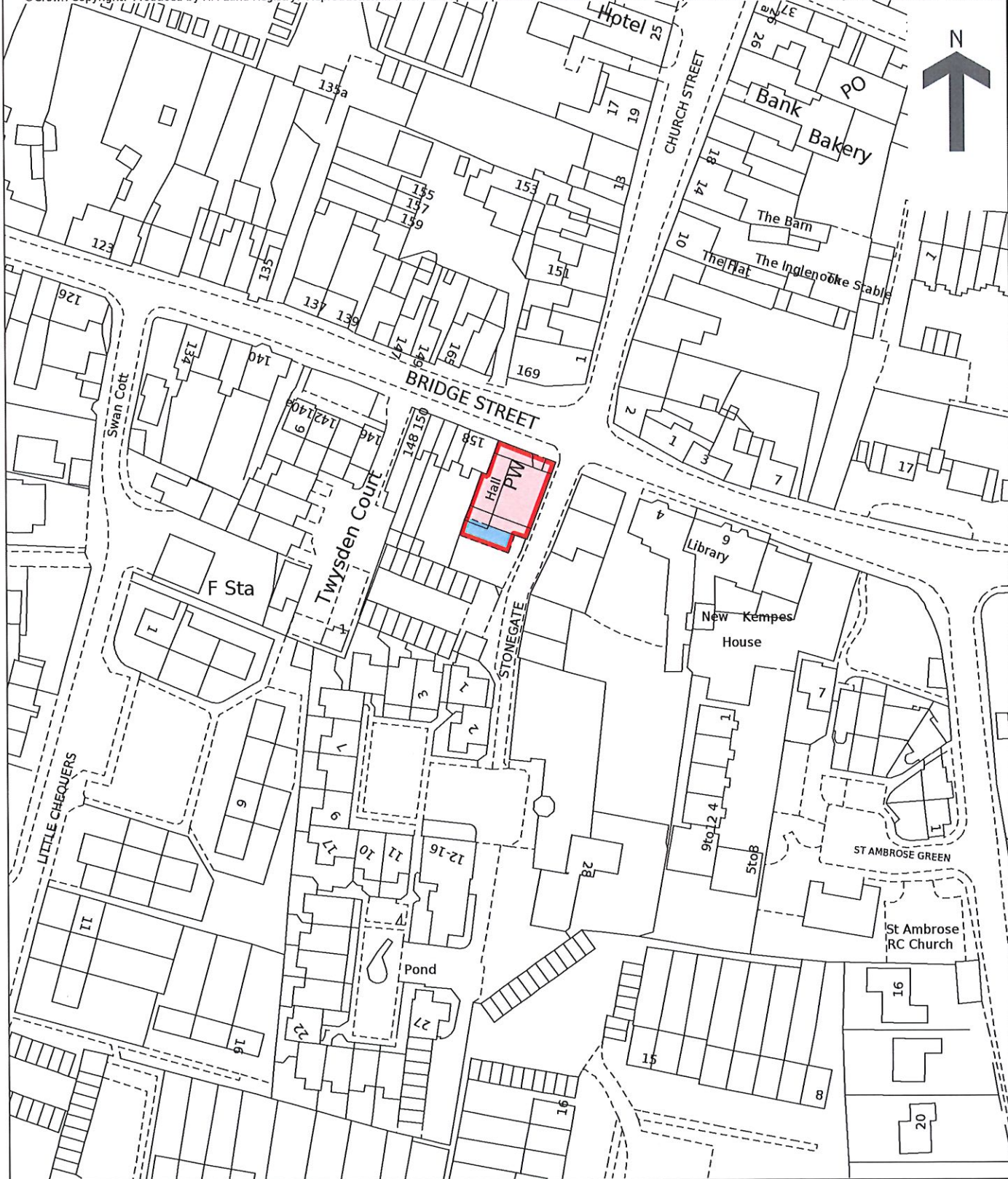
Date: 14th June 2022

HM Land Registry Official copy of title plan

Title number **K962352**
Ordnance Survey map reference **TR0546NW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Kent : Ashford**



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