

Meeting: Cabinet

Date: 18 November 2025

Wards affected: St Peters with St Marys and Clifton with Maidenway

Report Title: Nomination to List **The Edge, Brixham** and **The Monastery, Paignton** as Assets of Community Value (recommended for refusal)

When does the decision need to be implemented? As soon as possible

Cabinet Member Contact Details: Councillor Jacqueline Thomas – Cabinet Member for Tourism, Culture and Events and Corporate Services and Chairwoman of Standards Committee

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1. Purpose of Report

- 1.1. To inform Members of the nominations received by the Council to list **The Edge, Brixham** and **The Monastery, Paignton** as Assets of Community Value (ACV) and the outcome of the assessments of those nominations.
- 1.2. The Council has determined that these nominations do not meet the statutory criteria for listing under Section 88 of the Localism Act 2011.

2. Reason for Proposal and its benefits

- 2.1. The reasons for the proposal, and need for the decision are to ensure compliance with the Council's Asset of Community Value Policy and uphold transparency in line with the Localism Act 2011 and Asset of Community Value (England) Regulations 2012.

3. Recommendation(s) / Proposed Decision

- 3.1. That Members note the outcome of the officer assessments and agree that the nominations do not meet the statutory criteria under the Localism Act 2011 and should therefore be refused.

4. Appendices

Appendix 1: Nomination to list **The Edge, Brixham** as an Asset of Community Value submitted by The Edge, Brixham CIC

Appendix 2: Nomination to list **The Monastery, Paignton** as an Asset of Community Value submitted by Clifton with Maidenway Community Partnership

5. Background Documents

- The Council's Asset of Community Value Policy Assets of community value - Torbay Council

Supporting Information

As this report considers two separate nominations, each application and its corresponding assessment will be presented individually for clarity.

The Edge, Bolton Street, Brixham

The nomination, a copy of which is annexed to this report at **Appendix 1**, was submitted by The Edge, Brixham Community Interest Company.

The Edge is a privately owned, Grade II listed former United Reformed Church building, previously operated by and is owned by the Brixham Youth Enquiry Service (Brixham YES). The building currently hosts a range of community services including an independent food bank, community fridge and kitchen, yoga, arts and crafts, board game groups, IT support, neurodiverse coffee mornings, music and wellbeing activities, and children's holiday clubs.

Although the nominator is a newly formed Community Interest Company (CIC), they were established following the administration of Brixham YES, with the intention of continuing the services previously provided. It is understood that these services have been delivered from the building for more than five years prior to the nomination.

The nominator has advised that, despite entering into a three-year lease with the administrators of Brixham YES and receiving assurances regarding continued use, they have recently discovered that the building is now on the market.

Statutory Framework

Under Section 88 of the Localism Act 2011, a building or land may be listed as an ACV if:

Present and Future Test (Section 88(1)): The current non-ancillary use furthers the social wellbeing or interests of the local community, and it *is realistic to think that such use will continue*.

OR; Past and Future Test (Section 88(2)): There was a time in the recent past when the non-ancillary use furthered the social wellbeing or interests of the local community, and it is realistic to think that such use could resume within the next five years.

Assessment against criteria

The Edge clearly satisfies the current use requirement under s.88(1), as it hosts multiple community services.

The key issue is whether it is realistic to think such use will continue, given the building is subject to insolvency proceedings and is being marketed for sale. Administrators are legally obliged to secure the best price, which may result in disposal to a private purchaser without community obligations.

While the CIC demonstrates strong community engagement and continuity of services, there is no guarantee of future occupation beyond the current lease unless the CIC or another community group acquires the property.

Officer View

After reviewing the nomination against the statutory criteria in Section 88 of the Localism Act 2011, officers conclude that the asset does not meet the requirements for listing as an Asset of Community Value at this time.

While the building is currently used for a range of community activities, the test under Section 88(1) requires that it is *realistic* to think such use will continue.

The property is subject to insolvency proceedings and is being actively marketed for sale by the administrators of Brixham Youth Enquiry Service, who are legally obliged to secure the best possible price. This creates significant uncertainty regarding future occupation by the nominating Community Interest Company.

In the absence of any binding agreement or funded plan to secure the asset for continued community use, officers consider that the statutory requirement of realistic future use is not satisfied.

Should the property be sold and the nominating organisation (or another community group) be able to secure ownership or a long-term lease, a fresh nomination could be submitted for consideration at that stage.

The Monastery, Berry Road, Paignton

The nomination, a copy of which is annexed to this report at **Appendix 2**, was submitted by Clifton with Maidenway Community Partnership, who have also expressed an intention to lease the building from the Council.

The Monastery is owned by the Council and has remained vacant since November 2017, with community use having ceased over eight years ago. It was previously declared surplus and recommended for disposal by Cabinet on 6 August 2019 and was reaffirmed for disposal following Cabinet and Director discussions earlier this year.

Statutory Framework

Under Section 88 of the Localism Act 2011, an asset may be listed as an ACV if it meets one of two statutory tests:

Present and Future Test (Section 88(1)): The current non-ancillary use of the building furthers the social wellbeing or interests of the local community, and it is realistic to think that such use will continue.

OR; Past and Future Test (Section 88(2)): There was a time in the *recent past* when the building's use furthered the social wellbeing or interests of the local community, and it is realistic to think that such use could resume within the next five years.

The term "recent past" is not defined in legislation but is commonly interpreted by local authorities as meaning within the last five years.

Assessment Against Criteria

The Monastery has been vacant since 2017, and therefore fails the Present and Future Test, as there is no current community use.

Under the Past and Future Test, community use ceased more than eight years ago, exceeding the commonly accepted five-year threshold.

Tribunals have accepted longer gaps only in exceptional cases, such as *Sandhu v South Oxfordshire DC [2025] UKFTT 1306 (GRC)*, where the asset had a sustained and prominent role in community life (e.g., public houses with over a century of continuous use).

By contrast, the Monastery's primary function was as a place of worship, with community use occurring later. It does not demonstrate the same longevity or embedded community role as assets upheld in comparable tribunal cases.

Key factors in assessing "recent past" include the length of vacancy; generally, a period exceeding five years significantly weakens the case unless exceptional circumstances exist. Officers do not consider that such circumstances apply here.

Future Use Proposal

The nomination includes a proposal for a peppercorn lease, which indicates interest in future community use. However, previous assessments by interested parties have concluded that the property requires substantial investment for repair and refurbishment. At present, there is no funded or deliverable plan that would make resumption of community use realistically achievable within five years. On the other hand, when the asset is marketed for sale, any community group will have the opportunity to submit an offer to purchase the property.

Officer View

After reviewing the information against the statutory criteria and relevant case law, officers conclude that the nomination does not meet the requirements for listing The Monastery as an Asset of Community Value.

This conclusion is based on the following factors:

- The property has been vacant since 2017, and community use ceased more than eight years ago, which does not satisfy the “recent past” threshold generally interpreted as within five years.
- The Monastery’s primary function was as a place of worship; it does not demonstrate the sustained or embedded community role seen in exceptional cases upheld by tribunals.
- No realistic prospect of resuming community use within five years without significant investment and a funded plan.
- No exceptional circumstances have been identified to justify departure from the standard interpretation of the criteria.

7. Options under consideration

- **Option 1** Refuse both listings – (Recommended) as neither nomination meets the statutory criteria under Section 88 Localism Act 2011.
- **Option 2** Approve both listings - Approval would enable both community groups to benefit from the moratorium period under the ACV regime, giving them time to prepare a bid if the assets are sold. However, in this case, both properties are already earmarked for sale, meaning that the respective nominators will have an opportunity to bid regardless of ACV listing.
- **Option 3** Approve the Edge nomination; Refuse The Monastery
- **Option 4** Refuse the Edge nomination; Approve The Monastery

8. Financial Opportunities and Implications

- Although listing an asset as an Asset of Community Value does not in itself create a direct financial cost, it can give rise to potential financial liability through compensation claims. Under Regulation 14 of the Assets of Community Value (England) Regulations 2012, an owner or former owner may seek compensation for any loss or expense incurred as a result of the listing, provided that such loss would not have occurred otherwise.
- To be eligible, claimants must demonstrate actual financial loss directly attributable to the listing.

In the case of **The Edge**

- If listed, the administrators (as owners) have the right to request an internal review of the Council’s decision under Section 92(1) of the Localism Act 2011 and may appeal to the First-tier Tribunal (General Regulatory Chamber) under Regulation 11 of the Assets of Community Value (England) Regulations 2012.
- The nominator does not have a statutory right of appeal if the nomination is rejected. Their only recourse would be judicial review.
- If the listing is upheld and it is shown to have adversely affected the market value or saleability of the property, the Council could be liable for compensation under Regulation 14 of the ACV Regulations 2012.

- This risk is heightened in cases involving insolvency, where administrators may argue that listing has suppressed the asset's value.

In the case of **The Monastery**

- The Council is the freehold owner of the property, so there is no external compensation risk. However, the property has been declared surplus and is intended for sale. Listing the asset could have the effect of reducing its market value or deter potential purchasers, thereby impacting the amount the Council could achieve on disposal.

9. Legal Implications

- The nominations have been assessed in accordance with the Localism Act 2011, specifically Section 88, which outlines the criteria for listing land or buildings as Assets of Community Value.
- The legal effect of listing the property is detailed in the Torbay Council Assets of Community Value Policy which is available to view on the Council's website.
- If the nominations are unsuccessful, then in accordance with Section 93 of the Localism Act 2011, the nominations will be added to the Council's list of unsuccessful nominations, which is retained on the Council's website for a minimum of five years.
- Listing does not prevent the sale or change of ownership of the asset. Under Section 95 of the Localism Act 2011, the owner retains full discretion to sell to any party of their choosing. However, it does trigger a moratorium period if the owner intends to sell, allowing community groups time to express interest in purchasing the asset and additional time for the group to prepare a bid.

10. Engagement and Consultation

- No formal consultation or engagement has been undertaken with residents, stakeholders, or community groups. The nominations have been submitted by a qualifying community group in accordance with the requirements of the Localism Act 2011, and the assessments have been carried out by officers based on the statutory criteria.

11. Procurement Implications

- Not applicable

12. Protecting our naturally inspiring Bay and tackling Climate Change

- Not applicable

13. Associated Risks

Risk of listing assets that do not meet statutory criteria

For a building or land to be listed as an Asset of Community Value (ACV), the Council must be satisfied that:

Current Use Test

- The property is currently used (not just incidentally) in a way that benefits the social wellbeing or social interests of the local community (including cultural, recreational, or sporting interests); and
- It is realistic to think that this use will continue in the future.

OR

Past Use Test

- In the recent past, the property was used (not just incidentally) in a way that benefited the social wellbeing or social interests of the local community; and
- It is realistic to think that such a use could resume within the next five years.

Listing nominations that fail to meet these statutory criteria could expose the Council to legal challenge, reputational damage, and resource implications in defending its decision.

Risk of not listing qualifying assets

If the Council decides not to list a property that meets the statutory definition, the nominating applicant has no statutory right of appeal. Only the owner of the property may seek an internal review and, if dissatisfied, appeal to the First-tier Tribunal (General Regulatory Chamber) under the Assets of Community Value (England) Regulations 2012.

Legal remedies available to applicants

If a nomination is refused, the applicant has limited options to challenge the decision:

- **Judicial Review**
The applicant may apply to the Administrative Court for a judicial review under Civil Procedure Rules Part 54. This is a remedy of last resort and does not reconsider the merits of the decision; it only examines whether the Council acted lawfully, rationally, and followed proper procedures.
- **Complaint to the Local Government and Social Care Ombudsman**
If the applicant believes the Council acted improperly or failed to follow due process, they may lodge a complaint with the Ombudsman. The Ombudsman can investigate procedural fairness but cannot overturn the Council's decision.

14. Equality Impact Assessment

The Council has had due regard to its Public Sector Equality Duty (PSED) in considering this community nomination; however, as the decision does not involve any change to function, practice, or policy, officers conclude that there is no adverse impact on persons with protected characteristics.

Protected characteristics under the Equality Act and groups with increased vulnerability	Data and insight	Equality considerations (including any adverse impacts)	Mitigation activities	Responsible department and timeframe for implementing mitigation activities
Age	18 per cent of Torbay residents are under 18 years old. 55 per cent of Torbay residents are aged between 18 to 64 years old. 27 per cent of Torbay residents are aged 65 and older.	No adverse impacts are anticipated from this decision	Not applicable	
Carers	At the time of the 2021 census there were 14,900 unpaid carers in Torbay. 5,185 of these provided 50 hours or more of care.	No adverse impacts are anticipated from this decision	Not applicable	

Disability	In the 2021 Census, 23.8% of Torbay residents answered that their day-to-day activities were limited a little or a lot by a physical or mental health condition or illness.	No adverse impacts are anticipated from this decision	Not applicable	
Gender reassignment	In the 2021 Census, 0.4% of Torbay's community answered that their gender identity was not the same as their sex registered at birth. This proportion is similar to the Southwest and is lower than England.	No adverse impacts are anticipated from this decision	Not applicable	
Marriage and civil partnership	Of those Torbay residents aged 16 and over at the time of 2021 Census, 44.2% of people were married or in a registered civil partnership.	No adverse impacts are anticipated from this decision	Not applicable	
Pregnancy and maternity	Over the period 2010 to 2021, the rate of live births (as a proportion of females aged 15 to 44) has been slightly but significantly higher in Torbay (average of 63.7 per 1,000) than England (60.2) and the South West (58.4). There has been a notable fall in the numbers of live births since	No adverse impacts are anticipated from this decision	Not applicable	

	the middle of the last decade across all geographical areas.			
Race	In the 2021 Census, 96.1% of Torbay residents described their ethnicity as white. This is a higher proportion than the South West and England. Black, Asian and minority ethnic individuals are more likely to live in areas of Torbay classified as being amongst the 20% most deprived areas in England.	No adverse impacts are anticipated from this decision	Not applicable	
Religion and belief	64.8% of Torbay residents who stated that they have a religion in the 2021 census.	No adverse impacts are anticipated from this decision	Not applicable	
Sex	51.3% of Torbay's population are female and 48.7% are male	No adverse impacts are anticipated from this decision	Not applicable	
Sexual orientation	In the 2021 Census, 3.4% of those in Torbay aged over 16 identified their sexuality as either Lesbian, Gay, Bisexual or, used another term to describe their sexual orientation.	No adverse impacts are anticipated from this decision	Not applicable	
Armed Forces Community	In 2021, 3.8% of residents in England reported that they	No adverse impacts are anticipated from this decision	Not applicable	

	had previously served in the UK armed forces. In Torbay, 5.9 per cent of the population have previously served in the UK armed forces.			
Additional considerations				
Socio-economic impacts (Including impacts on child poverty and deprivation)		No adverse impacts are anticipated from this decision	Not applicable	
Public Health impacts (Including impacts on the general health of the population of Torbay)		No adverse impacts are anticipated from this decision	Not applicable	
Human Rights impacts		No adverse impacts are anticipated from this decision	Not applicable	
Child Friendly	Torbay Council is a Child Friendly Council, and all staff and Councillors are Corporate Parents and have a responsibility towards cared for and care experienced children and young people.	No adverse impacts are anticipated from this decision	Not applicable	

15. Cumulative Council Impact

None.

16. Cumulative Community Impacts

None.