

Meeting: Cabinet

Date: 16 December 2025

Wards affected: St Peters with St Marys

Report Title: The Edge, Brixham – Nomination to list as an Asset of Community Value

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 nomination received by the Council to list **The Edge, Brixham** as an Asset of Community Value (ACV) and the outcome of the assessment of that nomination.
- 1.2. The Council has determined that this nomination does 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 reason 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 the outcome of the officer assessment be noted and it be confirmed that the nomination does 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

5. Background Documents

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

6. Supporting Information

- 6.1. The nomination, annexed at **Appendix 1**, was submitted by The Edge, Brixham Community Interest Company (CIC).

6.2. **Background and Current Use**

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

These activities clearly demonstrate that the building furthers the social wellbeing and interests of the local community, as envisaged under Section 88 of the Localism Act 2011.

Although the nominator is a newly formed CIC, it was established following the administration of Brixham YES, with the intention of continuing the services previously provided. Evidence suggests these services have been delivered from the building for over 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 being marketed for sale.

6.3 **Statutory Framework**

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

- Present and Future Test (s.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.
- Past and Future Test (s.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.

6.4 **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 property is subject to insolvency proceedings and is being marketed for sale.

- Administrators are legally obliged under the Insolvency Act 1986 to secure the best price, which may result in disposal to a private purchaser.
- There is no guarantee that the community use can continue.

6.5 Officer View

After reviewing the nomination against the statutory criteria in Section 88 of the Localism Act 2011, officers concluded that the asset **does not meet** the requirements for listing as an Asset of Community Value (ACV).

While the building is currently used for community activities, Section 88(1) requires that it is *realistic to think* such use will continue. The property's involvement in insolvency proceedings and its active marketing for sale create significant uncertainty regarding future occupation by the nominating CIC. The nominator holds no security of tenure, and there is no restrictive covenant on the property's title; therefore, any future owner may lawfully use the property for any purpose permitted under planning legislation.

In the absence of evidence demonstrating that the asset can be secured for ongoing community use, officers consider that the statutory requirement of realistic future use is not satisfied.

6.6 Current position

Following the publication of the report to Cabinet on 18 November 2025, which included urgent items relating to two nominations (The Edge, Brixham and The Monastery, Paignton), the Leader announced that these matters would be deferred until 16 December 2025 to allow nominators additional time to provide further information.

No further information was provided in support of this nomination.

6.7 Exempt Disposal Due to Insolvency Proceedings

Under the ACV regime, a disposal pursuant to the Insolvency Act 1986 is an exempt disposal.

This means that an ACV listing would have no practical effect as it would not trigger the usual moratorium period and the sale can proceed without having to wait for community bids.

It is important to note that listing the property as an ACV does not guarantee continued community use for the nominator. Insolvency related disposals can result in the asset being sold to any buyer, potentially ending its community use.

6.8 Risk of Compensation Claims

Whilst not a reason for refusal, members should note the potential financial risk to the Council if administrators were to make a claim should the nomination be accepted.

Under Regulation 14 of the Assets of Community Value (England) Regulations 2012, an owner or former owner may claim compensation for loss or expense incurred as a result of listing.

Case Reference: *St John Ambulance v Teignbridge DC [2018]*

In this case, the First-tier Tribunal confirmed that compensation under Regulation 14 of the Assets of Community Value (England) Regulations 2012 can include losses arising from the listing itself, not just compliance costs. Although the claimant's substantial claim for capital

loss was rejected due to insufficient evidence, the Tribunal awarded compensation for abortive sale costs and management time directly attributable to the listing. This illustrates that listing an asset during insolvency or sale can expose councils to financial risk, even where the property is ultimately sold for its market value.

7. Options under consideration

6.1. Option 1 – Refuse the Nomination

Although the property currently serves a community function, Section 88 of the Localism Act 2011 requires it to be realistic that such use will continue. The evidence does not demonstrate this. Insolvency proceedings, active marketing, and lack of security of tenure create significant uncertainty, with no legal mechanism to secure ongoing community benefit.

Given these factors, the statutory criteria are not met, and officers advise that the statutory test under Section 88 of the Localism Act 2011 is not met, and therefore the property cannot be listed as an Asset of Community Value.

Hence, the recommendation at paragraph 3.1.

6.2. Option 2 – Accept the Nomination

This option is not recommended, as the nomination fails to meet the statutory criteria.

Furthermore, listing would impose restrictions on disposal and register a local land charge. However, insolvency-related sales are exempt from the moratorium, limiting any practical benefit. Listing could also deter buyers and expose the Council to compensation claims.

8. Financial Opportunities and Implications

- 8.1 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.
- 8.2 To be eligible, claimants must demonstrate actual financial loss directly attributable to the listing.

9. Legal Implications

- 9.1 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.
- 9.2 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.

- 9.3 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.
- 9.4 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

- 10.1 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. For clarity, there is no requirement for the Council to carry out public consultation under the Assets of Community Value regime.

11. Procurement Implications

- 11.1 Not applicable

12. Protecting our naturally inspiring Bay and tackling Climate Change

- 12.1 Not applicable

13. Associated Risks

13.1 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.

13.2 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.

13.3 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

- 14.1 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

15.1 None

16. Cumulative Community Impacts

16.1 None