

Meeting: Cabinet

Date: 16 December 2025

Wards affected: Clifton with Maidenway

Report Title: The Monastery, Paignton – 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 Monastery, Paignton** 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 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

6. Introduction

- 6.1 The nomination, a copy of which is annexed at **Appendix 1**, was submitted by Clifton with Maidenway Community Partnership. Within their application, the group also expressed an intention to lease the building from the Council. However, this falls outside the scope of this determination.
- 6.2 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, a position reaffirmed following Cabinet and Director discussions earlier this year.

6.3 Statutory Framework

Under **Section 88 of the Localism Act 2011**, an asset may be listed as an Asset of Community Value (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.
- 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**.

6.4 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.

6.5 Officer View

After reviewing the information against the statutory criteria and relevant case law, officers concluded 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.
- There is 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.

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.

On 1 December 2025, the nominator submitted additional information stating that the asset had been used after 2017 for elections prior to the Covid pandemic and utilised by the emergency services for training purposes. These activities are ancillary uses and do not constitute use of the facility by the community to further its social wellbeing or interests. Accordingly, the position remains unchanged.

Further evidence was provided in support of the Partnership’s application for CIL funding. However, this falls outside the scope of the ACV determination.

7. Options under consideration

7.1. Option 1 – Refuse the nomination

The Monastery ceased community use in 2017 over eight years ago. This period exceeds what could reasonably be considered “recent” for a vacant building, particularly one that has not been maintained or used for any community purpose since closure.

On this basis, the statutory test under section 88(2) is not met.

Hence, the recommendation at paragraph 3.1.

7.2. Option 2 – Accept the nomination

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

Should circumstances change and the property be brought back into community use in the future, a fresh nomination can be submitted at that time. Accordingly, officers advise against acceptance of the nomination.

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