

**DECISION NOTICE**

**THE LOCALISM ACT 2011 Section 88**

**Decision on the nomination of Lymington Bus Station High Street Lymington  
Hampshire SO41 9AF as an asset of community value.**

I, Colin Read, Executive Head of Service of The District Council of New Forest, pursuant to delegated powers, have considered an application made by the Friends of Lymington Bus Station to nominate Lymington Bus Station High Street Lymington Hampshire SO41 9AF as an asset of community value. Having considered the application I have decided that the application should not be accepted for the following reasons:

In the opinion of the local authority there is not 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 social interests of the local community, and it does not believe 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.

It therefore does not meet the criteria set out in the Localism Act 2011 to be eligible for listing.

Signed...COLIN READ.....

Colin Read

Executive Head of Service

Dated: 6/7/2016

## REPORT TO COLIN READ

# Application to nominate Lymington Bus Station High Street Lymington SO41 9AF as an asset of community value

## 1.0 INTRODUCTION

- 1.1 This report relates to an application made to the Council by the Friends of Lymington Bus Station to nominate Lymington Bus Station High Street Lymington SO41 9AF (“the Property”) as an asset of community value (“the Application”). The report reviews the Application, the criteria against which a decision has to be made, the result of consultations and makes recommendations.

A copy of the Application is annexed to this report.

## 2.0 BACKGROUND

- 2.1 The Application to nominate Lymington Bus Station High Street Lymington SO41 9AF as an asset of community value is made pursuant to the Community Right to Bid, arising out of the Localism Act 2011 (“the Act”). Under the Act, the Council must make a decision on the Application by 11 July 2016. If the Council accepts that the nomination meets the criteria set down in the Act, the Property must be added to the Council’s published list of assets of community value, registered as a local land charge and registered against the freehold title to the Property.
- 2.2 If the Property is listed as an asset of community value, the owners must notify the Council if they wish to dispose of the Property. The Council would notify community interest groups of the proposal. If such a group expresses an interest in the Property, a moratorium period of 6 months on the sale is imposed to allow the community interest group to prepare a bid and raise finance.
- 2.3 The bus station was closed in May 2015. The Property is currently used for parking buses when not in service. The site has signage making clear alternative bus services are available opposite the post office on Lymington High Street. There are also bus stops on Gosport Street. There is no bus service information at the Property and no other facilities are apparent. The High Street opposite the post office is level with a single kerb. There are marked parking areas on the road for buses collecting passengers from these bus stops. Buses would of course pass up and down the High Street whether they use the bus station or the roadside bus stops. There is service information provided on the bus stops.

## 3.0 THE APPLICATION

- 3.1 The Application was made by the Friends of Lymington Bus Station (“the Friends”) and was received by the Council on 16 May 2016. The Council is the proper decision making authority to determine the Application and delegations have been granted to the Executive Head of Service to make a decision on the matter. The Application is valid under the criteria laid down by the Act and the Property is not within one of the exceptions laid down in the Act.
- 3.2 The Friends are an unincorporated body comprising more than 21 local individuals who are on the Electoral Register for the District. A copy of the body’s constitution is attached to the Application. The activities of the Friends are wholly or partly concerned within the area covered by New Forest District Council. The Friends are not profit

making and any surplus is wholly applied to activities in support of the aims of the association. The Friends are entitled to make an application to list the Property as an asset of community value. The Application in fact contained details of 111 supporters and Friends.

- 3.3 The Property is currently owned freehold by The Go Ahead Group PLC. The Property has been used as a bus station for many years until its closure in May 2015. The Property comprises 2 parcels of land registered under title numbers HP597032 and HP98428.
- 3.4 The Application contends that the main use of the Property in the recent past furthered the social well-being or cultural, recreational or sporting interests of the local community. The Application then seeks to provide details as to how the Friends anticipate that the Property would return to furthering the social well-being or cultural, recreational or sporting interests of the local community. Finally the Application seeks to provide details as to when realistically the Friends consider that the Property could return to furthering the social well-being or cultural, recreational or sporting interests of the local community. These three elements of the Application will be set out in turn.
- A. The Application contends that the main use of the Property in the recent past furthered the social well-being or cultural, recreational or sporting interests of the local community.
- 3.5 The applicant provided details about the use of the Property by the local community in the statement accompanying the Application. The applicant says the Property is important to the social well-being of the local community. In particular the Friends assert:
- Until its closure the Property was the hub of public bus services in Lymington.
  - The bus station provided in a single location covered and sheltered waiting facilities toilet facilities and information for bus users.
  - The bus station removed the need for buses to take up scarce parking space with Lymington High Street and Gosport High Street and prevented passengers from looking through windows of residences whilst buses were stationary.
  - The bus station reduced disruption to trading premises by preventing shop fronts from being obscured and the gathering of bus users on narrow pavements.
  - The bus station is centrally placed close to the shops and other businesses.
  - Since the bus station has been closed it is apparent that there is no other suitable terminus location of adequate size within Lymington for buses to operate without disruption or to provide the expected level of services or convenience to a reasonable standard.
  - Placing of bus stops in Gosport Street has caused difficulties to less able-bodied users of buses.
  - The Property was used as a bus station for many years until its closure in May 2015. The Friends believe the closure occurred because of the reduction in bus service subsidies being paid to the operating company.
- B. The Application seeks to provide details as to how the Friends anticipate that the Property would return to furthering the social well-being or cultural, recreational or sporting interests of the local community.
- 3.6 The Friends contend that the property could return to furthering the social wellbeing of the local community. In particular the Friends assert:
- Some other local authorities provide bus services through not for profit organisations where all subsidies are applied to provide a bus service.

- The bus station is physically capable of returning to its former use and no alteration has yet been made to the layout of the premises.
- A different bus operator could rent the bus station from the current owners or purchase it if the current owners believe the bus station is surplus to requirements.
- The forthcoming Buses Bill is expected to revolutionise the way bus transport is financed and managed. It is expected to reverse the trend of bus cuts by introducing franchise operations.
- The Buses Bill is expected to replace the current practice of bus companies choosing services they wish to operate purely for profit motives. A package of bus services required by bus users would take precedence and reduction in subsidies should no longer be acceptable as a reason for operators to curtail services. A franchise package would be expected to require operators to include provision for required routes.
- The Buses Bill includes moves towards all local authorities having the opportunity to decide which bus services they wish to run after consultations and discussions with bus service users.

C. The Application seeks to provide details as to when realistically the Friends consider that the Property could return to furthering the social well-being or cultural, recreational or sporting interests of the local community.

3.7 The Friends make a number of assertions about when the Property could realistically return to furthering the social wellbeing of the local community. In particular the Friends assert:

- The bus station could return to its original use within 2 to 3 months if the bus services were taken over by another operator. There would be a process to go through including perhaps following a tender process run by Hampshire County Council.
- There may be the possibility of the local community purchasing the bus station from the current owners.
- The Friends could provide support and assistance in various ways such as information provision, small scale catering facilities and ensuring the toilet facilities are kept operational.
- The forthcoming Buses Bill is expected to be in force by early 2017 and is likely to radically transform the way bus services are financed and managed. The intention to increase bus services under the forthcoming legislation should lead to an immediate need to relocate bus services within Lyminster Bus Station.
- The bus station could return to use as an asset of community value within a few months and is realistic to expect to return to use as an asset of community value within a period of less than 12 months.

3.8 In addition the Friends have provided further information in support of the Application, comprising a number of extracts from speeches or articles about the Buses Bill. These include:

- Press release from Gov.UK web site dated 11 February 2016 which advises that bus services are to be made more passenger friendly as Councils will be given more freedom to improve services and that Councils will be given the choice to franchise services and enter into new partnerships with providers. Councils will be given new powers which are designed to give them the tools to drive up standards in the interests of residents. The government will honour its devolution commitment to provide local authorities with bus franchising powers.
- Notes of a speech "The case for the Buses Bill" delivered by Andrew Jones MP on 23 February 2016. The minister identified 3 principles: that people using buses is a good thing, local areas should have the tools to support and increase that bus usage and that devolution should mean local areas having greater choice as to how local transport works. The Buses Bill would introduce new arrangements for local

authorities and bus companies to enter into partnership with one another and to agree local standards for all series in their area for example concerning frequency of service, reliability, emissions, ticketing rules and so forth. The Buses Bill will give local authorities the choice to use new powers to franchise bus services in their areas should they choose to do so. It is noted the Buses Bill will not require local authorities to make changes and it will not include powers for local authorities to acquire land or assets from existing bus operators.

- An article from a web page “Bus and Coach Professional” dated 19 February 2016 which referenced the Government’s likely approach. The article notes Government has been subjected to fierce lobbying by the industry. There is a quotation given by the Chief Executive of “Greener Journeys” in support of increasing bus passenger numbers. There is also a quotation from the managing director of First Bus pointing to the success of existing partnership approaches.
- Finally, the Friends provided some accounts information about Go Ahead.

#### **4.0 THE OWNERS COMMENTS**

- 4.1 The Owner of the Property has been asked to comment on the Application. Solicitors for the owners, DACbeachcroft replied on 24 June 2016 making an objection to the proposal.
- 4.2 The Owner’s first objection is that the Property does not have a current use or use in the recent past which furthers the social wellbeing or social interests of the local community. DACbeachcroft point out there is no statutory definition of the meaning of “recent past”. DACbeachcroft cite the DCLG’s policy statement of 2011 which indicates that local authorities would need to decide on “recent” and it would depend on the circumstances. The local authority should take all relevant matters into consideration when making its decision.
- 4.3 The next objection was that even if the Council decided the bus station use was recent, that bus station use does not further the social wellbeing or social interests of the local community. Again, the legislation gives no statutory definition of this phrase although the Act does confirm that “Social Interests” includes cultural interests, recreational interests and sporting interests.
- 4.4 DACbeachcroft argues that the bus station does not further any of these interests. DACbeachcroft argues that when considering the nominated asset the Council must consider the use of the asset and the role it plays within the local community. DACbeachcroft argues that the Friends are primarily referencing the convenience of the Property and the bus service provided from the Property but provide no evidence that the bus station itself furthers the social wellbeing or social interests of the local community. DACbeachcroft argues that convenience does not constitute a social interest, a bus service is still being provided from the High Street and bus shelters and toilet facilities are also available on the High Street. DACbeachcroft argues that the focus of the Application is on the bus service provided from the Property rather than the social interests provided by the Property itself.
- 4.5 DACbeachcroft assert that since the Property stopped operating as a bus station there has been an increase in the number of bus users on the High Street with a greater footfall in the local shops. DACbeachcroft contend that the removal of operations from the Property to the High Street has in fact enhanced the success and vibrancy of the town centre and that the closure of the bus station has served to further the social wellbeing and interests of the local community. However no evidence has been provided to the Council in support of these assertions.

- 4.6 DACbeachcroft assert that the Friends have provided no evidence to support their claim that allows the Council to establish that there is a realistic likelihood that the Property can be run so as to further the social wellbeing or social interests of the local community. DACbeachcroft point out that whilst the Friends do not need to provide a financial plan in place before making the Application, given the costs of acquiring the site, the ongoing costs of running a bus service from the Property, the fact that no other bus service operator has demonstrated an interest in acquiring the site from the owners since its closure, the lack of any business plan to support the Application and the reliance on future legislation means the Friends have not shown that it is realistic to think there can continue to be a non-ancillary use of the Property which will further (whether or not in the same way) the social wellbeing or social interests of the local community in order to satisfy the statutory requirements for listing.
- 4.7 DACbeachcroft reiterate that no bus service provider has expressed any interest in acquiring the Property or indeed operating bus services from the Property at any stage during the marketing or sales process and it is unlikely one will be forthcoming in the foreseeable future. The present owner is a substantial bus operator and if it was unable to make the Property financially viable it is unrealistic to think another bus operator could. A more profitable and efficient service is provided by not using the Property as a bus station. If the Friends acquired the site they would be stuck with a property that no bus operator will wish to serve.

## **5.0 LEGAL POWER AND DELEGATIONS**

- 5.1 The Council must consider the nomination and decide whether to list the Property as an asset of community value.
- 5.2 The Council has put in place delegated powers for an Executive Head of Service to make the decision in consultation with the Head of Legal Services, relevant heads of service and portfolio holder(s).
- 5.3 The legal criteria to make the decision are laid down in the Act and supporting regulations. The Council must decide whether the Property is of community value.
- 5.4 The land is 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 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 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 (section 88(2) of the Act). "Social interests" include cultural interests, recreational interests and sporting interests.
- 5.5 In the event of the Council deciding to list the Property as an asset of community value, the owner can appeal against that decision, firstly to the Chief Executive and ultimately to the court (the First Tier Tribunal). The owner is able to claim compensation for loss and expense in relation to the Property which would be likely not to be incurred if the Property had not been listed. This can include delays in entering into a binding agreement to sell the land which is caused by relevant disposals being prohibited by the regulations.

## **6.0 CONSULTATIONS**

- 6.1 A number of consultations have been made as summarized below.

- 6.2 The Owner was informed of the Application and submitted objections to it as described in section 4 above.
- 6.3 Lymington & Pennington Town Council was informed of the Application and was invited to provide comments. The Town Council provided comments in support of the Application. In particular they made the following points:
- Consequent upon the withdrawal of public access to facilities at the bus station there has been a marked detrimental effect upon the residents, shopkeepers and the users of public transport.
  - The Town Council has worked with representatives of the bus company, NFDC and Hampshire County Council to address these issues.
  - The Town Council make reference to the Buses Bill and acknowledge that if it were passed there would be much to do to achieve the objects of the Friends.
  - The Town Council make reference to ongoing work to the Neighbourhood Plan for Lymington and Pennington and would welcome the opportunity to explore whether or not there may be opportunities to enhance the community value of this important resource.
  - The Town Council supports the Application approval of which would provide the opportunity not only to overcome the loss of amenity but also to enhance the use of this important resource for the benefit of the community.
- 6.4 The Executive Head for Governance and Regulation had no comments on the proposal.
- 6.5 Cllr Jill Cleary was informed of the Application as portfolio holder for Housing and Communities and she commented that she would leave it to the local Councillors to make any comments.
- 6.6 Local ward member Cllr Alan Penson supported the application. He commented:

“In my view the Bus Station did further the social well-being or social interests of the local community. Furthermore I believe that the site could be returned to furthering the social, wellbeing or cultural or recreational interests of the local community. This would not, necessarily, be in the form of a Bus Station.”

## **7.0 ASSESSMENT**

- 7.1 The assessment as to whether the Council should accept the Application to list the Property as an asset of community value is made under Section 88(2) of the Act. The first element of this test, s88(2)(a), is whether in the opinion of the local authority 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 social interests of the local community.
- 7.2 There is no statutory definition or guidance of the phrase “recent past,” which is a matter for the local authority to determine in each case. There does appear some judicial support for the proposition that what constitutes the recent past will depend on all the circumstances and that it is a relative concept. In *Crostone v Amber Valley*<sup>1</sup> the length of time the Property had been a pub was said to be relevant (over 200 years). The implication seems to be that the longer a period of use which furthers a community benefit, the longer the period that will constitute the recent past.

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<sup>1</sup> CR/2014/0010

- 7.3 DACbeachcroft contend that the fact of the closure of the bus station for commercial reasons, that the owner believed the operation of the bus station was not commercially viable and the fact that no other bus operators made offers to take over the operation or buy the bus station means that the “recent past” can be a relatively short period of time. However, these points are more explanations as to why the owners closed the bus station and do not really go to the fairly straightforward factual assessment as to whether the Property had been used for its purpose in the recent past. It is common ground the Property had been used as a bus station “for many years” and that closure only occurred some 15 months or so ago. The Council is not aware of any cases where the “recent past” has been 15 months or less. In the opinion of the Council, the Property was used for its purpose in the recent past as required by the Act.
- 7.4 The S88 (2) (a) also requires that there was an actual use of the Property that was not an ancillary use furthered the social wellbeing or social interests of the local community. The phrase “social wellbeing” is undefined by the Act but the phrase “social interests” does include cultural, recreation or sporting interests (s88(6)). DACbeachcroft observe the use of the Property does not fall within any of these listed social interests.
- 7.5 The Friends point out that the Property provided a hub for the provision of local bus services at the centre of Lymington, with covered and sheltered waiting facilities, toilet facilities and information. They say the Property allowed buses to pick up and collect passengers in the central area of the town, close to the shops and centrally located businesses. The Property provided a bus station for the convenience of passengers, reduced congestion on the High Street, provided information about services, a flat surface for the less able and it reduced pressure on High Street parking places.
- 7.6 DACbeachcroft contend the convenience to users of the Property as a bus station does not constitute a use of the Property that furthered the social wellbeing or social interests of the local community. DACbeachcroft point out that bus services are still provided from the centre of Lymington with bus shelters and there are other toilet facilities on the High Street. DACbeachcroft argue that the Application really focuses on the bus service provided from the Property rather than the social interest provided by the Property itself. Finally DACbeachcroft contend (but with no supporting evidence beyond the assertion) that since the closure of the bus station there has been an increase in passenger numbers and has enhanced the success and vibrancy of the town centre.
- 7.7 Lymington and Pennington Town Council in their comments to this Council observed in contrast that since the loss of the bus station facilities there had been a marked detrimental effect on the residents, shopkeepers and users of public transport. The Town Council supported the Application. Local ward member Alan Penson was also supportive of the Application.
- 7.8 The Friends also provided details of the proposed Buses Bill presently passing through Parliament. The speech of the Roads Minister, Andrew Jones MP gives a number of reasons why good bus services are important to the local community. However it appears the Minister’s comments concerning the Buses Bill are supportive of better bus services, rather than about the need for bus stations to deliver bus services. Overall the Application and also the Town Council response put great emphasis on the Buses Bill but as mentioned not only is this not law but in any case primarily deals with the delivery of improved bus services as a whole.



- 7.9 There are bus services into Lymington and the High Street and Gosport Street have bus stops and other facilities. Information concerning bus times can be found on bus stops or on-line and there is no particular reason to believe the bus station itself is a property that provides social wellbeing to the local community. A well run bus service may well provide great benefit to the local community but that is not what the Act is intended to cover.
- 7.10 Taking into account all the comments made, in the opinion of the Council there was not an actual use of the Property as a bus station in the recent past which furthered the social wellbeing or social interests of the local community and so the test set out in S88(2)(a) has not been satisfied.
- 7.11 The second element of the test as to whether the Council should accept the Application to list the Property as an asset of community value is set out in S88 (2)(b) of the Act. This requires the Council to decide 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 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.
- 7.12 DACbeachcroft assert that no evidence has been provided by the Friends to enable the Council to establish that there is a realistic likelihood that the Property can be run or used to further the social wellbeing or social interests of the local community. DACbeachcroft observe that in the opinion of their clients, who are experienced bus operators, the operation of bus services from the Property was not financially viable, that no other bus operators have sought to acquire the bus station and that a more profitable and efficient service can be provided by not using the bus station. DACbeachcroft observe that if the Friends acquired the Property they themselves would be “stuck” with a Property that no bus operator would wish to serve.
- 7.13 The Friends set out in Appendix B and C to the Application why they believe the Property could return to furthering the social wellbeing or social interests of the local community. The Friends mention that other local authorities provide bus services through not for profit organisations, but they do not provide the Council with specific examples of this. The Friends state the Property is physically able to be returned to proper use as no alteration has been made to the layout of the Property. Again, this point does not explain whether it is realistic the Property could be returned to community use.
- 7.14 The Friends argue that a different bus company could in theory rent the bus station from the current owners or purchase it from the current owners if the current owners consider it surplus to requirements. However it should be noted that whilst this may (or may not) be the case, private bus operators would not be entitled to take advantage of the moratorium provisions in the Act because of course they would likely not be a community interest group.
- 7.15 The Friends argue that the forthcoming Buses Bill could mean that bus companies may no longer choose services they wish to operate purely for profit motives. A package of bus services required by the bus users would take precedence and reduction in subsidies would no longer be acceptable as a reason for operators to curtail services. A franchise package would be expected to contract operators to include all required routes. These changes (and of course the Buses Bill is not yet law) may improve bus services but they do not really address the issue of whether it is realistic to think the Property could be brought back into use during the next five years that would further the social wellbeing or social interests of the local community.

- 7.16 The Friends believe the bus station could be returned to its former use quite quickly if bus services were taken over by a new operator. The Friends believe there would be a commercial imperative to conclude negotiations quickly although they also note any new arrangements may have to adhere to a tendering process with Hampshire County Council.
- 7.17 The Friends believe it may be possible for the local community to buy the Property from the owners and they say there is a groundswell of bus users and businesses who want the bus station to be used for this purpose. However the Friends have produced no particular evidence of the likelihood of achieving this. The Friends also in effect offer themselves as potential providers of assistance and support towards the upkeep of the bus station.
- 7.18 Similarly, whilst the Town Council support the Application they observe that even were the Buses Bill to become law there would be much to do to achieve the objectives of the Friends. The Council refers to the Neighbourhood Plan for Lymington & Pennington but can do no more than state that they would “welcome the opportunity to investigate whether or not there may be opportunities to enhance the community value of this important resource”. This does not give an indication there is a realistic plan in place or even being formulated.
- 7.19 The Owners contend that even as experienced bus operators the bus station was not financially viable and had to be closed. They advise this was due to the costs involved in managing and maintaining the Property. They further advised no other bus operator has expressed interest in acquiring the site or operating bus services from the Property. The Owners are an experienced operator and they argue that if they are unable to make the bus station financially viable it was unlikely another operator could.
- 7.20 With regard to the points made by the Friends concerning the Buses Bill, DACbeachcroft observe that the bill is not yet law and so should not be taken into account. However the Buses Bill is progressing through Parliament and it is realistic to believe that it will become law in the not too distant future. Government evidently hopes the Buses Bill can change the operational and financial background to the provision of local bus services. Whether this occurs is impossible for the Council to know and in any event the Buses Bill is really concerned with improvements to bus services overall. It should be noted that the Buses Bill does not envisage granting compulsory powers for local authorities to acquire property or assets from bus operators.
- 7.21 The Council does not expect the Friends to attach a fully formulated business plan to the Application. However there are a number of concerns as to whether it is realistic that the Property could be returned to community use as a bus station in any case. The site is likely to be expensive to acquire or rent, the Friends are not bus operators, there is no certainty as to whether the present owners would sell the land to a competing operator and new operators would need to secure routes in order to use the bus station. There do not appear to have been interest shown by other bus operators in acquiring the site. The Property is presently under contract for sale conditional upon planning permission being granted. No other alternative uses of the Property for community benefit have been proposed by the Friends.
- 7.22 Overall and taking into account all the comments made, the Council does not believe the Friends have provided sufficient evidence to demonstrate that it is realistic to think there is a time in the next five years when there could be non-ancillary use of the Property that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

7.23 The Council notes the advice from DACbeachcroft that the owner has entered into a contract for the sale of the Property dated 18 November 2015 conditional upon the grant of planning permission for sheltered housing. If there is an existing binding contract in place, as there appears to be, then a sale of the Property pursuant to that contract would not engage the moratorium provisions of the Act even if the Property were listed. Further a listed property can be removed from the list of assets of community value if the Council at a future time no longer considers it to be land of community value.

## 8.0 RECOMMENDATION

8.1 It is recommended that you as an Executive Head of Service of the Council decide this Application pursuant to delegated powers as follows:

- (1) In the opinion of the local authority there is not 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 social interests of the local community, and it does not believe 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. It does not therefore meet the criteria set out in the Localism Act 2011 to be eligible for listing.

For Further Information Contact:

Background Papers:

Andrew Smith  
Solicitor  
Tel: 023 80285588  
E-mail:  
andrew.smith@nfdc.gov.uk

Application by Friends of  
Lymington Bus Station  
Letter dated 24 June 2016 from  
DACbeachcroft