

CABINET

7th NOVEMBER 2012

COMMUNITY RIGHT TO BID – ASSETS OF COMMUNITY VALUE

Relevant Portfolio Holder	Kit Taylor
Portfolio Holder Consulted	
Relevant Head of Service	Ruth Bamford
Wards Affected	All

1. SUMMARY OF PROPOSALS

- 1.1 The report outlines the provisions relating to the ‘Community Right to Bid’ contained in the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 (“the Regulations”) and the implications for the council resulting from the requirement to hold a ‘List of Assets of Community Value’. The report also proposes a decision making process for the listing of community assets.
- 1.2 These provisions of the Localism Act and the Regulations came into force on 21 September 2012.

2. RECOMMENDATIONS

That the following recommendations be resolved:

- 2.1 **That Members approve the process for the listing and sale of community assets and the provisions relating to compensation as set out in this report and Appendices 1, 2 and 3.**
- 2.2 **That Members approve the delegations within this report to the Head of Planning and Regeneration and to the Executive Director for [Planning & Regeneration, Regulatory and Housing Services](#), and grant delegated authority to the Head of Legal, Equalities and Democratic Services to update the Scheme of Delegations accordingly.**

That Members recommend to Full Council :

- 2.3 **That Members note the new responsibility placed on local authorities to pay compensation to affected land owners under the Assets of Community Value Regulations and task the section 151 officer to make appropriate provision in the Medium Term Financial Plan to accommodate future requests for compensation.**

3. KEY ISSUES

Financial Implications

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- 3.1 The provisions have an impact on the rights of private property owners, therefore there will be a compensation scheme enabling owners to claim for costs or loss incurred as a direct result of complying with the procedures.
- 3.2 Under the Assets of Community Value Regulations the local authority is responsible for paying compensation in respect of listed assets within its area. There is no statutory cap on the amount of compensation that may be payable in respect of any one claim, and a local authority may face multiple claims in any one year. The Department for Communities and Local Government issued guidance on 4th October 2012 in relation to the Community Right to Bid. With regard to compensation claims, any individual or total payments of over £20k in a financial year will be funded by the government. In addition a New Burdens grant is to be allocated to all administering Councils to cover the costs associated with implementing the new scheme. The funding for 2012/13 has been advised at £4873. It is anticipated that, subject to Government approval, further payments will be made in 2013 and 2014.
- 3.3 Whilst the funding from government will help to meet some of the costs of the new arrangements, local authorities will still be expected to fund the first £20k of any compensation payments. The Section 151 officer will need to make provision in the Medium Term Financial plan for a fund to be established to cover the cost of future compensation claims.
- 3.4 Council owned property is potentially subject to listing and Members should note that the Executive Director Finance and Resources has a potential conflict in these matters due to property ownership. Local authorities and various specified public bodies are not able to claim compensation in respect of listed assets that they own.

Legal Implications

- 3.5 The Council has a statutory responsibility to implement the provisions as set out in the Localism Act and the Regulations. Failure to do so may be prejudicial to and result in legal challenges from voluntary and community organisations, parish councils and landowners.

Service / Operational Implications

- 3.6 The intention of the 'Community Right to Bid' is to give communities a right to identify a building or other land that they believe to be of importance to their community's social well-being and give them a chance to buy it if comes up for sale. In broad outline the new provisions are as follows.

Listing

- 3.7 The first step is for a community group to identify a building or other land that they believe to be of importance to their community's well-being and nominate it for listing by the local authority.
- 3.8 A local authority must maintain a list of land in its area which is land of community value. If a nominated asset meets the definition of an asset of community value set out in the Act, the local authority must add it to the list.
- 3.9 The owner of an asset may require an internal review of any decision to list it, and if the review upholds the listing he may appeal to the First Tier Tribunal.
- 3.10 There are no similar rights of review or appeal for community groups. A community group's only mechanism for challenging a decision by a local authority not to list an asset is judicial review.
- 3.11 Assets must be removed from the list after 5 years. Prior to removal officers must write to interested community organisations. Community groups may nominate the asset for re-inclusion on the list.

Sale of a listed asset

- 3.12 If an asset is listed, the owner must notify the local authority of any proposed sale, and the local authority must inform the community group which nominated the asset for listing and publicise the fact of the proposed sale generally in the area where the asset is situated. The sale cannot take place for an initial period of 6 weeks, and if during this period a community group expresses an interest in purchasing the asset the sale must be delayed for 6 months to allow time for a community bid to be organised.
- 3.13 The asset may be sold to a community group during this 6 month period.
- 3.14 At the end of the 6 month period the asset can be sold on the open market. At this point community groups have the same rights as any other bidders. The community right to bid does not restrict who the owner of the asset can sell his property to or at what price.
- 3.15 It is likely that not all potential assets of community value will be identified and listed from the outset and that a community group may only become concerned about a particular property when it becomes aware that its sale is proposed. An application for listing does not trigger any moratorium on sale.

Compensation

- 3.16 As the provisions have an impact on the rights of private property owners, owners are able to claim compensation from the local authority for losses or expenses which flow from the land being listed, including reasonable legal expenses incurred in a successful appeal to the First Tier Tribunal.
- 3.17 Applications for compensation are made to the local authority and whether, and how much, compensation is payable is determined by the local authority. As the local authority is also responsible for paying compensation, there must be a clear process for officers to determine compensation payments objectively.
- 3.18 The owner has a right to require an internal review of any compensation decision and following review may appeal to the First Tier Tribunal.

Process for Listing Community Assets

- 3.19 The key steps for considering a nomination to the List of Community Assets are set out in Appendix 1. The local authority must determine a nomination for listing within 8 weeks.
- 3.20 Only voluntary and community organisations with a local connection (as defined in the Regulations), and local parish councils, may make nominations for community assets to be listed. Nominations from other groups must be rejected.
- 3.21 There are some exemptions from listing. Notably residential premises may not be listed (but not living quarters which are an integral part of an asset such as a pub or shop which is otherwise eligible for listing).
- 3.22 The provisions require a local authority to notify the owner(s), occupier(s), nominator(s) and local parish council of any decision to list an asset.. The local authority is also required to maintain a list of unsuccessful community nominations, and provide reasons to the nominator for any decision not to list an asset.
- 3.23 An owner may require an internal review of a listing decision by the local authority. The owner has 8 weeks from notification of the listing decision to request a review.
- 3.24 The review must be completed within 8 weeks (unless otherwise agreed with the owner). It must be carried out by an officer who did not take any part in making the listing decision. The review process may include an oral hearing, and must do so if the owner requests that it does.

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- 3.25 If an owner is dissatisfied with the outcome of an internal review, he may appeal to the First Tier Tribunal.

Process for the Sale of a Community Asset

- 3.26 The key steps to be undertaken should there be a proposal to sell a listed asset of community value are set out in Appendix 2.
- 3.27 The owner of the asset must notify the local authority of any proposal to make a relevant disposal.
- 3.28 A relevant disposal of a listed community asset is the sale of the freehold, or the grant or assignment of a lease for 25 years or more, but only where the disposal will give the new owner 100% vacant possession. (A limited number of disposals, such as transfer by way of gift, within a family, due to inheritance or where the asset forms part of a larger estate are exempt and can take place unimpeded by the community right to bid.)
- 3.29 On receipt of a notification, the local authority must publicise the proposal to sell in the area where the asset is situated and notify any group which nominated the asset for inclusion on the list.
- 3.30 The owner's notification triggers an initial interim moratorium on the sale. of 6 weeks. If during these 6 weeks a community group states an intention to itself bid for the asset the full 6 month moratorium on sale is triggered.
- 3.31 The owner may dispose of the asset to a community group during the 6 month moratorium.
- 3.32 Any other disposal of the asset during the moratorium period (or without the relevant notices of the proposal to dispose having been given) would be ineffective from the outset (i.e. void).
- 3.33 If the owner wishes to claim compensation for any loss or expense flowing from compliance with the process he must do so within 13 weeks of the loss or expense being incurred.

Internal processes

- 3.34 The proposed internal process for listing community assets is set out in Appendix 3.
- 3.35 On receipt of a nomination officers would make initial checks, for example that the nomination is from valid community group and contains The correct information etc). If the nomination is clearly a non-starter, or

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incomplete, the applicant would be informed with the reasoning for the decision.

- 3.36 For nominations taken forwards, a period of consultation would then commence involving the owner and other interested parties. Local ward members would also be consulted at this stage.
- 3.37 Following the completion of the consultation process, the Head of Planning and Regeneration will provide a recommendation to the Cabinet as to whether the nomination should be accepted. The recommendation will take into account comments received from the consultation. The recommendation will seek a view from the Cabinet to inform the final decision made by the Head of Planning and Regeneration in consultation with the Portfolio Holder for Planning and Regeneration.
- 3.38 Once the decision is made the owner and nominator will be informed accordingly.
- 3.39 An owner may require the decision to list a property to be reviewed by the council. The request for the review has to be made within 8 weeks of his being notified of the decision. The review must be determined within 8 weeks (unless otherwise agreed with the owner). The review must be undertaken by a senior officer not involved in the initial decision. It is proposed that the Executive Director Planning and Regeneration undertakes the review.
- 3.40 As referred to at paras 3.16 to 3.18 above, the regulations provide that the Council must pay compensation to certain land owners for losses arising from the listing process. It is proposed that the officer with responsibility for assessing compensation claims in the first instance (under Regulation 14) will be the Head of Planning and Regeneration. An applicant for compensation has the right to ask for the initial decision to be reviewed under Regulation 16. The review must be carried out by a senior officer who did not make the original decision. It is proposed that compensation reviews be carried out by the Executive Director for Planning & Regeneration, Regulatory & Housing Services.

Customer / Equalities and Diversity Implications

- 3.41. The process will be fair and consistent for all members of the community and therefore it is not anticipated that there will be any direct impact on individual community groups or members.

4. RISK MANAGEMENT

The main risk is related to the need to have a manageable process for compiling and managing a list of assets of community value [and determining related compensation claims]. The processes as attached at the Appendices reflects the processes that are to be put in place to mitigate the risks associated with the implementation of the Act.

5. APPENDICES

Appendix 1: Proposed Process for Listing Community Assets

Appendix 2: Proposed Process for the Sale of Community Assets

Appendix 3: Proposed Internal Process for Listing Community Assets

6. BACKGROUND PAPERS

- Localism Act 2011
- The Assets of Community Value (England) Regulations 2012
- Community Right to Bid: Non-statutory advice note for local authorities

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