

CABINET

16 APRIL 2014

LOCALISM ACT 2011- ASSETS OF COMMUNITY VALUE

REPORT OF DEPUTY CHIEF EXECUTIVE

1. Purpose of the Report

To seek Cabinet's approval to the proposed arrangements to implement the Community Right to Bid provisions contained in the Localism Act 2011.

2. Description of Decision (Recommendations)

Cabinet is recommended to:-

(1) Note the Council's obligations under the Localism Act in relation to Assets of Community Value ("ACV") and the Community Right to Bid and approve the proposed arrangements set out in this report for administering these new duties.

(2) Authorise the Head of Planning and Property to maintain and publish the required lists of ACV and unsuccessful nominations for ACV and to take all necessary steps to promote and implement the proposed arrangements.

(3) Authorise the Head of Planning and Property in consultation with the Head of Scrutiny and Area Arrangements to receive and determine nominations to list any building and/or other land as ACV and to deal with compensation claims relating to listing of ACV

(4) Authorise the Deputy Chief Executive, in consultation with the Cabinet Secretary and the Portfolio Holder for Responsive Services and Customer Care, to determine any review of such decision of the Head of Planning and Property and Head of Scrutiny and Area Arrangements as mentioned in (3) above

(5) Recommend Council to authorise the Head of Law and Governance, in consultation with the Leader, to amend the Council's Constitution as necessary to reflect the above arrangements

3. Background

3.1 Key Provisions of the Assets of Community Value

In summary, the provisions give local groups a right to nominate land or property to be listed as ACV if the principal use of the asset furthers (or has recently furthered) their community's social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. If the asset is listed the provisions give community groups a fairer chance to mobilise themselves to bid for it.

The Council is required to administer the scheme. The procedures to be followed are detailed in the legislation and in order to meet the various prescribed deadlines responsibility needs to be delegated to the most relevant officers

The main provisions are detailed below with the precise requirements contained in Part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

3.2 Building or land within a Local Authorities area is classified as ACV if in the opinion of the authority:

- an actual current use of the building or other land furthers the social wellbeing or social interests of the local community, and
- it is realistic to think that there can continue to be use of the building or other land which will further the social wellbeing or social interests of the local community.

If the above criteria are not met the building or land could still be considered as of ACV if:

- there is a time in the recent past when an actual use of the building or other land furthered the social wellbeing or interests of the local community, and
- it is realistic to think that there is a time in the next five years when there could be use of the building or other land that would further the social wellbeing or social interests of the local community.

The Council will need to determine if a nominated Asset meets the above definition and will set its criteria for a successful nomination wide enough to allow for reasonable discretion on the part of the decision makers.

3.3 A nomination to list ACV can only be received from a relevant body with a local connection.

Local authorities cannot list land on their own initiative, it must be nominated. The voluntary or community bodies which may make community nominations are set out below:-

- A Parish Council or Neighbouring Parish Council if it borders an unparished area;
- An Unincorporated Body with at least 21 local individuals who appear on the electoral role within a local authority or neighbouring local authority and which does not distribute any surplus it makes to its members;
- a Neighbourhood Forum;
- Community Interest Groups with a local connection which must have one of the following structures:-
 - a) A Charity
 - b) A Community Interest Company
 - c) A Company Limited by Guarantee that is non profit distributing
 - d) An Industrial and Provident Society that is non-profit distributing

A local group can only nominate if it can demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority.

3.4 A Nomination must include:

- a description of the nominated land or buildings including its proposed boundaries,
- a statement detailing all information which the nominator has with regard to the freeholders, leaseholders and current occupants of the land including names and addresses,
- the nominator's reasons for thinking that the authority should conclude that the land or buildings are ACV.
- Evidence that the nominator is eligible to make a community nomination

3.5 On receipt of a valid nomination the Council must decide within eight weeks whether to include the land or buildings in the List of Assets of Community Value

3.6 If an Asset is considered to be of Community Value then the Asset must be added to the list of ACV.

The ACV list must be maintained and published by the Local Authority. The maintenance of the list will include the inclusion of new assets and the removal of existing assets following a successful review/appeal, a relevant disposal, where the Council form the view that the land or building is no longer of community value or the expiry of 5 years beginning with the date of the entry. An asset can be re-listed should it be nominated again.

3.7 Assets not considered to be of Community Value

The Council must maintain and publish a list of unsuccessful nominations which must include reasons for the land not being listed and the nominator must be informed.

3.8 The owner of ACV included in the Asset list can request a review within 8 weeks

3.9 The Council will appoint an officer of the appropriate seniority who did not take part in making the listing decision to carry out the review.

As soon as practicable following the written request for review, the Council must notify the owner of the procedure to be followed in connection with the review. An oral hearing must be held at the owner's written request. The Council must complete the review within eight weeks of receipt of the written request to review or such longer period as agreed with the owner in writing.

3.10 If the Owner remains dissatisfied following the review of the Council's decision they can appeal to the General Regulatory Chamber of the First-Tier Tribunal of HM Courts and Tribunals.

3.11 An owner of a listed Asset must notify the Council when they intend to make a relevant disposal of the asset.

When notice is received the Council must:

- Update the ACV list to note that a notice has been received, the date that the notice was received together with the details of relevant timetables
- Notify the group who nominated the Asset with the updated details to the ACV list
- The disposal must be publicised

3.12 A Parish Council or Community body as defined by the Act have six weeks from the date of notification of intention to dispose to advise whether they wish to be treated as a bidder.

If such a notice is received then the group have a full moratorium period of six months from the date that the Council receives notification from the owner to submit a bid for the property.

At the end of the full six month moratorium period the owner can consider the bids for the property and is free to sell to whomever they choose at whatever price.

3.13 An owner is entitled to compensation

If an owner can prove that they have incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed they can make a claim for compensation to the Council with a prescribed timetable.

4. Proposal

It is proposed that the above legislation be implemented by Authorising the Head of Planning and Property to maintain and publish the required lists of ACV and unsuccessful nominations for ACV and to take all necessary steps to promote and implement the proposed arrangements and authorising the Head of Planning and Property, in consultation with the Head of Scrutiny and Area Arrangements to receive and determine nominations to list any building and/or other land as ACV and to deal with compensation claims relating to listing of ACV.

It is also proposed that the Deputy Chief Executive, in consultation with the Cabinet Secretary and the Portfolio Holder for Responsive Services and Customer care, be authorised to determine any review of such decision of the Head of Planning and Property and Head of Scrutiny and Area Arrangements as mentioned above it is also proposed that details of the Community Right to Bid are appropriately published and posted on the Council's website together with the required lists and a nomination form for local groups ease of use.

6. Reasons for the Decision

6.1 The Localism Act 2011 and The Assets of Community Value (England) Regulations 2012 Regulations introduced the Community Right to Bid ("the scheme"). The scheme gives communities the opportunity to nominate land and buildings for listing as ACV with the aim that if a listed asset is put up for sale, community groups are given time to mobilise themselves to bid for it.

6.2 The Council is required to administer the scheme. The procedure and timescales for dealing with nominations, compensation, reviews and subsequent disposals of ACV are defined within the legislation and in order to meet the various prescribed deadlines the responsibilities need to be delegated to relevant officers.

7. Alternative Options

- 7.1 The Council has a statutory duty to comply with the Assets of Community Value provisions so the proposed steps outlined in this report must be undertaken to enable the Council to implement the provisions in practice.
- 7.2 If the Council does not delegate the responsibility for meeting the provisions of the Act it would prove difficult to meet the timescales dictated by the Act which could lead to a breach of the legislation and additional compensation payments.

8. Financial Implications

- 8.1 The Council must meet the cost of preparing, maintaining and publishing the appropriate property lists and dealing with the disposal opportunities in accordance with the Act. The council may also receive requests for compensation from private owners for loss and expense incurred through the asset being listed or previously listed.
- 8.2 The Council must meet the costs of advertising the Assets of Community Value process on the Council website.
- 8.3 The Council will receive New Burdens funding of £8,000 in both 2013/14 and 2014/15 to meet the costs referred to above, including the estimated costs of compensation (the government estimates only 40 successful claims each year for compensation nationally). The government will also meet the cost of compensation payments over £20,000 for any authority in a financial year.

9. Impact Analysis

9(a) Equalities –N/A

9(a)(i)The Government has published an Impact Assessment of Community Right to Bid. This includes assessment of the preferred option to provide a moratorium on the sale of an asset designated as an asset of community value, but with no right of first refusal, for community bodies. The equalities impact assessment of this option found that there were no foreseeable adverse impacts on any single equality group. The policy change was considered to provide greater opportunities for those affected by closure and disposal of private and public assets to obtain and run them. It is stated that mechanisms of

support will be considered for those who require it, targeting those who lack the skills, expertise and knowledge to make a competitive bid for an asset.

9(a)(ii) There are not considered to be any particular equality or diversity implications for the proposals set out in this report as the assessment of community nominations will need to be carried out in a consistent manner in accordance with the requirements of the regulations. There will be a need to ensure documents relating to Assets of Community Value are available in accessible formats if required and that the lists are available to view at the Customer Service Centre as required by the legislation.

9(a)(iii) With regard to human rights implications the Government's Impact Assessment (DCLG, Community Right to Bid – Impact Assessment, 21 June 2012) recognises that imposing a moratorium on sale of a listed site will be an interference with the owner's property rights under Article 1 of Protocol 1 to the European Convention on Human Rights. It is stated that the interference is justified in the general interests of the community. The provision for compensation is considered to contribute to making the temporary restriction on sale a proportionate way of achieving the benefit for the community. Attention is also drawn to the right for a landowner to request an internal review by the local authority of its decision to list their land. In response to the results of national public consultation and to ensure Article 6 compliance, the legislation also allows landowners to claim compensation for loss of value and expenses incurred as a consequence of adhering to provisions. They are also able to appeal against a decision on a compensation claim.

9(b) Privacy Impact Assessment (PIA) – N/A

9(c) Sustainability

Sustainability Impact Appraisal

Sunderland Strategy Objectives cross check with decisions outcomes:

• Prosperous City

No impact

• Healthy City / Safe City

No Impact

• Learning City

No impact

• Attractive and Inclusive City

No Impact

- 9(d) Reduction of Crime and Disorder – Community Cohesion / Social Inclusion** – The Localism Act gives communities the right to identify a building or other land they believe to be important to the communities social well-being. The aim is that if the asset comes up for sale they will be given a fair chance to make a bid for the asset on the open market. This means groups will have more time to put together a credible bid and raise funds.

10. Other Relevant Considerations / Consultations

The Government has published additional guidance on this issue which provides further detail to the summary provided by this report. This can be found in the DCLG document, *Community Right to Bid: Non-statutory advice note for local authorities* October 2012.

11. Background Papers

Localism Act 2011

Assets of Community Value (England) Regulations 2012