

DATE OF COMMITTEE
30 JANUARY 2013

REPORT OF THE LEADER

LOCALISM ACT 2011

EXEMPT INFORMATION

PURPOSE

This report seeks to inform Members of the new provisions regarding assets of community value and recommends how the new duties on this Council will be discharged.

RECOMMENDATIONS

That Cabinet:

- i) note the implications of the Assets of Community Value regulations for the Council,**
- ii) approve the arrangements for the discharge of this function as set out in this report, and**
- iii) delegate authority to the Chief Executive in consultation with the Leader of the Council to make amendments to the process as necessary.**

EXECUTIVE SUMMARY

Part 5 Chapter 3 of the Localism Act 2011 provides the statutory framework for Assets of Community Value. The Assets of Community Value regulations allow defined community groups to ask the Council to list certain assets as being of 'community value'. This is designed to give communities more opportunity to bid to buy the asset if the owner decides to sell. The Right came into force on 21 September 2012.

An asset of community value is defined as any land or buildings the use of which improves the social, economic or environmental wellbeing or interests of the local community and is likely to do so in the future. This includes (but isn't limited to) sporting, cultural and recreational interests.

Only eligible community and voluntary groups, local parish councils or local neighbourhood planning forums and charities can nominate an asset to be listed. The Council is given 8 weeks to make a decision.

If the asset meets the definition, the council must list it and inform all relevant parties, place the asset on the local land charges register and if the land is registered, apply for a restriction on the Land Register.

If the nomination is not successful then reasons must be given and no further nominations can be made for 5 years. The asset must be listed on the unsuccessful nominations list.

The owner of the asset can appeal. If the asset stays on the list then if the asset is to be sold, the owner must contact the Council. The Council must publicise that a sale is proposed

and in particular must let the nominating body know that the asset is for sale. Community interest groups then have 6 weeks to write to the Council to confirm they would like to be regarded as potential bidders for the asset. If none do so, the owner is free to sell their asset at the end of the six weeks. If a group does make a request during this 'interim' period, then the full six month moratorium (from the point the owner notifies the local authority) will operate. After the moratorium period the owner is free to sell to whomever they choose and at whatever price.

The asset owner may appeal to the Council against the listing of the asset. This must be done within 8 weeks from the date written notification was given. Basic procedural rules for the review are set out in the Regulations. The owner and/or their representative may make representations to the reviewing officer orally and/or in writing. The Council must complete their review within 8 weeks. If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First Tier Tribunal.

Private owners may claim compensation for loss and expense incurred through the asset being listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal. However the Regulations allow for claims for loss or expense arising simply as a result of the land being listed. Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The Council must consider the claim and is required to give written reasons for its decision.

An owner who is not satisfied with the Council's response to the compensation claim has 8 weeks within which to request an internal review. The Council must review their decision and notify the owner of the result with reasons within 8 weeks. An owner may appeal to the First Tier Tribunal against the Council's review decision.

Arrangements for the discharge of these duties:

1. A nomination form will be placed on the Council's website and a suggested format is attached to this report at appendix 1. The form will be returned to TBC and officers will undertake the initial compliance and land search checks.
2. The decision whether to list an asset and to publish successful and unsuccessful nominations on the Council's website be delegated to the Solicitor to the Council, the Director Assets and Environment and the Director Communities Planning and Partnerships or their nominees.
3. The Chief Executive and Executive Director Corporate Services to be given delegated powers to determine any appeals from these decisions. This complies with the requirements in the Regulations that the appeal be heard by an officer of sufficient seniority who has not been involved in the decision whether to register the asset.
4. Notification of an intention to sell an asset listed will be sent to TBC. The process to respond to this, including informing the nominating group and managing the moratorium period, be delegated to the Solicitor to the Council, the Director Assets and Environment and the Director Communities, Planning and Partnerships or their nominees.
5. The Solicitor to the Council, the Director Assets and Environment and the Director Communities, Planning and Partnerships or their nominees be given delegated powers to consider any compensation claims for loss and expense incurred through the asset being listed.
6. The Chief Executive and Executive Director Corporate Services to be given delegated authority to determine any appeals against the Council's compensation claim decision.

RESOURCE IMPLICATIONS

There may be significant additional duties for Officers, depending on the number of applications, appeals and claims for compensation. It is expected that the Council will be able to deal with these within existing resources. However, if there are a large number of applications this may need to be reconsidered. A 6 - 12 month review will be carried out and officers will report back to Cabinet if necessary.

There is the potential for significant compensation claims. Any compensation is payable by the Council up to a maximum of £20k per annum. The Government will meet the costs of compensation payments of over £20k in a financial year. The Council has received additional funds of £4873.00 in 2012, and the same level of grant in 2013 and 2014 under the Government's New Burdens fund to reflect costs associated with the new duty.

LEGAL/RISK IMPLICATIONS BACKGROUND

The Council could be liable for any legal expenses incurred in a successful appeal to the First Tier Tribunal by private owners against listing and compensation claim decisions.

Our insurers have considered the implications of this legislation on our behalf and have responded to us with the following statement:

As this appears to be a statutory duty we would expect the activity to be covered within the normal business definition of a Local Authority. However, this would only indemnify the council in respect of their legal liability ie employee accidental error or omission, negligence etc and can't see how we could provide cover for a compensation scheme.

SUSTAINABILITY IMPLICATIONS

The idea of communities being able to protect valuable community facilities is to be welcomed as these facilities contribute to the wellbeing of our communities. However, the right is a right to bid for an asset not the right to buy. The owner of the asset is under no obligation to sell to the community group.

BACKGROUND INFORMATION

Further information on eligible groups to nominate assets, categories of assets that are excluded from listing, sales exempt from the provision and enforcement can be found in the Non-Statutory Guidance document attached as appendix 2.

REPORT AUTHOR

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LIST OF BACKGROUND PAPERS

Localism Act 2011
Community Right to Bid – Non-statutory advice note for local authorities

APPENDICES

Appendix 1 – Nomination Form for listing as an Asset of Community Value
Appendix 2 – Community Right to Bid: Non-statutory advice note for local authorities
Appendix 3 – Nomination and Sale of Asset flow charts

