

EXECUTIVE COMMITTEE

16th October 2012

COMMUNITY RIGHT TO BID – ASSETS OF COMMUNITY VALUE

Relevant Portfolio Holder	Councillor Greg Chance
Portfolio Holder Consulted	
Relevant Head of Service	Ruth Bamford, Head of Planning and Regeneration
Wards Affected	All

1. SUMMARY OF PROPOSALS

- 1.1 The report outlines the provisions relating to the 'Community Right to Bid' 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 It is anticipated that this aspect of the Localism Act will come into force in October 2012.

2. RECOMMENDATIONS

The Executive Committee is asked to RESOLVE subject to any comments:

- a) **the process for compiling the 'list of assets of community value';**
- b) **the process for the internal review of the listing decisions; and,**
- c) **the proposal that compensation decisions are undertaken by the Executive Director of Finance and Resources in liaison with the Head of Planning & Regeneration.**

3. KEY ISSUES

- 3.1 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 so that if it comes up for sale there is a six month period within which they can prepare their bid to buy the asset. The property in question can then be sold on the open market. Community groups have the same rights as any other bidders but there is no preference given to the local community bid.
- 3.2 Through the proposed regulations it is anticipated that:
 - i) The provisions give communities a right to identify a building or other land that they believe to be of importance to their community's wellbeing.

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- ii) If the nominated asset meets the definition of an asset of community value, the local authority will list it.
 - iii) The owner of the asset will have a right to an internal review by the council, and a right of appeal to an independent tribunal against the result of the internal review.
 - iv) If the asset comes up for sale the community will be given an equal opportunity to make a bid to buy it on the open market.
 - v) Following a six month moratorium the owner is free to sell to whomever they choose.
 - vi) 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. It is understood that claims will be made to the local authority but compensation will be paid by the Secretary of State.
 - vii) There will be a right of internal review of a compensation decision and of appeal to an independent tribunal on a point of law against the review decision.
- 3.3 A key point is that the community right to bid does not restrict who the owner of the asset can sell his property to or at what price.

Financial Implications

- 3.4 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. The current regulations state that 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.

Legal Implications

- 3.5 The Council has a statutory responsibility to implement the provisions as defined within the Localism Act and the relevant Community Right to Bid legislation.

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Service / Operational Implications

Process for Listing Community Assets

- 3.6 The key steps for considering a nomination to the List of Community Assets are set out in Appendix 1.
- 3.7 Only voluntary and community organisations with a local connection, and the parish council, will have the right to make community nominations of community assets to be included on the list.
- 3.8 There are some exemptions from listing such as residential premises (but not living quarters which are an integral part of a pub or shop which are otherwise eligible for listing – these could still be listed as assets of community value).
- 3.9 The provisions require a local authority to maintain a list of assets of community value and to notify the owner(s), occupier, nominator(s) and other interested parties (as set out in the regulations). The local authority is also required to maintain a list of unsuccessful community nominations. The local authority must determine a nomination for listing within eight weeks.
- 3.10 An owner is to have a right of internal review of a listing decision by the local authority. The owner will have eight weeks from notification to request a review. The review must be completed within eight weeks (unless otherwise agreed with the owner). The owner will have the right to request an oral hearing and to be represented by whomever they wish. There is a right of external appeal by an owner who is dissatisfied with the outcome of an internal review. This is will be heard at an independent Tribunal.

Process for the Sale of a Community Asset

- 3.11 The purpose of identifying assets of community value is to ensure that a local community has the opportunity to form a bid for the property if it comes up for sale. The key steps to be undertaken should an asset of community value be sold are set out in Appendix 2.

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- 3.12 The moratorium on the sale of a community asset would normally be triggered by the owner notifying the local authority of their intention to dispose of the community asset. This is the point at which the six week interim moratorium (to state the intention to bid) and the six month full moratorium (to formulate a bid) commence. A relevant disposal of a listed community asset is considered to be the sale of the freehold, or the grant or assignment of a lease for twenty five years or more, but only where the disposal will give the new owner a hundred percent vacant possession.
- 3.13 Some disposals are exempt and can take place unimpeded by the community right to bid. Such disposals include transfer made by gift, transfer within a family, transfer due to inheritance or transfer where the listed community asset forms part of a larger estate.
- 3.14 Where a community group wishes to purchase a community asset and is able to pay the price determined by the owner, the owner will have the option of disposing of the community asset to that group without waiting until the end of the moratorium to do so.
- 3.15 It is proposed that all owners, other than public authorities, will be entitled to claim compensation for loss or expense incurred as a result of their property being on the List of Assets of Community Value and complying with any of the procedures required by the scheme.
- 3.16 In order to limit any unintentional non-compliance, listing of a property is to be a local land charge. A clear enforcement regime is to be set out in the regulations. A non-compliant disposal of property would be ineffective from the outset (i.e. void).

Internal processes

- 3.17 The council will be responsible for notifying owners and occupiers of listings and receipt of notices, and for publicising the possible sale of a listed asset. The council will also administer the compensation scheme. A proposed process is set out in Appendix 3 to manage this process.
- 3.18 Officers would receive a nomination and make initial checks (nomination from valid community group/ Does the property seem to fit the criteria etc). If the nomination is clearly a non-starter, or incomplete, the applicant would be informed with the reasoning for the decision.
- 3.19 A period of consultation would then commence involving the owner and other interested parties who would be given a specified time to respond. Local ward members would also be consulted at this stage.
- 3.20 Following the completion of the consultation process, the Head of Planning and Regeneration will provide a recommendation to the

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Executive (or other member group) as to whether the nomination should be accepted. The recommendation would take into account comments received from the consultation. The recommendation would seek a view from the Committee to inform the final decision made by the Head of Planning and Regeneration in consultation with the Portfolio Holder for Planning and Regeneration.

- 3.21 Once the decision is made the owner and nominator are informed accordingly.
- 3.22 An owner is to have the right to have the decision to list a property reviewed by the council. The request for the review has to be made within eight weeks and the review determined within eight weeks (unless otherwise agreed with the owner). The provisions indicate that the review is to be undertaken by a Senior Officer not involved in the initial decision. Similarly it is suggested that no elected member involved in the decision to list should be part of the review process.
- 3.23 It is proposed that the Executive Director Planning and Regeneration undertakes the review in consultation with the Leader.
- 3.24 There is no provision within the legislation for review of an unsuccessful community group nomination. It would not therefore be within the council's powers to make provision for such a review as this would be unenforceable and open to challenge by an owner.
- 3.25 The outcome of a review of the listing decision or a compensation decision can be appealed but such an appeal is handled externally to the council. It is not clear what might constitute a claim for compensation but as the DCLG has stated that it will fund the cost of compensation over £20k (either individual or total in a financial year). The regulations will clarify this matter regarding the criteria that will enable a valid claim. It is proposed that Officers assess the compensation claims and decisions on eligible costs and levels of compensation are made by the Executive Director Finance and Resources in liaison with the Head of Planning and Regeneration.
- 3.26 It is possible 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 the sale of it is proposed. There is no suggestion in the provisions that a proposed sale can be held up by a nomination by a community group.
- 3.27 There is no reason why council owned property should be treated any differently to privately owned property. Members should note that the Executive Director of Finance and Resources has a potential conflict in these matters due to property ownership. We would expect community groups etc to approach the council informally if they are minded to

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nominate a council owner property as there may be a better solution to meet community aspirations.

- 3.28 After an asset has been on the list for five years the council must remove it by default. However, prior to this Officers will need to write to interested community organisations to inform them of this, and allow them to make a case for keeping the asset on the list.

Customer / Equalities and Diversity Implications

- 3.29. 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. 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

Various documents in relation to the Localism Act and legislation / regulations for Assets of Community Value.

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