

MUNICIPAL YEAR 2013/2014 REPORT NO. **207A**

MEETING TITLE AND DATE:

Cabinet 12 March 2014
Council – 2 April 2014 (for
information only)

REPORT OF:

Director of Finance, Resources and
Customer Services

Agenda – Part: 1**Item:10****Subject: Assets of Community Value****Wards: All****Key Decision No: 3850****Cabinet Member consulted:**

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1. EXECUTIVE SUMMARY

The Localism Act 2011 introduced procedures for the Community Right to Challenge and the Community Right to Bid which places a duty on local authorities to maintain lists of assets of community value.

There is now a duty on a local authority to consider applications from certain groups who wish to nominate assets (both public and private) as Assets of Community Value. The local authority must maintain a list of Assets of Community value which will be known as the "List of assets of community value". There is also the requirement for Local Authorities to maintain a list of unsuccessful nominations.

Strategic Property Services has been delegated overall responsibility for overseeing the Right to Bid process.

This report sets out the recommended process to ensure that the Council complies with its responsibilities as set out in the Localism Act 2011, which was agreed by Cabinet on 12 March 2014. In approving the approach outlined, Cabinet also agreed to refer the report to Council for information.

2. RECOMMENDATIONS

- 2.1 That Council note the new duty under the Localism Act 2011 to implement the Community Right to Bid and process agreed by Cabinet to comply with the relevant requirements.

3. BACKGROUND

- 3.1** The concept of “Assets of Community Value” and the associated “Community Right to Bid” (CRTB) were introduced by the Localism Act 2011, which was enacted in November 2011. The CRTB came into force on 21st September 2012 under The Assets of Community Value (England) Regulations 2012.
- 3.2** The new right gives voluntary and community organisations with a local connection and parish councils (but not individuals) the opportunity to nominate an asset which they consider to be of local importance to be included on a list of 'Assets of Community Value' (ACV) and the Council must consider all nominations made in the appropriate form from appropriate organisations.
- 3.2** Land or buildings will have community value if the authority considers that the actual current main use of the property furthers the social wellbeing or social interests of the local community and it is realistic to think that such a use can continue (though it need not be in the same way). In addition the asset may also be of community value if there has been in the recent past an actual main use which furthered the social wellbeing or social interests of the locality and it is realistic to think that such a use could occur within the next five years.
- 3.3** The authority may set criteria for assessing social wellbeing and social Interests, and the latter may include cultural, recreational and sporting interests.
- 3.4** If nominated land or buildings meet the community value criteria, they must be accepted for listing. There are requirements to give notices, with reasons, for decisions in the Localism Act. Lists of successful and unsuccessful nominations must be kept and made available for inspection. Listing is a local land charge and listing as an ACV is for 5 years.
- 3.5** Residential property and land connected to it are excluded. However, if only part of a building is used as a residence, it is possible for the remainder to be listed.
- 3.6** The owner of a listed property may ask for a review. The Regulations require the review decision is to be made by an officer who has had no previous involvement in the consideration of the nomination.
- 3.7** If the owner of a listed property wishes to dispose of it, the Council must be informed and a moratorium period commences. There is a duty on the Council to notify the community interest group that nominated the asset that the owner wishes to dispose of the asset. A community interest group may ask to be treated as a potential bidder within six weeks of the date of notification of potential disposal. If the community group expresses an interest in purchasing the asset, the

owner may not dispose of their asset during a full period of six months, unless it is to the community interest group. There is no obligation on the owner to agree to dispose of the asset to the community interest group and the disposal can be at a market rate. Disposal also includes long-term leases of 25 years or more.

- 3.8** There are a number of types of disposal which are exempt from the moratorium requirements. These include disposals as a gift or to family members, disposals by personal representatives of a deceased owner, disposals as part of business transfers and sales ordered by a court.
- 3.9** The owner has a right to claim compensation from the authority for loss and expenses which they believe they have incurred through the asset being listed or previously listed. This includes any loss arising from delay in entering into an agreement to sell which is wholly caused by the moratorium.
- 3.10** Internal reviews of compensation decisions again have to be conducted by an uninvolved officer. Further appeals against listing and compensation decisions may be made within 28 days by writing to the First Tier Tribunal (General Regulatory Chamber)

4. PROCESS

- 4.1 The Listing of ACVs** – it is proposed that the processing of ACV nominations come under the remit of Strategic Property Services. The nominated ACV Coordinator will initially check nominations and, if deemed to be valid, pass them to the ACV Nominations Evaluation Panel for a decision to be made as to whether or not they should be accepted. Prior to this Members will be informed of any nominations received in their respective wards.
Depending on the panel's decision, the nomination will be registered on the Council's 'successful' or 'unsuccessful' nominations register as applicable. This process must be completed within 8 weeks. The draft assessment criteria checklist is attached as APPENDIX 1.
- 4.2 Appealing Against an ACV Listing** – The owner of a successfully listed ACV can appeal against the decision. Where this happens the unsuccessful nomination will be referred to the ACV Nominations Appeal Panel whose membership shall be different to the Evaluation Panel. This stage of the process must be completed within 8 weeks of the receipt of the request for appeal. If the owner is dissatisfied with the Council's Appeals Panel decision, a formal appeal can be made for consideration by a First Tier Tribunal (FTT). Only the owner of a nominated asset has the right of appeal.
- 4.3 Proposed Sale of an ACV** – The owner of a listed ACV is required to notify the Council if they wish to sell the asset. Where a notification of sale is received it is proposed that the ACV Coordinator will publicise *[on our website, in a local paper and in writing to the nominating*

organisation] the proposal to sell in order to allow community groups a chance to make a bid to purchase the asset. In the event that an expression of interest is received by the Council within the first moratorium period (6 weeks), the ACV Coordinator will pass the details on to the owner of the asset. Bids must be made within a 6 month 'moratorium' period. At the end of this period, if no bids have been received, the ACV Coordinator will advise the owner that they can dispose of the asset as they wish.

- 4.4 Compensation** – The legislation gives the owner of an asset the right to claim compensation from the Council if they believe they have incurred loss and expense in complying with either the initial 6 week nomination period or the 6 month moratorium period (or both). Compensation claims will initially be considered by the ACV Coordinator in consultation with the ACV panel. Appeals against decisions relating to compensation claims would be considered by the Director of Finance, Resources & Customer Services.
- 4.5 Process Maps** – process maps for Listing, Appeals, Sale and Compensation have been prepared and will be published on the Council's website if the proposed procedures are approved.
- 4.6 Governance** – In accordance with legislation, the following two panels have been established: The first to evaluate any bids received; and the second to hear the owners appeal of a successfully listed ACV. The proposed make up of these panels is as follows, it being the understanding that they should consist of officers:

ACV Evaluation Panel

1. ACV Coordinator & Chair (Strategic Property Services)
2. Head of Neighbourhood Regeneration
3. Head of Communities, Partnership and External Relations

This panel will also be advised by appropriate officers in the Council and will depend on the issues at hand.

The Panel's decisions will be forwarded to Corporate Management Board (CMB) for ratification prior to notification of the outcome.

ACV Appeal Panel

1. Head of Asset Management (Strategic Property Services)
2. Principal Lawyer (Legal Services)
3. Head of Scrutiny and Community Outreach

The Appeal Panel's decision will be forwarded to CMB for ratification prior to notification of the outcome. The administration of both panels will be undertaken by Strategic Property Services.

It is considered that the proposed membership of both panels will give both an independent and community focussed assessment on both nominations and any subsequent appeals.

4.7 Cabinet Approval

Cabinet (12 March 2014) agreed:

- (a) To note the new duty under the Localism Act 2011 to implement the Community Right to Bid.
- (b) The management approach for the implementation of the Community Right to Bid (as outlined within the report).
- (c) The evaluation criteria for assessing nominated assets of community value (as outlined within the report).
- (d) That any additional costs be contained within existing services and contingency budgets in 2014/15.

5. SPECIFIC ISSUES

- 5.1** The Council will be liable to cover compensation claims of up to £20,000 per annum. Beyond this figure, the Government will reimburse the local authority for any payments made.
- 5.2** There is a risk that nominations might be made under a misjudgement of the perceived benefits resulting from a successful listing. Such cases may result in consequential losses for asset owners and may have a detrimental impact on local business. To reduce this risk, it is proposed that officers [who – should not be any member of the Panel] would hold preliminary discussions with community groups making nominations as part of the initial validation process.
- 5.3** Service costs are initially expected to be low and are expected to be absorbed within existing resources. In the event that ACV nomination increase resources will need to be reviewed.

6. ALTERNATIVE OPTIONS CONSIDERED

As this is a new area of legislation research has been undertaken to see what other authorities are doing. At present all appear to be managing the Right to Bid within their own authority.

When the process is tested by way of a nomination this will give an opportunity to review how the process is operated and whether the lead service should continue to do so.

7. REASONS FOR RECOMMENDATIONS

To ensure that the council fully complies with the requirements of the Localism Act 2011 and maintains a register of successful and unsuccessful nominations.

8. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

8.1 Financial Implications

There will be a resource impact on the Council in implementing the requirements of the scheme, but this will depend on the volume and type of nominations, notification of intention to sell affected property, and appeals by owners against decisions. Although it is expected that the scheme will be administered within existing staff resources, the level of resources and funding will be reviewed and if necessary further funding sought in the light of experience of administering the scheme. The Council has received £7,855 government grant in 2013/14 to assist towards administering the scheme.

There will also be a potential cost to the Council in compensation payments of up to £20k in any one year (the Government meeting any costs in excess of this). The council would meet any potential impact below the £20k compensation threshold from within the existing contingency budget. This should be reviewed after the first year of operation.

There is a risk of the Community Right to Bid impacting upon the disposal of the Council's property assets, with delayed sales if Council properties for sale are registered as Assets of Community Value (see 8.3 below).

8.2 Legal Implications

8.2.1 Under s.87 of the Localism Act 2011 the Council has a duty to maintain a list of land in its area that is land of community value and a list of land for which unsuccessful nominations have been made.

8.2.2 The Assets of Community Value (England) Regulations 2012 (the 'Regulations') set out details in respect of the definition of organisations with a local connection sufficient to be entitled make an application for an Asset of Community Value and sets out further detail to be considered by the Council when considering whether the identified asset is an 'asset of community value'.

8.2.3 The Council has a duty to make a determination on a valid application within 8 weeks of the date of the valid nomination. In the event that an application is successful the Owner of the property may request a review of the decision within 8 weeks of the decision (s.92 of the Act).

- 8.2.4 The Regulations confirm that the review must be undertaken by ‘an officer of appropriate seniority who did not take any part in making the decision to be reviewed’. This review process must include an oral hearing where that is requested by the Owner who may be accompanied by a representative (whether legally qualified or not). In the event of a request for review the review decision must be completed by the end of the period of 8 weeks from the date the review was requested. No review mechanism is available in the event that the nomination is unsuccessful.
- 8.2.5 The recommendations contained within this report will ensure that the Council has adopted procedures in place to meet its duties in respect of s.87 of the Localism Act 2011.

8.3 Property Implications

Although many property implications are contained within the main body of the report it must be noted that the Council’s own properties may also be the subject of a nomination as an Asset of Community Value. However, this does not include residential properties and those managed by Enfield Homes.

The implications of an asset being successfully nominated and listed is that if the property were to be disposed of, the nominating organisation would need to be informed and a 6 month moratorium could be imposed which would restrict the sale of the property during this 6 month period. A key risk to be mindful of is that market conditions could change over the 6 month period and could affect the asset’s value.

It is important to note that a successful listing does not entitle transfer or disposal of the asset to an eligible community group. The Council will need to still exercise its discretion in accordance with the Property Procedure Rules.

The Councils Property Procedure Rules sets guidance and method for disposal of council assets. In addition The Local Government Act 1972 s123 applies to all disposals. For Section 123 purposes, a disposal includes the grant of a lease of more than 7 years or an assignment of an existing lease which has more than 7 years to run.

To ensure transparency in all property transactions as a matter of general principle, disposals or lettings to any organisation, including charitable, voluntary or non-profit organisations, must be on the basis of market value.

9. KEY RISKS

In the event that the requirements of the Localism Act are not fully implemented as originally intended this may potentially result in a breach of legislation and/or inflict reputational damage.

It is important that full consideration is given to the potential conflict of interest of using Strategic Property Services as the division represents the Council's role of land owner when disposing of Council assets; therefore it would be difficult to separate the role of overseeing the right to bid with the sale of the property.

This potential risk has been mitigated by having procedures which are transparent and auditable with clear evaluation criteria. In addition whilst Strategic Property Services will be administering the process there will be a majority of panel members on both the Evaluation and Appeal Panels from other council service areas.

Risk	Impact	Comment
Time	H	Nominations have already been received so it is important that procedures are implemented as soon as possible.
Viability	L	The process is expected to be straightforward and mainly administrative in nature after the initial process is undertaken, with the exception of the actual decision made on whether the asset has community value. The risk of any challenge will be limited if the decision making is transparent, fair and reasonable and in line with the published detailed evaluation criteria.
Finance	H	Provision needs to be made for compensation claims of up to £20k. No specific budgetary provision has been made but any claims would initially be funded from contingency
Profile	H	High initial profile anticipated as this is an important element of localism, to be used as a tool for the community to retain assets that are of community and social wellbeing importance
Equality & Diversity	L	All areas of our community will be affected equally. There is a potential case to suggest that the scheme may impact detrimentally upon the human rights of the owners of affected properties but the compensation scheme will mitigate this
Economic	M	The successful listing on an asset imposes a moratorium on the asset owner should s/he wish to dispose the asset. This moratorium could potentially impose an economic/financial burden on the asset owner due to the potential delay associated with obtaining an economic receipt for the asset.

10. IMPACT ON COUNCIL PRIORITIES

10.1 Fairness for All

The ACV is open to all community groups meeting the criteria in the Act and Regulations and nominations will have to demonstrate compliance with the criteria.

10.2 Growth and Sustainability

Opportunities may arise to assist regeneration and enable any successful nomination to develop services and facilities to the community in a sustainable way.

10.3 Strong Communities

The acquisition of an asset of community value will enable communities to grow, aiding both communications resource provision to the wider community.

11 EQUALITIES IMPACT IMPLICATIONS

It is not possible at this stage to undertake an equality impact assessment or analysis as the ACV is site specific. When a nomination is received the deciding panel will consider whether equality issues have been addressed.

12 PERFORMANCE MANAGEMENT IMPLICATIONS

The full and transparent procedures will be regularly monitored within Strategic Property Services by the internal ACV Coordinator. It will be essential that the monitoring ensures that all applicable timescales are met and that decisions are notified to both the 'nominator' and property owner.

Each bid will have its own checklist of required actions and timescales. This will enable the whole process to not only be monitored but also readily available for audit requirements.

It also essential that both the ACV registers (successful & unsuccessful bids) are updated and published at the earliest opportunity and be fully available online and in hard format.

13 HEALTH AND SAFETY IMPLICATIONS

In the event that the Council is aware of any health and safety issues affecting a Council property this should be brought to the attention of the nominating group.

14 HR IMPLICATIONS

There are no HR implications at this stage but should the work prove to be more extensive and time consuming than currently envisaged staffing implications may need to be reviewed

15 PUBLIC HEALTH IMPLICATIONS

One of the main focusses of the Assets of Community Value is Social Wellbeing. Opportunities may arise for the community to successfully nominate and acquire a facility which will be used to enhance the health and wellbeing of the community.

Background Papers – None

Appendices:

- Assets of Community Value Guidance Note
- Community Nomination Form
- Evaluation Criteria
- Community Right to Bid Flowchart 1
- Community Right to Bid Flowchart 2