

Executive

Localism Act 2011 – Assets of Community Value

5 November 2012

Report of Head of Law and Governance

PURPOSE OF REPORT

To enable the Executive to consider the implications of the provisions of the Localism Act 2011 in relation to assets of community value and to approve appropriate decision-taking mechanisms to ensure that the statutory requirements can be met.

This report is public

Recommendations

The Executive is recommended to:

- (1) Note the implications of the provisions of the Localism Act 2011 in relation to the obligation of the Council to maintain a list of assets of community value ('the List').
- (2) Delegate authority to the Head of Housing and Regeneration in consultation with the Lead Member for Estates and the Economy to consider and determine nominations for inclusion on the List.
- (3) Delegate authority to the Director of Development in consultation with the Leader of the Council to consider and determine requests from asset owners for review of decisions to include an asset on the List.
- (4) Delegate authority to the Head of Housing and Regeneration in consultation with the Head of Finance and Procurement to consider and determine applications for compensation from asset owners for loss and expense incurred through assets being included on the List.
- (5) Delegate authority to the Director of Development in consultation with the Director of Resources to consider and determine requests for review of compensation determinations from asset owners for loss and expense incurred through assets being included on the List.

Executive Summary

Introduction

Section 87 of the Localism Act 2011 and accompanying regulations applies to Council to establish a list of assets of community value. This report outlines the main provisions of the legislation and proposes an appropriate set of delegations to ensure that the statutory requirements can be met by the Council.

Background Information

- 2.1 Section 87 of the Localism Act 2011 obliges the Council to maintain a list of land in its area that is land of community value. The list must be known as 'The List of Assets of Community Value'. Once land is included on the List the entry must be removed from the List five years after the date of the entry. If it has not been disposed of prior to this. A list must also be maintained of assets which are nominated but not included on the List. These provisions and associated Regulations came into force on 20th September 2012.

Nomination

- 2.2 A building or other land in the Council's area is land of community value if, in the opinion of the Council:
- An actual current use of the building or other land that is not an ancillary use furthers the social well-being or social interests of the local community and
 - It is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social well-being or social interests of the local community.
- 2.3 A building or other land in the Council's area that is not currently land of community value can be included on the List if, in the opinion of the Local Authority:
- There is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social well-being 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 non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social well-being or social interests of the local community.
- 2.4 Certain land or buildings cannot be included on the list. The principal exclusion is residential property and this includes gardens, out-buildings and other associated land, including land that it is reasonable to consider as part of the land with the residence. There is, however, an exception to this general exclusion of residential property from listing and that is where an asset which could otherwise be listed contains integral residential quarters such as

accommodation as part of a pub, or a caretaker's flat. It is also not possible to list land licensed for use as a residential caravan site, or the operational land of statutory undertakers.

2.5 Nominations for inclusion on the list can only be made by:

- A Parish Council where the asset is located or a neighbouring Parish Council i.e. a parish which shares a border with the parish containing the asset, or
- A voluntary or community body as defined in the legislation.

A voluntary or community body may be:

- An unincorporated group with membership of at least twenty-one local people who appear on the electoral roll within the relevant Local Authority or a neighbouring Local Authority.
- A neighbourhood forum established under Section 61F of the Town and Country Planning Act 1990, or
- A community interest group with a local connection. This must be a charity, a community interest company, a company limited by guarantee that is non-profit distributing or an industrial and provident society that is non-profit distributing. To establish a local connection, the body's activities must be wholly or partly concerned with the Local Authority's area or a neighbouring Local Authority's area.

2.6 A nomination for inclusion of an asset on the List must be determined by the Council within eight weeks. It is, therefore, clearly necessary to ensure that delegated authority is given to appropriate officers to enable this time limit to be complied with. The nomination must meet certain minimum standards including:

- A description of the nominated land including its proposed boundaries.
- A statement of all the information which the nominator has with regard to the current occupants of the land and the identity of all those holding a freehold or leasehold interest in the land.
- The nominator's reasons for thinking that the land is of community value and
- Evidence that the nominator is eligible under the legislation to make a nomination.

Right to Review of Listing Decision

2.7 Although the owner of the asset must be notified of the nomination request and can make representations to the Council before the listing decision is taken, there is a further right of internal review by an asset owner against a listing decision. This must be determined within eight weeks. Again, it is therefore necessary to enable officers to determine a review under delegated authority so that the statutory requirements can be met. It is also, obviously,

necessary for there to be a separation of functions so that the reviewing officers were not involved in determining the original listing decision.

- 2.8 The proposal, therefore, is that the listing decision is undertaken by the Head of Housing and Regeneration in consultation with the Lead Member for Estates and the Economy while the review decision is determined by the Director of Development in consultation with the Council Leader.

Effect of Listing

Although the legislation has widely been portrayed as a 'community right to buy' this is not a true description of its legislative impact.

- 2.9 Once an asset has been included on the list nothing further will happen unless and until the owner decides that he wishes to dispose of it, either via a freehold sale or the grant of a lease of at least twenty-five years.
- 2.10 The asset owner must notify the Council of an intention to dispose of the asset. Inclusion of an asset on the list is a registered local land charge. If the asset is part of a registered title a restriction will be placed on the Land Register as well. The owner will only be able to dispose of the asset after a specified period of time has expired.
- 2.11 Initially a six week moratorium period is imposed during which the asset owner is unable to dispose of the asset and the Parish Council or appropriate community group is able to make a written request to be treated as a potential bidder for the asset. If no such request is made, the owner is entitled to dispose of the asset as he sees fit at the end of the six-week period.
- 2.12 If the Parish Council or relevant group does make a request to be considered as a bidder during the initial six-week moratorium, the period is extended to six months from the date of the notification of the intention to dispose. During this period the Parish Council/community group can work up a detailed bid and the owner may continue to market the asset and negotiate potential sales, but he may not exchange contracts or enter into a binding contract to do so later.
- 2.13 After the end of the moratorium period, whether for six weeks or the full six months, the asset owner remains free to dispose of the asset to whoever they choose and at whatever price they desire and no further moratorium will apply for the remainder of a protected period which lasts eighteen months from the date of notification of the intention to dispose.
- 2.14 It will, therefore, be realised that this is not a community right to *buy* but merely a community right to *bid*. No obligation is imposed on the asset owner to dispose of the asset to the Parish Council or community group and there is no obligation to offer a discount from the market value in the event that the asset is disposed of to the Parish Council or community group.
- 2.15 Certain types of disposal are exempt from the moratorium requirements. These include:
- Actual disposal to the Parish Council or local community group during the moratorium period.
 - Disposals made by way of gift.

- Disposals by personal representatives in accordance with the will or under intestacy rules.
- Disposals between family members.
- Part-listed land i.e. sale of a larger site where only part is included on the list.
- Disposal by a lender under a power of sale, and
- Compulsory purchase disposals.

Right to Compensation for Listing

- 2.16 Private owners (as opposed to public authorities) may claim compensation for loss and expense incurred as a result of the listing. Such compensation could include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the imposition of the moratorium. This could feasibly extend to an intervening fall in the market value of the land in the event that a particular disposal is lost as a result of the imposition of the moratorium.
- 2.17 The Council must consider the compensation claim, determine it and give written reasons for its decision. It is recommended that determination of compensation applications is delegated to the Head of Housing and Regeneration in consultation with the Head of Finance and Procurement.
- 2.18 There is also a right to seek an internal review of a compensation decision. Given the separation of duties which is again required here it is recommended that this part of the process be delegated to the Director of Development in consultation with the Director of Resources.
- 2.19 New Burdens grant support is being provided by the Government to meet the costs of compensation payments. The Government has also indicated that it intends to meet costs of compensation payments of over £20,000 in any financial year. This could be a single large claim or a combined total of smaller claims exceeding this threshold.

Other Rights to Challenge

- 2.20 There is no right to request a review of a decision not to include an asset on the list. However, a Parish Council or community group could potentially seek judicial review of the decision if it was procedurally or legally flawed.
- 2.21 It is also possible for the asset owner to seek to challenge the listing of an asset and/or the outcome of a compensation review decision by making an application to a Tribunal.

Conclusion

- 2.22 It should be noted that, while the bulk of the legislative provisions assume that a third party asset owner is affected by an application for inclusion on the list, a nomination could be made to relation to an asset owned by this Council. The procedure outlined above would still need to be followed although there would obviously be no right to compensation for the Council in the event that one of its assets was included on the list.

Key Issues for Consideration/Reasons for Decision and Options

The reasons for the recommendations set out above are:

- 3.1 To enable the Executive to understand the full implications of the legislation.
- 3.2 To enable determinations in relation to listing and compensation to be dealt with in a timely way in accordance with statutory requirements.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One** To accept the recommendations as set out.
- Option Two** To reserve the relevant decisions to members. Executive could decide that the listing and compensation determinations outlined above should be reserved to members. However, this is not recommended because of the statutory time limits that are imposed, the fact that determinations will involve a factual assessment applying legislative tests with limited scope for the exercise of discretion, and the need to ensure a separation of roles to accommodate the rights to review.
- Option Three** To delegate authority to officers other than those recommended. Executive could decide that alternative officers to those recommended should be given the necessary delegated authority. This is not recommended because the responsibility for assets and estates is vested in the Head of Housing and Regeneration and the compensation decisions should be subject to assessment and determination by qualified finance officers.

Consultations

Head of Housing and Regeneration

Implications

- Financial:** This legislation has a clear impact on the Council's resources, both in terms of officer time and direct budgetary implications. As far as potential claims for compensation are concerned the New Burdens grant settlement figure for this financial year amounts to £4,873. As indicated above, the Government has stated in its accompanying non-statutory guidance on the legislation that, in the event that the Council has a compensation outlay exceeding £20,000 in any financial year, the amount exceeding that threshold would be repaid. In the event that a Council asset was listed the Council would be unable to proceed with an intended disposal in a timely fashion because of the imposition of the

moratorium. This would lead to increased ongoing maintenance costs for the relevant asset and the possibility of a proposed disposal being lost.

Comments checked by Karen Curtin, Head of Finance and Procurement,
Karen.curtin@cherwellandsouthnorthants.gov.uk

Legal:

The legal implications are fully set out in the above report.

Comments checked by Kevin Lane, Head of Law and Governance,
Kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Management:

If the Council does not proceed as recommended there is a risk of non-compliance with its statutory duties under the Localism Act 2011.

Comments checked by Gavin Halligan-Davis, Interim Corporate Performance Manager, gavin.halligan-davis@cherwellandsouthnorthants.gov.uk

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Kevin Lane, Head of Law and Governance
Contact Information	0300 003 0107 Kevin.lane@cherwellandsouthnorthants.gov.uk