

Report to Sustainable development panel
24 October 2012
Report of Head of planning service
Subject Assets of Community Value

Item

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Purpose

This report explores the planning implications of designation of land or building/s as an Asset of Community Value (ACV), in particular whether an ACV designation should be treated as a material planning consideration in the planning application process.

Recommendation

That members note the contents of this report.

Corporate and service priorities

The report helps to meet the corporate priorities: A prosperous city; and city of character and culture.

Financial implications

There are no direct financial implications to this report.

Ward/s: All wards

Cabinet member: Councillor Bremner – Environment and development

Contact officers

Judith Davison, policy team leader (projects) 01603 212529

Graham Nelson, head of planning services 01603 212530

Jon Bunting, planner (policy) 01603 212162

Background documents

There are no background documents that are not already publicly available.

Report

Background

1. The Localism Act was enacted in November 2011. The Assets of Community Value (ACV) provisions set out in Part 5 Chapter 3 of the Act, and accompanying Assets of Community Value (England) Regulations, came into force on 21 September 2012. The Act and Regulations aim to help local communities who are looking to take over and run local assets by providing the opportunity to identify assets of community value and have them listed as such and, when they are put up for sale, provides them with time to raise finance and prepare to bid for them.
2. The Act and Regulations place a duty on local authorities to administer a scheme to identify assets of community value whether in public or private ownership.
3. A report to Cabinet on 17 October 2012 sought approval to implement decision making and governance arrangements in relation to community rights to bid for assets of community value, and recommended that members approve the proposals in the report with immediate effect (link to the Cabinet report for information: <http://www.norwich.gov.uk/CommitteeMeetings/Cabinet/Document%20Library/28/REPCabinet06AssetsOfCommunityValue20121017.pdf>). It explains the background to the community right to bid for assets of community value, the process for consideration of an asset which has been nominated by a community body, and the proposed arrangements for administering the designation process. Members will be verbally updated on Cabinet's decision at the Sustainable Development Panel meeting on 24 October.
4. The definition of an asset of community value is a "building or other land whose main (i.e. "non-ancillary") use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future"¹. When a listed asset is to be sold, local community groups will have a chance to make a bid to buy it on the open market. If the owner of the asset decides to dispose of the land/building, community groups will have a 6 week period in which to confirm if they wish to be considered a potential bidder. If confirmed then a 6 month moratorium will come into force, delaying the sale of these assets and giving the community group time to put together a bid to buy the asset.

Planning Issues

5. The purpose of this report is to consider whether the designation of land or a building as an asset of community value should be treated as a material planning consideration when deciding a planning application.
6. It is important to note that designation as assets of community value cannot restrict who the owner of such an asset can sell their property to, or at what price. The provisions also do not place any restriction on what an owner can do with their property, once on the list, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites.

¹ Definition appears in DCLG publication 'Community Right to Bid: Non-statutory advice note for Local Authorities', October 2012

7. The DCLG in its non statutory guidance note on assets of community value (October 2012), states that “it is open to the local planning authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.”
8. A material consideration is a matter that should be taken into account in deciding a planning application or an appeal against a planning decision. Any consideration which relates to the use or development of land is capable of being a material consideration, for example, policies or proposals in the development plan, government policy, representations by consultees, environmental impact assessment if appropriate, effect of a proposed development on a listed building, highway safety, environmental impacts of the proposal, nature conservation designations, and general/residential amenity (this is not an exhaustive list). The local planning authority may refuse planning permission or impose conditions only if the consideration is material in planning terms.
9. However there are a number of considerations that cannot be regarded as material in planning terms. For example, personal circumstances and financial considerations are not generally material in planning decisions. Also, local planning authorities should not use the planning system to regulate matters covered by other statutes.
10. In considering the materiality of ACV designations, it is important to note that the process of designating an asset of community value set out in the regulations is very prescriptive. Assuming that an asset is nominated by a properly constituted body, the council can only refuse to include it on the list if the land or building does not meet the definition of community value, or falls into one of the excluded categories (eg housing). This process is likely to result in a list of designated assets where the community value of individual assets may vary considerably. Indeed, there may be instances of community assets which are not nominated and designated as ACVs, but could be argued to have greater community value than those that have been designated. The Council cannot nominate assets of community value itself, and therefore it cannot ensure that all assets meeting the criteria of community value are listed.
11. It is also important to note that the process triggered by the sale of a designated asset of community value (i.e. a moratorium on its sale while the community group prepares to bid for it) is not guaranteed to result in acquisition of the asset by the community group, but may result in an approximate 6 to 8 month delay in the sale. Any application for a change of use of such a site or building will be determined through the planning application process, which is separate from the ACV designation process.
12. An application for change of use from community facilities is currently subject to policy AEC3 in the adopted City of Norwich Replacement Local Plan (2004) which allows such a change of use only where it can be demonstrated that the building / site is no longer suited to that use or that there is no viable alternative community use.
13. The emerging Development Management Policies plan includes policy DM22 which encourages the provision and enhancement of community facilities, and aims to prevent the loss of community facilities through redevelopment. The draft policy makes reference to assets of community value but the explanatory text acknowledges that the relevant legislation was not enacted at the time of writing; indeed some aspects of the policy and explanatory text will require updating to reflect the new

legislation and regulations. The plan is currently undergoing consultation and the policy may require further amendment following any representations made. The amended Development management policies plan (along with the Site allocations plan) will be reported to Sustainable Development Panel in early 2013, prior to submission to the Secretary of State for independent examination.

Conclusion

14. Whilst the designation of a site or building as an asset of community value is an important consideration, it cannot be considered to be material in planning terms. The process of determining assets of community value is separate from the planning process and simply confirms assets nominated by qualifying community interest groups which are considered by them to have some community value; however it is not an objective assessment of community value. In addition it may be inappropriate to treat a designated asset of community value as a material planning consideration when deciding a planning application, when other non-designated community assets may have greater community value but just have not been nominated and designated.
15. In conclusion, it is recommended that the designation of land/buildings as assets of community value is not treated as a material planning consideration as it may result in an inconsistent approach being taken to the consideration of planning applications and possibly result in poor quality decision-making on the part of the local planning authority. The council will however continue to consider the community value of land or buildings on their individual merits as part of the normal planning application process in line with adopted local plan policy AEC3 and emerging policy DM22 once adopted.