

Report to Scrutiny committee
11 October 2012
Report of Head of city development services
Subject Assets of Community Value

Item

7

Purpose

To give members the opportunity to comment on decision-making and governance proposals prior to recommendations going before cabinet for decision.

Recommendation

Members are asked to consider and comment on the decision making and governance proposals set out in the report.

Corporate and service priorities

The report helps to meet the corporate priority “city of character and culture” and enable the council to carry out its duties under the Localism Act 2011 relating to the right to bid for assets of community value.

Financial implications

Without knowing the likely number and nature of nominations it is hard to predict the likely costs associated with the new legislation. The additional administrative resource is estimated to be in the region of £6,000 p.a. although this is likely to vary from year to year. Similarly compensation costs are also hard to predict and likely to be variable. An initial estimate is £40,000 p.a. It is likely that the latter may change over time in light of case law. Government new burdens grant to cover such costs are due to be confirmed in October.

Ward/s: All wards

Cabinet member: Councillor Waters – deputy leader and resources

Contact officers

Andy Watt 01603 212691

David Rogers 01603 212463

Background documents

None

Report

Background

1. The Localism Act became law in November 2011 and provisions which relate to assets of community value came into force on 21 September 2012. The original intention had been to introduce a right for community groups to be able to buy land or property which has valuable community use. As the legislation passed through parliament it emerged as a community right to bid: for such land and property coming up for sale on the open market.
2. The legislation places a duty on district councils to administer a scheme which will identify assets of community value, whether they are in private or public ownership. The government's intention is to give community groups time to prepare and raise funds in order to be able to bid.
3. Regulations came into force on 21 September to prescribe how the legislation should operate:
 - a) District councils will have to maintain a publically available list of assets of community value
 - b) An asset will only be able to be placed on the list if it is nominated by a qualifying community interest group and the council determines that the asset has community use value
 - c) The council will not be able to nominate assets itself to go on the list
 - d) Community value can only be judged on the basis of an asset's recent past, current and likely future community use and not its heritage or other value
 - e) Residential land and properties are specifically excluded and will not be able to be nominated
 - f) Private and other owners of listed assets must notify the listing district council if they intend to make a qualifying disposal. They must then postpone the sale to give community interest groups time to advise if they wish to bid (6 wks)
 - g) If community interest groups wish to bid, then a further moratorium will be placed on the disposal to enable the group to raise funding (6 months)
 - h) At the end of the moratorium period the owner will be able to choose not to sell to the community interest group regardless of the level of their bid
 - i) Listed assets will stay on the list for 5 years (unless successfully appealed) at which point they must be re-nominated and the process started again.

4. The government had indicated that the relevant legislation would be enacted in October 2012; however it has now come into force. The council must therefore prepare and decide how it will determine nominations for assets of community value.

Administrative responsibility

5. Under the Act the council will have a duty to:
 - a) Receive nominations from qualifying community interest groups
 - b) Notify owners and others of nominations
 - c) Process and determine nominations for assets to be listed
 - d) Maintain and publish lists of successful and unsuccessful nominations
 - e) Notify owners and others of decisions
 - f) Consider appeals from property owners against listing
 - g) Provide information to community groups in the event of a proposal to dispose of a nominated asset
 - h) Pay compensation to private owners, relating to both costs and losses resulting from moratorium periods
 - i) Undertake enforcement action where obligations have been breached by property owners of listed assets of community value.

Decision making and governance

6. Whilst the determination and appeals process associated with the legislation and regulations is for the council to decide, there are certain provisions that partly determine the decision making process.
7. Only community interest groups with a local connection will be able to nominate assets to be listed as having community value. Community interest groups are clearly defined within the regulations and local authorities will need to satisfy themselves that nominating groups comply. The following are examples:
 - a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990
 - b) a parish council
 - c) an unincorporated body whose members include at least 21 individuals and which does not distribute any surplus it makes to its members

- d) a charity
- e) a company limited by guarantee which does not distribute any surplus it makes to its members
- f) an industrial and provident society which does not distribute any surplus it makes to its members
- g) a community interest company

District and county councils are excluded from being able to nominate assets of community value.

- 8.** Only land and property assets can be listed which are defined by the regulations as having a current, recent past and likely continued future community use. Examples of the types of community use that are covered by the regulations include:

- a) village shop
- b) pub
- c) sport and/or community centre
- d) child centre
- e) allotment
- f) library

The regulations largely exclude residential property and land.

- 9.** The legislation and regulations include provisions for decisions made by the council to be reviewed internally should an owner request. Paragraph 4 of schedule 2 of the regulations states that “An officer of the authority of appropriate seniority who did not take any part in making the decision to be reviewed (“the reviewer”) shall carry out the review and make the review decision”.
- 10.** Secondly the timescale for confirming decisions is limited. In considering both nominations and claims for compensation the council only has 8 weeks to reach a conclusion and notify the parties concerned. In the case of nomination reviews the land owner is entitled to ask for an oral hearing which also must be held within the 8 week period prior to the decision being made.
- 11.** Normally we would have a member led process but in this case an officer led decision making process is considered most practical. This will ensure that decisions are considered truly independent, and public accountability is maintained, by ensuring that officers do not over-turn previous member decisions at appeal stage. This would minimise the risk and cost of increased

appeals to tribunals (i.e. where the land/property owner continues to disagree with the council's decision).

- 12.** Additionally there are risks in meeting the statutory timescales if a member panel or committee was relied upon to make nomination decisions. To avoid such risk sufficient regular meetings could be timetabled; however, this would be both costly and administratively burdensome given the likelihood that nominations will not be received on a regular basis.
- 13.** The recommendation is therefore for cabinet to delegate nomination decisions to officers at head of service level. The decision on a nomination will need to be on the basis that "use [of the building or land] furthers the social wellbeing or social interests of the local community". To assist officers in making this decision it is also proposed that such decisions are made following input from local ward members where the asset is located.
- 14.** In the case of appeal of nominations it is recommended that the decision is made by the deputy chief executive or other member of CLT nominated by him.
- 15.** In the case of appeal of claims for compensation it is recommended that the decision is made by the head of law and governance in consultation with the section 151 officer. Where a claim for compensation exceeds the OJEU limit the claim would be referred to cabinet for decision.
- 16.** All nominations will be published on-line and will therefore be available to members and the public.

Appendix A

Decision making and governance	Recommendation
Ward member input	Relevant ward members to be notified of all nominations within their area. Comments received from ward members to be taken into consideration when determining nominations.
Determine nominations (To sit as required) (This must make provision for a higher council authority to review any decision to list)	Decision making Head of Local Neighbourhood Services in consultation with the head of Planning Or Other officers designated by the Deputy Chief Executive Advising Officers Professional officers as required including: Head of law and governance NPS Norwich property officer NPLaw solicitor
Appeal review (To sit as required)	Decision making Deputy Chief Executive or Executive member of CLT nominated by Deputy Chief Executive. Advising officers Specialist officers as required
Review and approve relevant compensation payments	Head of Law and Governance in consultation with section 151 officer. Using existing delegated authority Or Cabinet where amount exceeds OJEU limit
External review of appeal decisions	First Tier Tribunal, HM Courts and Justice Service
External review of compensation decisions	First Tier Tribunal, HM Courts and Justice Service
Reporting of decisions	ACV decisions to form standing items on Scrutiny and Cabinet forward agendas.