

Body: Cabinet

Date: 23 October 2013

Subject: Assets of Community Value
Localism Act 2011

Report Of: Julian Osgathorpe, Deputy Chief Executive

Ward(s) All

Purpose

- (1) To ask Cabinet to note the Assets of Community Value scheme which local authorities are required to maintain under the Localism Act and associated regulations
- (2) To request that Cabinet determine the application before it to list 153 Victoria Drive Eastbourne BN20 8NH as an asset of community value
- (3) To ask Cabinet to approve detailed arrangements for decision-making in relation to the listing of future applications, this to include delegations to officers at Chief Officer level

Recommendation:

- (1) That Cabinet consider the application to list 153 Victoria Drive as an asset of community value pursuant to regulations made under the Localism Act 2011 and determine whether or not to list it
- (2) That Cabinet approve the arrangements for the determination of future nominations to list assets as ACVs outlined in this report, and make the specific delegations to officers outlined in Appendix 2.

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1.0 Background

1.1 Part 5 Chapter 3 of the Localism Act 2011 provides for a scheme whereby local authorities are required to maintain a list of assets of community value which have been nominated by the local community and which in the view of the authority meet detailed criteria. When listed assets come up for sale or change of ownership, a moratorium is imposed to give community groups the time to develop a bid and raise the money to buy the asset when it comes on the open market. The objective of the regime is to help local communities retain relevant sites in public use as part of local life. The scheme is also known as the community right to bid and the Government has said that its aim is 'to give many more communities the opportunity to

take control of assets and facilities in their neighbourhoods by leveling the playing field (and) providing the time for them to prepare a proposal’.

- 1.2 The Localism Act became law in November 2011 and the 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 became restricted to a community right to bid for such land and property coming up for sale on the open market.
- 1.3 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.
- 1.4 The Regulations which came into force on 21 September 2012 prescribe how the scheme operates:
 - District councils must maintain a publically available list of assets of community value
 - An asset may only be placed on the list if it is nominated by a qualifying community body and the council determines that the asset has community use value
 - Authorities are not themselves able to nominate assets to go on the list
 - 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
 - Residential land and properties are specifically excluded and cannot be nominated
 - All owners of listed assets must notify the listing district council if they intend to make a ‘qualifying disposal’, which is defined as disposal of the freehold interest or a lease of more than 25 years’ duration, with certain exceptions (there are a number of exceptions, eg, where the land is being disposed of to a connected company, where its being disposed of by certain categories of transferee etc.)
 - They must then postpone the sale for 6 weeks to give the community body time to advise if they wish to bid
 - If community interest groups bid then a further moratorium of 6 months will be placed on the disposal to enable the group to raise funding
 - At the end of the moratorium period the owner will be able to choose whether or not to sell to the community group, regardless of the level of their bid
 - Detailed provisions allow the owner to claim compensation from the local authority where loss or expense has been incurred due to the listing
 - A review process is provided to allow for decisions to list and in relation to compensation claims. Further appeal is to the First Tier tribunal
 - 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.

1.5 The authority's first application to list an asset of community value has been received in relation to the Drive Public House, 153 Victoria Drive Eastbourne BN20 8NH. Members may be aware of this address in the context of the executive decision made by the authority as landowner not to enforce the 1932 covenants relating to the site for legal reasons. That matter is however entirely separate from the issue to be determined by Cabinet today, which this authority is bound to determine in accordance with the strict statutory criteria which have been put in place to enable it to discharge the responsibilities conferred on it by the Localism Act.

1.6 Cabinet is moreover invited to put in place arrangements for dealing with future nominations for assets of community value in such a way as to fulfil the authority's responsibility to:

- Receive nominations from qualifying community interest groups
- Notify owners and relevant parties of nominations
- Process and determine nominations for assets to be listed
- Maintain and publish lists of successful and unsuccessful nominations
- Notify the relevant parties of decisions made
- Consider appeals from property owners against listing
- Provide information to community groups in the event of a proposal to dispose of a nominated asset
- Determine applications for compensation from owners relating to both costs and losses arising from moratorium periods and pay the same.

2.0 Application to list 153 Victoria Drive Eastbourne BN20 8NH as an asset of community value

2.1 The application of the Save the Drive Community Group to list the above premises as an asset of community value, or 'ACV', has been received in, together with the following:

- Application to nominate and additional information in support submitted by the Save the Drive association on 29.9.13
- Copies of the land registry title comprising proprietorship register and plans

2.2 Cabinet will wish to consider the nomination in light of the detailed provisions of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 ("the Regulations").

2.3 To assist Cabinet in its decision-making, a detailed Report is appended hereto as Appendix 1 along with the information referred to above. Cabinet is recommended to consider it – and the evidence to which it refers - in some detail.

2.4 Taking into account all of the evidence available, Cabinet is recommended to enter the property into the EBC list of Assets of Community Value.

The grounds for this recommendation are as follows:

(1)

- (a) The Asset lies within the administrative boundaries of EBC;
- (b) The Save the Drive group is considered to be a community body with a local connection and is entitled under 89(2)b)(iii) of the Act to make a community nomination in respect of the Asset;
- (c) The nomination made by the community body includes the matters required under Regulation 6 of the Regulations;
- (d) The Asset does not fall within a description of land which may not be listed as specified in Schedule 1 of the Regulations;
- (e) The nomination form sets out the reasons for nominating the asset, explaining why the nominator believes the Asset meets the definition in the Act.

And in addition:

(2) in the opinion of the Authority,

(a) 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 wellbeing or interests of the local community, and

(b) it is realistic to think that there will be 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 wellbeing or social interests of the local community.

If minded to follow this recommendation, Cabinet is asked to confirm its detailed reasons for doing so.

3.0 Future administration of the Assets of Community Value scheme: recommendations for detailed arrangements and decision-making

3.1 Whilst authorities may approve the determination and appeals process they follow to discharge their duties under the legislation, the decision-making process is circumscribed by the Regulations. These set strict criteria for decision-making and leave minimal scope for creative interpretation.

The definition of those community interest groups with a local connection which may nominate assets for listing as having community value is clearly defined within the Regulations. So too are the types of land which may be listed (with residential property and land largely excluded), as is the requirement that potential ACVs have a current, recent past and likely continued future community use.

Moreover the provisions for reviews of decisions to list or provide compensation should an owner request are both subject to strict time limits and must be carried out by an officer who was not involved in the previous

decision. 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." In considering both nominations and claims for compensation the authority has only 8 weeks to reach a conclusion. In the case of nomination reviews the land owner is entitled to request an oral hearing which also must be held within the 8 week period.

3.2 In view of the fact that the legislation provides a defined set of criteria for decision-making and a process governed by strict time limits, a decision making process which is Chief Officer-led throughout but allows for input from elected members is considered the most practical approach. This will eliminate any risk that member decisions are overturned by officers at appeal stage and will thus 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). It will also reduce the risk of failing to meet statutory timescales.

3.3 The recommendation is therefore that Cabinet delegate nomination and compensation decisions to the Deputy Chief Executive who will be able to nominate one of his fellow Chief Officers if needs be. 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 proposed that such decisions be made following input from elected members where the asset is located, with members being given a minimum of 14 days from receipt of nominations to make written representations regarding them.

In the case of appeal against a decision to list it is recommended that the decision is made by the Chief Executive or other Chief Officer nominated by him (being a person not involved in the original decision).

In the case of an appeal against decisions on claims for compensation it is recommended that the decision is made by the Chief Executive or other Chief Officer in consultation with the Lawyer to the Council and the section 151 officer.

3.4 Decisions with regard nomination and compensation are subject to external appeal to the First Tier Tribunal.

4.0 Future administration of the Assets of Community Value scheme: recommendations for ensuring transparency

4.1 All nomination decisions (both to list and not to list) will be published on-line and thus available to the public. This authority will also publish detailed information about the statutory regime and the arrangements this authority has put in place for implementing it. Links will be supplied to relevant resources to enable the public to find out more about the criteria set in the regulations for listings.

4.2 As well as alerting elected members to nominations received in and providing an opportunity to make comment on those, the process will involve publishing all decisions in the members newsletter.

5.0 Consultation

5.1 Consultation has taken place with the relevant Cabinet portfolio officer.

6.0 Resource Implications

6.1 Financial

The Localism Act and related legislation places a duty to administer a new scheme on local authorities. The cost of delivering it will depend on the number of applications received in and their complexity.

The volume and sum of any compensation claims arising out of any listings is also a relevant issue although the Government has said that it will meet the cost of compensation claims that exceed £20,000 in a financial year up to March 2014 and that it will consider follow-on funding from 2015 onward.

6.2 Staffing

The human resources needed to make the scheme work will depend on the number of applications received in, their complexity and whether the listing and/or any compensation claim is appealed either on the basis of written representations or at oral hearing. All viable efforts will be made to deliver implementation within existing budgets.

7.0 Other Implications: Environmental, Human Rights, Community Safety, Youth, Anti-poverty.

7.1 None

8.0 Conclusion

8.1 In relation to the application relating to 153 Victoria Drive, Cabinet has two options open to it: to agree to list it, in accordance with officer's recommendations, or to refuse to do so.

8.2 In making its decision, Cabinet is requested to minute its detailed reasons for its decision and to authorise the Lawyer to the Council to notify its decision to all relevant parties and to take all necessary next steps. Should a review of the decision be sought and/or a request for compensation made then those steps will be taken in accordance with the arrangements and delegations proposed in this Report (see 8.3), provided that Cabinet agrees those arrangements today.

8.3 Cabinet is also requested to consider making the recommendations as to the future administration of the scheme outlined in this Report, including the specific officer delegations referred to above and outlined in Appendix 2.

JULIAN OSGATHORPE
DEPUTY CHIEF EXECUTIVE

Background Papers:

The Background Papers used in compiling this report were as follows:

The Localism Act 2011

The Assets of Community Value (England) Regulations 2012

Parliamentary Briefing on Localism Act: Assets of Community Value (SN/PC/06366; last updated 1 August 2013)

Community Right to Bid: Non-statutory advice note for local authorities

<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>

Other resources and guidance protected by copyright

Appendices:

Appendix 1 – Report including recommendations in respect of the nomination of 153 Victoria Drive

Appendix 2 – list of delegations

To inspect or obtain copies of background papers please refer to the contact officer listed above.

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