

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
27 November 2012

Subject: **ASSETS OF COMMUNITY VALUE AND “COMMUNITY RIGHT TO BID”**

All Wards
Portfolio Holder for Customer Services: Councillor T Swales

1.0 PURPOSE AND BACKGROUND:

1.1 The Localism Act 2011 introduced the “Community Right to Bid” for Assets of Community Value. This report sets out the implications for the District Council.

2.0 DECISIONS SOUGHT:

2.1 To recommend to Council that functions relating to Assets of Community Value be delegated to the Director of Customer Services.

3.0 ASSETS OF COMMUNITY VALUE:

3.1 The provisions of the Localism Act 2011 relating to Assets of Community Value came into effect on 21 September 2012. The provisions introduce the right for certain local groups to nominate buildings or land for listing by the Local Authority as an Asset of Community Value. Once on a list there are restrictions on the disposal of the asset which in certain circumstances will allow a community group to bid for the asset. A summary of the provisions is set out in the Annex to this report, which is an extract from Government guidance.

4.0 OBLIGATIONS ON THE COUNCIL:

4.1 The Council is required to maintain a List of Assets of Community Value. It is required to receive nominations from community groups and in certain circumstances add an asset to the list. Although there is some judgement to be made the Act is quite specific about what constitutes an Asset of Community Value. There is no scope for the Council to specify assets which will be covered or have a policy on this subject.

4.2 The Council has to make a determination on nominations within eight weeks. If property is listed the owner may ask for a review of the decision. The Regulations require that this is carried out by a senior officer within the council. There is a further right of appeal to an independent Tribunal.

4.3 If an asset is listed and the owner intends to dispose of it there are proposals for a moratorium on the sale which will allow a community group to bid for it. There is no obligation on the owner to sell to the community group. There are various obligations on the Council in terms of notifying various parties throughout the process.

4.4 The legislation provides for compensation to be paid by the Council where a landowner has suffered loss as a result of the operation of the system. There are provisions for review of compensation decisions and appeal to an independent Tribunal.

4.5 It is recommended that all functions relating to Assets of Community Value be delegated to the Director of Customer Services.

5.0 FINANCIAL ISSUES AND EFFICIENCIES:

5.1 The Council is expected to administer all aspects of the new system. It is believed that this can be achieved within existing staffing resources.

5.2 The Council is expected to pay compensation in certain circumstances. It is not known how many successful claims there might be and the extent of any financial liability for the Council. The Government envisages that the liability will be small. It intends to reimburse Local Authorities where the annual cost of compensation exceeds £20k for the first three years of the scheme. Local Authorities are expected to fund any compensation up to £20k in any year.

6.0 CONCLUSIONS:

6.1 The new Assets of Community Value provisions introduce a new function for the District Council. Almost all of the elements are set out in the legislation and there is little discretion.

6.2 The Council needs to create an administrative framework and Officers have begun to put this in place.

6.3 It is appropriate that the process be administered by Officers to meet the timescales and review provisions imposed by legislation.

6.4 There will be some resource implications, but these can be absorbed.

7.0 RECOMMENDATION:

7.1 That Council be recommended to delegate all Assets of Community Value functions to the Director of Customer Services.

MARTYN RICHARDS/SANDRA WALBRAN

Background papers: None

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Section 2

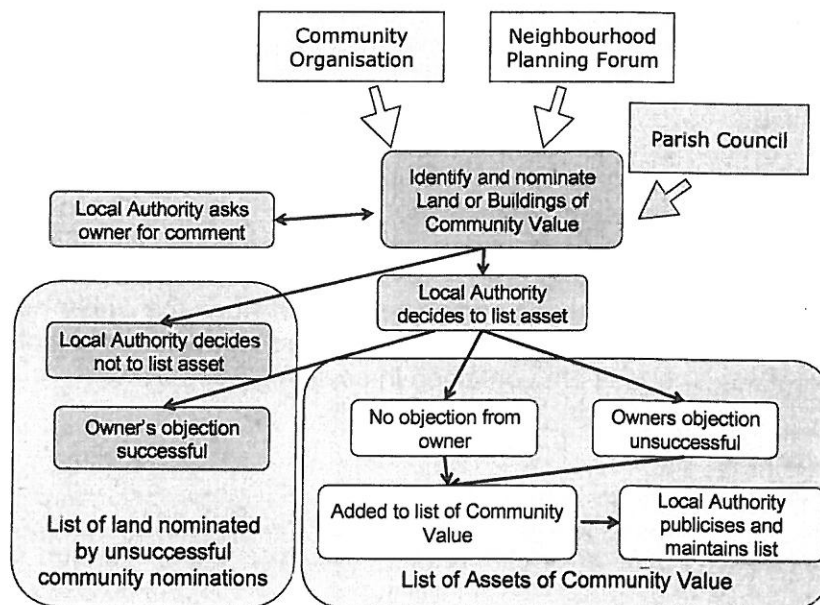
Outline of how the scheme works

- 2.1 The provisions give local groups a right to nominate a building or other land for listing by the local authority as an asset of community value. It can be listed if a principal (“non-ancillary”) use of the asset furthers (or has recently furthered) their community’s social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. When a listed asset is to be sold, local community groups will in many cases have a fairer chance to make a bid to buy it on the open market.
- 2.2 The Assets of Community Value legislation places requirements on the following local authorities in England:
- (a) a district council,
 - (b) a county council for an area for which there are no district councils,
 - (c) a London borough council,
 - (d) the Common Council of the City of London, or
 - (e) the Council of the Isles of Scilly.
- 2.3 The scheme has two main parts: nominating and listing assets and the moratorium.

Nominating an asset

- 2.4 It is open to parishes and community organisations, including neighbourhood forums (as constituted under section 61F of the Town and Country Planning Act 1990, added to that Act by the Localism Act) to nominate local assets to their local authority, to be included on the list of assets of community value. Nominated assets may be owned by anybody, including the local authority and the Crown.
- 2.5 A neighbouring parish council can nominate an asset. Where the land is in a parish area, this means a parish which shares a border with it; or if an asset is in an unparished local authority area, so that there is no immediately adjoining parish council within the same local authority area, a parish council that borders the local authority could nominate an asset.

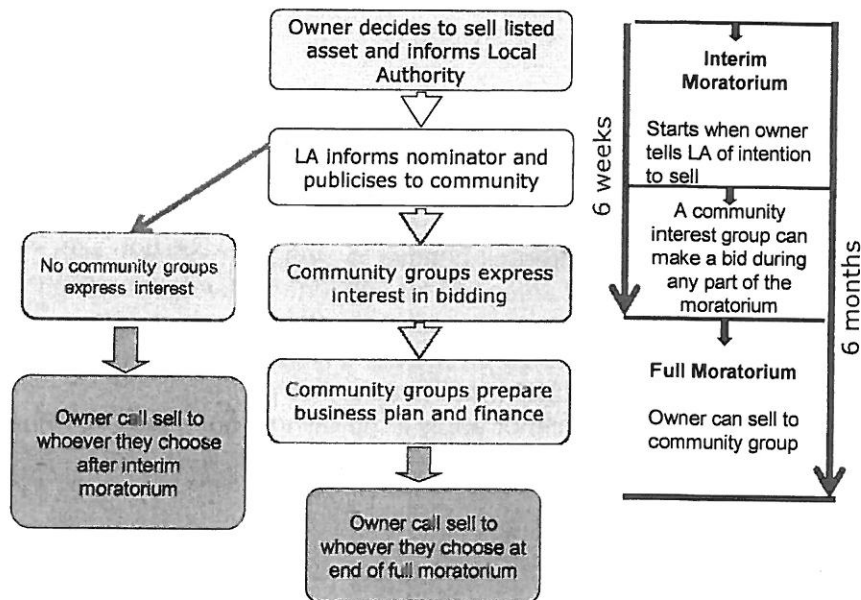
- 2.6 The local authority will then have 8 weeks to make a judgement about whether the asset meets the definition set out in section 88 of the Act or whether it falls into one of the excluded categories, including residential property, set out in Schedule 1 to the Regulations.
- 2.7 If the nominated asset is properly nominated, is in the local authority's area, meets the definition, and is not excluded, the local authority must list it and inform all specified parties (including the parish council). They must also place the asset on the local land charges register and, if the land is registered, apply for a restriction on the Land Register in Form QQ (for details see below under Enforcement).
- 2.8 If the owner objects to their property being placed on the List, they will have a right to an internal review by the council of the decision to list. The details of this process are set out below. If the owner remains in disagreement with the listing after the internal review they have a right of appeal to an independent Tribunal.
- 2.9 If the local authority do not agree that the asset nominated meets the section 88 definition, or it is in one of the excluded categories, they must place it on a list of assets nominated but not listed. If an owner is successful in their appeal against listing at internal review or Tribunal stage then the asset must also be moved to the list of unsuccessful nominations. It is for the local authority to decide how long they hold unsuccessful nominations on this list. The intention of this is to ensure transparency and to avoid multiple nomination of an asset that does not meet the definition.



Moratorium

- 2.10 Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least twenty-five years).
- 2.11 Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired.
- 2.12 The first part of this window is a 6 week interim period, which will apply in all cases, from the point the owner notifies the local authority. This will allow community interest groups to make a written request to be treated as a potential bidder. If none do so in this period, the owner is free to sell their asset at the end of the 6 weeks.
- 2.13 If a community interest group as defined in regulation 12 of the Regulations (referring to the bodies in paragraph (1) (d) to (g) of regulation 5) does make a request during this interim period, then the full 6 month moratorium (again from the point the owner notifies the local authority) will operate. During this period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception. The owner may sell to a community interest group during the moratorium period.
- 2.14 After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – the owner is free to sell to **whomever they choose and at whatever price**, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the local authority of wishing to sell). The process and lengths of the moratorium periods are contained in section 95 of the Act².

² <http://www.legislation.gov.uk/ukpga/2011/20/section/95/enacted>



2.15 Not all proposed sales have to be notified to the local authority however. A range of disposals will be exempted from the provisions. A number are set out in section 95(5) of the Act, and others are in the Regulations. The full list of exemptions is given in Annex A.

Compensation

2.16 The scheme recognises that these provisions may have some financial impact on owners and provides a compensation scheme for private property owners. This will not be available to public bodies. The local authority will be responsible for administering the compensation scheme, including assessing and determining compensation awards. Owners and former owners will have rights of review and appeal regarding the authority's compensation decisions (see Section 10).

Enforcement

2.17 The scheme provides for various mechanisms to encourage compliance by requiring local authorities to:

- Inform owners and other interested parties that an asset has been listed
- enter on the local land charges register the fact that an asset has been listed; and

- in the case of registered land, apply for a restriction on the Land register.

2.18 Additionally, to give a strong incentive to owners to comply with the scheme, non-compliant sales will be void (ineffective), meaning that the change of ownership has not taken place (regardless of whether it has erroneously been registered on the Land Register - which would have to be rectified once the fact that the sale was void was discovered). However this penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.

What the provisions do not do

- 2.19 These provisions do **not** restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do **not** confer a right of first refusal to community interest groups (unlike the Scottish scheme).³
- 2.20 The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - 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.

³ <http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/Community>

