



## CABINET

17 June 2015

**Subject Heading:**

**Cabinet Member:**

**CMT Lead:**

**Report Author and contact details:**

**Policy context:**

**Financial summary:**

**Is this a Key Decision?**

**When should this matter be reviewed?**

**Reviewing OSC:**

### ASSETS OF COMMUNITY VALUE

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The Council's draft Voluntary Sector Strategy and action plan commits the Council to implementing a procedure for enacting the community right to bid provisions of the Localism Act.

There is a small revenue cost to the Council. If an asset is listed as an asset of community value, there is a right for the owner to claim compensation, if s/he can prove loss, as set out in the report. The Government has committed to meeting compensation payments of over £20k in one financial year.

No

Review to take place after the first nomination has been received and been through the process.

Overview and Scrutiny Board

**The subject matter of this report deals with the following Council Objectives**

Havering will be clean and its environment will be cared for	<input type="checkbox"/>
People will be safe, in their homes and in the community	<input type="checkbox"/>
Residents will be proud to live in Havering	<input checked="" type="checkbox"/>

**SUMMARY**

This report outlines the assets of community value provisions in the Localism Act 2011 and proposes a procedure and delegations to manage any nominations made for listing of community assets under the Act.

**RECOMMENDATIONS**

1. That the Council's proposed approach to the implementation of the assets of community value provisions in the Localism Act 2011, as outlined in the report, be approved
2. That the Group Director, Communities and Resources be authorised to implement those sections of the Localism Act (as set out in the report) which relate to the determination of all applications submitted to the Council in accordance with the approved scheme, all reviews requested by property owners whose properties are approved for inclusion in the List of Assets of Community Value and in relation to claims for compensation.
3. That the Director of Asset Management Services be authorised to administer the compensation scheme associated with assets of community value.

**REPORT DETAIL**

**Introduction**

1. The Assets of Community Value provisions in the Localism Act 2011 came into force on 21<sup>st</sup> September 2012. Since that time, local groups have had the right to nominate land or buildings (in any ownership) as assets of community value, provided that they meet certain criteria. Details of the scheme are set out below.

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2. The Council has not, as yet, received any nominations and has accordingly not had to maintain a list of decisions. However, in January 2015, the Leader received a letter from the then MP Stephen Williams requesting that the Council adds accessible information on the website about these community rights, including how to make a nomination. In order to do this the Council needs to put in place procedures and delegations, as set out in this report, to administer the scheme.
3. The provisions of the legislation are in two main parts – nominating and listing assets and the provisions concerning a proposed sale. The Act also makes provision for compensation to be paid to the property owner if losses or expenses are incurred as a result of the Listing.
4. The legislation aims to provide an opportunity for local community groups to be informed when an important local amenity/building comes up for sale and to provide an opportunity for local people to organise themselves so that they can bid to purchase the property, potentially preventing the loss of a facility that is considered important to that community.

### **Nomination of Properties**

1. A community organisation may nominate both publicly and privately owned land and properties which they consider to have “community value” for inclusion in the List of Assets of Community Value. This list is created purely for the purposes of the Act and does not in any way relate to heritage listing. Only “voluntary and community bodies” with a local connection have the right to make nominations. The definition of “voluntary or community body” is a body which is:
  - an unincorporated group with membership of at least 21 local people (who appear on the electoral roll for this Council or a neighbouring Council) and which does not distribute any surplus it makes to its members
  - a Parish Council (which can include a Parish Council which borders the local authority area)
  - a statutory neighbourhood forum
  - a charity, a community interest company or a company limited by guarantee or an industrial and provident society, which does not distribute any surplus it makes to its members.
2. The Act specifies that a property will be considered to have community value if, in the Council’s opinion:
  - a. the property’s actual current use (which is not an ancillary use) furthers the social wellbeing or the social interests (which include cultural, sporting or recreational interests) of the local community, and,
  - b. 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 wellbeing or social interests of the local community.

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3. For property not in current community use, the Act provides it may be listed if it has furthered the social wellbeing or social interests of the local community in the recent past (this is not defined in the legislation but it is suggested that it should generally be defined as “within the last 3 years” although each case will need to be considered on its own merits) and it is realistic to consider that it will do so again during the next 5 years.
4. It is proposed that the nomination will be considered by the Head of Policy and Performance (or their nominee) who will receive the application, validate it (by checking that the applicant is eligible to make a nomination and that the asset meets the definition of assets of community value) and prepare a report to a panel comprising of the Head of Policy and Performance, (who will Chair the panel), the Head of Regulatory Services and the Director of Legal and Governance (or their nominees). The panel would agree (within an 8 week period) to either accept or reject the nomination, with reasons given for the decision. The process of notification would be carried out by the Head of Policy and Performance or their representative.
5. The Regulations exclude certain categories of assets from listing. The principal one is residential property (although where this is integral to the community use (e.g. accommodation above a public house), this would not prevent a listing). Other exceptions are land licensed for use as a residential caravan site and the operational property of statutory undertakers.
6. If a nominated property is in the Havering area, meets the criteria, and is not excluded, it will be added to the list, which will be available to view on the Council’s website. The nominating organisation, the owner of the asset, the occupier (if different from the owner), parties with other legal interests in the property and the Local Land Charges Section must all be notified. This will be undertaken by the Head of Policy and Performance or their representative. The Council must also request that a restriction be placed on the property’s Land Registry title so that no transfers of ownership can occur unless the owner has complied with the requirements of the scheme. If the nomination does not meet the criteria it will be added to another list, the List of Assets of Unsuccessful Community Nominations.
7. Only the owner of the asset (and not the applicant) has the right to request an internal review of a decision to include the asset in the List of Assets of Community Value. It is proposed that if an owner requests an internal review, this will be completed by the Group Director of Communities and Resources (who will not have been involved in the original assessment and decision). If the owner is dissatisfied with the results of the internal review they will have the further opportunity to have an independent appeal heard at the General Regulatory Chamber of the First-Tier Tribunal.
8. 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. It is planning policy which primarily determines the particular uses of sites. However, the fact that the site is listed may be a material planning consideration for the Local Planning Authority to consider if an application

for a change of use is submitted. In the case of Havering, the planning policy position will be provided by the National Planning Policy Framework, the London Plan and the new Havering Local Plan (when it is adopted).

### **The Procedure when a Listed Asset comes up for Sale**

1. When the owner of a listed property decides to enter into a relevant disposal of that asset, they must notify the Council of their intention in writing. A “relevant disposal” is defined as the transfer of the freehold, or the grant or assignment of a lease originally granted for at least 25 years, giving vacant possession to the new owner. Certain disposals will be exempt from the scheme, for example, disposals made as a gift, transfers of property between members of the same family, transfers due to inheritance, disposal of the property as a going-concern and several other types of disposal which are set out in the Regulations.
2. If the disposal is not exempt, then the following process will be set in motion:
  - A 6-week “interim moratorium period” begins, in which the owner is not permitted to dispose of their asset.
  - The Head of Policy and Performance (or their nominee) notifies the nominating community group of the owner’s intention to dispose of the listed property and provides details of the interim and full moratorium periods as well as the end date of the protected period (see below). The community notification procedure is likely to also involve the display of a notice in the surrounding area and information on the Council’s website
  - During these 6 weeks, eligible community interest groups may request in writing to be considered as a potential bidder for the property, otherwise the owner will be free to sell on the open market when the 6-week period is over (and will be further covered by a Protected Period – see below).
  - If the Council receives a written request from an eligible community interest group to be treated as a potential bidder, it must notify the owner accordingly. A longer “full moratorium period” will then be triggered, in which the community group has time to raise capital and prepare their bid, and in which the owner cannot sell the property (unless it is to an eligible community interest group). This period lasts for 6 months from the date that the owner originally expressed their intention to dispose of the property. The owner may continue to market and negotiate sales in this period but may not exchange contracts (or enter into a binding contract to do so later).
  - At the end of the 6-month full moratorium period, the owner is free to dispose of the property to any buyer of their choosing and at whatever price, provided they do so within what is called the Protected Period. They are under no obligation to accept any community group’s offer – the scheme does not offer a “right of first refusal” to community groups. It is a way of delaying the disposal of a listed property in order to make sure that local people get a fair chance to bid for properties that are of

value to their community and to attempt to retain these properties in public use and as part of local life.

- The Protected Period lasts for a total of 18 months from the date the owner expressed their intention to dispose of the property. The Protected Period means that if the owner does not dispose of their property at the end of the interim or full moratorium periods, there will be the remainder of the protected period (i.e. 12 months) in which they are permitted to dispose of the property, without triggering any further delays. If no relevant disposal is entered into during this time, when the Protected Period ends, another period of delay may apply to their planned disposal.
3. If a listed property is sold without complying with the notification and moratorium requirements of the scheme, then any transfer of the property to a new owner will be void. It is also worth emphasising that that this process only applies to “disposals” and therefore if a building listed as an asset of community value is to be demolished without being sold, the above moratorium rules do not apply.

### **Compensation**

1. Compensation is available to private owners for any loss or expense incurred as a result of their property being listed or previously listed. An example of a compensation event is a loss of value due to a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period, or for legal expenses incurred in a successful appeal to a tribunal. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the Regulations allow for claims for loss or expense arising simply as a result of the property being listed. The time limit for an owner to make a compensation claim is whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the property ceases to be listed.
2. The burden of proving the claim falls on the owner and no time limit is specified for a local authority to respond to the claim. It is proposed to delegate this decision to the Director of Asset Management Services. An owner who is not satisfied with the local authority’s response to their compensation claim may request an internal review of the decision, which must take place within 8 weeks. It is proposed that this is delegated to the Group Director of Communities and Resources. If still unsatisfied with the review’s decision, the owner may then appeal to the General Regulatory Chamber of the First-tier Tribunal. On the issue of funding the guidance note states:

*“As with other costs incurred by local authorities in meeting the requirements placed on them, we have reflected the estimated costs of compensation within the new burdens funding. The compensation elements of new burdens funding are estimated on the basis of 40*

*successful claims for compensation across all administering local authorities over a year.*

*In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims,”*

### **How the Scheme will be administered in Havering**

It is proposed that the scheme be administered by Officers of the Council as it is highly procedural in nature. It is proposed that the various elements of the scheme be delegated to officer level as follows:

To the Group Director of Communities and Resources:

- Power to make decisions on listing, to maintain and publish a list of assets of community value (and a list of unsuccessful nominations), to give notification of inclusion or removal of land from list, to receive notice of and to publicise receipt of notice of intended disposal of land and subsequent steps
- Power to review decisions to include land on the list of assets of community value and to review compensation decisions

To the Director of Asset Management Services:

- Power to administer the compensation scheme associated with assets of community value

## **REASONS AND OPTIONS**

### **Reasons for the decision:**

The requirement to manage this process is set out in the Localism Act 2011 and the Council needs to have processes in place to handle requests as and when they are submitted.

### **Other options considered:**

Alternative delegation arrangements considered. This included delegating power to the Director of Asset Management Services to make decisions on listing etc. but this was not proposed as there could be a potential conflict of interest if a nomination was made in respect of Council land.

**IMPLICATIONS AND RISKS**

**Financial implications and risks:**

The cost of set up and administering this scheme can be contained within existing budgets. The Act requires the Council to investigate legal title for any private properties that are nominated, via the Land Registry, for which there is a small fee of approximately £40. As reported above, very few compensation claims are envisaged, and the authority will be reimbursed for any costs above £20k in any one year. Funding would need to be identified, should successful claims arise, up to that £20k level. From 2015/16, there is no new burdens funding for Community Right to Bid.

**Legal implications and risks:**

Potential legal challenge if the Council does not have the correct procedures in place to handle requests for listing and reviews.

**Human Resources implications and risks:**

Additional resource implications, depending on the number of requests received.

**Equalities implications and risks:**

This report sets out the Council's procedure to manage any nominations made for listing of community assets under the Localism Act. The procedure will need to be accessible for disabled people and comply with the Council's policies and procedures regarding accessible communications and reasonable adjustments for disabled people and groups.

The Community Value aspect of the Localism Act does not provide local community groups with the "right of first refusal", instead it provides a fairer chance to obtain assets, such as creating a longer "full moratorium period" in order to allow the group to raise capital and prepare a bid. If community groups undergo this process and are successful in bids, there could be public assets available for use for vulnerable groups and people with different protected characteristics.

**BACKGROUND PAPERS**

Letter from Stephen Williams MP – 19<sup>th</sup> January 2015.