
ASSETS OF COMMUNITY VALUE

**Responsible Cabinet Member - Councillor Chris McEwan,
Economy and Regeneration Portfolio**

Responsible Director - Richard Alty, Director of Place

SUMMARY REPORT

Purpose of the Report

1. To recommend procedures and arrangements to implement new duties under the Localism Act 2011 relating to assets of community value.

Summary

2. The Assets of Community Value provisions came into force on 12 October 2012 under the Localism Act 2011. The provisions are explained in the main report and draft operational policy (**Appendix One**) but in summary certain community groups have rights to nominate assets of community value. The local authority has a duty to maintain a list of nominated assets. If these assets are made available for sale communities can halt the sale for a period of time to enable them to bid for the asset. Darlington Borough Council needs to put in place procedures and arrangements to implement its new duties, which include determining nominations, maintaining and publishing the list of nominated assets and other associated activities.

Recommendations

3. It is recommended that :-
 - (a) the Assistant Director – Policy & Regeneration be given delegated powers to deal with all aspects of statutory function relating to assets of community value
 - (b) without limiting the ability of the Assistant Director to determine how to discharge the function the suggestion of Cabinet is that:
 - (i) powers be sub delegated to the Head of Regulatory Services to maintain the list of assets of community value, the list of unsuccessful nominations and to receive, process and make decisions about the listing of assets and claims for compensation that arise

- (ii) Requests for reviews of any decisions about the listing of an asset or for compensation will be heard by the Assistant Director – Policy & Regeneration
- (c) a period of 5 years be adopted as the time period after which listed assets of community value and failed community nominations should be removed from the lists;
- (d) where nominations for assets to be included as being of community value rely on a use in the recent past, this be regarded as a period of no more than 5 years preceding the date of nomination; and
- (e) the Council's Scheme of Delegation to officers be amended, to include a new legal exception as follows:
 - (i) To carry out powers in relation to Assets of Community Value under part 5 Chapter 3 Localism Act 2011.
 - (ii) Under the heading Officer.

Powers to determine whether an asset should be placed on the list - Head of Service. Powers to determine reviews - Assistant Director Policy and Regeneration.

Reasons

4. The recommendations are supported to enable the Council to meet its duties under the Localism Act 2011 with respect to Assets of Community Value by the following reason:-

Richard Alty, Director of Place

Background Papers

Localism Act 2011

Assets of Community Value (England) Regulations 2012

Bill Westland : Extension 2552

S17 Crime and Disorder	This report has no implications for crime and disorder.
Health and Well Being	Assets of community value can support health and wellbeing and has the potential to help secure the future of such assets.
Carbon Impact	There are no carbon impact implications in this report.
Diversity	There are no specific issues relating to diversity.
Wards Affected	All wards are affected equally.
Groups Affected	The report affects all groups.
Budget and Policy Framework	This decision does not represent a change to the budget and policy framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	The content of the report has the potential to contribute to health and wellbeing by providing for assets of community value to be the subject of a bid by community groups.
Efficiency	The report does not identify and specific efficiency issues.

MAIN REPORT

Information and Analysis

5. Part 5, Chapter 3 of the Localism Act 2011 has introduced a new community right to bid with respect to assets of Community Value. This right allows certain defined community groups to nominate assets of community value. The nomination must be assessed by the Council and approved or rejected. The Council must maintain two published lists of assets of community value: one for successful nominations and one for unsuccessful nominations (including reasons).
6. An asset of community value is defined as:-
 - (a) buildings or land where the current primary use furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community, AND it is realistic to think that now or in the next five years there could continue to be a primary use that will further the social well-being or social interests of the local community (whether or not in the same way as it is currently used).
 - (b) Or the buildings or land are not currently of community value but in the recent past (five years) the primary use was to further the social well-being or social interests of the local community AND it is realistic to think that in the next five years there could be primary use of the building/land which will further the social well-being or social interests of the local community (whether or not in the same way as before).

7. The buildings or land can be in public or private sector control and therefore can include things such as play areas, sports pitches, libraries, village halls, pubs and local shops. Some buildings and land are exempted such as residential accommodation.
8. The bodies listed below are the only ones entitled to make nominations:-
 - (a) A Neighbourhood Forum (a body designated as such pursuant to Section 61(f) of the Town and Country Planning Act 1990 as established by the Localism Act 2011).
 - (b) A Parish Council.
 - (c) An unincorporated body having at least 21 members and which not distribute any surplus it makes to its members.
 - (d) A charitable organisation.
 - (e) A company limited by guarantee that does not distribute any surplus it makes to its members.
 - (f) An industrial and provident society being a body registered or deemed to be registered under the Industrial and Provident Societies Act 1965, which meets one of the conditions in Section 1 of the Act, and that does not distribute any surplus it makes to its members.
 - (g) A community interest company group (a company that satisfies the requirements of Part 2 of the Companies (Audit Investigations and Community Enterprise) Act 2004).
9. Once a nomination is accepted the building or land must be registered by the Council with the Land Registry. Assets will typically remain on the list for five years. The owners of land or buildings listed by the Council as an asset of community value are required to inform the Council of their intention to dispose of the asset. This triggers a moratorium period during which time community groups can prepare and submit a bid to purchase the asset. The right does not restrict who the owner of a listed asset can sell the property to, or at what price, and does not confer a right of first refusal on the bidding community group.
10. Owners of assets who suffer loss or expense as a consequence of their asset being listed as an asset of community value can claim compensation from the Council.
11. The Council needs to set up a number of procedures and arrangements to implement the new duty. These include:
 - (a) To make decisions on submitted nominations. This includes determining whether the nomination is complete, whether the asset is actually of community value, and determining whether the nomination should be approved.

- (b) To hear and determine appeals by the owner of an asset against the Council's decision to include an asset on its list of assets of community value.
 - (c) To publish lists of successful and unsuccessful nominations. (It is intended that a web page be set up to include nomination application forms and guidance, as well as lists of successful and unsuccessful nominations).
 - (d) To determine a definition of "recently" in the context of the definition of a community asset being "a building or land the main use of which is or has recently been to further the social wellbeing or social interests of the local community".
 - (e) To establish a compensation scheme and arrange for the adjudication and payment of any compensation claimed by owners of assets.
 - (f) The legislation states that after a period of time following inclusion, assets on the list and failed community nominations should be removed. The legislation suggests this period be 5 year period but the Council can determine a different time scale if it so chooses.
12. Much of the new duty will be met by setting up administrative procedures. However, several elements within the duty require formal decision making processes to be set up. The recommendation is that the Assistant Director – Policy & Regeneration be given delegated powers to deal with all aspects of statutory function relating to assets of community value.
13. A draft operational policy has been prepared and is attached as **Appendix One**. The draft includes the following courses of action.

Decisions on Nominations

14. The Head of Regulatory Services will have the primary responsibility for dealing with nominations and determining whether assets should be listed and also whether owners of assets that are listed should be compensated for any losses occasioned by the asset being listed.
15. Requests for reviews of any decisions about the listing of an asset or for compensation be heard by the Assistant Director – Policy & Regeneration.

Definition of "recent past"

16. The definition of an asset of community value (stated in paragraph 8) includes buildings or land where the primary use that furthers the social well-being or social interests was in the *recent past*. The Council may determine its own definition what this means. It is suggested that recent past be taken to mean within five years of the date of the nomination, the reason being that it is reasonable for the Council to hold documentation on the property to determine its usage over that period.

Removal of assets from the List

17. It is proposed that the Council adopt 5 years as the time period after which assets on the list and failed community nominations should be removed. This is in keeping with the period suggested in the relevant legislation and associated guidance.

Financial Implications

18. Existing resources will be used to manage applications, appeals and enquiries. There is, however, a financial risk associated with the right to claim compensation. A new burdens payment of £4,873 has been made in recognition of costs associated with the new duties and, subject to Parliamentary approval, further payments will be made in both 2013 and 2014. At this point in time it is not possible to estimate how much compensation payments may amount to, other than to confirm that the financial risk to the Council will not exceed £20,000 in any one year as the Government has undertaken to meet any costs arising from compensation claims and exceeding this sum in any year. There will also be a cost involved in registering assets with Land Registry.

Legal Implications

19. The Council has a legal duty to properly meet its obligations under the Localism Act with respect to Assets of Community Value. The contents of this report will ensure that this new duty is met.

Equalities Considerations

20. An initial assessment of the process for dealing with nominations does not highlight any issues for protected characteristic groups as defined in the Equality Act 2010 but it will be important to monitor cumulative impacts at a strategic level as well as impacts of individual proposals. This strategic overview and individual impact assessment will form part of the process of defining community value to ensure that no protected characteristic groups as defined in the Equality Act 2010 are treated less well than other groups whilst also ensuring that we meet the public sector duty to promote equality where possible.

Consultation

21. Parish Councils will be consulted on the detailed arrangements as they are developed but no consultation has been carried out to date.