

<b>DECISION-MAKER:</b>	CABINET
<b>SUBJECT:</b>	COMMUNITY RIGHT TO BID – DECISION MAKING & GOVERNANCE.
<b>DATE OF DECISION:</b>	18 DECEMBER 2012
<b>REPORT OF:</b>	CABINET MEMBER FOR RESOURCES AND CABINET MEMBER FOR COMMUNITIES
<b>STATEMENT OF CONFIDENTIALITY</b>	
None	

### **BRIEF SUMMARY**

The Government has introduced legislation under the banner of “Community Right to Bid”, as part of their commitment to Community Empowerment, within the Localism Act 2011. The Assets of Community Value (England) Regulations 2012 (the Regulations) sets out the basis for the new “open approach” to Community Assets (Assets of Community Value) and their subsequent disposal. The Regulations ensure that community organisations have a fair chance to bid for assets and facilities that are important to them before they are sold elsewhere. The Regulations came into force on 21<sup>st</sup> September 2012. There is currently no specific authority in place to enable the Council to make a Decision about any nomination, review or compensation claim which may come forward under these Regulations.

### **RECOMMENDATIONS:**

- (i) That authority be delegated to the Communities Manager to consider and determine Nominations to List Assets of Community Value following consultation with the ward councillors in which the property is located and other consultees as appropriate, including relevant Council officers, representatives from partner agencies and community spokesperson/people as relevant and appropriate
- (ii) That authority be delegated to the Senior Manager – Communities, Change and Partnership to consider and determine Reviews of the Listing of Assets of Community Value following consultation with the Cabinet Member for Communities and Cabinet Member for Resources and other consultees as appropriate, including relevant Council officers, representatives from partner agencies and community spokesperson/people as relevant and appropriate.
- (iii) That authority be delegated to the Senior Manager - Property, Procurement and Contract Management to agree the payment of compensation.
- (iv) That authority be delegated to Chief Internal Auditor (Head of Partnership) to determine Compensation Reviews.
- (v) That authority be delegated to the Head of Legal, HR and Democratic Services to approve the application and removal of Local Land Charges and Title Restrictions on a Listed property’s title preventing disposal of the property in accordance with the Regulations.

- (vi) That the Governance Committee be requested to review the governance arrangements pertaining to the Council's Community Right to Bid scheme as part of the annual review of the Council's Constitution, and recommend any amendments as necessary.

## **REASONS FOR REPORT RECOMMENDATIONS**

1. The Regulations came into force on 21<sup>st</sup> September 2012. There is currently no authority in place for any officer within the Council to determine any Nomination for listing an Asset of Community Value, to determine a Review request made against a decision to List or for the approval for the payment of compensation made by an affected owner.
2. The potential number of Nominations, Reviews and Compensation claims is unknown at this stage. In order to manage the decision making process in the most effective and efficient manner the provision of delegated powers permitting officer decision making is considered the most appropriate mechanism for processing these type of applications given the statutory timescales imposed.
3. A decision cannot be taken by Senior Manager for Property, Procurement and Contract Management in respect of Nominations and Reviews as a conflict of interest arises where the City Council owns a property that has been nominated. From a property point of view it may be preferable to the Council for a nominated property not to be listed, as listing could delay disposal and affect dealings with the property in future. The decision should therefore be made by an officer who is, and can be seen to be, independent of the property function. In addition, whilst the decisions affect property, the regulations enable Community Empowerment, and therefore the decision needs to be made on a community benefit rationale. It is not a decision about property per se, but about whether property has, or could have, a community benefit. The key issue is therefore about community benefit, not the property itself.
4. The Regulations mean the Council will need to make decisions not just on its own property but also on property owned by private individuals and other Public and Private Sector bodies in the City. A transparent approach to Community Value needs to be taken through the decision making process which can be achieved by the Communities Manager being the lead officer involving other consultees as appropriate.
5. At the point of Listing after Nomination or Review, the Council is required to place a Local Land Charge against the property and place a restriction on the title in order to prevent owners selling without complying with the Regulations. The removal of these restrictions is a legal function (as it affects property that is not owned by the Council as well as property that is) and authority to remove following compliance should fall to the Head of Legal, HR and Democratic Services.
6. The owners of properties that are listed and are subject to the moratorium periods and prescribed disposal procedures, are entitled to claim for compensation from the Council for losses and expenses incurred as a result of the listing, and thereby delaying a disposal by moratorium periods of the 6 and 20 week windows of opportunity. The assessment and negotiation of the

claim relates to property issues and should therefore be determined by the Senior Manager – Property, Procurement and Contract Management.

7. The compensation claimant has the right to request a Review of the compensation offer. The Review is to be taken by an officer of appropriate seniority and a person who has not taken part in the original claim decision. The Review must be undertaken within 8 weeks of the request for a Review. The Review therefore will be determined by Chief Internal Auditor (Head of Partnership) as a senior officer who has not been involved in any previous decisions associated with the property. The Delegation is required in order to comply with the timescales set out by the Regulations.

#### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

8. Decision making to be conducted through Cabinet – rejected due to the timescale imposed by the Regulations and the ability for the owner to seek an oral hearing. A Nomination must be determined within 8 weeks of submission. A Review request is to be made within 8 weeks from 'Listing' and enables the owner to request an oral hearing for the Review.
9. Utilise existing delegated authority – there is not any existing delegated authority within the Officer Scheme of Delegation which covers the various authorities required for these new regulations.

#### **DETAIL (Including consultation carried out)**

10. The Assets of Community Value (England) Regulations sets out the basis for the open approach to Community Assets (Assets of Community Value) and their subsequent disposal.
11. An 'Asset of Community Value' is not described precisely in the Localism Act or the Regulations; the Government have enabled Local Authorities to have some flexibility to decide what constitutes an Asset of Community Value in their areas. The Act prescribes that a building or other land in a local authority's area is land of community value if in the opinion of the authority:-
  - a. an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social 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.
12. The Regulations which came into force on 21<sup>st</sup> September 2012, entitle a community or voluntary body to nominate public or private properties to be included on a list of assets of community value (the List) and for the relevant local authority to determine nominations and maintain the list for properties in its area.
13. If the property owner then wishes to dispose of a listed property it must advertise this and Regulations allow a 'window of opportunity' for community groups to make a bid/business case to acquire it before the property can be sold on the open market. However, there is no presumption that a community group has a right to purchase or that the owner will have to dispose of the property to them, or accept a value below its market value.

14. There are strict procedures and processes to be followed and this report sets out the authorities required to implement the Regulations.
15. The Council cannot nominate either its own or other properties; the Council is to be the decision making and monitoring body. The Council will be responsible for compiling and managing the list, making decisions as to what should and should not be included, and liaising with the relevant property owners.
16. Once an asset is nominated by an eligible community or voluntary body group (for which there is a specific criteria) the Council must consider whether the nominated asset meets the definition of 'community value'. If it does, it must be placed on the List. The Regulations require that before making the decision Local Authorities should contact the landowner to seek their views. Following a decision by the Authority to 'List' a property, the owner will have a right to request that the Council carry out an internal review of that decision. The owner may be able to further challenge this through an external First –Tier Tribunal (an independent body).
17. Local authorities will be required to publish the List, as well as a list of assets that are unsuccessfully nominated. Once placed on the List, an asset will remain on it for a period of five years or until sold if within the five year listing period.
18. To ensure that community groups are given the opportunity to bid for listed properties, a Local Land Charge and a Restriction on the property's title must be placed at the point of 'Listing' to prohibit a sale until the Council have been satisfied the vendor has complied with the regulations. The Council must then notify the nominating community/voluntary group of the intended sale. If an asset is placed on the List, this means that when the owner wants to sell they must inform the Council.
19. If an owner wishes to sell, a community group will be given an initial six week period to decide whether they wish to be considered as a potential purchaser. If a group indicate they wish to be considered as a potential purchaser the owner must wait a further 20 weeks before entering into a sale, thus allowing the group the opportunity to raise funds and make an offer during that 20 week period. The property can be advertised during the 20 week period.
20. There is no obligation on the owner to sell to the community group. After the expiry of the initial 6 weeks and, if applicable, the subsequent 20 weeks, the owner will be free to sell to whoever and on whatever terms they wish.
21. There will be a compensation scheme for owners for costs and losses incurred as a result of listing which would be unlikely to have been incurred if the land had not been listed. This is expected to relate primarily to costs and expenses incurred as a result of complying with the procedural requirements of the scheme during the 6 and 20 week windows. The Council will have to administer this process and meet the cost of compensation. The Council will be able to seek a refund of compensation claims from Central Government over £20,000 for either single or cumulative claims as part of the new Burdens Assessment. The period for these refunds is unclear.

22. The owner will be able to seek a Review (appeal) of the compensation offer. The Review must be undertaken by a senior officer who was not involved in the original compensation decision. The Review must take place within eight weeks of the request. An impartial officer within the Audit Risk and Assessment has been identified as the appropriate person to implement a Review Decision. If the applicant is still dissatisfied with the financial offer following Review, they can apply to the First Tier Tribunal a new tribunal within the Lands Tribunal chamber. The compensation decision will then become an external decision, at which the Council will need to provide representation.

## **RESOURCE IMPLICATIONS**

### **Capital**

23. There are not any direct capital implications in implementing the Regulations and setting out the governance for these regulations.

### **Revenue**

24. The Regulations prescribe several new systems which have been set up to manage the Nomination process, Review process and Compensation Claims procedure. These will be resource intensive and lengthy in duration. Most of the detailed work will be undertaken by Capita under the Strategic Services Partnership (SSP) contract but as this is a new service, this will be subject to additional charges. Any revenue pressures which cannot be absorbed within existing budgets need to be addressed in the development of the budget in future years.
25. One-off set up costs have also been incurred for the construction of the web pages and online forms and there will be ongoing charges for the maintenance of these pages. To date these unplanned costs have been met from existing property management budgets following a re-prioritisation of work. However, a more detailed assessment of the estimated financial impact will be undertaken as potential numbers of nominations are processed.
26. In addition to these one-off set up costs and ongoing management costs, the Council will be required to pay compensation to land owners. The Regulations do not set out which losses and expenses are to be compensatable or which will be exempt. It is for the Local Authority to assess an owner's losses and expenses incurred. Each claim will therefore have to be considered on its own merits. The quantum of compensation will also depend upon the type of property and the prevailing market conditions. '4
27. Within the new burdens assessment, the Government will meet costs of compensation payments of over £20,000 of compensation costs in a financial year, This could occur through the Council paying out over £20,000 in one financial year either on one large claim or as a combined total on a number of smaller claims. This currently limits the Council's liability to £20,000 in any one financial year.
28. These Regulations affect the Council's own property portfolio. Any property which is subject to 'Listing' will need to comply with the Regulations, the Council is not exempt from these procedures.

## LEGAL IMPLICATIONS

### Statutory power to undertake proposals in the report:

29. The Council is required to make appropriate arrangements to fulfil its duties in relation to the Community Right to Bid scheme contained within the Localism Act 2011 and subordinate legislation.

### Other Legal Implications:

30. The Scheme is intended to provide adequate protection to the Council in the event that an affected property owner suffers a loss attributable to the Scheme whilst attempting to sell that property. The Council should be mindful that as no indemnity has been provided by the Government, liability may arise in unanticipated circumstances for which the Council may become responsible by default at least in the first instance.

## POLICY FRAMEWORK IMPLICATIONS

31. The implementation of these regulations is one element of the Government's 'Localism Agenda' which is focussing on placing more power in the hands of communities. The Regulations whilst property drive, accord with the Council's wider community Strategy.

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**KEY DECISION?** Yes

<b>WARDS/COMMUNITIES AFFECTED:</b>	All
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### SUPPORTING DOCUMENTATION

#### Appendices

1.	None.
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#### Documents In Members' Rooms

1.	None.
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#### Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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#### Other Background Documents

#### Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1. None	