

EAST HERTS COUNCIL

EXECUTIVE - 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR
COMMUNITY SAFETY AND ENVIRONMENT

COMMUNITY ASSETS

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report outlines the provisions relating to the 'Community Right to Bid' and the implications for the Council resulting from the requirement to hold the list of assets of community value.

<u>RECOMMENDATIONS FOR EXECUTIVE: That:</u>	
(A)	the proposed process for compiling the list of assets of community value involving the Director of Neighbourhood Services in consultation with Executive Member for Community Safety and Environment and ward Members be approved; and
(B)	the proposal that internal reviews of listing decisions and compensation decisions are undertaken by the Director of Finance and Support Services be approved.

1.0 Background

1.1 As a result of the Localism Act local communities have the ability to nominate assets of community value for inclusion on a list maintained by the Council. This report outlines the provisions relating to the 'Community Right to Bid' and the implications for the Council resulting from the requirement to hold the list of assets of community value.

2.0 Report

2.1 The Localism Act put in place provisions to help community interest groups take over local amenities called “assets of community value” that are threatened with closure. Assets may be nominated for inclusion on a list and the disposal of listed assets is delayed to allow local groups time to put together a bid to acquire them. This could delay a proposed disposal by up to six months.

Many disposals will not in fact be included as the moratorium appears not to apply as long as the property is occupied at the time of the disposal. The regulations exempt disposals within a group of companies and the sale of shares in the property owning company appears not to be affected.

Compensation will be payable for loss or expense incurred as a result of the property being listed.

What is an Asset of Community Value?

Land or buildings can qualify as assets of community value if their current or recent non-ancillary use “furthers the social well-being or social interests of the local community” and it is “realistic” to think that such a use can continue, whether or not in the same way. A decision needs to be made about when is a use “non-ancillary”. It is not clear what evidence needs to be before the Council in determining whether in their opinion a relevant use is “realistic”. If in the opinion of the Council there is a time in the recent past when an actual non-ancillary use fulfilled the two objectives and it is realistic to think that in the next 5 years there could be a non-ancillary made which met either of the two objectives then it is land of community value. “Recent past” is not defined.

Examples include a village shop, pub, community centre, children’s centre and allotments. Under the regulations, residential property is excluded but a building only partly used as a residence is not. So, for example, a shop or a pub with living accommodation above could be listed. Hotels and holiday homes count as residential for this purpose. Simply having planning permission for a residential development does not bring property within the exclusion, even if construction of the development has started.

Compiling the List

There is an obligation for the Council to maintain lists of land that

is of community value and land which has been the subject of unsuccessful attempts to have it listed. Nominations for listing may be made by a Town or Parish Council or a “voluntary or community body with a local connection” as defined in the regulations. Once a nomination is made, the Council must notify the owner and occupiers of the property and will have eight weeks to decide whether to list the property. If the property is listed, there is another eight week period during which the owner can request a review of the decision. The review must then be carried out within eight weeks and if the decision is still to list the property, the owner has a right of appeal to the First-Tier Tribunal. Once listed, the property will remain on the list for a maximum of five years.

Which Disposals Are Affected?

The rules apply to disposals of the freehold or a leasehold interest of at least 25 years with vacant possession. The moratorium will not apply as long as the property is occupied at the time of the disposal. Certain disposals are exempt, such as gifts, disposals to family members or by personal representatives and a disposal of part of a business sold as a going concern.

The regulations add some further exemptions including disposals in pursuance of a planning obligation, option or pre-emption right made before the land was listed, disposals by a mortgagee under a power of sale and disposals within a group of companies. The disposal of shares in the property owning company appears not to be covered.

The Moratorium

If the owner of a listed asset of community value wishes to make a disposal to which the rules apply, the first step is to notify the Council of the owner’s wish to enter into a relevant disposal. There appears to be no requirement to give details of the price or any other terms of the proposed disposal. There is then a six week interim moratorium on entering into the disposal to give community interest groups an opportunity to make a written request to be treated as a potential bidder for the property. If such a request is made during that six week period, then a full moratorium comes into effect, which lasts until six months after the original notification was made. The full moratorium is to give the community interest group time to make a bid for the property. If the group makes a bid, the owner is not obliged to accept it, even if it matches or exceeds the owner’s asking price or terms

which the owner has agreed with a proposed purchaser. Once the full moratorium has ended, there is a protected period of eighteen months from the original notification during which the relevant disposal may be entered into, but after that period has ended the procedure must start again.

A disposal is “entered into” when an agreement for the disposal becomes binding, which means that it will not be possible to exchange an agreement during the moratorium to be completed afterwards. It is not clear whether an agreement conditional on no bid being made by a community interest group would be regarded as “binding” for this purpose.

The timing of the notification to the Council is important. It seems it is not necessary to wait until terms are agreed in principle before giving the notice and the longer the owner waits before giving the notice, the longer the delay before the disposal can proceed. However, if notice is given too early it will start the eighteen month protected period running, with the risk that time could run out before agreements are exchanged and the whole process would have to be gone through again.

If a disposal is made in breach of the rules, the regulations provide that it will be ineffective unless the owner was unaware that the property was listed, having made all reasonable efforts to find out if it was.

Compensation

Compensation can be claimed for loss or expense incurred as a result of the property being listed. That may include loss resulting from a delay in disposal caused by the moratorium and also reasonable legal expenses incurred in a successful appeal to the Tribunal (but not costs in connection with a review of the authority’s decision on listing or on compensation). The claim must be made to the local authority within 13 weeks after the loss or expense was incurred and must state the amount claimed and include supporting evidence. Once the claim is decided, there is an eight week period to request a review of the decision. If a review is requested it must be carried out within eight weeks. There is a right of appeal to the First-Tier Tribunal.

Procedure

The Council will be required to maintain a list of assets of community value and maintain a list of properties where

nominations have failed. The Council will be responsible for notifying owners and occupiers of listings and receipt of notices, and for publicising the possible sale of a listed asset. The Council will also administer the compensation scheme.

The recommended approach is:

1. Officers would receive a nomination and ensure that the nomination was from valid community group and establish whether the property appears to fit the criteria. If the nomination is clearly invalid or incomplete, the applicant would be informed with the reasons for the decision.
2. Consultation would take place with the owner and any other interested parties who would be given up to 6 weeks to respond. Ward Members would be consulted at this stage.
3. Officers would prepare a report with a recommendation.
4. The Director of Neighbourhood Services in consultation with Portfolio Holder for Community Safety and Environment makes the decision. The owner and nominating body would be informed of the decision.

Internal Review Process

An owner has the right to have the decision to list a property reviewed. The request for the review has to be made within 8 weeks and the review determined within 8 weeks (unless otherwise agreed with the owner). The provisions require that the review is to be undertaken by a senior officer not involved in the initial decision. Similarly no elected Member involved in the decision to list may be part of the review process.

It is proposed therefore, that the Director of Finance and Support Services undertakes the review. Similarly it is suggested that they would undertake any review relating to compensation.

There is no provision within the legislation for review of an unsuccessful community group nomination. It would not therefore be within the Council's powers to make provision for such a review as this would be unenforceable and open to challenge by an owner.

Compensation: it is not clear what might constitute a claim for compensation but the DCLG has indicated that it will for the time being fund the cost of compensation (although the local authority will administer the claim). It is proposed that officers assess the compensation claims and decisions on eligible costs and levels of compensation are made by the Director of Finance and Support Services.

Council owned property: the List of Assets of Community Value and the corresponding community right to bid apply equally to Council owned property and to privately owned property.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Localism Act 2011

The Assets of Community Value (England) Regulations 2012-

<http://www.legislation.gov.uk/ukdsi/2012/9780111525791/contents>

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