

Cabinet Member Decision Making session – Finance Performance and Customer Service

Report of the Assistant Director of Finance, Asset Management and Procurement

Review of applications for Community Right to Bid under the Localism Act 2011

Summary

1. The Assets of Community Value (England) Regulations 2012 are now in force and require the local authority to maintain a list of 'Assets of Community Value'. This report sets out the requirements of these regulations and proposals for establishing and maintaining this list and the process for dealing with any applications. It also presents the first applications for listing of assets for consideration by the Cabinet Member.

Background

2. The Localism Act 2011 received Royal Assent in November 2011 and contained a number of provisions relating to new community rights. One of these is the 'Community Right to Bid' and this part of the Act (Part 5 Chapter 3) and the subsequent Assets of Community Value (England) Regulations 2012 have now come into force.
3. The purpose behind these provisions is to ensure that property (land and building) assets which are currently used to the benefit of the local communities are not disposed of without the local community being given a fair opportunity to bid for these assets when they are put on the open market. This right is not simply to accommodate 'public assets' but also private assets, the test is whether such assets are viewed as 'assets of community value'. These assets therefore could be currently owned by the public, private or voluntary sector.
4. The definition of 'community value' is set out in the regulations and can be summarised as

- The actual current use of the building/land furthers social well being or the social interests of the local community
 - Realistically this use can continue for the next 5 years
 - There was a time in the recent past where actual use furthered these aims.
5. There is no exhaustive list of what is considered to be an asset of community value but cultural, recreational and sporting interests are included. Excluded specifically are residential type properties (such as hotels, housing in multiple occupation and residential caravan sites) and operational land of statutory undertakers.

The process

6. The regulations set out how potential assets can be listed which in brief is as follows:
- **Nomination** – this can be by a voluntary or community body with a local connection. Includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils). The nomination needs to include specific information – description, name of occupiers and owners, reasons for ‘community value’, evidence of validity of nominator.
 - **Consideration** – the local authority has 8 weeks to make the decision which is decided by an ‘appropriate group’. It is suggested that this ‘appropriate group’ is the Capital and Asset Board (CAB) which is already in operation and has cross-Council representation at a senior level (the Board is chaired by the Director of Customer and Business Support Services). The Capital and Asset Board will make a recommendation to the Cabinet Member for Finance Performance and Customer Service who will then formally take the decision. If the nomination is successful the asset details are entered onto the ‘Community Value list’ – see below – and also the local land charges register. If unsuccessful then the details are entered onto an ‘unsuccessful nominations’ list for a period of 5 years to prevent repeat nominations. The owner can request a review of the decision which must be completed within 8 weeks and the owner can further appeal within 28 days of the review outcome to a Tribunal.
 - **The ‘Assets of Community Value’ List** – this needs to be published and reviewed regularly and must be accessible in electronic and paper format. It is suggested that a paper copy is kept at West Offices and

there is easy access to the electronic format on the Council's website. It is also suggested that the list is maintained by City and Environmental Services Directorate within their planning and land charges function. The review of the list will be a function of the Capital and Asset Board. Entries are removed if an asset is sold, there is a successful appeal or after 5 years.

- **Disposal of assets on the list** – if a building or piece of land which is on the list is going to be sold with vacant possession then the owner of the asset needs to give notice to the local authority. There is then a 6 week moratorium period for any community group to express interest in writing and if they do then a 6 month period for that group to prepare its bid. After that period the owner can market the property and any bid from the community group will be considered with bids from other interested parties. There is no guarantee that the offer from the community group will be successful as the owner of the asset will dispose of the property in accordance with its own criteria for disposal.
 - **Compensation** – the presence of the land or building asset on the community value list may result in additional expenditure or a loss to the owner and therefore the owner can apply for compensation from the local authority. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value). This compensation is determined by the local authority (it is suggested that this is carried out by the Capital Asset Board) and the owner can have the compensation reviewed within 8 weeks and appeal to a Tribunal if still not satisfied. It should be noted that compensation can only be claimed by private owners (no compensation for public authorities) and the government has not provided any funding for this compensation (or for any costs associated with any of these provisions).
7. The part of the Localism Act and Regulations detailed above are in force and therefore the Council needs to establish the List and implement the process outlined above. The Council needs to ensure that the List of Assets of Community Value is publicised and made easily accessible and that community groups and the public are aware of how nominations can be made and how the process works.
 8. The introduction of this legislation may possibly delay the sale of any asset which is on the list for at least 6 months if the community expresses an interest in it. For City of York Council this will mean a potential delay in

obtaining any capital receipt to fund the capital programme which will increase borrowing requirements. However this is only a short delay (the original proposal was for 12 months) and with so many other factors (such as market conditions, planning etc.) causing potential delay on disposal of assets the impact will be minimal

9. It could have an affect on the capital receipt obtained as the fact that the asset is on the list could dissuade other organisations and companies from bidding for the property as they would be in 'competition' with a community group. Again it is felt this will only be a minimal impact and will only apply to assets that satisfy the criteria for listing.
10. As detailed above there are a number of costs associated with this process including any compensation costs (see para 6). No funds are being allocated from central government and therefore any costs will need to be funded from the Council's own reserves. The amount of these is unknown.

Applications for Listing Community Assets

11. The Council has just received a number of bids for placing assets on the Community Asset List. The full applications are attached as Annexes and a summary of the bid and the recommendation of the Capital Asset Board is set out below.

Golden Ball Community Pub

12. The freehold of the Golden Ball is owned by Enterprise Inns. The lease of the Pub was bought last year by a group of individuals who have established a co-operative to run the pub. They operate the pub but also organise a wide range of community activities such as debates, live music, theatre, fresh bread selling and community picnics. They have applied to add the property to the List of Community Assets. The Co-op are keen to buy the freehold should it be sold to ensure the long term future of the community pub. The response of the owner of the freehold is being sought and will be tabled at the meeting.
13. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the list even where they are currently run as commercial businesses. Given that the Golden Ball has a distinct community focus the application clearly fits the criteria of the legislation and the Capital Asset Board recommend that the Cabinet

Member agrees the acceptance of the Golden Ball onto the List of Community Assets.

Fordlands Road - Former Elderly Persons Home (EPH)

14. Fulford Parish Council have applied to add the former Fordlands Rd Elderly Persons Home, owned by City of York Council, onto the list. The application sets out a plan to seek funding to buy the building and adjoining land and convert the former residential home into a community centre dedicated to celebrating local culture, local history and local nature conservation by creating a meeting room and making exhibition rooms available to local interest groups. The plans would create a visitor centre and starting point for walks around the site of the Battle of Fulford for battle field tourists and local residents. The site could also play a role in spreading further knowledge about for example the rare Tansy Beetles that inhabit Fulford's village green.
15. We have not found any precedent of listing care homes and the legislation specifically excludes residential properties. As a care home the building did not offer any other broader facilities to the local community. It provided a home to elderly people from across the city. Its use was therefore residential and as such it does not meet the criteria set out in the legislation. The Capital Asset Board therefore recommends that this property is not added to the List of Community Assets.

Council Plan

16. The Community Right to Bid provisions are part of the Localism Act 2011 which supports the rights of local communities to be involved in their local areas. It also can support the Council Plan Priority 3 – Building Strong Communities – by giving local communities and voluntary organisations the potential to have a say in the development of community assets to maximise the benefit to them. The Council's Corporate Asset Management Plan 2011-2015 also has a strong emphasis on Localism and the Council already has a Community Asset Transfer Policy in place in dealing with its own community assets.

Implications

17. **Financial** – as detailed in this report there are costs involved in setting up and maintaining the list of Assets of Community value as well as dealing with any nominations. These can be met from existing budgets.

However there is also a requirement for the local authority to fund any compensation costs which are awarded and there is currently no budget for these costs.

Human Resources (HR) – none

Equalities, Crime and Disorder and IT - none

Legal – the Localism Act 2011 sets out the framework which is outlined in this paper. The Council will need to comply with this which is in force now.

Property – all implications are contained in this report.

Other - none

Risk Management

18. As there is a legislative requirement to implement a Community Right to Bid process there are no significant risks as there is no option but to implement.
19. The potential risks to obtaining capital receipts – both in terms of timing and amount are set out in this report but in both cases this is felt to be **LOW**.

Recommendations

20. The Cabinet Member is asked to agree the proposals for the implementation of a process for the Community Right to Bid legislation as outlined in this report

Reason: To ensure the Council has a process in place for dealing with any applications and the establishment and maintenance of a list of Assets of Community Value

21. The Cabinet Member is asked to decided whether to add The Golden Ball Bishophill onto the List of Community Assets

Reason: To ensure the Council meets its legislative requirements under the Localism Act 2011 and promotes community access to community facilities.

22. The Cabinet Member is asked to decide whether to add Fordlands Road Elderly Persons Home to the List of Community Assets

Reason: To ensure the Council meets its legislative requirements under the Localism Act 2011 and promotes community access to community facilities.

Contact Details

Author:

Phillip Callow
Title Head of Asset Management
Dept Name Property
Tel No.553360

Chief Officer Responsible for the report:

Tracey Carter
Title - AD Finance Property
Procurement

**Report
Approved**



Date 26.02.2014

Specialist Implications Officer(s)

Implication Legal
Name Andy Docherty
Assistant Director Governance and ICT
Tel No. 551004

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Annexes

Annex 1 – Golden Ball – Bishophill – Application to add to the List of community assets

Annex 2 – Fordlands Rd former Elderly Persons Home - Fulford – Application to add to the List of community assets

Annex 3 – Guidance to bidders