

EXETER CITY COUNCIL

**EXECUTIVE
2 OCTOBER 2012**

**COUNCIL
16 OCTOBER 2012**

**ASSETS OF COMMUNITY VALUE
(THE “COMMUNITY RIGHT TO BID”)**

1. PURPOSE OF REPORT

- 1.1. This report advises Members of the implementation of the part of the Localism Act relating to assets of community value, and seeks authority for setting up the list of assets and related processes.

2. INTRODUCTION

- 2.1 The Localism Act allows community organisations to nominate buildings or other land for inclusion on a list of assets of community value, if they are considered to be of importance to a community’s social wellbeing. If added to the list, an asset must not be sold without the Council being notified. This triggers a moratorium during which community organisations have the opportunity to put together a bid to buy the asset. This scheme is also therefore known as the “Community Right to Bid”.
- 2.2 Note that organisations are not given a right of first refusal, nor are they entitled to buy the asset at a discount.
- 2.3 The relevant statutory provisions are expected to come into force on 12 October 2012.

3 MAINTAINING THE LIST

- 3.1 It is proposed that the list of assets will be maintained within City Development. There is no prescribed form, but the list must be available for public inspection without charge. The Council must also maintain a list of unsuccessful nominations.
- 3.2 Nominations for inclusion on the list must be made by a voluntary or community body with a local connection. The Regulations contain comprehensive definitions, but examples include a neighbourhood forum, an association of at least 21 members registered to vote locally and whose surplus funds (if any) are applied for the benefit of the area, or a charity which operates in the local area. Certain information must be included in the nomination, and we are preparing a form to help applicants complete this process correctly.
- 3.3 Certain land and buildings are prevented from being assets of community value, namely buildings wholly used as residences and connected land, caravan sites, and operational land (such as that belonging to the former utilities or a rail operator). Subject to that, the asset should be listed if in the opinion of the Council:-
- an actual current use of the asset (that is not an ancillary use) furthers the social wellbeing or social interests (cultural, recreational and/or sporting) of the local community, and

- it is realistic to think that there can continue to be non-ancillary use of the asset which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- 3.4 Alternatively, an asset can qualify if it had such a use in the recent past, and it is realistic to think that there is a time in the next five years when it could do so again (whether or not in the same way as before).
- 3.5 Examples could be pubs, shops, libraries and community facilities, although not every example of these facilities will qualify. For example, a shop in Exeter High Street would not be considered to further the community's social wellbeing or interests in the same way as a single shop in a small village.
- 3.6 It is recommended that the technical issues such as eligibility of the organisation, completeness of the information supplied, and fact that the asset is not in an excluded category should be decided by the Projects and Business Manager in City Development. The value judgement as to whether the asset is of community value should be made by him in consultation with the Portfolio Holder for Housing and Community Involvement.

4 EFFECT OF LISTING

- 4.1 Notice of the decision will be given to the organisation, together with reasons if the listing is unsuccessful. If successful, notice will also be given to the owner and occupier, and the listing will be registered as a local land charge and at the Land Registry.
- 4.2 Following the listing of an asset, nothing will happen until an owner wants to dispose of the freehold or a long leasehold interest in it. In those circumstances, notice of the intended disposal should be given to the Council. There are exceptions to this, including gifts of land, transmission of assets on death, transfer of the asset between family members, or transfer of a business as a going concern. The owner is explicitly allowed to dispose of the land to a community interest group.
- 4.3 The Council must in turn pass on the owner's notice to the group who made the original nomination, and publicise within its area the fact that it has received notice of the intended disposal of a listed asset.
- 4.4 Notice from an owner of an intended disposal is the starting date for the following periods:-
- The "interim moratorium period" of six weeks, during which a defined "community interest group" can submit a written request to be treated as a potential bidder for the land, which the Council must pass on to the owner.
 - The "full moratorium period" of six months, which is triggered if such a request is received, and during which the community interest group can put a bid together to purchase the property.
 - The "protected period" of eighteen months, during which the owner is free to sell the asset without further delay, if no community interest group has submitted a request and/or pursued it through to completion of a purchase within the relevant moratorium periods.
- 4.5 An owner may be entitled to claim compensation for loss incurred as a result of the listing. A possible scenario is where the asset loses value while a sale is delayed. Based on experience with the Scottish "Community Right to Buy" scheme, the Government estimates that such compensation payable nationally may amount to an average of £255,000 a year across England and Wales, although it is difficult to give a

realistic estimate of the cost to any particular local authority as this will depend partly on the number of claims in their area. For example, the Government estimates that there will be up to 22 successful compensation claims a year, on which basis many local authorities would not see a successful claim during the course of any given year.

- 4.6 It will also be possible to claim compensation for expenses incurred during a sale as a result of the listing. Here the Government estimates an average of £2000 per claim.
- 4.7 A decision on compensation claims will be a technical exercise based on the information supplied, and it is envisaged that this will be carried out by the Projects and Business Manager, calling on the expertise of other relevant professionals, for example in Estates Services, where appropriate.

5 REVIEWS

- 5.1 There are two situations in which an owner can ask for a review of the Council's decision:-

- a "listing review", that is a review of the decision to include an asset on the list;
- a "compensation review", that is a review of a decision whether or not to award compensation, or the amount.

Reviews have to be carried out by an officer of "appropriate seniority" who did not take any part in making the original decision.

- 5.2 It is recommended that the review function is delegated to the Corporate Manager Policy/Communications/Community Engagement, in view of his oversight of the localism agenda generally coupled with the fact that he will not be involved in the day to day decision-making processes set out in this report.
- 5.3 There is a further right of review in either case to a Tribunal, which can award reasonable legal costs against the Council.

6 RESOURCE IMPLICATIONS

- 6.1 There will be minor miscellaneous disbursements such as fees for registering assets at the Land Registry (£40 per registered title), which can be met from existing resources. There is also a potential liability to pay compensation as set out in paragraphs 4.5 and 4.6, which is not being funded by the Government.
- 6.2 At present it is anticipated that this scheme can be accommodated using existing staff resources. However, the collective workload generated by initiatives under the Localism Act is still something of an unknown quantity, and this may need to be reviewed in the light of experience.

7 RECOMMENDATION

- 7.1 It is recommended to Council that:-

- (a) Authority be delegated to the Projects and Business Manager (or in his absence another officer nominated by the Assistant Director City Development):-
- (i) To maintain the list of assets of community value, and to consider and decide the technical correctness of nominations for inclusion of assets on the list;

- (ii) In consultation with the Portfolio Holder for Housing and Community Involvement, to consider and decide the merits of nominations for inclusion of assets on the list.
- (b) Authority be delegated to the Corporate Manager Policy/Communications/Community Engagement to conduct listing reviews and compensation reviews in respect of assets of community value.

and the Scheme of Delegation to Officers be amended accordingly.

**ROSS HUSSEY
PROJECTS AND BUSINESS MANAGER**

CITY DEVELOPMENT

Local Government Act 1972 (as amended)

Background papers used in compiling this report:-

None.