

WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 4 DECEMBER 2012

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**Title:**

**ASSETS OF COMMUNITY VALUE (ACV)**

**[Portfolio Holder: Cllr Bryn Morgan]  
[Wards Affected: All]**

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**Summary and purpose:**

The report outlines the process for listing Assets of Community Value (ACV) as required under the Localism Act 2011 the relevant provisions of which came into force on 21 September 2012. The report sets out the issues which need to be resolved to meet the requirements of the legislation.

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**How this report relates to the Council's Corporate Priorities:**

The ACV scheme increases the opportunity for community groups, including town and parish councils, to bid for land or buildings of community value that the owners of the land or buildings are intending to sell

**Equality and Diversity Implications:**

The ACV scheme increases the opportunity for community groups to bid for land or buildings of community value that their owners are intending to sell

**Environmental and Climate Change Implications:**

There are no environmental or climate change implications.

**Resource/Value for Money Implications/Legal:**

The legislation will require resources for its administration. The amount will depend on the number of assets nominated to be on the list of ACVs by local community groups and the number of claims for compensation made by owners. There will also be implications for the Council as the potential owner of community assets.

Waverley has received one off grants for the implementation costs of Assets of Community Value of £4,873 and for Community Right to Challenge of £8,547.

Once the scheme is in operation the Council is required to assess the level of compensation payable in appropriate cases. This could result in individual payments of up to £20,000 if the owner can substantiate their claim. The Government will meet compensation payments over £20,000.

Once an asset is listed as an ACV it is necessary to apply to the Land Registry for a restriction on the title of that land or building. An entry must also be made on the Council's Local Land Charges Register.

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## **1.0 Background**

- 1.1 Under the Localism Act the Council is required to maintain a list of assets of community value (ACV). This will allow a community group to have an opportunity to bid to buy an ACV that has been included on this list if the owner wishes to dispose of it on the open market. Examples of ACVs include community centres, libraries, swimming pools, village shops, markets and pubs.
- 1.2 Section 88 of the Localism Act states 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.
- 1.3 ACVs can be owned by public authorities or private bodies and individuals. The Council's own assets may be nominated by community groups for inclusion in the list.

## **2.0 The Process**

- 2.1 The process for determining whether land or buildings should be included on the list of ACV following a request from a community group; the maintenance of the list of assets; and the subsequent procedure for an owner who wants to dispose of an asset that is on the list is set out in the flow diagram attached as Annexe 1.
- 2.2 The Council has 8 weeks to decide whether the land or buildings meets the definition set out in Section 88 of the Localism Act or whether it falls into one of the categories of excluded land which includes residential property. A list of the categories of excluded land and buildings is set out in Annexe 2.
- 2.3 Where land or buildings have been included in the list and the owner wants to dispose of the asset he/she must notify the Council and this triggers the moratorium process. Not all proposed sales of land or premises that have been listed as ACV are relevant disposals and where an exemption applies the owner does not have to notify the Council. Exempt disposals include disposals to community groups, disposals pursuant to a court order or a pre-existing agreement and disposals for continuing health provision or education. A full list of exemptions is attached as Annexe 3.

## 2.4 Planning considerations

The Government's non statutory advice note states in para. 2.20 "that it is open to the Council as local planning authority to decide whether listing as an asset of community value is material consideration if an application for change of use is submitted, considering all the circumstances of the case". In the light of this it is important that the Council's position is clearly stated.

The view of Officers is that the designation of a site or building as an asset of community value cannot be considered to be material in planning terms. The process of determining assets of community value is separate from the planning process and simply confirms assets nominated by qualifying community interest groups which are considered by them to have some community value; however, it is not an objective assessment of community value. This process is likely to result in a list of designated assets where the community value of individual assets may vary considerably. Indeed, there may be instances of community assets which are not designated as ACVs, but could be argued to have greater community value than those that have been designated. The Council can not nominate ACVs itself, and therefore cannot ensure that all assets meeting the criteria of community value are listed.

In the light of this it is recommended that the designation of land/buildings as assets of community value is not treated as a material planning consideration as it may result in an inconsistent approach being taken to the consideration of planning applications. The Council will however continue to consider the community value of land or buildings on their individual merits as part of the normal planning application process in line with adopted local plan and other material considerations. The granting of permission for development would not override the need for an affected owner to follow the process outlined in paragraph 2.3.

## 3.0 Compensation

- 3.1 The process may have some financial impact on owners of ACV who are selling their land or premises. A compensation scheme is provided for private owners but this will not be available to public bodies. Waverley will be responsible for administering the compensation scheme including assessing and determining the compensation awards. Owners and former owners will have rights of review and appeal against the Council's compensation decisions. Annexe 4 sets out in more detail the compensation scheme including the government's role in meeting any costs of compensation incurred by the Council.

## 4.0 Issues for consideration

- 4.1 The protocol for ACV requires the Council to undertake a number of responsibilities. The following are the issues that the Council needs to resolve now that the legislation has come into force. They are:

- Who will be responsible for the administrative role of accepting nominations and notifying community groups and owners of the progress of a nomination in accordance with the legislation?
- Who will make the final decision on a nomination in accordance with s88 of the Localism Act within the 8 weeks of the nomination? Who will maintain the list of both successful and unsuccessful nominations and whose responsibility will it be to amend the lists and notify the relevant parties when necessary?

It is recommended that the Chief Executive be delegated authority to make all relevant notifications and decide whether land or premises nominated by a community body is included in the list of ACV following the preparation of a report with a recommendation on the nomination.

- Who will decide if a compensation claim is successful? Requests for compensation must be made within 13 weeks of the loss being incurred or finished being incurred and be supported by evidence. It is suggested that the Deputy Chief Executive be delegated authority to determine claims for compensation.

- Who in the Council of appropriate senior authority will undertake the review of the successful listing or a review of compensation if it is requested? This person can not be part of the original decision making process for the listing or the claim for compensation.

It is recommended that the Deputy Chief Executive be delegated authority to review the listing decision and the Chief Executive be delegated authority for the review of a decision on a compensation claim.

## **5.0 Conclusion**

5.1 The Localism Act 2011 allows community bodies, including town and parish councils, to nominate land or buildings to be included on the list of Assets of Community Value. If the nomination is successful, it gives community groups a fairer chance to make a bid to buy it on the open market.

5.2 The legislation places a requirement on the Council to administer the procedure including deciding whether nominated land or premises should be placed on the list of ACV, determining claims for compensation and subsequently determining a review against the Council's decision if one is requested. In order to meet the requirements of the legislation a change to the Councils constitution is proposed to delegate authority to senior council officers.

## **Recommendation**

It is recommended that

1. authority be delegated to the Chief Executive to decide whether land is appropriate for inclusion in the list of Assets of Community Value, and to determine community nominations in that respect, in accordance with

Sections 87 to 108 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012;

2. authority be delegated to the Deputy Chief Executive to act as the senior officer responsible for a review of the listing made under the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012;
3. authority be delegated to the Deputy Chief Executive to determine compensation payable pursuant to the Localism Act and Regulations 14 and 15 of the Assets of Community Value (England) Regulations 2012;
4. authority be delegated to the Chief Executive to act as the senior officer responsible for a review of compensation made under the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012; and
5. the view that designation as an Asset of Community Value will carry no weight in the assessment of planning applications be endorsed.

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### Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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