

Birmingham City Council

Report to Cabinet

23rd June



Subject: **LOCALISM ACT 2011: COMMUNITY RIGHT TO BID FOR ASSETS OF COMMUNITY VALUE**

Report of: Acting Director, Neighbourhoods

Relevant Cabinet Member: Councillor Ian Ward, Leader of the Council

Relevant O &S Chair(s): Councillor Lou Robson, Economy & Skills

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference: 007675/2020		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 An Asset of Community Value (ACV) is land or property of importance to a local community which is subject to additional protection from development under the Localism Act 2011 (the Act) (as defined in Appendix 1 to this report). Provided they meet the qualifying criteria a voluntary or community body with a local interest in the area (the community interest group) (as defined in Appendix 1) can nominate an asset to be included on the register of ACVs which is maintained by the relevant local authority in accordance with the Act. If listed the owner of an ACV must inform the local authority if they wish to sell the ACV. If the nominating community interest group wants to buy a listed ACV, they can make a Community Right to Bid which triggers a moratorium for six months, to give them an opportunity to raise the money to purchase the ACV. The owner is not obliged to sell to a community interest group.

- 1.2 The ACV listing only improves the chances of community interest groups being able to purchase by providing more time to raise funds. It does not require the owner to sell the ACV at a discount
- 1.3 To inform Cabinet of the recommended amendments to the existing 2013 Cabinet delegations that the Council operates under in order to make the decisions required to meet the Council's legal obligations in relation to ACV listing nominations Community Right to Bid for an ACV under the Act

2 Recommendations

That Cabinet approves the following delegations, replacing the existing 2013 Cabinet delegations, in order to make the decisions and better comply with the local authority statutory duties in relation to ACV listing nominations and the Community Right to Bid for an ACV in accordance with the Act

- 2.1 Delegates authority to the Director of Neighbourhoods to make the final decision on a whether to list or not list an ACV in consultation with the Leader and following a recommendation from the ACV Panel comprising of cross-directorate senior officers as set out in the ACV listing process in Appendix 2
- 2.2 Delegates authority to the Assistant Chief Executive to determine the outcome of ACV listing decision review which can be made by a landowner who objects to an ACV listing of its property in accordance with the Act.
- 2.3 Delegates authority to the Assistant Director of Property to determine compensation claims payable to a landowner in connection with the listing of land as an ACV under the Act as set out in section 7.3 of this report and at Appendix 3 the right of the owner to claim compensation for loss arising from ACV listing.
- 2.4 Delegates authority to the Assistant Chief Executive to undertake a review of an ACV compensation claim decision made under 2.4 which can be made by the landowner in accordance with the Act
- 2.5 Agrees to utilise any year end underspends on Neighbourhoods Development Support Unit (NDSU) to establish an ACV earmarked reserve to help address any future claims for compensation referenced in 2.4 and 2.5 above as well as any related ACV work.
- 2.6 Delegates authority to the Chief Executive to appoint alternative officers to discharge the duties in 2.2, 2.3 and 2.4 if those posts cease to exist.

3 Background

- 3.1 Concerns have been raised regarding the current internal process for managing the determination and listing of Asset of Community Value process as set out in Appendix 2, particularly the overall service ownership and administration of this work type, which has culminated in an adverse determination in respect to a case referred to the Local Government Ombudsman and the LGO determination of 30th January

2018. There is a need to update the ACV nomination and listing decision-making process (the ACV listing process) following internal restructuring of senior officers' roles. It is felt that the ACV listing process best sits with where the current lead for Localisation sits which is the Neighbourhoods Directorate , but that the ACV decision listing review process and any ACV compensation claim decision review is determined by the Assistant Chief Executive as set out 2.3 and 2.5 above. To date two ACV listing decisions made by the Council have resulted in ACV decision listing reviews.

- 3.2 A report to Cabinet on the 14th January 2013 "Localism Act 2011 Community Right to Bid for Assets of Community Value and Community Right to Challenge" delegated authority to the Strategic Director of Resources, to discharge the Council's functions in relation to ACVs. A further report of the Deputy Chief Executive in August 2014 delegated approval to the Director of Property jointly with the Deputy Leader, following a recommendation from the ACV Panel. Following the departure and removal of the Director of Property post the responsibility to list has transferred to the Director, Inclusive Growth. Authority to determine compensation claims was delegated to the Director of Property under that report, whilst responsibility for determining an ACV decision listing review and an ACV compensation claim decision review remained with the Deputy Chief Executive in that report. Responsibility for ACVs transferred from the Deputy Leader to the Leader in the constitution of June 2016 in line with other property-related delegations.
- 3.3 In the last documented process ACV nomination forms were received by Corporate Strategy and then Legal Services before being passed to an ACV Panel comprising senior officers from across the Council's Directorates to consider in detail whether the statutory nomination tests are met, and then make a recommendation for consideration via an Executive Report
- 3.4 In reviewing the process, it was considered that Legal Services was ill-placed to make an objective assessment particularly as there is limited guidance from the supporting legislation, and as a result the ownership of the process and administering applications has been passed to the Neighbourhoods Directorate. Cabinet supported this through a new resource allocation to the Neighbourhoods Directorate in this year's budget process. A firm Corporate policy on what the Council considers constitutes community value and the key points to consider in order to champion certain community assets is required. This should be driven by a service area that has experience in working with community groups which would give a much clearer vision as to how to deal with nominations. The process owner should be one that can develop a clearer definition and guidelines for what is meant by social wellbeing and social interest
- 3.5 The Director, Inclusive Growth, may be conflicted in relation to nominations of Council owned land/ buildings therefore supporting the requirement for a new delegation to a new ACV process owner within Neighbourhoods Directorate.

4 Options considered and Recommended Proposal

- 4.1 Do Nothing this will mean the Council will not be able to efficiently discharge its ACV statutory duties in accordance with the Act and increase the risk of the referrals to the Local Government Ombudsman.
- 4.2 The recommended proposals will enable proper service ownership of the ACV process within a particular Directorate, and better enable the Council to perform its ACV statutory duties as set out in this report

5 Consultation

- 5.1 The Acting Corporate Directors of Inclusive Growth and Neighbourhoods, and the Assistant Chief Executive have been consulted regarding the contents of this report and are fully supportive of the report proceeding to an executive decision.
- 5.2 No external consultees were identified

6 Risk Management

- 6.1 The City is currently at risk of failing to manage ACV nominations within the required statutory timescale of eight weeks, this change of delegation will place the specific responsibility for management of ACV nominations on to Neighbourhoods Directorate and ensure a timely response to the nomination when all information has been received by the Council in relation to the nomination. (Appendix 5)

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The recommended decisions continue to support the Council Plan 2018-2022 priority outcomes, Birmingham is a great city to live in where citizens have a voice in how the Council is run and the Council's localism commitment to building stronger communities by enabling community empowerment by giving local people and groups a greater say about what happens to local amenities and how local services are delivered and considering the newly published Strategic Document – "Working Together in Birmingham Neighbourhoods " – launched in 2019

- 7.1.2 The recommended decisions allow the City Council to fulfil its statutory obligations

7.2 Legal Implications

- 7.2.1 The report recommendations will allow the Council to continue to discharge its statutory duties to determine nominations for Assets of Community Value and also reviews of those nomination decisions to list and compensation claim decisions where made by landowners under the Localism Act 2011.

7.3 Financial Implications

- 7.3.1 The process will be carried out within existing finances and resources.
- 7.3.2 Whilst there is no statutory challenge to a non-ACV listing decision under the Act an owner of land listed as an ACV can be entitled to seek a review of a listing and receive compensation in accordance with Appendix 3.
- 7.3.3 The compensation scheme is to enable private landowners only to claim for costs or loss incurred as a direct result of complying with the procedures required by the Act. The measure of loss is the loss or expense in relation to the land incurred by the owner which would be likely not to have been incurred if the land had not been listed as an ACV and the reasonable legal expense incurred in a successful appeal by the owner to the First-tier tribunal in relation to listing, a refusal to pay compensation or the amount of compensation.
- 7.3.4 Since the introduction of the Act the Council has not made any compensation payments.
- 7.3.5 It is for note that previously the Government would underwrite any compensation claims in relation to ACV decisions that exceeded £20,000 – the “safety net”. This safety net was removed by the Government in 2015 and now each listing authority must meet in full any successful compensation claims against it exceeding £20k.
- 7.3.6 There remains an underlying financial risk that some compensation payments could be awarded in the future. As no compensation payments have been made previously no budget mechanism currently exists for doing so, and therefore no budget allowance exists to transfer to the Directorate to which the service is transferring. Any future pressures resulting from this could be managed in a number of ways, by allocating a new budget through the budget setting process, through calling on policy contingency at the time of such a compensation event or by seeking to build over time a reserve to cover such future eventualities. It is proposed at this stage to seek to build an ACV earmarked reserve through any future underspends on NDSU, the new team overseeing the service. If this does not prove possible then the alternative options will need re-considering at a later date.

7.4 Procurement Implications (if required)

- 7.4.1 No procurement implications have been identified.

7.5 Human Resources Implications (if required)

- 7.5.1 The ACV process will bring additional work to the Neighbourhoods Directorate. Additional budget has been provided for this.

7.6 Public Sector Equality Duty

- 7.6.1 A copy of the Equality Act 2010 – Public Sector Duty statement is appended at Appendix 4. It is considered that having regard to the 2013 screening that a further Equality Assessment is not required for the recommendations in this report. An initial screening was completed as part of the original report to Cabinet in January 2013 regarding the Asset of Community Value process; no adverse impacts were identified. Cabinet is asked to have due regard to this.

8 Background Documents

- 8.1 Report to Cabinet dated 14th January 2013 - “Localism Act 2011: Community Right to Bid for Assets of Community Value and Community Right to Challenge”
- 8.2 Report to Deputy Chief Executive dated August 2014 - “Procedure for Dealing with Assets of Community Value, Compensation Determinations and ACV and Compensation Listing Reviews

List of Appendices

Appendix 1: Community Right to Bid – The Guidance

Appendix 2: BCC Nomination Listing Process

Appendix 3: The right of the owner to claim compensation for loss arising from ACV listing

Appendix 4: Equality Act 2010

Appendix 5: Risk Assessment

Appendix 6: ACV Definitions