

Meeting of the Cabinet – 12th February 2013

Joint Report of the Director of Adult Community and Housing Services and the Director of Corporate Resources

A Dudley MBC Policy for Community Asset Transfer

The implementation of the separate legal process for the Community Right to Bid with regard to Assets of Community Value

Purpose of Report

1. To Seek approval from Cabinet of the policy relating to Community Asset Transfer.
2. To note and comment on the procedure established to meet the new legal duty for Council's to manage the Community Right to Bid procedure with regard to Assets of Community Value in accordance with the Localism Act 2011.

Background

3. The Localism Act 2011 introduced the legal process, to be administered by local authorities for the listing of assets of community value and enabling a process of a community right to bid.
4. In addition the Local Authorities are encouraged to adopt their own policies to allow for community asset transfers of their own assets – such as land or buildings – to the voluntary sector. This report firstly introduces a draft Council policy (the Community Asset Transfer Policy) for consideration and approval to allow for the transfer of local authority assets i.e. land or property to a voluntary organisation, subject to the criteria outlined in the policy.
5. It must be noted that this Community Asset Transfer policy is not a legal requirement and allows for a process which is solely for internal decision making when community groups and /or the Council wish to consider such an asset transfer. This policy is totally separate from the legal process of Community Right to Bid under the Localism Act, which is set out in the second part of this report.
6. **Community Asset Transfer Policy**

The Quirk report in 2007, "Making Assets work", established certain principles with regard to maximising the use of publicly owned community assets and as a result the government created an asset transfer unit. Prior to the implementation of key provisions in the Localism Act, Dudley Council, in February 2012, in conjunction with a national asset transfer specialist "Locality ", provided an initial draft policy for consultation with the voluntary sector which included community

centre management groups and internal Directorates of the Council. The responses were used to further develop the policy now put forward for adoption.

7. The policy relates only to Council owned assets which includes land and buildings. These assets must currently be in community use in order to be considered for transfer.
8. The definition of Community Asset Transfer is “The transfer of land or buildings from the Council’s freehold ownership into the stewardship and/or ownership of voluntary and community sector organisations.”
9. Any transfer may be made on the basis of a short term or long term lease; or in some cases full transfer of the freehold.
10. **Advantages of implementing a Community Asset Transfer Policy:**
 - It is a positive way to devolve power to neighbourhoods and encourage local involvement and community action
 - It can contribute to regeneration of communities.
 - It can create new organisations with the ability to generate additional resources which may not be available to the Council.
 - It can create stronger, more sustainable voluntary and community organisations which can create wider benefits for their own communities. This in turn may help to provide financial security recognition and management capacity within the sector.
 - It can stimulate partnership working between the Council and voluntary and community organisations and other partners and improve provision of services in communities and their accountability.
 - It can contribute to efficiency savings by releasing surplus property
 - It can help the Council rationalise its estate and maximise use of its assets with a focus on community outcomes.
 - The activities safeguarded by transfer should contribute to Council objectives.
11. The detailed draft policy is available in the Members room and on the Committee Management Information System on the website.
12. A draft “HOW TO” guide for potential applicants is being developed to assist in the process. This will be available on line and at libraries and council offices throughout the Borough.
13. There will be a single point of contact, within the Council to liaise with voluntary organisations with regard to potential transfers. The Council will regularly review potential assets for transfer and be proactive in its approach to the transfer process. The Policy itself will be reviewed after 12 months in operation.

14. Any potential organisation wanting to have an asset transferred will be required to meet detailed criteria including a strong business case, robust finances and the skills and organisational capacity to deliver. There will also need to be an annual statement of community benefit.

15. **Community Right to Bid and Assets of Community Value**

The Localism Act 2011, contains provisions which allow local groups such as voluntary organisations; neighbourhood forums; community interest companies; parish councils; or unincorporated local bodies (with at least 21 members eligible to vote locally) to nominate land or buildings of a non residential nature to be placed on a local authority list as an Asset of Community Value. The land and / or buildings can be in private or public ownership

16. The Council has a new duty to administer the statutory process and if it receives a valid nomination it must decide if the land or building meets the definition as set out within the Act:

An actual current use of the building or land (not its ancillary use) furthers the social wellbeing or social interests of the local community and it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further the social wellbeing or social interests of the local community.

17. It must be noted that this could include a “recent past” use and 3 years would appear to be a reasonable timeframe for this purpose.

18. Once a building is duly listed and has met all the legal criteria to be included on the list the owners of the land have to be notified and have a right of appeal against the listing. There are also compensation provisions if the owner of the land or building has a financial loss due to potential delays that a community right to bid creates.

19. The Director of Corporate Resources has made arrangements to implement the Assets of Community Value provisions utilising the Council’s Corporate Property Group as a decision making body.

20. If an asset that has been placed on the formal list of Assets of Community Value is then proposed for sale, the local organisations will have up to 6 months to raise capital and bid to buy the asset. This new right is the “community right to bid”. However, there is no requirement on the owner to sell the asset to the relevant nominating body or indeed any other bidding local organisation.

21. The detailed role of the Council is attached at appendix 1, together with the process for nominating an asset at Appendix 2; and the process for asset disposal at Appendix 3.

Finance

22. The development of the Asset Transfer Policy has been achieved within existing budgets, however any costs required to ensure assets are fit for transfer would need to be considered on a case by case basis.

23. The Council to date has received a “new burdens payment “of approximately

£4000 in respect of administering the new legal process of community right to bid.

24. It should be noted that in respect of claims by land owners for compensation, the Council could be liable in any one year for up to £20,000, (on the basis of either a single case, or number of cases), which will not be funded by Government – recompense being made available only when the figure exceeds that amount.

Law

25. The Local Government Act 1972 general disposal consent (England) (updated 2003), enables the Council to dispose of land for less than the best consideration that can be reasonably obtained. The Council may do anything incidental to, conducive to, or which facilitates the discharge of its functions under section 111 of the Local Government act 1972.
26. The Localism Act 2011 and subsequent regulations make provisions in respect of Community Right to Bid / Assets of Community Value and provide a Right of Appeal for asset owners against a local authority decision to list an asset and compensation decisions.

Equality Impact

27. The Community Asset Transfer policy sets out a clear, transparent and fair framework for decisions. Community, voluntary and faith organisations who are applying for an asset transfer will need to demonstrate that their plans meet the needs of, and have the support from the local community.
28. The Community Right to Bid scheme is primarily an administrative process defined by legislation with little discretion for local authorities.

Recommendation

29. That the Community Asset Transfer policy as referred to in this report be approved and adopted
30. To note the new legal duty for the Council with regard to the community right to bid and assets of community value list.
31. To agree the procedure set out in the report and appendices for managing the process for nomination, listings and disposal of Assets of Community Value and determining applications for compensation.
32. That the Director of Corporate Resources, in consultation with the Cabinet Member for Human Resources, Law and Governance, be authorised to make any necessary amendments to the Community Asset Transfer Policy and the Community Right to Bid procedure to reflect any further advice received or in the light of operational experience.



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List of Background Papers

Appendix 1 Detailed Role of The Council with regard to Assets of Community Value and Community Right to Bid

Appendix 2 and 3 Process for nomination for list and disposal of Assets for Community Value

http://www.local.gov.uk/web/guest/media-releases/-/journal_content/56/10171/3835503/NEWS-TEMPLATE and Process for asset disposal

APPENDIX I:

The Role of the Council

Under the 'Community Right to Bid' provisions, the Council is required to:

- Set up a process to enable local community and voluntary groups to nominate assets;
- Adjudicate in accordance with Government Regulations on whether the assets can be included on a list of assets of community value;
- Publish the list of assets of community value and also details of those assets that were nominated but unsuccessful, including the reason why the nomination was unsuccessful and inform the Land Registry accordingly;
- Implement an internal review process should the owner of the nominated asset disagree with the Council's decision that the nomination be successful;
- Set up and monitor a moratorium process so that when an asset from the list comes on to the market, community groups have time to register their intent to bid and raise the necessary capital, and prevent the owner from selling the asset during the moratorium period. This involves notifying the nominating body and ensuring notification goes out within the area local to the asset; and
- Operate a compensation scheme to compensate owners for loss or expense incurred as a result of listing and comply with any of the procedures required by the scheme.

It is proposed that the Council's Corporate Property Group act as the adjudicating body when considering nominations; and as a separate process, reviews from asset owners against a decision to list will be heard by the Director of Corporate Resources.

An additional process has to be established from the point the owner of a listed asset wants to sell. Interaction is largely between the owner and any bidding organisation but the owner must notify the Council of the intention to dispose and the Council must notify the original nominating body and publicise the owner's intention within the local area.

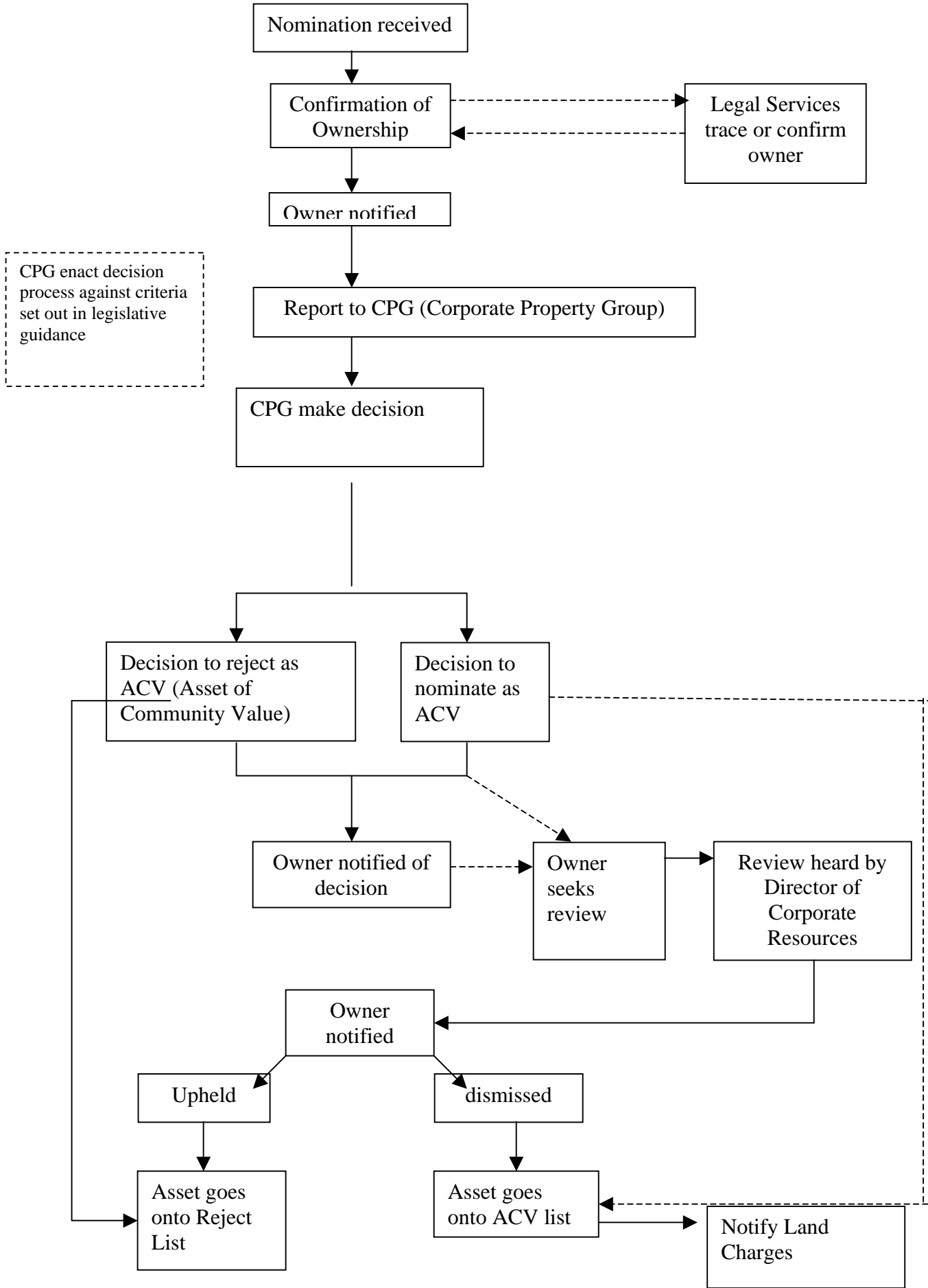
Compensation

Arrangements for the adjudication and payment of any compensation claimed by owners for loss or expense incurred as a result of listing and complying with any of the procedures required by the scheme are to be administered by the Council. The scheme must include an initial decision-making process and an internal review process. It is proposed that a senior officer group comprising 3 Heads of Service act as the Adjudicating body when considering compensation applications and as a separate process, reviews against compensation decisions will be heard by the Treasurer. Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.

The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.

The Government has reflected the estimated costs of compensation within the new burdens funding, on the basis of 40 successful claims across all administering local authorities over a year. In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20,000 in a financial year – either on one large claim or as a combined total on a number of smaller claims. Any costs incurred by the Council up to £20,000 will not be met by Government.

APPENDIX 2: Process from asset nomination received to decision (8 weeks)



APPENDIX 3: Process for Asset Disposal

