

CABINET – 17TH JANUARY 2013

Report of the Head of Cleansing and Open Spaces

Lead Member: Councillor Hilary Fryer

Part A

ITEM 7 ASSETS OF COMMUNITY VALUE

Purpose of Report

The Government has recently brought into effect in England provisions of the Localism Act 2011 relating to assets of community value. All local authorities need to ensure that they have systems in place to enable them to manage their lists relating to assets of community value and to respond to requests to include land on their lists. This report sets out the Council's response to this requirement.

Recommendations

1. That the high level process set out at Appendix A which proposes how the Council will maintain and manage its register of assets of community value be approved.
2. That the Head of Cleansing and Open Spaces, in consultation with the Lead Member and other relevant Heads of Service, be given delegated authority to determine nominations for assets of community value in accordance with the Council's process and policy and that the Strategic Director of Corporate Services be given delegated authority to determine appeals against the inclusion of assets on the list of assets of community value in accordance with the Council's process and policy.
3. That delegated authority be given to the Strategic Director of Corporate Services, in consultation with the Lead Member for Waste Operations and Open Spaces and relevant Heads of Service, to make all detailed arrangements required to implement, and subsequently maintain, the proposed process.

Reasons

1. To meet the Council's responsibilities in respect of assets of community value arising from the Localism Act 2011 and relevant regulations thereto.
2. To identify the officers with overall responsibility for the nomination and appeals processes.
3. To allow the process to be implemented and maintained efficiently, on a timely basis.

Policy Justification and Previous Decisions

The Localism Act 2011 introduced an obligation on local authorities to maintain lists of land in their areas that is land of community value. This obligation has been brought into effect by the following regulations:

- The Localism Act 2011 (Commencement No 1) (England) Order 2012 brought into force for England on 21 September 2012 Chapter 3 of Part 5 of the Localism Act 2011, subject to specified exceptions (the specified exceptions are provisions relating to Wales).
- The Assets of Community Value (England) Regulations 2012 (“the regulations”), which also came into force on 21 September 2012, and apply in relation to England only, introduce some particular requirements relating to the rights contained in the Localism Act 2011

The regulations are supported by non-statutory advice notes issued by the Department of Communities and Local Government (DCLG) to local authorities in October 2012 (provided as a background paper).

Implementation Timetable including Future Decisions and Scrutiny

Implementation of the proposals set out in this report will, subject to amendments arising from the Council’s constitutional processes, commence as soon as the decision of Cabinet becomes effective.

Report Implications

The following implications have been identified for this report.

Financial Implications

It is assumed that the proposed processes described in this report can be undertaken within existing resources. On this basis therefore, there are no direct financial implications arising from this report.

Risk Management

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

<i>Risk Identified</i>	<i>Likelihood</i>	<i>Impact</i>	<i>Risk Management Actions Planned</i>
The process gives rise to a significant number of appeals, leading to significant resource implications.	2 (unlikely)	2 (minor)	<ul style="list-style-type: none">• Process design maps directly to the relevant regulations of the Localism Act• Some financial support may be available from the government
The number of applications to register assets as being of community value leads to significant resource implications.	2 (unlikely)	2 (minor)	<ul style="list-style-type: none">• If the public interest in this right surpasses expectations resource implications will be addressed through the Council’s standard budgetary processes

Key Decision: Yes

Background Papers: Community Right to Bid: Non-statutory advice note for local authorities (DCLG, October 2012)

Officers to contact: Simon Jackson – Strategic Director of Corporate Services
01509 634699
simon.jackson@charnwood.gov.uk

Neil Greenhalgh – Head of Cleansing and Open Spaces
01509 634695
Neil.greenhalgh@charnwood.gov.uk

Part B

Overview

1. The chapter of the Localism Act 2011 which has been brought into effect by the latest commencement order introduced an obligation on local authorities to maintain lists of land in their areas that is land of community value. These lists are to be known as their lists of assets of community value (or 'ACV'). Parish councils and voluntary or community bodies with a local connection have the right to nominate land for inclusion in a list of assets of community value.

2. Land which has been included on a local authority's list of assets of community value is subject to restrictions on its disposal. There is an interim moratorium period of six weeks beginning with the date on which the local authority receives notification of a proposed disposal, and a full moratorium period of six months beginning with that date, during which disposal may be prevented. There is also a 'protected period', during which no further moratorium will apply, of 18 months beginning with the date on which the local authority receives notification of a proposed disposal.

What is an asset of community value?

3. The decision as to whether an asset is of community value or not is in the opinion of the local authority.

4. In forming this opinion, a local authority should apply the following tests:

- The land must be in the local authority's area
- The primary use or uses of the land or building must further the social well being or social interests of the local community: it cannot be an ancillary or secondary use; for example cultivated farmland or woodland that happens to provide some amenity by being a place of natural beauty appreciated by the local community would probably not be eligible because the amenity value is ancillary to its primary use as cultivated land: AND
- It must be a realistic prospect that the land or building will continue to further the social well being or social interests of the local community for at least five years following the nomination, although it need not do so in the same way; an example of this might be a bowling green and club-house that is converted into a children's play area or tennis courts
- Land may still be regarded as being of community value if there was a time in the recent past when its primary use furthered the social well being or social interests of the local community: AND
- It must be a realistic prospect that the land or building will continue to further the social well being or social interests of the local community for at least five years following the nomination, although it need not do

so in the same way; an example of this might be that the bowling green has recently been abandoned for that use but it could be restored or converted into a children's play area or tennis courts.

Exempted Land

5. Schedule 1 of the Regulations lists land which is not of community value and therefore cannot be listed, as follows:

- The principal exemption is residential property
 - This includes gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal where they are in the same ownership as the associated residence.
 - "The same ownership" includes ownership by different trusts of land settled by the same settlor, as well as literally the same individual owner.
 - There is an exception to this general exclusion of residential property from listing; this is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat
- Land licensed for use as a residential caravan site (and some types of residential caravan site which do not need a licences).
- Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990, such as a railway or light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertakings, or any undertaking for the supply of hydraulic power and a relevant airport operator

Nominating assets of community value

Who may nominate?

6. Local authorities *cannot* list land on their own initiative - it must be nominated. For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located). The voluntary or community bodies which may make community nominations are set out below.

- I. **Parish Councils.** This may be for an asset in its own area, or in the neighbouring parish council.

- II. **Neighbouring Parish Councils.** If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.
- III. **Unincorporated groups.** Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.
- IV. **Neighbourhood forums.** The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community.
- V. **Community interest groups with a local connection.** These must have one or more of the following structures:
 - i. A charity
 - ii. A community interest company
 - iii. A company limited by guarantee that is non profit distributing
 - iv. An industrial and provident society that is non-profit distributing to its members (NB these groups will be renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 when it comes into force)

What constitutes 'a local connection'?

- (A parish council automatically has a local connection provided the nominated land is in its area or borders its area or, if it is within an 'unparished area' it is within the area of the local authority)
- The nominating body's activities must be wholly or partly concerned with the local authority's area or a neighbouring authority's area
- At least 21 individuals in an unincorporated body must appear on the electoral roll within the local authority, or a neighbouring local authority
- For an unincorporated body or a company limited by guarantee or an industrial or provident society, any surplus made must be wholly or

partly applied for the benefit of the local authority's area or a neighbouring authority's area.

Disposal of land or property listed as an asset of community value

7. A landowner may not dispose of land included on a list of assets of community value unless:
- the local authority has been informed of the proposed disposal
 - the interim moratorium period has ended without a written request having been received from a community interest group to be treated as a potential bidder; or the full moratorium period has ended
 - and, the protected period has not ended
8. A local authority must publicise receipt of a notice of intended disposal of land. A local authority must also inform a landowner of a request from a community interest group to be treated as a bidder for the land.
9. It is interesting to note that although community interest groups must be informed of the prospective disposal of an ACV, the provisions of the Act *do not* restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do not confer a right of first refusal to community interest groups (unlike the Scottish scheme).

Unsuccessful nominations

10. If a nomination is unsuccessful, the local authority must give written reasons to the person who made the nomination and must also maintain a list of land in its area that has been the subject of unsuccessful nominations.
11. The regulations suggest that assets appearing on the list of unsuccessful nominations cannot be re-nominated as ACV while they are on that list. It appears that it is up to individual local authorities as to how long an asset remains on the unsuccessful nomination list; for Charnwood it is proposed that this period of time will be **five years**, being the maximum period allowed by the regulations.

Appeals and compensation

12. An owner of land which has been included in a list of assets of community value may ask for a review of the local authority's decision to include the land on the list. Local authorities are required to publish their lists of assets of community value and their lists of land nominated by unsuccessful community nominations, as well as making them available for inspection and providing one free copy of each list if requested.
13. Subject to specified exceptions, a landowner or former owner of land is entitled to compensation from a local authority if, at a time when that person

was the owner of the land and the land was listed on the local authority's list of assets of community value, the person incurred loss or expense which would be likely not to have been incurred if the land had not been included on the list. The amount of compensation is determined by the local authority.

14. Subsequently, a claimant for compensation has the right to ask a local authority to review either or both of its decisions in response to a claim, as to whether compensation should be paid and, if so the amount of compensation. The authority must give the person who asked for the review written notification of the decision on the review and the reasons for the decision. The person who asked for the review may appeal to the First-Tier Tribunal against any decision of the local authority on the review.

15. The government does not anticipate that the number of compensatory incidents will be significant. According to DCLG guidance, some new burdens funding may be available based on a total of 40 successful claims for compensation 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 £20k of compensation costs in a financial year.

16. It should be noted that *no right of appeal* exists for community groups whose nominations are unsuccessful.

Proposed process for nominating assets of community value in Charnwood

17. The Council's process for dealing with nominations of assets of community value will have the following key features:

- The onus will be on the applicant to provide all the necessary information for the local authority to consider the application; the Council does not have the resources to support local bodies through the application process
- Inter alia, applicants will need to provide an accurate description of the land or building nominated, including plans, its ownership, its occupiers and its value as a community asset
- The applicant must also justify and provide evidence of its status as a valid community body
- The Council will develop a nomination application form, together with associated guidance notes, to help applicants provide this information and the Council to assess the application.

18. The high level process the Council proposes, together with a pro forma application form, is set out at Appendix A.

Appendices

Appendix A

Maintenance and management of registers for assets of community value -
Proposed high level process for Charnwood Borough Council

Appendix A

Maintenance and management of registers for assets of community value - Proposed high level process for Charnwood Borough Council

The proposed process by which Charnwood will deal with ACV nominations, and subsequent maintenance of the ACV registers, is set out below.

Assessing ACV nominations

Principle

It is a key principle of this process that nominating groups are responsible for gathering all relevant information in support of their nomination

Designated officers

The assessment process will be led by a named officer who will act as the initial public contact for ACV applications.

To assess applications an officer group will be convened as required to enable the Council's decision on nominations to be completed within **eight weeks**. The group may further be supported by a member of the Property Services team in the event that the Council is the owner of the nominated asset.

Assessment criteria

The initial step will be to decide whether the nominating body has provided sufficient information to enable an adequate assessment to be undertaken.

The DCLG states that:

'A nomination must include the following information for the local authority to consider:

I. A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.

II. Any information the nominator has about the freeholders, leaseholders and current occupants of the site.

III. The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.

IV. The nominator's eligibility to make the nomination.'

If the information provided is insufficient, the nominating body will be informed and required to provide further information before any assessment will be carried out.

To aid both applicants and the Council, a standard application form will be produced. A draft of this is attached as an annex to this Appendix.

To qualify as an ACV, a positive response to the questions below will be required:

1. Does the nominating group qualify as an appropriate voluntary or community body?
2. Is the land or building that is nominated within Charnwood?
3. Can we confirm that the land or building is not on the current list of 'unsuccessful nominations'?
4. In the opinion of the officer group, is the asset one that would qualify as an ACV?

Guidance:

- The primary use or uses of the land or building must further the social well being or social interests of the local community: it cannot be an ancillary or secondary use; for example cultivated farmland or woodland that happens to provide some amenity by being a place of natural beauty appreciated by the local community would probably not be eligible because the amenity value is ancillary to its primary use as cultivated land: AND
- It must be a realistic prospect that the land or building will continue to further the social well being or social interests of the local community for at least five years following the nomination, although it need not do so in the same way; an example of this might be a bowling green and club-house that is converted into a children's play area or tennis courts
- Land may still be regarded as being of community value if there was a time in the recent past when its primary use furthered the social well being or social interests of the local community: AND
- It must be a realistic prospect that the land or building will continue to further the social well being or social interests of the local community for at least five years following the nomination, although it need not do so in the same way; an example of this might be that the bowling green has recently been abandoned for that use but it could be restored or converted into a children's play area or tennis courts.

Following the assessment, relevant parties will be informed in writing of the Council's judgement in respect of the nomination, including the asset owner, the parish council and the nominating body (if not the parish council). The decisions may be:

- Agree nomination - accept asset as ACV
- Reject nomination – asset to recorded on list of unsuccessful nominations

The Land Charges team will also be informed at this time in order that the ACV registers may be updated.

Appeals

Only the land owner is entitled to appeal the initial officer decision. The appeals process is summarised below:

A1. If an asset has been included on the List, an owner has the right to request the local authority to review its decision. The deadline for the owner to request this review is eight weeks from the date written notice of listing was given or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.

A2. Basic procedural rules for the review are set out in Schedule 2 to the Regulations. It must be conducted by an officer of appropriate seniority, who did not take part in the decision to list. The owner may appoint a representative and the local authority will be required to provide all relevant documents to the representative.

A3. The owner and/or their representative may make representations to the reviewer orally and/or in writing. The authority must complete their review within eight weeks, unless a longer period has been agreed in writing.

A4. The owner and authority will bear their own costs of the review.

A5. If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the local authority's review decision.

Maintaining the ACV registers

Maintaining the ACV registers in Charnwood will be the responsibility of the Land Charges team.

In addition to the list of assets of community value, local authorities are required to maintain a list of assets nominated unsuccessfully by community nomination.

The guidance states that, 'local authorities must publish both lists; it is up to them to decide how they publish them, but they must make them available for free inspection by any person and must provide a free copy of either to anyone who asks for it (but are not required to provide more than one free copy of each). The proposed solution for Charnwood is that they will be published on the Council's internet site.

Other requirements of the regulations include:

- The list of unsuccessful nominations must include reasons for the land not being listed
- Local authorities are required to add to the list of assets, as soon as practicable:
 - that a notification by the owner of intention to dispose of the land has been received by the local authority and the date this was received

- the end dates of the interim and full moratorium periods and the protected period
 - where relevant, that the full moratorium has been triggered
 - the identity of the community interest group that triggered the full moratorium
- Local authorities are required to remove an asset from the List, as soon as practicable:
 - after a relevant disposal (other than an exempt disposal)
 - when an appeal against a listing has been successful
 - when they form the opinion that the land or building is no longer of community value
 - or, no later than 5 years from the date of entry on the list

ANNEX TO APPENDIX A

Assets of Community Value - Draft Nomination Form

For office use only			
Application reference number		Received date	
Assigned to			
Confirmed application receipt		Applicant advised of assignee referral	

Please complete the form legibly and return to the address below. Please mark as 'Community Asset Right to Bid Nomination Form, Confidential'

Contact name Address Telephone Email	
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1. Who you are

a) Applicant details – please provide the following details about your organisation

Full name of applicant organisation:

.....

Address:

.....

.....

.....

.....

Postcode.....

...

Website.....

.....

Email.....

...

Position in
Organisation.....

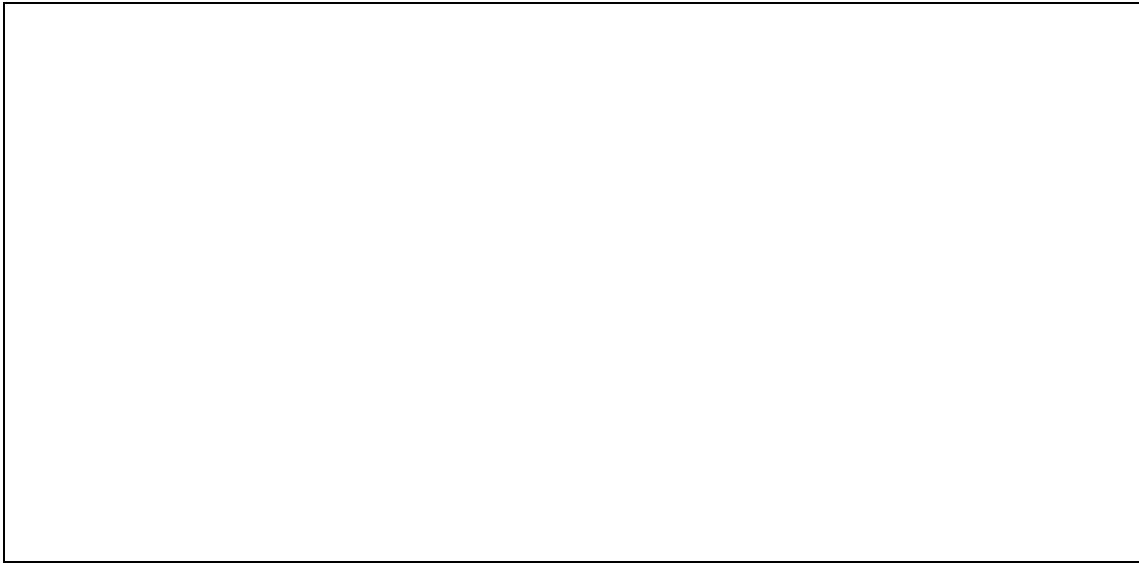
Telephone No:

To assist with the initial processing of this application within Charnwood Borough Council please attach proof to this application of the legal status of your organisation and that there has been formal agreement to make this application. Formal proof may be copies of minutes of meetings where the matter was discussed.

b) What kind of organisation are you? Please tick the appropriate box to indicate the kind of organisation you are to confirm your eligibility to make the nomination.

i) Parish Councils. This may be for an asset in its own area, or in the neighbouring parish council.	
ii) Neighbouring Parish Councils. If the parish council borders a un-parished area, then they may nominate an asset within the neighbouring district council or unitary council.	
iii) Unincorporated Groups. Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral role within the local authority, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try and save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.	
iv) Neighbourhood Forums. There can only be one neighbourhood forum for an area and the way they are set up is clearly defined by the Council as a planning authority. The procedure for forming a neighbourhood forum is set out in Section 61F of the Town and Country Planning Act 1990	
v) Community interest groups with a local connection. These must have one or more of the following structures: a) A charity b) A community interest company c) A company limited by guarantee that it is non-profit distributing d) An industrial and provident society that is non-profit distributing (these groups will be renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010) e.g. co-operative societies.	

c) Local Connection - please describe how your organisation has a local connection to the site in question, for example, do you live in the area or are you a user of the property already. The Council may seek evidence to support your statement.



2. Details of your organisations governance structure

Neighbourhood Forum Registration

Company registration number:

.....

CIC registration number....

.....

Charity registration

number.....

Friendly Society registration

number.....

Other.....

...

Please note these details above may be shared with other parts of the Council, third sector organisations and other community partners for the purposes of the processing your application.

3. Where is the land or building that you wish to see listed as an asset of community benefit?

This is to assist in the initial processing of your enquiry. Please attach a plan or map to this application (Google maps are useful for this purpose) showing the boundary of the asset to be listed indicating where possible if it has more than one owner. This is to assist with identifying the asset to be considered for listing and the freehold or leasehold ownership(s) for each part of it.

Address.....
.....

.....
.....

.....Postcode.....
.....

4. Who owns the asset in question?

a) Is the Council the owner of the asset? If yes, please proceed to Q6

Yes/No – please delete as appropriate

This may be confirmed by contacting Charnwood Borough Council's Property Services team at [contact email to be inserted]

b) Is the asset privately owned? If yes, please supply proof in form of Copy of Title documents and plan. This information is required if the asset is listed. It would be helpful if these details could be supplied to assist the Council in contacting the owners in respect to the nomination for listing. Information may be obtained online at www.landregistry.gov.uk or:

Leicestershire Land Registry
Westbridge Place
Leicester
LE3 5DR
Tel: 0844 892 1111

Owner 1 Name..... Address..... Leaseholder Yes/No Freeholder Yes/No Owner 2 Name..... Address..... Leaseholder Yes/No Freeholder Yes/No If there are more than two leasehold or freehold owners please give their details on a separate sheet to accompany this application.
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5. Who are the current occupiers of the asset?

Please supply proof: this information is required if the asset is listed. It would be helpful to assist the Council in contacting the occupiers in respect to the application for listing. Information may be available from HM Land Registry at the address previous listed.

Occupier 1 Name..... Address.....
Occupier 2 Name..... Address.....
Occupier 3 Name..... Address.....
Please add the details of any other occupiers of the asset on a separate sheet to accompany this application

6. What reason do you have for nominating this asset, why do you think it is of community benefit?

This is to assist the Council in deciding whether or not the asset meets the criteria for listing.



7. Declaration

This must be signed by the appropriate authorised officer in your organisation.

The Council would like to receive as much information as possible. Please confirm that:

- The information contained within this application is correct and complete
- The required supporting documents referred to in this application:
 - Site plan
 - Proofs of ownership and occupation
 - Proof as to the legal status of your organisation
 - Proof that it has been formally agreed to make the application

Full
Name.....

Signature..... Date.....
....

Position within
Organisation.....

E
Mail.....
...

Tele:.....
.....

Nomination by post: Applications and supporting documents must be clearly marked 'Community Asset Right to Bid Expression of Interest Confidential'
Applications by electronic mail will be accepted. All supporting documents must be included as attachments.

NB: Please retain a copy of this form for your records. Should your circumstances or contact details change please inform the appropriate officer.

This information will be held in accordance with the Data Protection Act 1998. Information contained herein may be shared with officers and elected members from Charnwood Borough Council and retained for 5 years.