

# Crawley Borough Council

# 1

**Report to Overview and Scrutiny Commission**  
**17<sup>th</sup> March 2014**

**Report to Cabinet**  
**19<sup>th</sup> March 2014**

## **Localism Act 2011 – List of Assets of Community Value**

**Report of the Head of Legal and Democratic Services**  
**Report No. LDS/080**

---

### **1. Purpose**

The Localism Act 2011 provides a range of rights for local communities relating to a number of the Council's functions and the way in which services are delivered. These rights include the ability to nominate assets of community value for inclusion on a list maintained by a local authority. This report outlines the provisions relating to the Assets of Community Value Scheme and the implications for the Council of having to hold the list of Assets of Community Value including recommended procedures and arrangements for dealing with the duty.

### **2. Recommendations**

#### **2.1 To the Overview and Scrutiny Commission:**

That the Commission considers the report and decides what comments, if any, it wishes to submit to the Cabinet.

#### **2.2 It is recommended that the Cabinet:**

- (1) Note the duty under the Localism Act 2011 to implement the List of Assets of Community Value Scheme as laid out in this report.
- (2) To approve the outline of the scheme as set out in the report and the operational policy as set out in Appendix 1.
- (3) That delegated authority be granted to the Head of Legal and Democratic Services to finalise and administer the scheme.
- (4) That delegated authority be granted for the determination of assets to be listed as Assets of Community Value to an Assets of Community Value Panel (ACVP) comprising of three Heads of Service drawn from a pool of Officers (Head of Legal and Democratic Services, Head of Community Services, Head of Strategic Housing and Planning Services, Head of Property, Head of Planning and Environmental Services) in consultation with the Cabinet Member for Community Engagement, and in the event of a conflict of interest then the Leader of the Cabinet.
- (5) Delegate authority to the Director of Transformation and Housing to be responsible for hearing and reviewing any decision about the listing of an Asset.

- (6) Delegate authority to the Head of Legal and Democratic Services and the Council's Section 151 Officer to determine claims for compensation, with a review being undertaken by the Director of Transformation and Housing.
- (7) Approve a period of five years be adopted as the time period after which Listed Assets of Community Value and failed Community Nominations should be removed from the lists.
- (8) Where nominations for assets to be included as being of Community Value rely on a use in the recent past, this be regarded as a period of no more than 3 years preceding the date of nomination.
- (9) In the event of an application to list Council owned land/buildings which is successful, the Cabinet to make the decision on whether to accept a bid.

### **3. Reasons for the Recommendations**

- 3.1 To ensure that the Local Authority complies with statutory legislation under the Localism Act 2011 and offers a fast and robust procedure for dealing with Assets of Community Value nominations, appeals and compensation claims.

### **4. Background**

- 4.1 The Assets of Community Value provisions are contained in the Localism Act 2011, Part 5, Chapter 5.
- 4.2 The Government's policy in introducing these provisions is to assist local community groups to preserve buildings or land which are of importance to their community's social well-being. The background to this is a trend in recent years of communities losing local amenities and buildings of importance to them.
- 4.3 The focus of the Assets Scheme is to give the local community early warning of sales and to enable eligible local groups to delay sales by six months to provide time for them to put together a competitive bid to buy the asset. The scheme does not require the owner to sell to a community group, but improves the opportunity for this outcome.

### **5. Description of Issue to be resolved**

- 5.1 The asset must be **a building or land**, as defined in section 88 of the Act. The contents of a building, or related services or business assets, are not covered by the Act. In general, in order to be listed, the building must further the social wellbeing or social interests of the local community, or have been used to do so in the recent past. Residential property is excluded from listing, except where an asset that could otherwise be listed contains integral residential quarters, such as a pub or caretaker's flat.
- 5.2 The buildings or land can be in public or private sector ownership and therefore can include things as play areas, sports pitches, libraries, village halls, pubs and local shops. Certain categories of land and buildings cannot be listed as a community asset. These excluded categories are set out in Schedule 1 of the Assets of Community Value Regulations 2012. The nominator must ensure that the nominated asset is not in one of these categories.

The following are excluded:

- Residential properties or land. This include 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. However, an asset which could otherwise be listed which contains integral residential quarters such as accommodation as part of a pub or caretakers flat would be capable of listing;
  - Land licensed for use as a residential caravan site and some types of residential caravan site which do not need a licence; or
  - Operational land of statutory undertakers as defined in the Town and Country Planning Act 1990 s263.
- 5.3 Once listed the local authority must inform owners and other interested parties that it has been listed, enter this on the local land charges register and, in the case of registered land, apply for a restriction on the land register. Provisions exist for appeals by way of review against the local authority's decision, and for compensation to be paid where the listing has had a detrimental effect on the value of the property.
- 5.4 A moratorium will be applied when a listed asset is put up for sale. This is an initial six-week interim period, during which a community group must express interest in bidding. If one does, there is a Six Month Moratorium **beginning from when the asset is put up for sale, i.e. including the six-week interim period**, to allow a community interest group to put a bid together.
- 5.5 The provisions for a community group to prepare a bid only apply **when the asset is being put up for sale.** There is no compulsion on the owner of the listed asset to sell it, nor any restriction on what the owner can do with the property while they own it.
- 5.6 There is no community right to buy the asset, just to bid. This means that the local community bid may not be the successful one. The owner can, at the end of the moratorium, sell to whomever they choose and at whatever price. The owner is also at liberty to negotiate a sale with a preferred buyer during the moratorium period: but the sale cannot be **concluded** during that period.
- 5.7 Where the sale of an asset has been announced but not yet concluded, it is still possible for a group to seek to list it. This circumstance may arise if a much-used local asset is suddenly put up for sale. If contracts are exchanged for the asset and a transfer takes place before the asset is formally listed, there would be no opportunity for a group to put in a bid; but if the asset is listed before a sale is agreed, the moratorium provisions apply.

## 6. Information & Analysis Supporting Recommendation

6.1 The Council needs to set up a number of procedures and arrangements to implement the new scheme these include:

- (a) To make decisions on submitted nominations. This includes determining whether the nomination is complete, whether the asset is actually of

community value, and determining whether the nomination should be approved.

- (b) To hear and determine appeals by the owner of an asset against the Council's decision to include an asset on its list of Assets of Community Value.
- (c) To publish lists of successful and unsuccessful nominations. (It is intended that a web page be set up to include nomination application forms and guidance, as well as lists of successful and unsuccessful nominations).
- (d) To determine a definition of "recently" in the context of the definition of a community asset being "a building or land the main use of which is or has recently been to further the social wellbeing or social interests of the local community".
- (e) To establish a compensation scheme and arrange for the adjudication and payment of any compensation claimed by owners of assets.
- (f) The legislation states that after a period of time following inclusion, assets on the list and failed community nominations should be removed. The legislation suggests this period be 5 year period but the Council can determine a different time scale if it so chooses. After the 5 year period the land or property can be resubmitted as a new nomination if an eligible community group wishes to do so.

6.2 Several elements within the scheme require formal decision making processes to be set up. Accordingly please see the Draft Operational Policy attached at Appendices 1, 2 and 3 which outlines the Policy for dealing with those procedures and arrangements.

## **7. Implications**

- 7.1 There will be a resource impact on the Council in implementing the requirements of the scheme, but this will depend on the volume and type of nominations, notification of intention to sell affected property, and appeals by owners against decisions.
- 7.2 In addition, there will be a potential cost to the Council in compensation payments of up to £20,000 in any one year (the Government picking up costs in excess of this). The Council would meet any potential impact below the £20K compensation threshold from within existing budgets. This would be reviewed after the first year of operation.
- 7.3 There may be an impact of the Community Right to Bid upon the disposal of the Council's property assets, with delayed sales if properties are listed as Assets of Community Value.
- 7.4 Chapter 3 of Part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 together deliver the Community Right to Bid Scheme which provide communities the opportunity to identify assets of community value, have those lists and bid to purchase them. The Council is required to comply with the provisions of the Scheme in accordance with the Act and the Regulations as set out in this report and Appendices 1, 2 and 3.

## **8. Background Papers**

The Localism Act is available from the UK Government website  
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>.  
A plain English guide to the Localism Act, published by DCLG 15 November 2011.  
<http://www.communities.gov.uk/publications/local/government/localismplainenglishupdate>.  
Managing Risk in Asset Transfer – Department for Communities and Local Government.

Report author and contact officer: Manson Kendall, Principal Property Lawyer –  
01293 438784 – [Manson.Kendall@crowley.gov.uk](mailto:Manson.Kendall@crowley.gov.uk).

## DRAFT OPERATIONAL POLICY

### Crawley Borough Council Policy on Assets of Community Value Scheme

#### **Purpose**

This document explains Crawley Borough Council's policy for implementing the Assets of Community Value Scheme as set out in the Localism Act 2011.

#### **Introduction**

The Localism Act provides certain community groups with an opportunity to protect and preserve local assets of community value, be they land or buildings.

The Council is required to maintain two lists – one listing nominations of assets of community value that have been approved, and a second listing failed nominations, with reasons. The key steps for considering a nomination to the List of Community Assets are set out in Appendix 2.

Owners of assets on the list of successful nominations must inform the Council of an intention to sell or dispose of the asset. Eligible community groups may then delay the sale or disposal in order to bid to buy it. This right does not give the community group a right to buy, only a right to bid.

Buildings and land in both public and private ownership can be the subject of an Application to List and subsequent right to bid. Certain categories of land and buildings cannot be listed as an asset of community value. These include:-

Residential properties or land.

Land licensed for use as a residential caravan site and some types of residential caravan sites which do not need a licence.

Operational land of a statutory undertaker as defined in the Town and Country Planning Act 1990.

There are three distinct processes that the Council must address. These are:

1. Processing nominations and determinations of applications to nominate and listing of Assets of Community Value.
2. Managing contested nominations, reviews, appeals and applications for compensation.
3. Managing assets that are to be sold.

#### **The Process**

##### **Nominations and Listing**

The first stage of the process is triggered by receipt of a nomination (nomination forms will be made available to potential nominators both on-line and in hard copy).

Nominations will be assessed against the following three criteria:

1. Is the nominating organisation eligible to make the nomination?

Only certain organisations are eligible (as defined in the Localism Act and associated regulations) to make nominations. These are:

- Neighbourhood Forums
- Parish Councils
- Unincorporated bodies (with at least 21 individual members who are on the local electoral register)
- A charity
- A company limited by guarantee where profits are not distributed to members
- An Industrial or Provident Society
- A Community Interest Company

Completed nominations will be acknowledged and then processed within a target maximum of 8 weeks. The Council will determine whether the nomination is successful or not by having regard to the criteria above and will advise the nominating organisation and the land owner within 7 days of the decision being taken. There is no right of appeal for the nominator to the Council's decision.

Nominations will be processed by the Head of Legal and Democratic Services. Decisions on the determination of assets to be listed as Assets of Community Value will be made by a ACVP comprising of three Heads of Service drawn from a pool of Officers (Head of Legal and Democratic Services, Head of Community Services, Head of Strategic Housing and Planning Services, Head of Property, Head of Planning and Environmental Services in consultation with the Cabinet Member for Community Engagement and in the event of a conflict of interest then the Leader of the Cabinet. The decision will be recorded on a validation form. This is a formal record of the meeting which records the final decision and reason why an asset is accepted or rejected as an asset of community value.

2. Is the nomination form properly complete?

The nomination must be in writing (hard copy or electronic). It must identify the nominating organisation and provide adequate proof of that organisation's eligibility (see below for list of eligible organisations). It must identify the asset and any occupiers and details of those holding a freehold or leasehold estate in the asset. It must provide reasons as to why the asset is of community value. A nomination template form has been developed to assist potential nominators. The Council will acknowledge nominations within five working days of receipt. The Council will when it is considering whether land nominated by a community nomination should be included in the list take all practicable steps to give the information that it is considering listing the land to the owner of the land, where the owner is not the freeholder the holder of the freehold estate in the land and the holder of any leasehold estate in the land other than the owner, any lawful occupier of the land and finally any parish or neighbourhood Council where the land is situated within a parish or neighbourhood boundary.

Notification that a nomination has been received will also be sent to the Leader of the Council, the relevant local member, the Council's Corporate Management Team and internal Crawley Borough Council departments.

3. Is the nominated asset of community value?

The asset is of community value if the Council judges that:

- Current use of the building or land furthers the social well-being or social interests of the local community, or such use has existed within the recent past (within five years);
- The community use has been the main use rather than an ancillary use;

- It is realistic to think that the building or land could continue to be used in a way which will further the social well-being and social interests of the community within the next five years, and:
- It is not an exempted building or piece of land.

(The Localism Act defines “social interest” as including cultural, recreational and sporting interests).

The Asset of Community Value Panel will consider all written information provided as part of the community nomination and all written responses received as a result of the notification procedure. Oral presentations will not be permitted.

The Council will maintain, and publish on its web site, two lists – one of assets of community value (resulting from successful nominations) and one listing unsuccessful nominations. This latter list will give reasons why the nomination was unsuccessful. Hard copies of the lists will be made available on request. Upon listing of an asset, a land charge will be registered against the land or property and a restriction entered at the Land Registry.

### **Managing Reviews and Appeals**

The Director of Transformation and Housing will hear reviews.

#### **Reviews**

The owner of an asset that has been listed as an asset of community value has the right to ask the Council to review its decision. In such cases the owner (of the listed land or building) must write to the Council within 8 weeks of receipt of notification from the Council that the asset is to be listed. The asset will remain listed while the review is carried out.

The owner is entitled to request an oral hearing which must be done in writing and if not then the review will be considered on the papers.

A review hearing will take place at which the owner will present a case for removing the asset from the list. The officer hearing the review will determine the outcome having regard to:

- Whether the nomination was properly submitted and whether this was by an eligible group;
- Whether the asset is eligible to be listed;
- Any new information that has come to light since the nomination was determined;
- Any improper actions or failure to follow procedure on the part of the Council that has affected the original decision.

The owner will be entitled to be present at the review meeting but must submit a written case including all evidence prior to a review meeting being arranged.

The Director of Transformation and Housing will be empowered to remove the asset from the list of assets of community value if the hearing officer finds in favour of the owner.

#### **Appeals**

If the owner of a listed asset is dissatisfied with the Council’s decision reached at its review hearing he/she is entitled to appeal to an independent first tier tribunal (The General Regulatory Chamber of the First Tier Tribunal). If a tribunal appeal is successful the owner may apply to the Council for reasonable costs.

### **Managing Assets That Are To Be Sold**



The owner of a listed asset is required to notify the Council of an intention to dispose of the property certain forms of disposal are exempt in the Regulations, these are:

- Transfers made other than for value (a gift).
- Transfers between members of the same family (whether it be a sale or a gift).
- Transfers due to the inheritance of the asset.
- Sales by personal representatives in order to pay estate debts or cash legacies.
- Transfers occasioned by resignation or death of partners in a firm of trustees or a trust.
- Transfers between trustees, between a trust and settler, and between a trust and beneficiary.
- Business to business transactions of a going concern, where the intention is to continue the existing use of the asset.
- Transfers where the listed asset forms part of a larger estate.
- Disposals made as a result of pre-existing arrangements.
- Transfers between connected companies.
- Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules.
- Provision of on-going public service delivery.

### **Moratorium Period**

At such time as the Council receives notification of the intention to make a (non-exempt) disposal of a listed asset a 6 week initial moratorium period will commence. During this period eligible community interest groups have the opportunity to decide whether they wish to prepare a bid to purchase the asset.

The Council will publish the owner's intention to dispose of the asset on its web site and notify in writing the organisation that originally nominated the asset.

Community groups eligible to bid to purchase the asset are:

- A body with a local connection which is constituted in one of the following ways:
  - A company limited by guarantee
  - An Industrial or Provident Society
  - A Community Interest Company
  - Any other body which is registered as a charity including a Charitable Incorporated Organisation.

If within this 6 week period an eligible community group expresses an interest to bid, a full moratorium period of 6 months will commence (from the date of the notification of disposal). During this period a sale is prohibited and the community group has the opportunity to prepare and submit a full bid to the owner for the asset. The owner is under no obligation to accept the bid.

If at the end of the 6 month moratorium a bid has not been received the owner is free to dispose of the asset as they wish. No further moratorium can then commence for 18 months from the date that the Council received notification of disposal. This provides the owner with 12 months in which to dispose of the asset freely. The key steps to be undertaken should an Asset of Community Value be sold are set out in Appendix 3.

### **Compensation**

The owner of a listed asset may make a claim for compensation for any loss or expenses he/she has incurred during the time the asset is listed, which would not have been incurred had the asset not been listed. A claim may therefore be made for:

- Any loss resulting from a delay in the owner entering into a binding agreement to sell the asset, that has been caused by either the initial or full moratorium period
- Any reasonable legal expenses incurred in a successful appeal to the first tier tribunal against the Council's decision to list the asset, refuse to pay compensation, or the amount of compensation offered or paid.

Compensation claims will be progressed in three stages:

Stage 1 – The initial claim to the Council must be made before the end of thirteen weeks of the loss or expense being incurred. The claim must be in writing and sent to the Head of Legal and Democratic Services, and include the amounts sought and supporting evidence. The Head of Legal and Democratic Services and the Council's Section 151 Officer will consider the validity of any claim as soon as practicable.

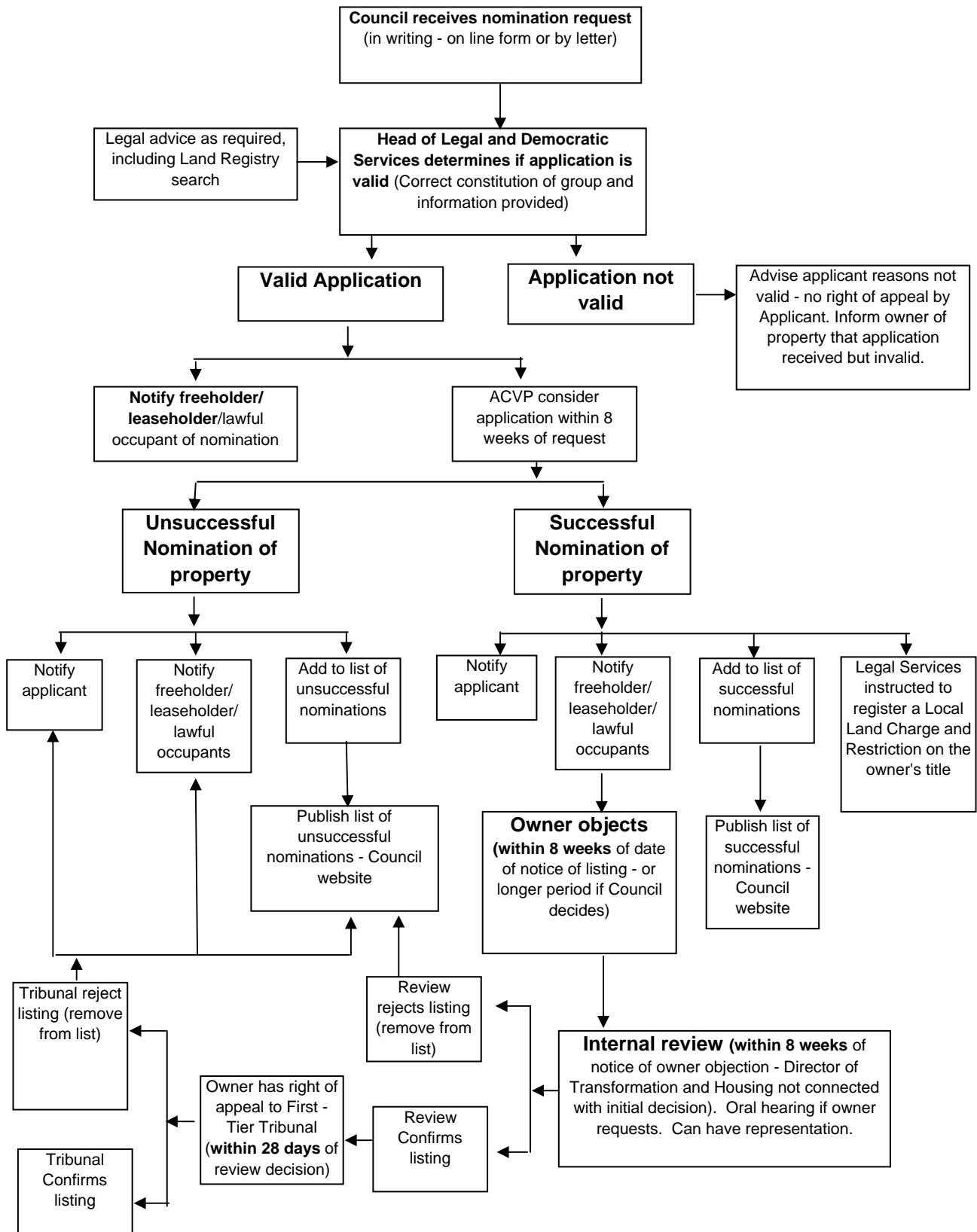
Stage 2 – Within 56 days of being notified of the Council's decision at stage 1 above, a request to review that decision may be submitted, in writing and including the amounts sought and supporting evidence. The review will be heard by the Council's Director of Transformation and Housing.

Stage 3 – The owner may refer a claim to the first tier tribunal where he/she is not satisfied with the outcome of a stage 2 claim.

### **Policy Review**

Crawley Borough Council may review and amend this policy in light of developing good practice and guidance.

**Assets of Community Value Listing Procedure**



Procedure following listing

