

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF CABINET ON 03 JUNE 2019

### PART A : REPORT

<b>SUBJECT:</b> Assets of Community Value – Policy & Guidance Notes for Nominating Bodies & Owners
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<b>REPORT AUTHOR:</b>	Nat Slade, Group Head of Technical Services
<b>DATE:</b>	22 January 2019
<b>EXTN:</b>	37683
<b>PORTFOLIO AREA:</b>	Technical Services

#### EXECUTIVE SUMMARY:

Cabinet is asked to recommend to Full Council that the Assets of Community Value Policy and Guidance Notes for Nominating Bodies & Owners be adopted, and to make associated changes to the constitution. The policy provides a framework for the Council to consider and determine Asset of Community Value nominations and any subsequent requests for review, compensation claims and any subsequent requests for review of compensation decisions.

#### RECOMMENDATIONS:

Cabinet is asked to recommend to Full Council that:

1. the Assets of Community Value Policy and Guidance Notes for Nominating Bodies & Owners be adopted;
2. the Group Head of Technical Services be delegated authority to make any future necessary changes to the Policy as a consequence of new legislation or alternative practices;
3. the following deletions which refer to Assets of Community Value be made to the Council's Constitution at:
  - a. Point 9 in Part 3 (Responsibility for Functions), Section 3 covering the Cabinet Member for Community Wellbeing
  - b. Point 2 in Part 3 (Responsibility for Functions), Section 3 covering the Cabinet Member for Technical Services
  - c. Paragraphs 4.14 and 4.15 in Part 4 (Officer Scheme of Delegation) as they refer to the Director of Place

4. the following additions be made to the Council's Constitution at Part 4 (Officer Scheme of Delegation):
  - a. *Authority be delegated to the Director of Place and Group Head of Technical Services, or their nominated representative, to validate, consider and determine nominations for property/land to be listed as an asset of community value under the Assets of Community Value Policy*
  - b. *Authority be delegated to the Director of Place and Group Head of Technical Services to appoint an officer of the Council to consider and determine any request for review of a decision to list an asset of community value in accordance with the Assets of Community Value Policy*
  - c. *Authority be delegated to the Group Head of Technical Services or their nominated representative to consider and determine claims for compensation made under the Assets of Community Value Policy*
  - d. *Authority be delegated to the Director of Place or their nominated representative to consider and determine any request for review of a decision made about a claim for compensation in accordance with the Assets of Community Value Policy*
5. The Group Head of Council Advice & Monitoring Officer be authorised to make any further consequential changes required to the Constitution.

## **1. BACKGROUND:**

- 1.1 In response to concern around the loss of assets which are valued by the community, the Government introduced The Community Right to Bid through the Localism Act 2011. This was implemented by The Assets of Community Value (England) Regulations 2012. The Act allows voluntary or community bodies to nominate a building or piece of land to be listed as an 'Asset of Community Value'. In the event that the owner of a listed asset wishes to sell it, a prescribed procedure must be followed which provides a moratorium period of up to six months for a community interest group to prepare an offer to purchase the asset from the owner. The owner is however under no obligation to sell the asset to the community interest group in such circumstances.
- 1.2 It is more than six years since the Council received its first nominations. Since then the Council has received 87 valid nominations to consider whether to list. The majority of these were listed as an Asset of Community Value. Nominations last for five years. There are at time of writing, 70 Assets of Community Value listed by Arun. The list is published on the website, see Background Papers.
- 1.3 The legislation provides a series of safeguards for owners of assets which are listed. The owner of an asset can request an officer undertakes a review of a decision to list. The owner can appeal the outcome of the review decision to the First Tier Tribunal.

- 1.4 If such an appeal is upheld, the owner can submit a claim to be recompensed for legal expenses incurred, for which the Council has an obligation to pay. The legislation also places an obligation on the Council to pay compensation for losses incurred by the owner of a listed asset as a consequence of a delay in entering into a binding agreement to sell which is wholly caused by the moratorium period.
- 1.5 A further safeguard for owners is that they may request an officer undertakes a review of a compensation decision. The owner may also appeal the compensation review decision to the First Tier Tribunal.
- 1.6 Of the 87 valid nominations received by the Council, at least three decisions were reviewed by officers following receipt of request to do so by the owner. Two review decisions were appealed by owners at the First Tier Tribunal. The first of these appeals was upheld, the most recent appeal was dismissed. There has been one claim for compensation received, associated with the upheld appeal, and as the claim met the criteria, the Council was obliged to pay.
- 1.7 The legislation provides criteria to define what bodies are able to submit nominations. Since the legislation was introduced there has been a lot case law established which the Council must have regard to when determining nominations. In particular these relate to what the features are of a valid nominating body, and what constitutes sufficient evidence of community value.
- 1.8 Consequently more information is needed from a nominating body now to secure a successful listing of an asset than was the case when the Council first began to receive nominations in 2012. As many of the assets which were listed five years ago come due for re-nomination, it is considered helpful for all parties, especially nominating bodies, to set out in a policy (see Appendix 1) clearly what the information they will need to submit, and how the associated processes are carried out.
- 1.9 The regulations, which states who should be consulted on a nomination, are silent on consulting with Ward Members. It is considered valuable to be able to have regard to Ward Members who often have useful knowledge of their areas. By including this provision within the policy Ward Members representations can be taken into account by officers in determining whether land should be listed.
- 1.10 In contrast, the existing arrangements for the Council to determine claims for compensation are that this is to be undertaken by a Compensation Panel of Members, led by the Cabinet Member for Technical Services. No further details of the Panel are contained within the constitution. Thus far the Council has received a single claim for compensation which was the only time the panel has been convened. There is little discretion over whether compensation claims should be paid, and so the proposal which has been made is to delegate these compensation claim decisions to officers.
- 1.11 The Constitution also contains an erroneous reference to an Assets of Community Value Appeals Panel, for which the lead Member would be the Cabinet Member for Communities and Wellbeing. The regulations state that on the owner's request, reviews of compensation decisions and of listing decisions must be undertaken by an officer of "appropriate seniority". Appeals are dealt with by the First Tier Tribunal. Accordingly, the proposal is to remove this reference in the Constitution.

1.12 The appended policy and associated proposed changes to the Constitution and delegations address all these issues.

**2. PROPOSAL(S):**

Cabinet is asked to recommend to Full Council that:

1. the Assets of Community Value Policy and Guidance Notes for Nominating Bodies & Owners be adopted;
2. the Group Head of Technical Services be delegated authority to make any future necessary changes to the Policy as a consequence of new legislation or alternative practices;
3. the following deletions which refer to Assets of Community Value be made to the Council's Constitution at:
  - a. Point 9 in Part 3 (Responsibility for Functions), Section 3 covering the Cabinet Member for Community Wellbeing
  - b. Point 2 in Part 3 (Responsibility for Functions), Section 3 covering the Cabinet Member for Technical Services
  - c. Paragraphs 4.14 and 4.15 in Part 4 (Officer Scheme of Delegation) as they refer to the Director of Place
4. the following additions be made to the Council's Constitution at Part 4 (Officer Scheme of Delegation):
  - a. *Authority be delegated to the Director of Place and Group Head of Technical Services, or their nominated representative, to validate, consider and determine nominations for property/land to be listed as an asset of community value under the Assets of Community Value Policy*
  - b. *Authority be delegated to the Director of Place and Group Head of Technical Services to appoint an officer of the Council to consider and determine any request for review of a decision to list an asset of community value in accordance with the Assets of Community Value Policy*
  - c. *Authority be delegated to the Group Head of Technical Services or their nominated representative to consider and determine claims for compensation made under the Assets of Community Value Policy*
  - d. *Authority be delegated to the Director of Place or their nominated representative to consider and determine any request for review of a decision made about a claim for compensation in accordance with the Assets of Community Value Policy*
5. The Group Head of Council Advice & Monitoring Officer be authorised to make any further consequential changes required to the Constitution.

<b>3. OPTIONS:</b> (a) Not to recommend to Full Council to adopt the Assets of Community Value Policy and Guidance Notes for Nominating Bodies & Owners, nor make the associated delegations and changes to the Constitution. (b) To amend the Assets of Community Value Policy and Guidance Notes for Nominating Bodies & Owners, prior to recommending in accordance with the proposal.		
<b>4. CONSULTATION:</b> Legal Services		
Has consultation been undertaken with:	<b>YES</b>	<b>NO</b>
Relevant Town/Parish Council		X
Relevant District Ward Councillors		X
Other groups/persons (please specify): Legal Services Monitoring Officer	X	
<b>5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)</b>	<b>YES</b>	<b>NO</b>
Financial	X	
Legal	X	
Human Rights/Equality Impact Assessment		X
Community Safety including Section 17 of Crime & Disorder Act		X
Sustainability		X
Asset Management/Property/Land	X	
Technology		X
Other (please explain)		
<b>6. IMPLICATIONS:</b> <u>Financial:</u> 6.1 The Council is obliged to pay compensation to owners of assets of community value if they incur legal expenses in successfully appealing a listing/compensation decision, or if they incur loss as a consequence of a delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period. When the Assets of Community Value regime was introduced, the government committed to reimbursing local authorities for compensation it became liable for. The Council contacted the Ministry of Housing Communities and Local Government seeking reimbursement for the one compensation claim it has received and paid, and was advised that the government no longer reimburses local authorities. No		

specific budgetary provision has been allocated for this purpose.

Legal:

- 6.2 The Council's Legal Services are able to provide advice. Appeals made to the First Tier Tribunal may necessitate legal representation.

Asset Management/Property/Land:

- 6.3 Some of the Council's own estate has been listed, and more may be nominated in the future which would oblige it to follow the prescribed procedure in the event the Council proposed to dispose of it.

**7. REASON FOR THE DECISION:**

To provide a clear framework in which to deliver the Assets of Community Value processes.

**8. EFFECTIVE DATE OF THE DECISION: 12 June 2019**

**9. BACKGROUND PAPERS:**

Appendix 1 Assets of Community Value Policy & Guidance Notes for Nominating Bodies & Owners

Arun's List of Un/Successful Assets of Community Value:

<https://www.arun.gov.uk/download.cfm?doc=docm93jjm4n13347.pdf&ver=13494>