

5 November 2012

Report of	Head of Strategic Policy and Regeneration	Author	James Firth ☎ 508639
Title	Assets of Community Value - Community Right to Bid		
Wards affected	All		

This report recommends that the Panel note the legislative requirements concerning assets of community value, consider the implications and make a recommendation to Cabinet on the arrangements to be adopted by the Council, including any necessary changes to the constitution.

1. Decision(s) Required

- 1.1 To note the legislative requirements concerning assets of community value (also known as 'community right to bid') as set out in this report.
- 1.2 To consider the implications and make recommendations to Cabinet on the arrangements to be adopted by the Council as set out in section 5 below.
- 1.3 The Monitoring Officer be requested to make any necessary changes to the constitution.

2. Reasons for Decision

- 2.1 The provisions of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 place a number of requirements on the Council. This report provides further information on these legislative requirements and makes recommendations on the arrangements to be adopted by Colchester Borough Council.

3. Alternative Options

- 3.1 The Council is required by legislation to maintain a list of assets of community value and to consider community nominations. The proposed arrangements for processing and considering applications are set out in the proposals section of this report. Alternative options include placing responsibility for these functions within a different section(s) of the Council.

4. Supporting Information

- 4.1 The Localism Act 2011 introduced a right for Parish Councils, and other local groups such as community and voluntary bodies to nominate a building or other land as an 'asset of community value'. Local authorities are required to consider such applications, and maintain and publish a 'list of assets of community value'. The owner of any land or buildings on the list is required to give notice and comply with a moratorium period before they sell or dispose of the land/building in order to give community groups an opportunity to bid for the land/building should they wish to do so (the Community Right to Bid).
- 4.2 *Part 5 Chapter 3 of the Localism Act 2011* (Sections 87 to 108) and *The Assets of Community Value (England) Regulations 2012* set out the processes and procedures which the Council is required follow and came into force on the 21 September 2012. The assessment of community nominations must be carried out on the basis of whether the

land meets the definition of an asset of community value as defined in the legislation. Applications to dispose of land, listing reviews and compensation reviews must also be carried out as set out in the legislation. These technical processes are functions that it is appropriate to carry out at officer level. The regulations also specify that listing and compensation reviews must be carried out by an officer of appropriate seniority rather than at member level.

- 4.3 This report provides further information on these legislative requirements and makes recommendations on the arrangements to be adopted by Colchester Borough Council regarding assets of community value (Community Right to Bid). Flow charts showing how the process would operate in Colchester have been produced and are attached to this report as appendix 1. The first flow chart sets out the process for dealing with community nominations. The second flow chart sets out the process to be followed when an owner wishes to dispose of land which is listed as an asset of community value. The text below provides further details.

Community nominations

- 4.4 Community nominations may be made by:
- a parish council;
 - a neighbourhood forum;
 - an unincorporated body with at least 21 local individuals and which does not distribute any surplus it makes to its members;
 - a charity;
 - a company limited by guarantee which does not distribute any surplus it makes to its members;
 - an industrial and provident society which does not distribute any surplus it makes to its members;
 - a community interest company.
- 4.5 Nominations from a parish council must relate to land within its area or a neighbouring area. Community bodies must have a local connection.
- 4.6 On receipt of a community nomination the Council is required to notify the parish council, the owner of the land, the freehold or leasehold estate holder (if not the owner), and any lawful occupant of the land that it is considering listing the land. Within eight weeks of receiving the nomination the Council must make a decision as to whether the land is an asset of community value. This must be done in accordance with the Localism Act which defines when land (including buildings/structures) should be considered of community value. It is defined as land where:
- the actual current main use of the land furthers social wellbeing or the social interests of the local community and it is realistic that such a non-ancillary use can continue; or
 - A recent main use of the land furthered the social wellbeing or the social interests of the local community and it is realistic that such a non-ancillary use could be carried out in the next five years.
- ‘Social interests’ include cultural, recreational and sporting interests.
- 4.7 Certain land is excluded by the legislation and may not be listed. This includes residential premises, however integral accommodation as part of a shop or public house which would otherwise be eligible for listing can still be treated as an asset of community value.
- 4.8 It is proposed that authority be given to the Spatial Policy Manager to decide whether nominated land should be considered to be an asset of community value.

- 4.9 Where the Council decides the land is of community value and intends to add it to the 'list of assets of community value', it must give notice of inclusion on the list to the relevant parties and advise the owner of the land of their right of appeal. Land which is added to the list is also recorded on the land charges register. Land remains on the list for five years.
- 4.10 If the Council decides not to add land to the list, the Localism Act and Regulations specify that written reasons must be given to the organisation that made the nomination and the land must be added to a 'list of land nominated by unsuccessful community nominations.'
- 4.11 The Council must publish both the list of assets of community value and the list of land nominated by unsuccessful community nominations. The lists must be available for inspection and one free copy must be provided to any person.

Requests for a listing review

- 4.12 The owner of land which the council has decided should be added to the 'list of assets of community value' has a right to request a review of this decision:
- Such a request must be made within eight weeks of the day written notice was given of the Council's decision to add land to the list
 - The review must be conducted by an officer of appropriate seniority who did not take any part in making the decision to be reviewed
 - The owner may appoint any representative to act on their behalf
 - The Council must notify the owner of the procedure to be followed
 - An oral hearing must be held if requested by the owner
 - Representations may be made orally or in writing or both
 - The review must be completed within eight weeks or longer if agreed with the owner.
- 4.13 The right to request a review only applies to the owner of the land which the Council has decided should be added to the list and not to any other party.
- 4.14 It is proposed that authority be given to the Head of Strategic Policy and Regeneration to carry out and make decisions on listing reviews.
- 4.15 The owner of the land may choose to further appeal to First Tier Tribunal (HM Courts & Tribunals) should they wish to do so.

Moratorium on the disposal of listed land – Community Right to Bid

- 4.16 If the owner of land included on the 'list of assets of community value' wishes to dispose of the land they must notify the Council.
- 4.17 It should be noted that some types of sale are exempted from this requirement. The types of disposals that are exempted are set out in section 95(5) of the Act, and others are in the Regulations. Such disposals include transfer made by gift, transfer within a family, transfer due to inheritance, and transfer where the listed community asset forms part of a larger estate.
- 4.18 On receipt of the notice the Council must update the list, notify the organisation that made the original community nomination, and publicise the matters in the area where the land is situated.
- 4.19 An interim moratorium period applies for six weeks (beginning the day the Council receives notification from the owner). During this period the owner is not permitted to dispose of the land.

- 4.20 If no written request is received from a local community group stating that they wish to be treated as a potential bidder during the six week interim moratorium period then the owner may proceed with the disposal of the land once the six weeks have expired.
- 4.21 If during this six week period the Council receives a written request from a local community group that they wish to be treated as a potential bidder, the Council passes this to the owner of the land informing them that the full moratorium period of six months now applies (beginning the day the Council received the original notification from the owner). The owner is not permitted to dispose of the land during the six month period. This gives the interested community bodies time to prepare a bid for the asset. At the end of the six month period the owner is able to consider all bids including any made by community groups and they may then proceed with the disposal of the land. The disposal of the land to a local community group is also exempt from the moratorium and is allowed during the interim (six week) or full (six month) moratorium periods. Sale to a community group can therefore proceed before the end of the moratorium periods if a community group's bid is accepted.
- 4.22 The provisions do not restrict who the owner of a listed asset can sell the property to, or at what price, so even if a community organisation puts forward a bid the owner does not have to sell to them.

Compensation

- 4.23 The owner or former owner of listed land is entitled to compensation from the Council where they have incurred loss or expense which would not have been incurred if the land were not listed. The regulations state that this may include (without prejudice to other types of claim) claims arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused by the six week or six month moratorium periods. It may also include claims for reasonable legal expenses incurred in an appeal to First-Tier Tribunal. The Government's Impact Assessment (DCLG, Community Right to Bid – Impact Assessment, 21 June 2012) lists claims for expenses and claims for loss of asset value as the possible types of compensation that are most likely to be awarded. With regards to claims for expenses it is the owner's responsibility to prove that extra costs have been incurred as a direct result of the provisions of the legislation. Compensation claims for loss of asset value may apply where an asset being sold at a later date than it would otherwise have been, as a result of triggering the moratorium could lead to a fall or a rise in the capital value of listed assets.
- 4.24 Compensation claims must be made in writing to the Council; be made before the end of 13 weeks after the loss or expense was incurred; state the amount of compensation sought; and be accompanied by supporting evidence.
- 4.25 Compensation claims cannot be made by public authorities and bodies.
- 4.26 The DCLG Community Right to Bid Guidance (October 2012) states that as with other costs incurred by local authorities the estimated costs of compensation have been reflected in the new burdens funding. The compensation elements of new burdens funding are estimated on the basis 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, it is also stated that the Government will meet the cost of compensation payments of over £20,000 in a financial year. This could occur through a local authority paying out over £20,000 in one financial year either on one large claim or as a combined total on a number of smaller claims. Local authorities should write to the Community Assets Team at DCLG with a request for financial support providing evidence of the compensation costs incurred.

Requests for a compensation review

- 4.27 The owner making a claim for compensation may request a review of the decision on whether to pay compensation and/or a review of the amount of compensation that is to be paid. The review would follow the same procedures as the listing review:
- Such a request must be made within eight weeks of the day written notice was given of the Council's decision on the compensation award
 - The review must be conducted by an officer of appropriate seniority who did not take any part in making the decision to be reviewed
 - The owner may appoint any representative to act on their behalf
 - The Council must notify the owner of the procedure to be followed
 - An oral hearing must be held at the owner's request
 - Representations may be made orally or in writing or both
 - The review must be completed within eight weeks or longer if agreed with the owner
- 4.28 It is proposed that authority be given to the Head of Strategic Policy and Regeneration to carry out and make decisions on compensation reviews.
- 4.29 The person who requested the compensation review may appeal to the First Tier Tribunal against any decision of the Council in the review.

Enforcement

- 4.30 Listing of a property is recorded as a local land charge to help ensure compliance. To give a strong incentive to owners to comply with the scheme, the legislation provides that non-compliant sales will be void (ineffective), meaning that the change of ownership has not taken place. This is the case regardless of whether it has erroneously been registered on the Land Register which would have to be rectified once the fact that the sale was void was discovered.

Additional guidance

- 4.31 The Government has recently published additional guidance on this issue which provides further detail to the summary provided by this report. This can be found in the DCLG document, *Community Right to Bid: Non-statutory advice note for local authorities*, October 2012.

5. Proposals

- 5.1 It is proposed that the Council's functions relating to assets of community value (community right to bid) are carried out by the Spatial Policy team in Strategic Policy and Regeneration. This includes:
- maintenance and publication of the list of assets of community value
 - maintenance and publication of the list of land nominated by unsuccessful community nominations
 - consideration of community nominations
 - processing of notices of disposal and correspondence relating to the moratorium period
 - applications for compensation
- 5.2 Officers from other departments will be involved in the decision making process including the community development team and sport and leisure department. In terms of decision making it is recommended that:

- *Community nominations and compensation decisions*
Appropriate authority is given to the Spatial Planning Manager to make decisions on community nominations and compensation awards. Consultation to be carried out with an appropriate Cabinet member as necessary and dependent on the circumstances of the case.
- *Listing review and compensation review decisions*
Appropriate authority is given to the Head of Strategic Policy and Regeneration or Executive Director to make decisions on listing and compensation reviews. Consultation to be carried out with an appropriate Cabinet member as necessary and dependent on the circumstances of the case.

5.3 The assessment of community nominations must be carried out on the basis of whether the land meets the definition of an asset of community value as defined in the legislation. It is therefore considered that these functions can be carried out effectively at officer level. The number of community nominations and applications to dispose of land that will be received by the Council is not known. It is possible, however, that relatively high numbers of applications may be received which must be considered within the time limits specified in the legislation. It should also be noted that the regulations set out the procedures for listing and compensation review and specify that it should be carried out by an officer of appropriate seniority rather than at member level.

6. Strategic Plan References

6.1 The Council's role in the Assets of Community Value and Community Right to Bid process will help to achieve the objectives of the Strategic Plan concerning delivering high quality and accessible services. It will particularly support the Council's priority of 'enabling local communities to help themselves'.

7. Financial Considerations

7.1 The carrying out of the Council's functions for Assets of Community Value and Community Right to Bid will have resource implications. The extent of resources required will depend on the degree of uptake and numbers of community nominations received.

7.2 There will be an impact on resources when dealing with community nominations and maintaining the lists of assets of community value required under the legislation. There will also be an impact on resources when dealing with notifications from owners of their intention to dispose of listed land. These stages all require notices to be sent to the relevant parties and local publicity to be undertaken as appropriate.

7.3 The listing and compensation review procedures also have resource implications and the legislation requires this to be carried out by officers of appropriate seniority.

7.4 Should an appeal be made to First Tier Tribunal then this would be likely to place considerable resource demands on the Council. A successful award of costs against the Council at First Tier Tribunal would also have financial implications.

7.5 As set out in the compensation section above the Council is required to compensate the owner or former owner of listed land where they have incurred loss or expense which would not have been incurred if the land were not listed. DCLG guidance states that the estimated costs of providing this compensation have been included in the new burdens funding. Additionally if the Council pays out over £20,000 in one financial year (either on one large claim or as a combined total on a number of smaller claims) then the Council may write to the Community Assets Team at DCLG with a request for financial support providing evidence of the compensation costs incurred.

8. Equality, Diversity and Human Rights Implications

- 8.1 The Government has published an Impact Assessment of Community Right to Bid (DCLG, 21 June 2012). This includes assessment of the preferred option (now implemented) to provide a moratorium on the sale of an asset designated as an asset of community value, but with no right of first refusal, for community bodies. The equalities impact assessment of this option found that there were no foreseeable adverse impacts on any single equality group. The policy change was considered to provide greater opportunities for those affected by closure and disposal of private and public assets to obtain and run them. It is stated that mechanisms of support will be considered for those who require it, targeting those who lack the skills, expertise and knowledge to make a competitive bid for an asset.
- 8.2 There are not considered to be any particular equality or diversity implications for the proposals set out in this report as the assessment of community nominations will need to be carried out in a consistent manner in accordance with the requirements of the regulations. There will be a need to ensure documents relating to Assets of Community Value are available in accessible formats if required and that the lists are available to view at the Customer Service Centre as required by the legislation.
- 8.3 With regard to human rights implications the Government's Impact Assessment (DCLG, Community Right to Bid – Impact Assessment, 21 June 2012) recognises that imposing a moratorium on sale of a listed site will be an interference with the owner's property rights under Article 1 of Protocol 1 to the European Convention on Human Rights. It is stated that the interference is justified in the general interests of the community. The provision for compensation is considered to contribute to making the temporary restriction on sale a proportionate way of achieving the benefit for the community. Attention is also drawn to the right for a landowner to request an internal review by the local authority of its decision to list their land. In response to the results of national public consultation and to ensure Article 6 compliance, the legislation also allows landowners to claim compensation for loss of value and expenses incurred as a consequence of adhering to provisions. They are also able to appeal against a decision on a compensation claim.

9. Publicity Considerations

- 9.1 The noting of the legislative requirements concerning assets of community value, consideration of the options and making a recommendation to Cabinet on the arrangements to be adopted by the Council may generate significant publicity interest in the scheme and generate a large number of community nominations.
- 9.2 Publicity may be required at appropriate stages to invite community nominations, provide detail on how nominations or requests to dispose of land will be dealt with by the Council, and publicise official matters relating to the proposed disposal of land in accordance with the regulations.

10. Consultation Implications

- 10.1 The assets of community value provisions are set out in the Localism Act 2011 and consultation has been carried out at national level. The government ran a consultation exercise seeking views on the proposed detail of the scheme to be set out in regulations and on the type of support that would be of most assistance. The consultation ran for 12 weeks and ended on 3 May 2011.

11. Community Safety Implications

- 11.1 The Government's Impact Assessment (DCLG, Community Right to Bid – Impact Assessment, 21 June 2012) considers that the provisions will potentially promote greater social cohesion and build social capital strength as opportunities are being made available for communities to identify assets they consider are important and to develop them to best fit their needs.

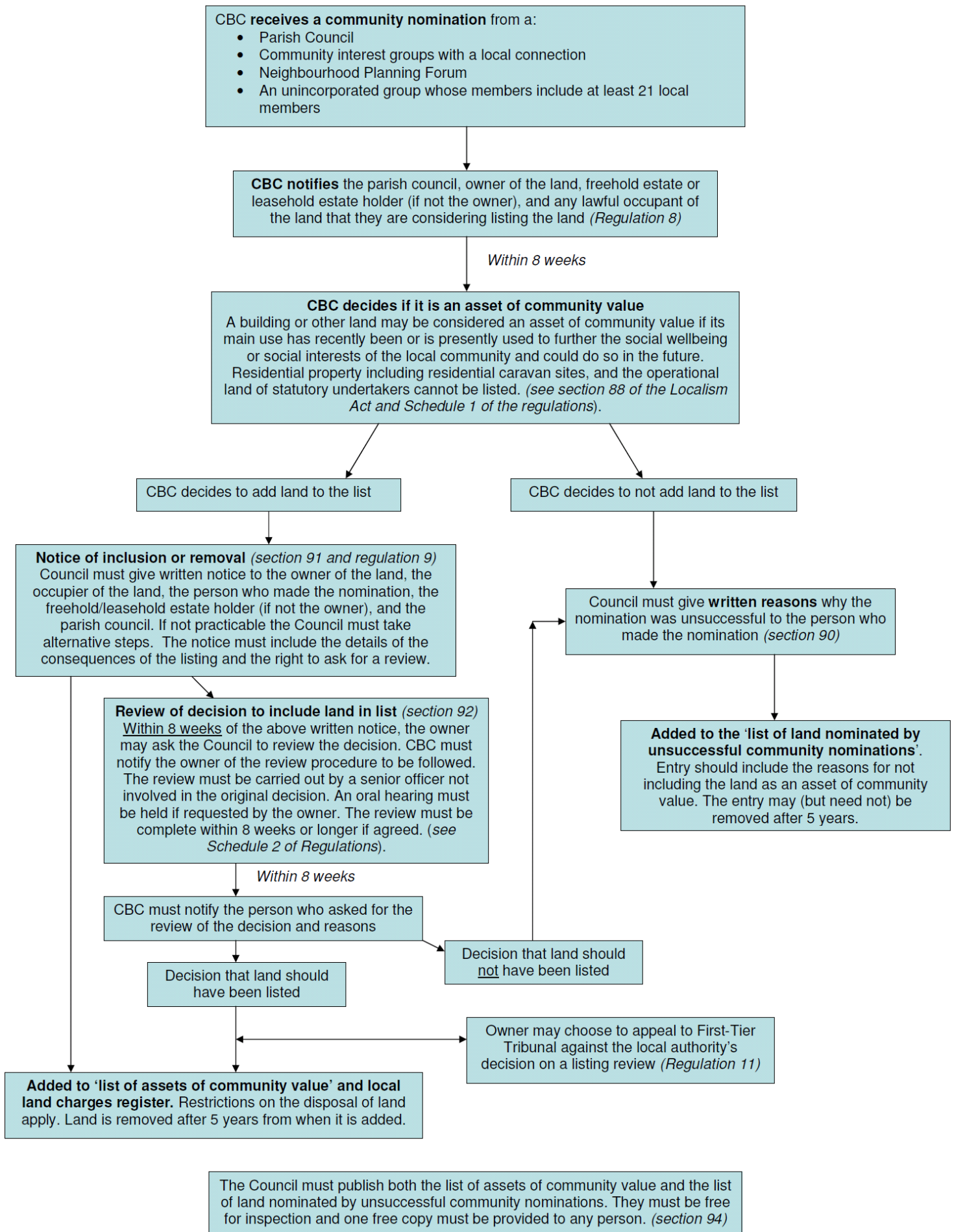
12. Health and Safety Implications

- 12.1 None

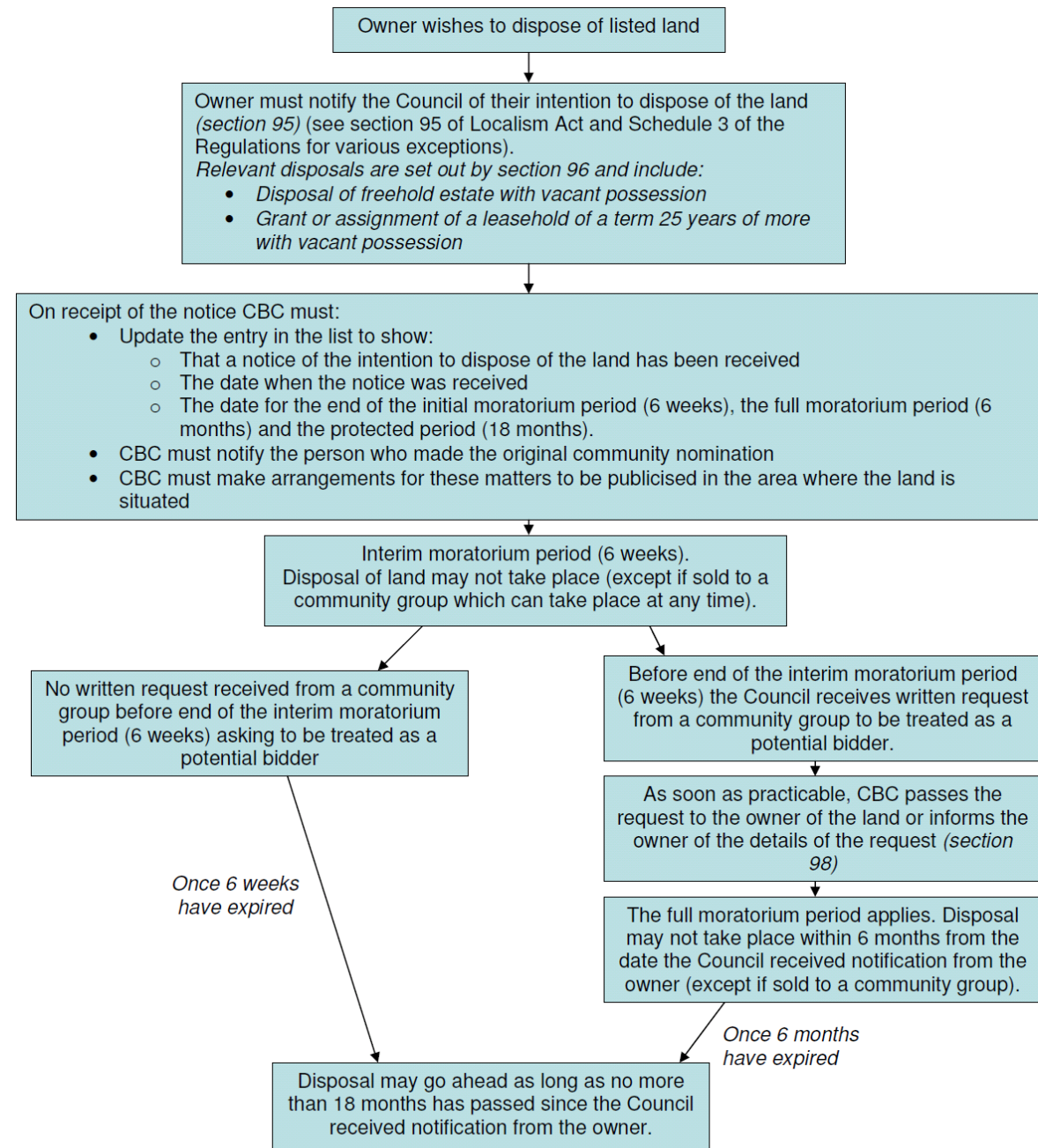
13. Risk Management Implications

- 13.1 There is a risk that the Council may fail to correctly deal with community nominations for assets of community value, or fail to correctly fulfil its obligations under the disposal of listed land procedures (community right to bid). This may result in assets of community value not being appropriately identified, land disposals being unacceptably delayed or alternatively allowed to proceed when the moratorium period should have applied. There are also risks in terms of compensation and legal costs associated with the First Tier Tribunal process. The proposed processes and procedures set out in this report should help reduce these risks by implementing arrangements to ensure the Council fulfils all of its obligations.

Assets of community value - Process chart for community nominations



Assets of community value - Process chart for disposal of listed land



The owner or former owner of listed land is entitled to compensation from CBC of such amount as CBC may determine when that person has incurred loss or expense which would not have been incurred if the land had not been listed.

(Section 99 and Regulation 14)

The following types of claim can be made:

- Any period of delay in entering into a binding agreement to sell which is wholly caused by being prohibited to dispose of land during the 6 week period, or where the prohibition continues for six months any part of that 6 month period.
- A claim for reasonable legal expenses incurred in a successful appeal to the first tier tribunal against the Council's decision to list the land, refuse to pay compensation, or with regard to the amount of compensation offered or paid.

Claims must be made in writing before 13 weeks after the loss or expense was incurred, state the amount of compensation sought, and be accompanied by supporting evidence.

The person making the claim can request a review of the decision under regulation 16. This compensation review must follow the procedure in schedule 2 of the regulations (similar to the listing review procedure).

Where a local authority has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal (Regulation 17).