

PAPER NO. 1

REPORT TO THE EXECUTIVE MEETING OF 4 June 2018

Meeting: Executive
Date: 4th June 2018
Subject: Assets of Community Value
Report of: Matthew Bills, Neighbourhood And Green Spaces Officer
Portfolio Holder: Cllr King
Status: For approval
Relevant Ward(s): All

1 Purpose of the Report

- 1.1 To seek approval from the Executive Committee for amendments to the Assets of Community Value policy concerning compensation to asset owners to reflect current national policy.
- 1.2 To seek approval from the Executive Committee to changes in the agreed delegation of decisions for amendments to the District Council's Assets of Community Value policy to reflect updates in national policy.
- 1.3 To seek approval from the Executive Committee to changes in the agreed delegation of decisions for considering compensation claims and request for review of compensation claim decisions by asset owners.

2 Recommendations:

- 2.1 That the Executive approve the removal of the text as set out in section 4.5 below and insertion of new text to reflect current national policy as contained in Appendix A and in 4.6 below.
- 2.2 The Executive give delegated authority to the Head of Planning and Regeneration to make amendments to the District Council Assets of Community Value policy and guidance to reflect future national policy changes and best practice.
- 2.3 The Executive give delegated authority to the Corporate Director (NP) to determine compensation claims received as a consequence of listing Assets of Community Value (set out in the suggested policy and process at 4.6 and Appendix A).

2.4 The Executive give delegated authority to the Corporate Director (BJ) to consider any appeals received for compensation claims as (set out in the suggested policy and process at 4.6 and Appendix A).

3 Summary of Reasons for the Recommendations

3.1 By making the proposed changes to current policy the District Council is ensuring it has a legally compliant and transparent policy for the consideration and review of compensation claims from asset owners.

3.2 By delegating responsibility for future amendments to District Council Assets of Community Value policy to the Head of Planning and Regeneration, the Authority is ensuring it can respond efficiently to policy changes nationally and ensures that communities have the most up to date guidance available to them.

3.3 By delegating responsibility for decisions on compensation claims to Corporate Directors ensures that the Council is adhering to current national policy and is providing efficient and transparent decisions to asset owners.

4 Key Facts

4.1 The Assets of Community Value Policy was approved by Executive on 25th March 2013 (minute 525 refers).

4.2 A further report of 3rd November 2014 gave delegated powers to Corporate Directors to determine nominations of Asset of Community Value, and any subsequent request for review and appeals that may arise as the consequence of listing the asset.

4.3 The current policy states that Harborough District Council will not compensate owners for losses incurred as a consequence of listing an Asset of Community Value.

4.4 While in many case this may be true, there may be circumstances where compensation to the asset owner is appropriate e.g. where a sale of a listed asset has been delayed as a consequence of listing and Council Tax has still been due.

4.5 Current policy text:

12) Policy to determine whether compensation for loss will be made by the Authority for inclusion of an asset on the list Regulation 14	There will be no compensation in any form made by Harborough District Council for loss after inclusion of a property on the list of assets of community value
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4.6 Suggested new policy text:

<p>12) Policy to determine whether compensation for loss will be made by the Authority for inclusion of an asset on the list Regulation 14</p>	<p>Harborough District Council will consider a compensation claim in the following circumstances:</p> <ol style="list-style-type: none">1. If owner or former owner of listed land or of previously listed land makes the claim, other than specified owners in regulation 15.2. The circumstances mentioned in paragraph 1 are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed.3. The following types of claim may be made:-<ol style="list-style-type: none">a) a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused:-<ol style="list-style-type: none">(i) by relevant disposals of the land being prohibited by section 95(1) of the Act during any part of the relevant six weeks that is on or after the date on which the responsible authority receives notification under section 95(2) of the Act in relation to the land, or(ii) in a case where the prohibition continues during the six months beginning with that date, by relevant disposals of the land being prohibited during any part of the relevant six months that is on or after that date; andb) a claim for reasonable legal expenses incurred in a successful appeal to the First-Tier Tribunal against the responsible authority's decision:-<ol style="list-style-type: none">(i) to list the land,(ii) to refuse to pay compensation, or(iii) with regard to the amount of compensation offered or paid4. A claim for compensation must:-<ul style="list-style-type: none">• be made in writing to Harborough District Council;• be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred;• state the amount of compensation sought for each part of the claim; and• be accompanied by supporting evidence for each part of the claim.5. Harborough District Council Corporate Director will consider the claim and will give the claimant written reasons for its decisions with respect to the
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	<p>request for compensation. No time limit is set for response to the claim for compensation but this will usually be with 13 weeks.</p> <p>6 A person who has made a claim for compensation may, if dissatisfied with the Council's decision, ask Harborough District Council to review its decisions, made in response to that claim, as to</p> <ul style="list-style-type: none"> • whether compensation should be paid to that person, and • if compensation is to be paid, the amount of that compensation <p>7 The compensation review will be undertaken by the Corporate Director not involved in the initial compensation decision. The decision will usually be made within 13 weeks and will be informed to the claimant in writing.</p> <p>8 Where Harborough District Council has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal against any decision of the authority on the review.</p>
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4.7 The national policy allows for an asset owner to make a claim for compensation for actual losses incurred as a consequence of listing the asset; if they are not happy with the compensation decision they may ask for a review of the decision and if still not happy may ask for their claim to be considered by the First Tier Tribunal. The suggested policy text and process for considering the compensation claim can be found at 4.6 above and Appendix A.

5 Legal Issues

5.1 [The Assets of Community Value \(England\) Regulations 2012](#) states in [Regulation 14](#) that an owner or former owner of listed land or of previously listed land, other than some specified owners in [Regulation 15](#), is entitled to compensation from the responsible authority of such amount as the authority may determine where the circumstances in 5.2 apply.

5.2 The circumstances mentioned in paragraph 5.1 are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed as an Asset of Community Value.

5.3 The following types of claim may be made:-

- a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused:-

- (i) by relevant disposals of the land being prohibited by section 95(1) of the Act during any part of the relevant six weeks that is on or after the date on which the responsible authority receives notification under section 95(2) of the Act in relation to the land, or
 - (ii) in a case where the prohibition continues during the six months beginning with that date, by relevant disposals of the land being prohibited during any part of the relevant six months that is on or after that date; and
- a claim for reasonable legal expenses incurred in a successful appeal to the First-Tier Tribunal against the responsible authority's decision:-
 - (i) to list the land,
 - (ii) to refuse to pay compensation, or
 - (iii) with regard to the amount of compensation offered or paid

5.4 A claim for compensation must:-

- be made in writing to the responsible authority;
- be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred;
- state the amount of compensation sought for each part of the claim; and
- be accompanied by supporting evidence for each part of the claim.

5.5 The responsible authority must give the claimant written reasons for its decisions with respect to a request for compensation. No time limit is set for response to the claim for compensation.

5.6 [Regulation 16](#) states a person who has made a claim for compensation may ask the responsible authority concerned to review its decisions, made in response to that claim, as to

- whether compensation should be paid to that person, and
- if compensation is to be paid, the amount of that compensation.

5.7 [Regulation 17](#) states where a local authority has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal against any decision of the authority on the review.

6 Resource Issues

6.1 There may be resource issues as a consequence of compensation claims but these are difficult to quantify. [The Community Right to Bid: Non-statutory advice note for local authorities 2012](#) states that 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. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.

7 Equality Analysis Implications/Outcomes

7.1 None arising from this report

8. Risk Management Implications

8.1 By setting out a clear policy for considering compensation claims Harborough District Council will be less open to challenge from asset owners. By delegating the decisions to Corporate Directors it will enable to Authority to make decisions efficiently and give clarity to claimants.

9 Consultation

9.1 Internal consultation.

10. Options

10.1 To not delegate authority for decision making for policy and guidance updates to Head of Planning and Regeneration – this is not considered to be appropriate as it is not an efficient way to make decision with regard to amendment to national policy.

10.2 To not amend the compensation policy for Harborough District Council – this is not appropriate as it does not reflect the policy and guidance from Government.

10.3 To not delegate the compensation decision process to Corporate Directors – this will mean that each compensation claim and decision will need to be presented to Executive Committee. It is not considered appropriate because the review of the decision cannot be made by a committee that is independent and of equal standing to the initial decision. Additionally, it is not an efficient way for the Council to conduct a process that is set out in legislation.

11 Background Papers

11.1 none

Previous report(s):

- **Assets of Community Value 25th March 2013**
- **Community Right to Bid – Clarifications of Delegated Responsibility 3rd November 2014**

Information Issued Under Sensitive Issue Procedure: ~~Y~~/N

Ward Members Notified: ~~Y~~/N

Appendices:

A. Suggested Compensation Claims Policy and Process