

Report of **Director of City Development**

Report to **Executive Board**

Date: **7 March 2012**

Subject: **Assets of Community Value – Legislation and Implications**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Localism Act became law on 15 November 2011 and sets out more detail underpinning proposals to give community organisations an opportunity to make a bid to acquire assets and facilities that are important to them known as Assets of Community Value.
2. Applications will be made to the local authority to include an Assets of Community Value on the 'List of Assets of Community Value'. The Council will be required to publish and maintain its list and any asset once placed on the list, will remain on it for a period of 5 years. Assets nominated unsuccessfully must also be retained on a separate list for a period of 5 years with reasons why the nomination was unsuccessful.
3. It is expected that there may be in excess of the 15 Assets of Community Value applications per year estimated by the Department for Communities and Local Government (DCLG) with the potential for this to increase as awareness rises and if service reviews result in council assets potentially becoming available.
4. The main implication for the Council for the sale of listed assets or assets that are nominated in response to any sale proposals, will be at least a six month delay on the disposal process. This could have an impact on the phasing of capital receipts and potentially the availability of capital receipts to fund the council's investment programmes.
5. Although Regulations to be made by the Secretary of State for the DCLG (Secretary of State) are awaited which will regulate how the scheme operates in practice, it is understood that the resolutions propose that landowners will be able to claim compensation for costs directly incurred in complying with the scheme; to be paid

by the Council. The Council may be able to claim compensation for its own affected assets but this has not been confirmed.

Recommendations

The recommendations of the report are:

6. to note that the Localism Act 2011 dealing with Assets of Community Value is expected to come fully into force later this year, once all the Regulations have been made by the Secretary of State, which will have implications for the Council and give approval to the publishing of the proposed field list attached at Appendix 1, for the published 'List of Assets of Community Value' and also the 'List of land nominated by unsuccessful community nominations'.
7. delegate authority to the Director of City Development, in consultation with the Executive Member for Development and the Economy, to authorise inclusion of community nominations which satisfy the criteria set out in the Act in the list of assets of community value and those which would fall into the list of land nominated by unsuccessful community nominations.

1 Purpose of this report

1.1 The purpose of this report is to detail the provisions dealing with Assets of Community Value in the Localism Act to Executive Board and set out the following requirements and potential implications to the Council:

- nominations from groups or individuals that have a 'local connection' (including a Parish Council) will need to be assessed to determine if the asset is of 'community value';
- resources required to set up and maintain the 'List of Assets of Community Value' and list of land nominated by unsuccessful community nominations;
- the potential delay of the disposal of listed and nominated assets of at least 6 months while application are assessed or business cases and funding applications are developed;

1.2 The report seeks approval to:

- the publishing of the proposed field list attached at Appendix 1, for the 'List of Assets of Community Value'
- delegate authority to the Director of City Development to authorise inclusion of community nominations in the list of assets of community value which satisfy the criteria set out in the Act and those which would fall into the list of land nominated by unsuccessful community nominations.

2 Background Information

2.1 Part 5 Chapter 3 of the Localism Act 2011 provides the statutory framework for Assets of Community Value. The Localism Act became law on the 15th November 2011 and sets out more detail underpinning proposals to give community organisations an opportunity to bid to acquire an Asset of Community Value. It is expected to come fully into force in either April or October 2012 once Regulations made by the Secretary of State have been issued.

2.2 Assets of Community Value give community organisations an opportunity to bid to acquire assets and facilities that are important to them. These facilities could include community facilities such as the local shop or the last pub in the village, the community centre, children's centre or library building. The opportunity is only available if the landowner gives notice to sell.

2.3 Community interest groups will have the right to apply for any land or buildings that they consider to be of community value to be registered as community assets. Applications will be made to the local authority to list those of community value. A successful application will result in the asset being registered as an asset of community value for a period of five years. A local land charge will then be placed against the land, notifying any prospective purchase that the asset is on the List of Assets of Community Value.

2.4 Much of the detail within the Assets of Community Value is subject to further clarification to be issued in Regulations to be made by the Secretary of State.

3 Main issues

3.1 Community Nominations of Assets of Community Value

3.1.1 The Assets of Community Value provisions in the Localism Act 2011 will entitle community groups to identify and nominate public or private assets of community value, in their local area.

3.1.2 Nominations for Assets of Community Value can only come from a parish council or by a person that is a voluntary or community body with a 'local connection'. Regulations to be made by the Secretary of State will give more detail as to what is meant by a "voluntary or community body" and "local connection", but may be community organisations or neighbourhood planning forums. Similarly, the detail that must be included with any such nomination has not yet been set out. However, at the very least it is suggested that any nomination should provide details including:

- a description of the asset including address sufficient for it be identified;
- the owner of the property including a copy of the land registry entry for registered land;
- reasons why the asset should be considered as having community value;
- confirmation that the nominator is eligible to nominate.

3.1.3 Local authorities could also request additional information considered to be relevant.

3.1.4 To assist community groups in preparing nominations, the Council will produce a nomination form, which will be available to download from the Council's website or sent directly by request.

3.2 Definition of an Asset of Community Value

3.2.1 The Act states that a building or land is of community value if, in the opinion of the Council:

- an actual current use of the building or land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and;
- it is realistic to think that there can continue to be a non-ancillary use of the building or land which will further the social wellbeing or social interests of the local community, although the use does not have to be in the same way.

3.2.2 Land is also of community value if it is not currently used to further the social wellbeing or interests of the local community, but was used for such purposes in the recent past and is realistic to think it could be used again for such purposes in the next five years.

3.3 Assessment Procedure for Assets of Community Value

3.3.1 Once a nomination for an Assets of Community Value listing is received, it will be assessed by Asset Management. A robust assessment procedure will be used to assess requests to nominate community assets. Subject to Regulations to be made by the Secretary of State, the proposed process is:

1. Application received by the Council and logged onto a database

2. Nominator checked for eligibility. Ineligible nominations will be rejected.
3. Application checked for completeness. Incomplete applications will be returned to the nominator.
4. Ownership checks take place.
5. Owner notified of application and offered opportunity to object. Deadline of two weeks to be given
6. Appraisal undertaken by officers in City Development and a report passed to the Chief Asset Management Officer for authorisation. This formally approves the inclusion of the subject property in the register of community assets or in the list of unsuccessful community nominations.
7. Community group and landowner notified of decision
8. Property entered into register
9. Local Land Charge registered against the land
10. Leeds City Council website updated weekly

More detail on the proposed process is included in the flowchart at Appendix 2.

3.4 List of Assets of Community Value

- 3.4.1 As mentioned above, as part of the Assets of Community Value proposals, a local authority is required to maintain a 'List of Assets of Community Value' (this wording must be used), including both public and private assets. Unsuccessful nominations must also be published in the 'List of land nominated by unsuccessful community nominations'
- 3.4.2 Once an asset is nominated by an eligible person or group, the local authority will consider whether the nominated asset meets the definition of 'community value'. If it does, the asset must be placed on the list.
- 3.4.3 Once placed on the list, an asset will remain on it for a period of 5 years. If an asset is placed on the list, this means that when the owner decides to sell their property, they must inform the local authority of their intention to do so.
- 3.4.4 The lists will be updated weekly and published on the Council's main website. They will also be available in hard copy format. Data for inclusion in the lists will be decided by the local authority. This information needs to be recorded in a way that allows maps of Assets of Community Value properties to be produced, although the lists will be published as tables. Leeds are proposing to publish the fields as shown in Appendix 1.

3.5 Implications to Leeds City Council from Administering Assets of Community Value

- 3.5.1 There will be a resource implication for the Council in administering the scheme. This will largely be dependent on the scheme's popularity in the district, which is very difficult to predict. In assessing the impact of the proposed scheme the DCLG undertook an exercise to measure the cost implications for all Local Authorities. The DCLG figures found that for the average local authority, officer time needed to be spent on the scheme breaks down as follows:

Setting up the list of community assets including 7 days (one off)
publicising the list.

Assessing what goes on the list	18 days per year
Publicity and queries	4 days per year
Handling moratorium and sale periods	18 days per year
Five yearly review of listed assets	4 days per year (years 5-10 only)
Total year 1 (assuming full year)	47 days
Total years 2-4	40 days
Total years 5-10	44 days

3.5.2 These figures are based on the average local authority. Leeds has a population of around five times¹ the average local authority, so potentially could require five times the resources stated above (except for setting the list up which should take the same amount of time). This would give

Total year 1 (assuming full year)	207 days
Total years 2-4	200 days
Total years 5-10	220 days

3.5.3 The DCLG impact assessment estimates a total of 1,048 applications to nominate assets in England per year for the first six years (an average of 3.2 per authority). Applying the same formula as used above, this would result in 15/16 applications being made per year in Leeds, with an expected two per year going through the full process to sale.

3.5.4 Leeds City Council has a high level of community related activity, with high numbers of community centres and community asset utilisation. The authority manages 51 community centres and has a further 24 on lease to local organisations. Ongoing asset rationalisation is leading to increased enquiry levels from community groups. There are currently 11 asset transfer requests currently being progressed by the Council. These figures suggest that take up of the scheme in Leeds could be higher than the DCLG estimate. However, the administration will be managed within existing resources in Asset Management.

3.5.5 The DCLG impact assessment estimates a total of 1,048 applications to nominate assets in England per year for the first six years (an average of 3.2 per authority). Applying the same formula as used above, this would result in 15/16 applications being made per year in Leeds, with an expected two per year going through the full process to sale.

3.6 Appeal by Landowner

3.6.1 In these circumstances the process will require the Council to notify the landowner and any occupier of the land when an Assets of Community Value nomination to list their asset has been received in writing. The landowner will then have a set period to submit an objection. If the objection is unsuccessful

¹ Total estimated England population 2008 = 51,456,400. Total estimated Leeds population 2008 = 787,700. 326 local authorities affected by ACV. 51,456,400 divided by 326 = 157,842. 787,700 divided by 157,842 = 5

and the asset included in the list of community assets, the landowner will have a right to appeal. If the request is made in accordance with the Act and any timescales set out by Regulations made by the Secretary of State, the Council has to review the decision.

3.6.2 The review process is by way of an internal review. Again Regulations to be made by the Secretary of State will set out the procedure to be followed on any review. It is anticipated that the landowner will be able to present any relevant evidence for consideration by the local authority, (including anything that has come to light since the decision to list the asset was made, the review should be undertaken within six weeks and the decision on the review should be taken by an officer who is equal in rank or more senior to the officer who took the decision to list the asset and who wasn't involved in the original decision. The Secretary of State may also allow the landowner to request an oral hearing as part of the internal review.

3.6.3 Should the landowner still be dissatisfied, Regulations may provide for an appeal to be made to a court or tribunal, but the decision would always be open to a claim for judicial review..

3.7 Notifying an Owner with No Known Name or Address

3.7.1 It is likely that for some nominations the owner of the property will be unknown. The Act enables a local authority to take reasonable alternative steps to bring the notice to the person's attention. Depending on the nature of the land, it is proposed that this would be addressed by the Council:

- placing a notice on the land or building itself; and/or
- placing a notice in the local newspaper; and/or
- posting a notice on the Council's website.

3.7.2 Councils can also use powers under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. However, whether local authorities choose to make use of these powers would be at their discretion. Using these powers has a cost implication. Land Registry searches can be undertaken for £8. This will be the preferred method. Searches which identify the land as not being registered at the Land Registry will cost £5.

3.7.3 It will be for the Council to decide the period to give an unknown landlord to respond to any notice issued. It is proposed that the Council will place a notice on the land or building and post a notice on the Council website.

3.7.4 Ultimately if the landowner cannot be identified, this should not prevent the registration of an asset on the list of assets of community value.

3.8 Removal of Assets from List of Community Assets

3.8.1 The Council must remove an asset from the list of assets of community value when:

- the specified listing period has ended (currently proposed to be five years);
- the asset is disposed of under the terms of the Act

- an internal review or other appeal decides that the asset has been wrongly listed;
- the Council may also be granted powers to remove an asset from the list if the asset is no longer of community value.

3.8.2 The Council must inform the landowner and any nominator that the asset has been removed from the list. There is nothing to prevent an asset that has been removed from the list from subsequently being re-listed.

3.9 Procedure for Disposal of Listed Assets

3.9.1 Once an asset is included in the register, the owner must give the Council notice that a relevant disposal is intended. A relevant disposal is defined as the sale of the freehold or assignment of a lease of at least 25 years, only when the disposal grants vacant possession. Upon receiving the notice the Council must:

- enter details on the list of community assets including that the Council has received the notice, the date the notice was received, the end of the initial moratorium period, the full moratorium period and the protected period; (as defined in the Act and below)
- if the asset was listed in response to a community nomination, then the nominator must be informed in writing;
- arrangements must be made to publicise the matter in the area where the asset is situated.

3.9.2 Once the Council has received notice for the owner the initial moratorium period (also known as the interim window of opportunity period) will begin. This gives community groups a period of time to register with the Council to be treated as a potential buyer. The timeframe for this is six weeks. If no eligible group registers written interest in that time period then the owner will be free to dispose of the asset.

3.9.3 If an eligible group submits an expression of interest then the full moratorium period (also known as the full window of opportunity period) will begin. This will give the community group six months (including the interim window of opportunity period) to put an offer together for the property. The owner may only make a relevant disposal within this period if the disposal is to an eligible community group.

3.9.4 Once the full moratorium period is over the owner is free to dispose of the asset to whoever they wish. There is absolutely no obligation on the landowner to dispose to an eligible community group. This process is set out in Appendix 3.

3.9.5 The owner will have a period of time known as the protected period to dispose of the asset without having to incur another delay. The time specified for this period is eighteen months from the date notice to sell was provided to the Council. Therefore, if the full window of opportunity period is six months, the owner will have a further twelve months to dispose without having to go through the process again.

3.9.6 Failure by the owner of an asset to follow the correct procedure could lead to enforcement action. It is the responsibility of a local authority to take action to enforce the provisions of this part of this Act in accordance with Regulations to be

made by the Secretary of State. This might, for example, enable any group that would have considered themselves as an eligible bidder under the provisions of the scheme to lodge a complaint in Court on the grounds that the owner has not complied with the statutory requirements of the scheme. This could potentially result in the sale being set aside, rendering the transaction ineffective and compensation being paid.

3.10 Implications for LCC as landowner

- 3.10.1 It is likely that a high percentage of assets included in the Leeds list of community assets will be owned by Leeds City Council.
- 3.10.2 The main implication as per Assets of Community Value for the sale of a listed asset will be a six month delay in the disposal process. However, it is considered very likely that the six month period will not be sufficient for community groups to raise the necessary finance. At this stage the Council could legally dispose of the building on the open market. However, if a community group has taken six months to work on a bid, it would be a reasonable approach to provide either an extension of time for funding to be raised or a transfer could be considered on a less than best consideration basis subject to a business case. Both options would have a impact on the capital receipts programme. It is impossible to accurately anticipate the level of implications at this time, but Property Services have been fully briefed on Assets of Community Value and are considering it as part of their plans. Their business unit will be treated as the landowner for any Council owned Assets of Community Value nominations so will be informed if any Council assets are placed on the list of community assets.
- 3.10.3 It should be noted that although the Assets of Community Value process requires that a relevant disposal does not take place for six months, marketing could continue throughout this period.
- 3.10.4 The Localism Act 2011 has significant implications for local communities throughout Leeds. Consultation has taken place with area leaders and Area Committees to inform them of the detail of the Act and its implications for local communities, landowners and the Council as a whole.
- 3.10.5 A separate report on this issue deals with the potential impact on the Council in terms of its approach to community asset transfer.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 DCLG consulted widely on Assets of Community Value at the national level. A response was submitted by Asset Management on behalf of the Council.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Assets of Community Value forms part of the Localism Act dealing with community empowerment and is being implemented by central government. Locally, equality considerations need to ensure that the published list is produced in an accessible format. An EIA Screening Form has been completed in relation to the proposed decisions being taken.

4.3 Council policies and City Priorities

4.3.1 Although a central Government piece of Legislation, implementation of Assets of Community Value contributes to the Vision for Leeds and the City Priority Plan priorities that Leeds will be fair, open and welcoming and that all Leeds communities will be successful. The strategic outcomes for these priorities include:-

- increase a sense of belonging that builds cohesive and harmonious communities;
- Leeds will be a city where there is a strong community spirit and a shared sense of belonging, where people feel confident about doing things for themselves and others;
- local people have the power to make decisions that affect them;
- people are active and involved in their local communities;

4.4 Resources and value for money

4.4.1 The scheme could delay the disposal of any Council asset included in the list by up to six months. During this time the Council will continue to be liable for NNDR (business rates), security costs (where appropriate) and utility standing charges. The major cost is likely to be NNDR, especially since empty property rates are payable at 100%.

4.4.2 It is possible that Assets of Community Value will result in an increase in less than best consideration requests from community organisations. The Community Asset Transfer Policy, set out separately in this agenda, will mitigate this risk by setting out when the Council will consider requests for community asset transfer.

4.4.3 CLG's impact assessment sets out the likely demand for Assets of Community Value and the resources required to administer the scheme. Their figures show that Leeds City Council will need to allocate 200-220 hours per year officer time to administering the scheme. Internal estimates agree with DCLG's overall assessment of required officer time.

4.4.4 It is proposed that landowners will be able to claim compensation for actual costs incurred in complying with the scheme. The compensation will be paid by the Council. The budget for this will be considered and budgeted through the New Burdens Assessment. Compensation claims will have to be submitted within a stipulated time limit, proposed to be 90 days.

4.4.5 It is unclear whether the Council itself would be able to claim compensation for its own affected assets. There is nothing in the Act itself that excludes this, although DCLG's consultation document stated that "private landowners" could claim compensation and sought consultation on the definition of "private landowners".

4.4.6 The average compensation claim is estimated at £2,000. The DCLG impact assessment estimates one successful compensation claim for every 4.5 successful transfers. Using the estimated take up figures from this assessment, this would result in less than one successful claim on average in Leeds each year. Total estimated compensation would therefore be £2,000 allowing for one successful claim.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The Council is responsible for introducing these arrangements in accordance with the requirements of the Localism Act 2011 and subsequent Regulations. The Council would be in breach of its' statutory obligations if it did not do so.
- 4.5.2 There will be a need to fully assess the legal implications of this part of the Localism Act once the Regulations are in place.
- 4.5.3 Legal advice will be required in the event of any challenge regarding the compliance with the requirements set out in the Act, and in particular in relation to listing of an asset as an Assets of Community Value.
- 4.5.4 Under the Council's Constitution, a decision may be declared as being exempt from Call In if it is considered that any delay in implementing the decision would seriously prejudice the Council's or the public interest. Any delay may prevent the Council from introducing the arrangements set out in this Report, but the Council has no option but to do so.

4.6 Risk Management

- 4.6.1 Much of the detail within the legislation is subject to regulations that have not yet been published. However, this is limited to technical details and not issues that should affect the process of assessing nominations.
- 4.6.2 There is a risk of confusion among local communities about what Assets of Community Value actually allows community groups to do, and that this leads to raised aspirations among communities that they will have a right to take over a property. All documents produced for Assets of Community Value and the Assets of Community Value section of the website will make clear that Assets of Community Value only grants the limited rights to register an asset of being of community value and that if the landowner decides to market the property, it only gives them the right to a six months period to develop a bid that may or may not be accepted.
- 4.6.3 The same risk applies to landowners whose assets are nominated. This risk will be mitigated by making the rights and their implications clear in all correspondence, especially when a landowner is informed that: a nomination has been made; when a decision has been taken to list an asset; and, when setting out the appeals procedure.

5 Conclusions

- 5.1 Assets of Community Value is a right within the Localism Act for communities to bid to take over assets and facilities they consider to have community value, from either April or October 2012. It will have implications for Leeds City Council in terms of both staff resources and from compliance as landlord. It is very difficult to estimate the likely take up so the impact on staffing resources or the capital receipts programme are unknown at present. Community use of assets is a popular topic in Leeds and some communities are particularly active in this area. It could be that in some neighbourhoods there are numerous applications for the scheme. However, the scheme only grants limited rights and it may be that due to this the reaction of the Leeds community is to not nominate assets, although this is considered unlikely.

5.2 Local Authorities will be required to assess nominations to list assets and to keep and publish a List of Assets of Community Value and a List of Unsuccessful Community Nominations. This will require additional resource from the Council. Communities and Local Government (CLG) have estimated likely demand and officer time required for the typical local authority. These estimates show that in Leeds there could be 15 or 16 successful nominations per year and these will require 200-220 hours of officer time.

5.3 Assets of Community Value will also have an implication for the Council as landowner. It is likely that a high proportion of listed assets will belong to the Council. This may result in a delay of six months for disposal of each registered asset.

6 Recommendations

6.1 Executive Board is requested to:

- to note that the Localism Act 2011 dealing with Assets of Community Value is expected to come fully into force later this year, once all the Regulations have been made by the Secretary of State, which will have implications for the Council and give approval to the publishing of the proposed field list attached at Appendix 1, for the published 'List of Assets of Community Value' and also the list of land nominated by unsuccessful community nominations".
- delegate authority to the Director of City Development, in consultation with the Executive Member for Development and the Economy, to authorise inclusion of community nominations which satisfy the criteria set out in the Act in the 'list of assets of community value' and those which would fall into the 'list of land nominated by unsuccessful community nominations'.

7 Background documents²

7.1 Equality Impact Screening Form

DCLG Consultation paper "Proposals to introduce a Community Right to Buy – Assets of Community Value"

Leeds City Council response to DCLG Consultation

² The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Appendix 1 – Field Lists

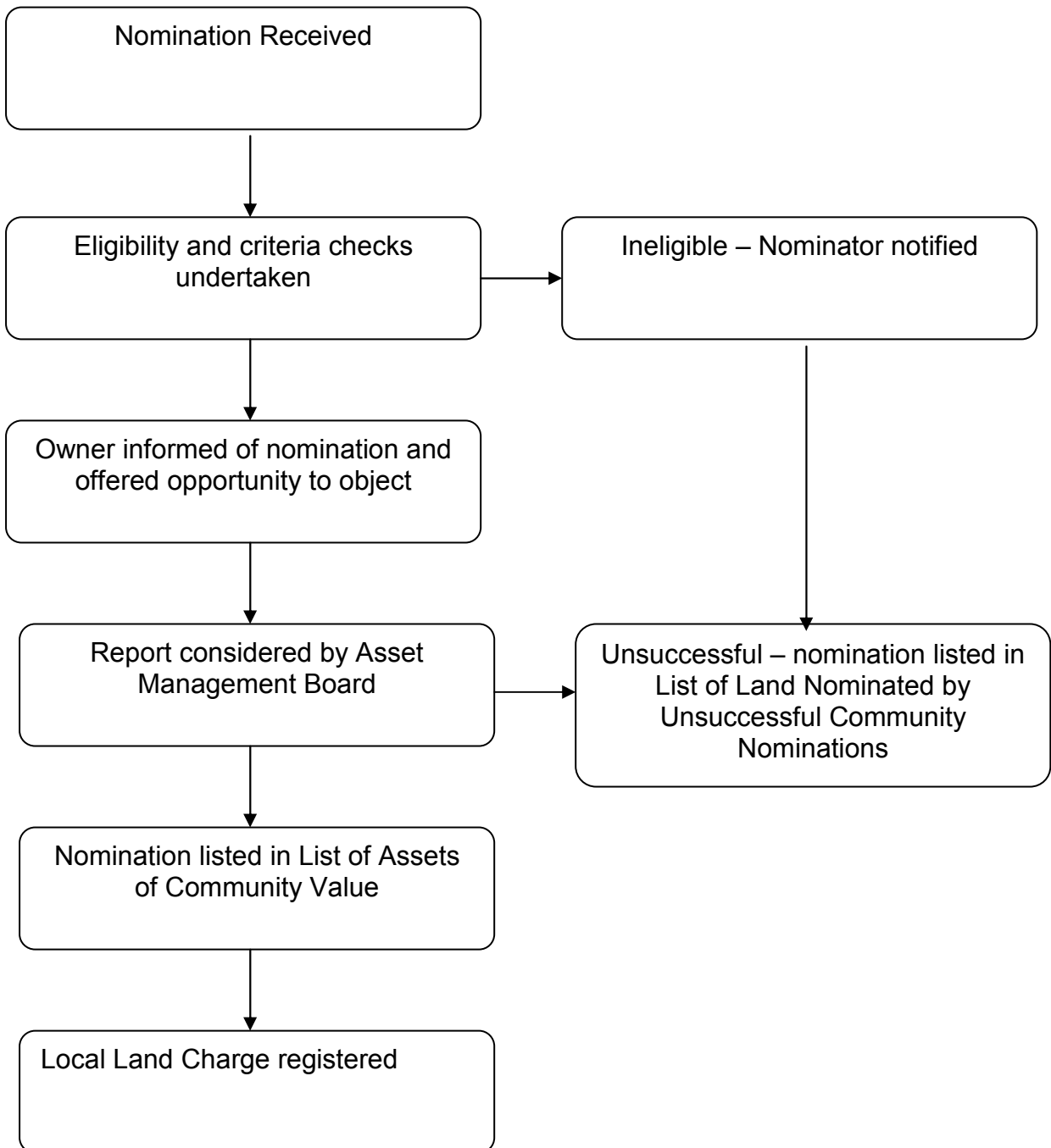
List of fields for List of Assets of Community Value

Field	Type	Publish
Property Reference	Auto Number	y
Date of nomination	date	n
Property Name/number	Text	y
Property Address	Text	y
Property postcode	postcode	y
Easting	Text	n
Northing	Text	n
Nominator Name	Text	y
Nominator Address	Text	n
Nominator postcode	postcode	n
Nominator Contact	Text	n
Nominator is local	Text	n
Owner	Text	y
Owner Address	Text	n
Owner postcode	postcode	n
Owner Contact	Text	n
Ownership level (freehold/leasehold)	drop down	y
Ownership verified	date	n
Date owner informed of nomination	date	n
Ward	drop down	y
Area committee	drop down	y
Date listed	date	y
Date listing expires	date	y
Rationale for listing	Text	y
Status	drop down	y
Date listing referred to legal for registering	date	n
Date listing Registered	date	n
Date disposal notice received	date	y
End of initial moratorium period	date	y
Date expression of interest received	date	y
End of full moratorium period	date	y
End of protected period	date	y
Date disposed	date	y
Disposal method (freehold/leasehold)	drop down	y
Successful ACV?	yes/no	n
Purchaser	Text	n
Amount paid	currency	n

List of fields for List of Unsuccessful Community Nominations

Field	Type	Publish
Property Reference	Auto Number	y
Property Name/number	Text	y
Property Address	Text	y
Property postcode	postcode	y
Nominator Name	Text	y
Nominator Address	Text	n
Nominator postcode	postcode	n
Nominator Contact	Text	n
Owner	Text	y
Owner Address	Text	n
Owner postcode	postcode	n
Owner Contact	Text	n
Ownership level (freehold/leasehold)	drop down	y
Ward	drop down	y
Area committee	drop down	y
Date listed	date	y
Date listing expires	date	y
Rationale for not listing	Text	y

Appendix 2 – Process for assessing nominations



Appendix 3 – Process for Disposal of Listed Assets

