

CABINET

8 FEBRUARY 2022

DETERMINATION OF APPLICATIONS FOR ASSET OF COMMUNITY VALUE APPLICATIONS UPDATE TO THE EMPLOYEE SCHEME OF DELEGATIONS

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources
Report from: Richard Hicks, Deputy Chief Executive and Director of Place
Author: Bhupinder Gill, Assistant Direct Legal and Governance

Summary

This report seeks Cabinet approval to update the Employee Scheme of Delegations to clarify the position in relation to applications for designations of Asset of Community Value ('ACV') status.

1. Budget and policy framework

- 1.1. No funding is required for this recommendation. The decision for this matter is within the Council's policy and budget framework.
- 1.2. This report has been circulated separately to the main agenda. Therefore, the Cabinet is asked to accept this report as urgent to enable consideration of the matter at the earliest opportunity. This is because an application was submitted requiring determination by the Council within an eight week period and has triggered the need for these delegations to be in place.

2. Background

- 2.1. One of the new community powers introduced by the Localism Act 2011 ('the Act') was the ability for the community to apply to the local authority to register buildings, areas of recreational space or facilities as assets of community value.
- 2.2. The Act and the associated regulations set out a framework of legal tests which each application must meet in order for the asset to receive ACV status. These tests centre on whether the facility furthers the social interest or social well being of the community either at the time of application or in the recent

past and that there is a realistic prospect of it being able to do so again in the next five years.

- 2.3. There are a number of criteria that must be met by the nominating person or body to show that they are eligible to make the nomination and these are set out within the Act.
- 2.4. Previously, the decision making was carried out by the former role of Assistant Director Housing and Regeneration, however that post no longer exists and therefore it has fallen to the Director of Place and Deputy Chief Executive, however this is not currently reflected within the constitution. Cabinet is therefore being asked to confirm this delegation and allow for the update to the scheme in order that there is a clear audit trail.
- 2.5. In addition to this, the Act requires the Authority to maintain registers of applications, both successful and unsuccessful, as well as a register of assets of community value.

3. Options

- 3.1. Cabinet can confirm the delegation as requested. This will allow the statutory process to be carried out in the most efficient way but retain decision making at an appropriately senior level within the Council.
- 3.2. Cabinet could choose not to confirm this delegation, if this is the case then in order to minimise the risk of challenge to a decision all applications would have to be reported to cabinet for cabinet to make the determination. Although there are not a large number of applications this would not be a good use of cabinet time or resource.

4. Advice and analysis

- 4.1. The recommendation is that the Authority be delegated to the Director of Place and Deputy Chief Executive to determine applications for Asset of Community Value Status and to maintain the registers as required by the Localism Act 2011
- 4.2. A diversity Impact Assessment has not been completed due to the nature of the decision cabinet is being asked to consider.

5. Risk management

- 5.1. The recommendation within this report is suggested in order to minimise the risk of challenge to any decision regarding an ACV.

Risk	Description	Action to avoid or mitigate risk	Risk rating
That the decision making process is unclear	Decision making not made at an appropriate level meaning that statutory timeframes are put at risk	Confirm delegation as requested	C3

6. Consultation

- 6.1. Due to the nature of the decision which Cabinet is being asked to consider no consultation is necessary and therefore none has been undertaken.

7. Climate change implications

- 7.1. This recommendation has no negative impact on Climate Change within Medway.

8. Financial implications

- 8.1. There are no financial implications arising directly from this report as the processes to determine applications for ACV status have been in place for some time and are met from within existing budgets and resources.

9. Legal implications

- 9.1. In order to minimise the risk of challenge to the use of any powers by the Council it is necessary to ensure that any adoption of powers and subsequent delegation to officers has a clear audit trail. Following a number of restructures through the Regeneration, Culture and Environment Directorate, that trail has become unclear, therefore Cabinet are being asked to agree the delegation as set out below.
- 9.2. The application process and criteria to be applied are relatively prescriptive and are set out within the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

10. Recommendation

- 10.1. It is recommended that the Cabinet delegates authority to the Director of Place and Deputy Chief Executive to, in consultation with the Portfolio Holder for Resources, determine applications for Asset of Community Value Status and to maintain the registers as required by the Localism Act 2011.

11. Suggested reasons for decision

- 11.1. The Council has a statutory duty to maintain the registers of ACVs and determine applications made by eligible bodies it is important that this is carried out within the statutory timescales and therefore it is appropriate to confirm the delegation.

Lead officer contact

Bhupinder Gill, Assistant Director Legal and Governance
Telephone: 01634 332133 E-mail: bhupinder.gill@medway.gov.uk.

Appendices

None

Background papers

None