



Cabinet 12 September 2012

Community Right to Bid (Sept 12/14)

1. Summary and Reasons for Recommendations

- 1.1 From autumn 2012, community groups will be able to nominate local land or buildings as '*assets of community value*' that cannot be sold without the community group first being informed and given the opportunity to prepare a bid. The new powers are known as the '*Community Right to Bid*' and, with some exceptions, can be applied to land or buildings that are in public or private ownership.
- 1.2 The Borough Council needs to be ready to deal with nominations from community groups as well as the associated listing, review, notification and compensation processes. This paper seeks Cabinet's agreement to a proposed approach to dealing with the Community Right to Bid. A similar report is being considered by Forest Heath District Council at its Cabinet meeting on 4 September 2012.

2. Recommendations

- 2.1 It is **RECOMMENDED** that:-
- (1) the proposed approach to dealing with the Community Right to Bid detailed in paragraphs 4.1 to 4.13 and Appendices B and C of Report D119, be approved;
 - (2) it be recommended to full Council that a delegation be made such that nominations under the Community Right to Bid be handled by officers once in force, as outlined in Appendix C to Report D119; and
 - (3) delegated authority be given to the Joint Chief Executive or relevant Head of Service, in consultation with the Portfolio Holder for Tourism and Community Services, to amend minor details of the operation of the scheme should it be necessary in light of changes in the Government's final regulations and advice notes.

3. Corporate Priorities

- 3.1 The recommendations meet the following, as contained within the Corporate Plan:-
- (a) Corporate Priority 1: '*Working together for strong, healthy and diverse communities*'; and
 - (b) Corporate Priority 3: '*Working together for an efficient council*'

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4. Key Issues

What is the Community Right to Bid?

- 4.1 The Community Right to Bid, previously known as the Community Right to Buy was introduced by the Government in the Localism Act 2011, alongside other community rights such as the Community Right to Challenge. The Government has published draft regulations that would implement the Community Right to Bid which it expects to come into force in October 2012. At that point, the Government will publish advice notes¹.
- 4.2 Under the Community Right to Bid ('the Right'), community groups, including Parish Councils, are able to nominate non-residential buildings or land within their communities as '*assets of community value*' which cannot be sold without the community group being given the opportunity to put together a bid to purchase the asset. The Right does not give any preferential treatment to community groups in the sale of the asset; rather it gives them the time to prepare bids so that they have a realistic chance of purchasing the asset. The Right applies to both publicly owned and privately owned assets, though not to individual residences.
- 4.3 The Government has made available £19 million to community groups to support them in putting together bids. This is available through the Social Investment Business Group website and is intended to support groups in building the internal capacity to take over ownership of assets and to carry out feasibility studies.
- 4.4 The Government's intention is that the Community Right to Bid will be used to help community groups to purchase assets such as village shops, community centres, woodlands used for recreation, pieces of land, children's centres, library buildings and local pubs that have become commercially unviable and would otherwise no longer be available for use by the local community. The Right covers assets currently owned by the Council and will sit alongside the Council's well-established asset management process. Members will be aware that the Council has already undertaken a number of community asset transfers to bring wider community benefit to local communities and will continue to do so, where appropriate, alongside the operation of the Community Right to Bid.
- 4.5 A helpful description of how the Right works **from the point of view of a community group** is available on the Government's Community Rights website at: <http://communityrights.communities.gov.uk/what-are-community-rights/community-right-to-bid/>
The text from this webpage is reproduced at Appendix A attached to this report.
- 4.6 A detailed process diagram of **how a local authority must deal with a nomination** made under the Community Right to Bid is attached to this report at Appendix B. The diagram shows the four main aspects of the Right, namely nomination by a community group; review of a listing by the owner of an asset; the moratorium periods once an asset comes up for sale; and compensation of the owner as a result of delays in selling the asset.
- ### ***The Council's overall approach***
- 4.7 As for the Community Right to Challenge, the Council needs to decide how it wishes to treat the Community Right to Bid.
- 4.8 In the first instance, it is recommended that information about the Right is published on the Council's website; a short note is included in the weekly '*Wavelength*' bulletin for all staff; and that a briefing note is sent to all Councillors explaining the Right and its implications for communities and asset owners.

¹ DCLG had advised that draft advice notes would be available during summer 2012, but these have not yet been published

4.9 The information on the Council's website should set the Right in the context of the Council's wider approach to working with communities on asset management. It should also stress that community groups should not only be nominating assets but also preparing themselves to put in bids where appropriate, directing them to the support available from the Government referred to in paragraph 4.3.

4.10 It is recommended that these initial actions are followed with opportunities for feedback from asset owners and community groups, in order to ascertain what level of potential interest there is in the Community Right to Bid, and what level of concern it has generated.

4.11 Where Council assets are listed under the Community Right to Bid, the Council should consider any bids from community groups at the point of disposal as part of its wider asset management strategy. Decisions about disposal should therefore take account of social value as well as financial gains.

Dealing with nominations made under the Community Right to Bid

4.12 Appendix C sets out a proposal for how nominations made under the Community Right to Bid should be handled within the Council (using current team titles, pre-restructuring). This is based on a delegation being sought from full Council (on 18 December 2012) to allow all aspects of the process to be dealt with by officers, keeping Ward Members, Suffolk County Council Division Members, and Portfolio Holders informed at key points in the process, as shown in the flow chart at Appendix B. It is proposed that the majority of the process is handled by officers in Community Services. This will have some initial implications for staff time as the process is established. However, it will not become clear for a while how many nominations will be made in the longer term (see Section 9 below on Resource implications for further details).

4.13 Some aspects of the process remain a little unclear to date, and further guidance will be needed before the process and calls on staff time can be finalised. For example, the Department for Communities and Local Government (DCLG) impact assessment states that *'local authorities must remove assets from the list after 5 years by default. However, prior to this they will need to write to interested community organisations to inform them of this, and allow them to make a case for keeping the asset on the list'*. This is not included in the draft regulations and so has not been formally included in the process diagram or proposal for roles and responsibilities at this stage.

5. Other Options considered

5.1 The new Right is likely to come into effect for all local authorities in October 2012. The Council will then have no option but to implement it. The proposals outlined in paragraphs 4.8 to 4.13 and the associated appendices are considered to offer the best way forward when balancing the interests of promoting viable and sustainable communities whilst also respecting the interests of private property owners, who may be small businesses. The processes proposed are intended to ensure propriety and allow Council decision-making to be undertaken in an efficient and effective way.

<p>6. Community impact <i>(including Section 17 of the Crime and Disorder Act 1998 and diversity issues)</i></p> <p>6.1 The DCLG assessed the impact of the proposed Community Right to Bid in January 2011 and then again in June 2012 (to reflect changes made as a result of the consultation). The assessment found that there were no impacts on statutory equality, sustainable development, health, environmental or rural duties. There were impacts on small firms and on Human Rights (see Section 11 below for Legal or policy implications). The Impact Assessment is available at: http://www.communities.gov.uk/publications/communities/righttobidia</p>																				
<p>7. Sustainability Impact <i>(including environmental or social impact on the local area or beyond the Borough)</i></p> <p>7.1 See 6.1 above.</p>																				
<p>8. Consultation</p> <p>8.1 The Government consulted on the proposed Community Right to Bid from 4 February to 3 May 2011. The respondents included a wide range of voluntary and community groups as well as local authorities (LAs), including St Edmundsbury Borough and Forest Heath District Councils.</p>																				
<p>9. Resource implications <i>(including asset management implications)</i></p> <p>9.1 There will be costs to the Council of setting up a list of assets of community value; managing the list and 5-yearly reviews; compensation for loss of asset value; and enforcement. The following table shows the expected costs across all 353 local authorities in England, as estimated by the DCLG in its impact assessment for the Community Right to Bid. St Edmundsbury's costs can be expected to be at the lower end of the estimates and some savings should be expected to be achieved by administering the process jointly across St Edmundsbury Borough and Forest Heath District Councils.</p> <table border="1" data-bbox="150 1137 1385 1570"> <thead> <tr> <th>Cost area</th> <th>Total estimated cost across all English LAs (DCLG figures)</th> <th>Approximate cost per English LA (FHDC analysis)</th> <th>Time period</th> </tr> </thead> <tbody> <tr> <td>Setting up list of assets of community value</td> <td>£379,000</td> <td>£1,075</td> <td>Per year, 1 year only</td> </tr> <tr> <td>Managing the list process and 5-yearly reviews</td> <td>£2,500,000</td> <td>£7,100</td> <td>Per year</td> </tr> <tr> <td>Compensation for loss of asset value</td> <td>£233,000</td> <td>£660</td> <td>Per year, over 9 years</td> </tr> <tr> <td>Enforcement</td> <td>£35,000</td> <td>£100</td> <td>Per year, over 10 years</td> </tr> </tbody> </table> <p>9.2 The Government stated in its response to the House of Lords Secondary Legislation Scrutiny Committee that <i>'costs to local authorities will be covered by central Government (via the New Burdens principle) during the spending review period (to 2014-15). After this period, local authorities will have to cover their additional costs from within their budgets'</i>.</p> <p>Costs of compensation</p> <p>9.3 Owners of assets who believe that they suffered loss as a result of the process can claim compensation from the Council. The Borough Council therefore needs to prepare itself for possible compensation claims which could be burdensome both in terms of staff time and the cost of any successful claims.</p>	Cost area	Total estimated cost across all English LAs (DCLG figures)	Approximate cost per English LA (FHDC analysis)	Time period	Setting up list of assets of community value	£379,000	£1,075	Per year, 1 year only	Managing the list process and 5-yearly reviews	£2,500,000	£7,100	Per year	Compensation for loss of asset value	£233,000	£660	Per year, over 9 years	Enforcement	£35,000	£100	Per year, over 10 years
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- 9.4 However, the DCLG estimates that there will only be between 4 and 22 successful claims per annum at around £2,000 per claim. This is based on experience from the equivalent Scottish scheme under which there have only been 2 claims since 2004.
- 9.5 Following consultation with local authorities in January 2012, the Government is also providing a safety net for local authorities facing claims of over £20,000 in one year, either from a single claim or a number of separate claims. Verified claims of over £20,000 will be met by the Government. The Government's has also encouraged local authorities to look at how best to manage the risk of claims, possibly through individual or mutual insurance.
- Approach to meeting the costs to West Suffolk***
- 9.6 It is expected that the work of administering the Community Right to Bid will be able to be absorbed within current workloads across Forest Heath District and St Edmundsbury Borough Councils. The Councils need to develop an approach to meeting the costs of any successful compensation claims and it is proposed that the option of taking out insurance be pursued.

10. Risk Assessment (*potential hazards or opportunities affecting corporate, service or project objectives*)

Risk area	Inherent level of Risk (before controls)	Controls	Residual Risk (after controls)
	High/Medium/Low		High/Medium/Low
Initial flurry of nominations and requests for review from asset owners	Medium. Although based on the Scottish Government's experience, the numbers may be as low as 2 nominations per authority	Clear information for asset owners on Council website, plus information for community groups about the need to be preparing bids as well as just nominating assets	Low
Final version of regulations is different from the current draft version	Low	Delegation to make any minor amendments consequent on the publication of the final regulations	N/A

11. Legal or policy implications

11.1 Imposing a moratorium on the sale of property listed as an Asset of Community Value will be an interference with the owner's property rights under Article 1 of Protocol 1 to the European Convention on Human Rights. However, the Government considers that the interference is justified in the general interests of the community and that the provisions around review, compensation and appeal help to make the temporary restrictions on sale a proportionate way of achieving the benefit for the community. Further details are given in paragraph 85 on p37 of the Government's impact assessment:

<http://www.communities.gov.uk/publications/communities/righttobidia>

Wards affected	All	Portfolio Holders	Tourism and Community Services
Background Papers		Subject Area	Support Services
Assets of Community Value – draft regulations: http://www.legislation.gov.uk/ukdsi/2012/9780111526293/pdfs/ukdsi_9780111526293_en.pdf Community Right to Bid – impact assessment: http://www.communities.gov.uk/publications/communities/righttobidia			

HOW THE COMMUNITY RIGHT TO BID WORKS

Step 1: Identify an asset

Your community group decides which asset it's interesting in buying. This could be something that you've heard is going to be sold or closed down but that you want to keep running.

Even at this early stage, think about what you want the asset for and what you want to achieve with it in the future.

The more people in your community you can involve, the better. Getting the support of key local partners like your MP, councillors, council officers, other voluntary and community groups and journalists will help your bid.

Step 2: Get your group ready to make a bid

Decide how best to [structure your group](#) for the project.

For example, should you set up as a company limited by guarantee or community interest company?

If you're not an established community group, you'd need to make sure you have at least 21 members on the local electoral register.

You should also do things like:

- make sure your group has the right skills and training
- make sure your group has the right management structure
- plan how you would develop the asset once you take it over
- plan how you would run the asset in the long-term
- secure finance
- appoint relevant professionals like surveyors, architects, builders, lawyers or accountants

Step 3: Ask your local authority to 'list' the asset

Your group submits a short nomination to the [local authority that deals with planning](#). In many cases, this will be your local district or borough council.

Your nomination should explain:

- what the asset is
- why the asset boosts the social well-being of your community
- details about your group

Your local authority can tell you how much detail you should provide.

The authority then considers your request and decides whether to put the asset on a list of local 'assets of community value'.

If it decides **not** to list it, it should say why.

If the asset is listed and the owner disagrees, the owner could ask the authority to review its decision. If the authority sticks to its decision to list it, the owner could then appeal to a tribunal.

Step 4: If the owner decides to sell

If the owner decides to sell the asset and it's been listed by the local authority, the authority will tell you that it's come up for sale.

There are some exceptions to this. Your local authority will be able to give you more advice.

Step 5: Decide if you want to bid

Once you've been told the asset is being sold, incorporated groups have 6 weeks to tell the local authority they want to bid for it.

This is called making an 'expression of interest'.

Step 6: Prepare and submit your bid

From the date the local authority tells you the asset is being sold, you have 6 months to prepare and submit your bid to buy it.

Your bid should include a detailed description of:

- why your group is best placed to take over the asset
- how you would finance the purchase
- how you would run the asset

Step 7: The owner considers the bids

Once the 6 months are up, the owner then looks at all the bids and decides who to sell the asset to.

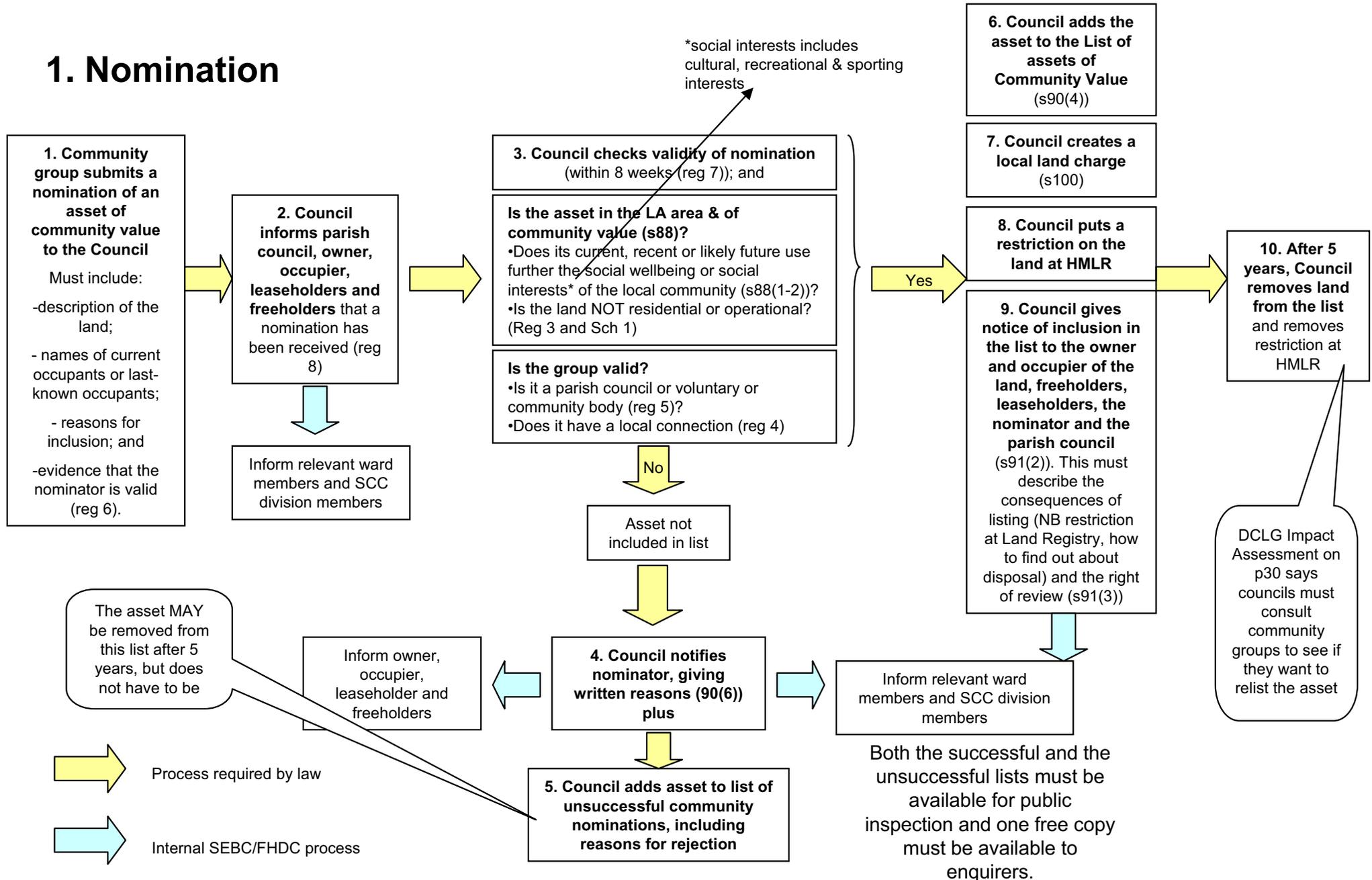
Step 8: If successful, you take over ownership

If the owner decides to sell it to you, your group then goes through the process of buying the asset from the current owner.

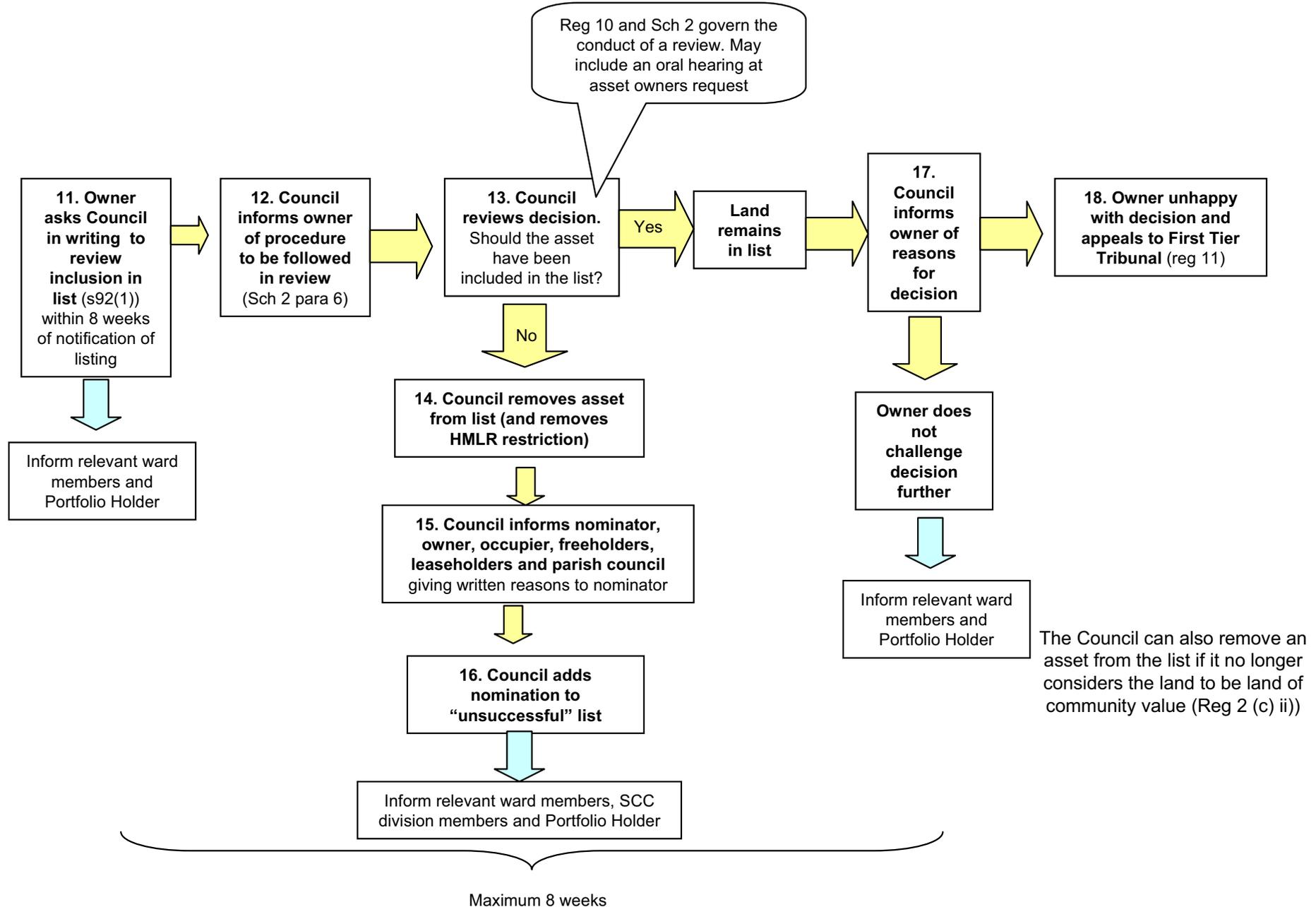
The asset would then be yours to manage and run.

Community right to bid (ss87-108) and SI 2012 No. **** (Assets of Community Value (England) Regulations 2012

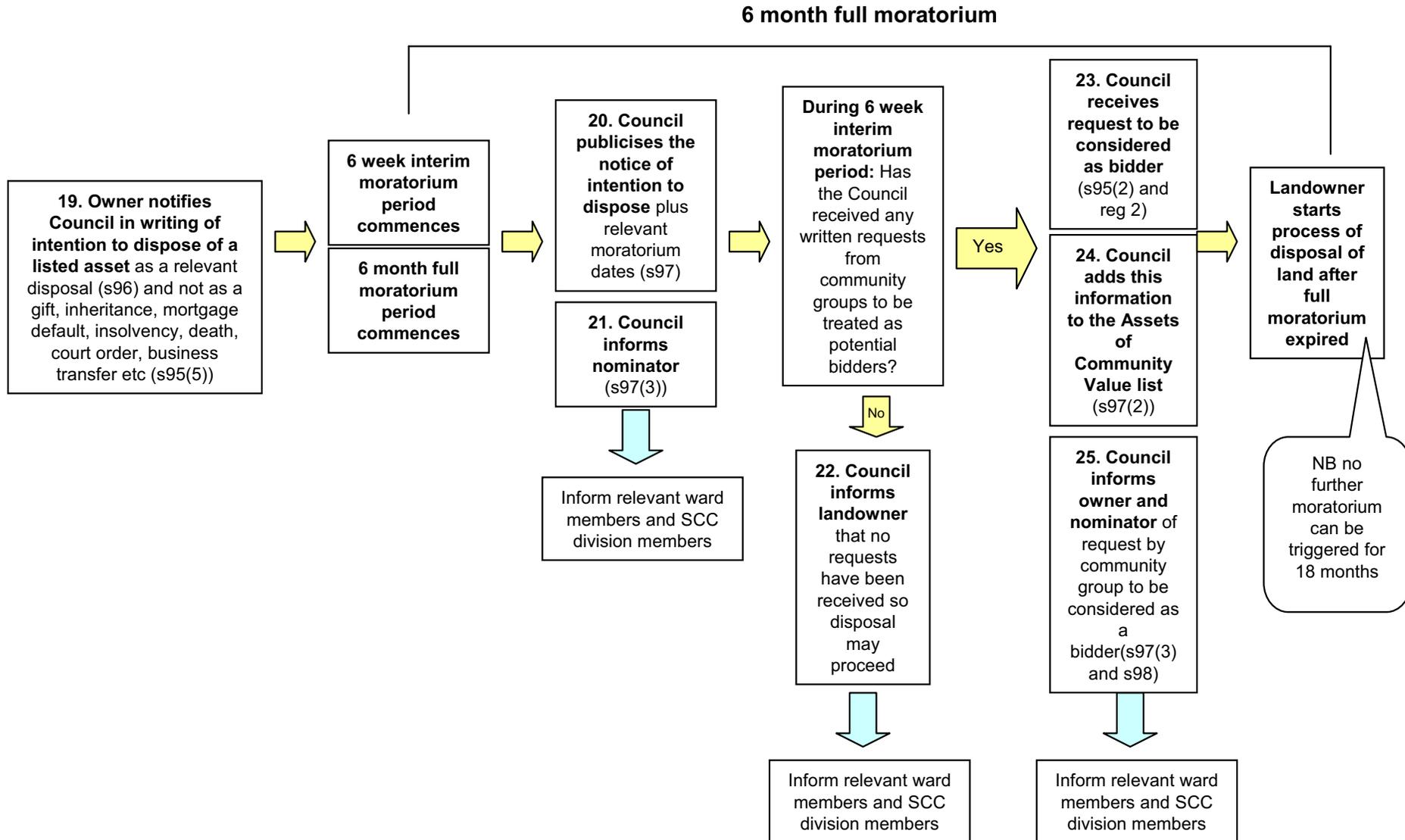
1. Nomination



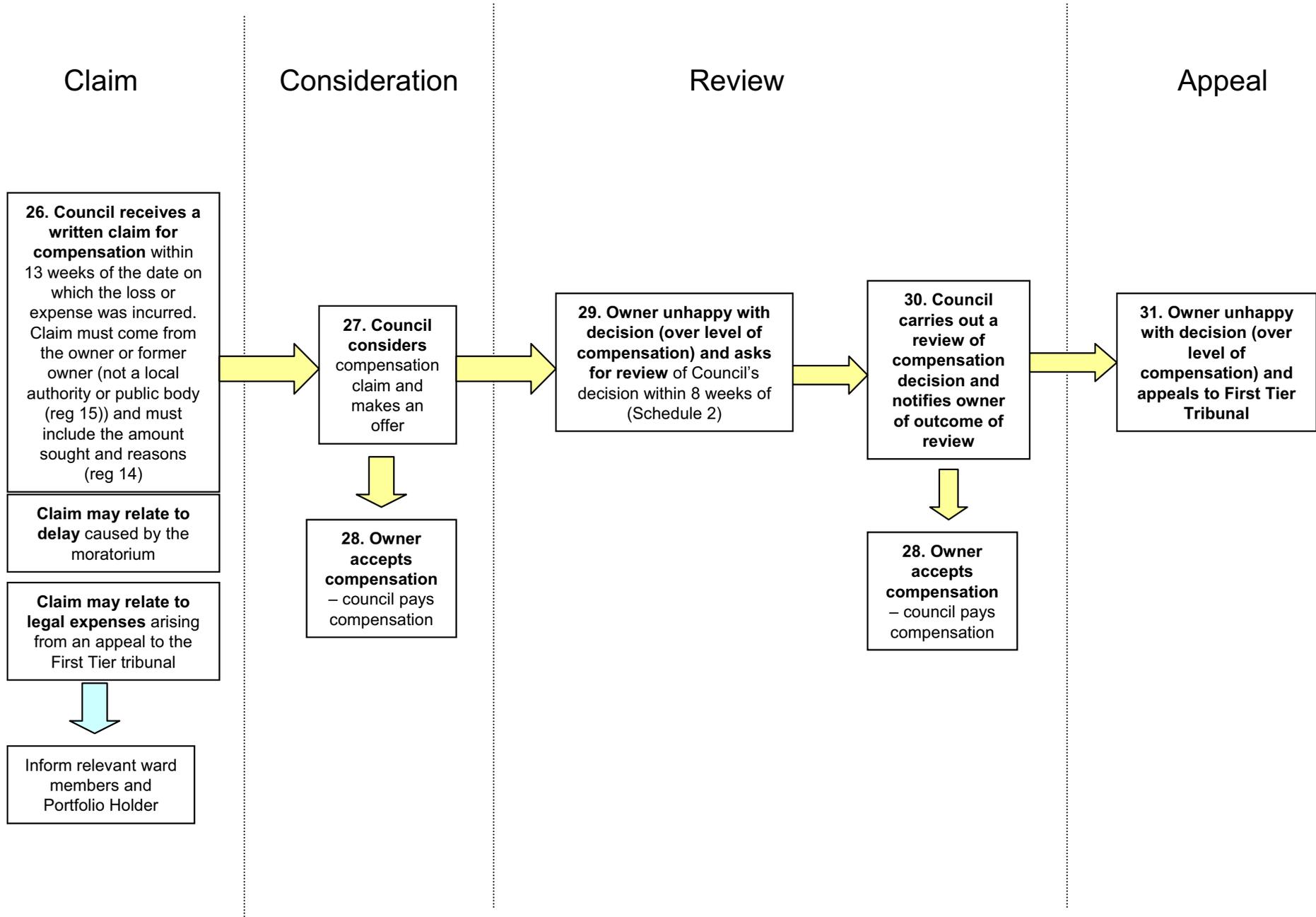
2. Review of listings



3. Moratorium periods



4. Compensation



PROPOSED ROLES AND RESPONSIBILITIES* (*words in italics denote tasks over and above what is required by the regs*)

Numbers in left hand column relate to the process numbers shown in the flowchart at Appendix B

* Team names may change depending on outcome of changes to management structure

→ NOMINATION

1	Community group submits a nomination to the Council	Legal services
2	Council informs parish council, owner, freeholders, leaseholders, occupiers of asset and <i>Ward and SCC division Members</i> that a nomination has been received	Community services
3	Council checks validity of nomination	Community services
<i>Where nomination doesn't meet criteria</i>		
4	Council informs nominator, <i>owner, occupier, leaseholder, freeholder and Ward and SCC division Members</i> giving reasons why unsuccessful	Community services
5	Council adds nomination to list of unsuccessful nominations, including reasons	Community services
<i>Where nomination meets criteria</i>		
6	Council adds nomination to List of Assets of Community Value	Community services
7	Council makes local land charge	Land charges team
8	Council puts a restriction on the land at HM Land Registry	Legal services
9	Council informs asset owner, occupier, leaseholders, freeholders, nominator, parish council <i>and Ward and SCC division Members</i> of listing	Community services
10	Asset removed from list after 5 years (and restriction removed at HMLR)	Community services

→ REVIEW

11	Owner requests a review of the listing decision (<i>Inform Ward Members and Portfolio Holder</i>)	Legal services
12	Council informs owner of procedure to be followed in connection with review	"Officer of appropriate seniority not involved in the listing decision" NB consider possibility of partnering in a reciprocal arrangement with another council (e.g. Babergh/Mid Suffolk) to gain from external input to the review
13	Council reviews listing decision	"Officer of appropriate seniority not involved in the listing decision" (see point 12 above)
<i>Where review concludes asset should not have been listed</i>		
14	Council removes asset from list (and removes restriction at HMLR)	Community services

15	Council informs owner, occupier, leaseholder, freeholder, parish council and nominator of removal from list	Community services
16	Council adds nomination to "Unsuccessful" list (<i>Inform Ward and SCC division Members and Portfolio Holder</i>)	Community services
Where review concludes asset should remain in list		
17	Council informs owner that asset still in list plus reasons for decision (<i>Inform Ward Members and Portfolio Holder</i>)	Community services
18	Owner unhappy with decision and appeals to First Tier Tribunal	Legal services

→ DISPOSAL

19	Owner gives notification to Council of intention to dispose of listed asset	Legal services
20	Council publishes notice of owner's intention to dispose, including relevant moratorium dates	Community services
21	Council informs nominator <i>and Ward and SCC division Members</i> of owner's intention to dispose	Community services
Where no requests to be treated as bidders received		
22	Inform owner <i>and Ward and SCC division Members</i> that no requests received so disposal can continue	Community services
Where requests to be treated as bidders received		
23	A community group submits a request to be treated as a bidder	Community services
24	Council adds bid information to List of Assets of Community Value	Community services
25	Council informs owner, nominator <i>and Ward and SCC division Members</i> of request received	Community services

→ COMPENSATION

26	Owner or former owner makes a written claim for compensation	Legal services
27	Council considers compensation claim and makes an offer (<i>informs Ward Members and portfolio holder</i>)	Legal services
28	Owner happy with compensation - Council pays compensation	Financial services
29	Owner unhappy with decision and asks for a review	"Officer of appropriate seniority not involved in the listing decision" (see point 12 above)
30	Council carries out a review of compensation decision and notifies owner of outcome of review	"Officer of appropriate seniority not involved in the listing decision" (see point 12 above)
31	Owner unhappy with decision and appeals to First Tier Tribunal	Legal services