

REPORT FOR DECISION

MEETING: CABINET

DATE: 28th NOVEMBER 2012

SUBJECT: COMMUNITY RIGHT TO BID

REPORT FROM: CABINET MEMBER COMMUNITY DEVELOPMENT

CONTACT OFFICER: David Fowler (Head of Communities)

TYPE OF DECISION: NON-KEY DECISION

FREEDOM OF INFORMATION/STATUS: This paper is within the public domain

SUMMARY: The report outlines the provisions of the Localism Act 2011, insofar as they relate to the Community Right to Bid, and the implications to the Council of the requirement to hold a 'List of Assets of Community Value'. The report also proposes a decision making process for the listing of community assets and for the determination of any compensation claims.

OPTIONS & RECOMMENDED OPTION

Cabinet are requested to:

Note the new duty under the Localism Act 2011 to implement the Community Right to Bid, as described within this report

Option 1. Approve the recommendations of this report

Option 2. Not approve the recommendations of this report.

Option 1 is recommended as the means of addressing the Council's obligations under the Localism Act 2011, insofar as they relate to the Community Right to Bid

IMPLICATIONS:**Corporate Aims/Policy Framework:**

Do the proposals accord with Policy Framework? Yes.

Statement by s151 Officer:

There is a potential cost to the Council in respect of compensation payments – see comment below for further detail.

Statement by Executive Director of Resources:

The Community Right to Bid does not in itself prevent the sale or lease of any Council owned assets of community value which are listed as such on the register. However, the moratorium provisions of the Act could delay the sale of such an asset by up to 12 months.

It is not currently possible to predict with any accuracy how many assets will be nominated by community groups as having community value, nor how many of these assets may be put up for sale. The Government estimates that nationally 94 assets per year will be affected by the moratorium on sale.

All compensation for losses incurred by private owners of assets, through the moratorium on sale, is payable by the Council. However, an amount is included within the new burdens assessment and the Government will meet costs of compensation payments of over £20,000 of compensation costs in a financial year. This could either be one large claim, or as a combined total on a number of smaller claims. The Council has received a payment of £4,873 as a new burdens grant.

Equality/Diversity implications:

None

Considered by Monitoring Officer:

Yes

JH

Are there any legal implications?

The legal implications of the Community Right to Bid duty are detailed in the report.

Wards Affected:

All

Scrutiny Interest:

Overview & Scrutiny

TRACKING/PROCESS**EXECUTIVE DIRECTOR:**

Deputy Chief Executive

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
	x		
Scrutiny Commission	Cabinet	Committee	Council
	x		

1. INTRODUCTION

- 1.1 The Localism Act 2011 introduces a new procedure for the Council to administer known as the Lists of Asset of Community Value, also known as the 'Community Right to Bid'. The legislation, which came into effect on 21 September 2012, requires the Council to maintain a list of properties within the Borough that have been nominated by community groups and which are considered to be of community value.
- 1.2 If the owner of a property on the List subsequently puts the property up for sale, the Council must notify the local community, thereby providing them with the opportunity to submit a bid to the owner to purchase the property.

2. PROCESS SUMMARY

- 2.1 The scheme essentially falls into three parts:
- The nomination procedure
 - The sale of a listed property
 - The compensation that must be paid to any owner suffering losses as a result of sale being delayed
- 2.2 Full details of the process are contained within the Government's advice on the Right to Bid, which is contained within Appendix 1 to this report, however they can be summarised as follows:
- 2.3 Community interest groups will be able to nominate assets of community value, to be held on a register maintained and published by the Council.
- 2.4 The Council then considers whether or not the asset should be listed in accordance with pre-determined criteria which are outlined within Paragraph

3.2 below. If an asset is listed and at some point in the future the owner decides to dispose of it, then the community interest group is notified as part of a wider advertisement process. The group then has a six week period in which to submit a request to be treated as a potential bidder for that asset.

- 2.5 If the community interest group decides not to submit bid, the owner of the asset is free to dispose of it as they see fit. However, if a group confirms that it does wish to submit a bid it then has 6 months in which to do so. Unless it is to the community interest group, the asset cannot be disposed of during this period.
- 2.6 If no bids are received or accepted within this six month moratorium on sale, the owner is free to dispose of the asset for a further period of 12 months. If the asset is not sold within this timescale the whole process begins again.
- 2.7 The Community Right to Bid is simply that. It does not confer a right of first refusal on community interest groups, nor does it stipulate the price at which the asset has to be sold. Similarly, it does not place any restrictions on what an owner can do with the property while it is held within the register of assets of community value.

3. ISSUES FOR THE COUNCIL

3.1 The Community Right to Bid provisions require the Council to:

- Establish a process which enables community groups to nominate assets of community value
- Determine whether or not a nomination should be listed as a asset of community value
- Publish the register of assets of community value, together with a register of unsuccessful nominations (including the reason why the nomination was unsuccessful)
- Establish a process for the review of listing decisions, should the owner of a listed asset disagree with the Council's decision to list that asset
- Establish and monitor a moratorium process, so that the community group is notified once confirmation is received from the owner of a particular asset that they wish to dispose of that asset
- Establish a compensation process to compensate owners for loss or expense incurred as a result of listing or complying with the contents of the Act.

3.2 Criteria to determine Assets of Community Value

3.2.1 The Localism Act specifies that a property will be considered to have community value if:

- the property's current use, or use in the recent past, furthers the social wellbeing or the social interests (cultural, recreational, or sporting interests) of the local community, and
- that use must not be an ancillary one, and

- for property in commercial use, it is realistic to think that this use will continue, or for property that has been in community use in the recent past it is realistic to think that there will be community use within the next 5 years.

3.2.2 Certain categories of assets are excluded from listing. The principal one is residential property, but where the residential element of an asset is only an ancillary use (a pub, for example) then this asset is potentially capable of being listed.

3.2.2 Members will recognise that the criteria described above are very broad in nature. It is anticipated that that over time case law, further guidance from the Secretary of State and accepted best practice will more objectively define what constitutes an Asset of Community Value. Any subsequent additional criteria will be submitted to Cabinet for consideration.

3.3 Who May Nominate

3.3.1 The Council cannot list property on its own initiative – it must be nominated by community groups.

3.3.2 The following voluntary and community bodies may make nominations to the Council:

- Community interest groups with a local connection, which must be either:
 - (a) a charity
 - (b) a community interest company
 - (c) a company limited by guarantee that is non profit making
 - (d) an industrial and providential society which is non profit making
- Unincorporated groups
These groups must have a membership of at least 21 local people who appear on the Council's electoral roll, or that of a neighbouring authority. Members should be aware, however, that the Government Guidance excludes unincorporated groups from bidding for community assets.
- Neighbourhood Forums
It should be noted that the Council's Township Forums do not constitute neighbourhood forums. The latter has membership taken from different sections of the community and covers the entire borough. In contrast, Township Forums are essentially committees of the Council.

3.4 The Nomination Process

3.4.1 It is proposed that all nominations for Assets of Community Value will be determined by the Cabinet Member for Community Development, in consultation with an officer nominated by the Executive Director of Environment and Development Services.

3.4.2 In the event that an owner of an asset that has been listed appeals against that listing, the review should be undertaken by persons not involved in the original decision. It is therefore recommended that the review should be undertaken by any Cabinet member other than the Cabinet Member for Community Development.

3.5 Compensation

- 3.4.1 Private owners may claim compensation for loss and expense incurred through the asset being listed where they wish to sell that asset. Compensation is not payable to public bodies.
- 3.4.2 All compensation is payable by the Council, although an amount is included within the new burdens assessment and the Government will meet costs of compensation payments of over £20,000 in a financial year. This could either be one large claim or as a combined total on a number of smaller claims. The Council has now received a payment of £4,873 as a new burdens grant.
- 3.4.3 The Government estimates that, on average, 700 assets will be nominated and listed and 94 listed assets will be proposed to be sold per annum.
- 3.4.4 Any private owners of listed assets of community value incurring loss as a result of the sale moratorium must submit a substantiated claim to the Council. Any such claim is to be considered by the Council and reasons must be given for its decision.
- 3.4.5 An owner who is not satisfied with the Council's response to a claim for compensation can request a review by the Council of that decision. An owner may also appeal to an independent Tribunal against the Council's review decision on compensation.
- 3.4.6 It is suggested that initial claims for compensation are determined by the Head of Property & Asset Management and any subsequent reviews of that decision undertaken by the Executive Director of Resources.

4. COMMUNITY RIGHT TO CHALLENGE

- 4.1 Members may benefit with a distinction being drawn between the Community Right to Bid and the Community Right to Challenge:

Right to Bid	Right to Challenge
Relates only to 'land' that fits the criteria (this includes property)	Relates to a 'service' (which could include the use of land and buildings) subject to exceptions
Affects all property owners (subject to exceptions)	Affects the public service provider only
No obligation to sell land	If an expression of interest is accepted, the authority is required to undertake a procurement exercise for that service, which may lead to the authority awarding a contract for the provision of that service

5. CONCLUSIONS

- 5.1 The Localism Act does not provide for a community right to buy, merely to bid. It does, however, allow community groups time to develop such bids for the purchase of assets deemed to be of community value. At the expiry of the six month sale moratorium period an owner of an asset of community value is free to sell that asset to whomever it sees fit and at whatever price.

5.2 Should it be resolved that any Council owned assets of community value are to be sold, Members should be aware that the sale process could potentially be delayed by up to 12 months in complying with the requirements of the Localism Act.

6. RECOMMENDATIONS

6.1 Members are requested to:

- Note the contents of this report.
- Approve that all nominations for assets of community value are determined by the Cabinet Member for Community Development, in consultation with an officer nominated by the Executive Director of Environment and Development Services.
- Approve that all appeals against a listing decision can be determined by any member of the Cabinet with the exception of the Cabinet Member of Community Development.
- Approve that all initial claims for compensation are determined by the Head of Property & Asset Management and any subsequent reviews of that decision undertaken by the Executive Director of Resources.

Background documents:

Full report attached

For further information on the details of this report, please contact:

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