

REFERRAL

from
CABINET
HELD ON 6TH NOVEMBER 2012

to
COUNCIL
ON 20TH DECEMBER 2012

Public Interest Test

The author of this referral, Julie Hamilton, Senior Democratic Services Officer, has determined that it is considered to be of a non-confidential nature.

MINUTE NO. 84(a) - Community Right to Bid – Assets of Community Value (Key Decision No. 354)

RESOLVED that:

1. The processes, as set out at paragraph 3.6 of the report, be approved so that the Council can meet its statutory responsibilities in respect of the Community Right to Bid.
2. This approach be approved and adopted by full Council in December 2012.

Referred Reports will be submitted in their original form unless the Responsible Officer indicates otherwise.

Copies to: Committee Administrator
 Interim Chief Executive
 Director of Corporate Services
 Corporate Development and Policy Manager

BASSETLAW DISTRICT COUNCIL

CABINET REPORT

6 NOVEMBER 2012

REPORT OF THE DIRECTOR OF CORPORATE SERVICES

COMMUNITY RIGHT TO BID – ASSETS OF COMMUNITY VALUE

Cabinet Member: Policy and Community
Engagement
Contact: Gillian Blenkinsop – ext 3142

1. Public Interest Test

- 1.1 The author of this report has determined in preparing this report that this matter is not confidential.

2. Purpose of the Report

- 2.1 To provide Members with an update on the Community Right to Bid provisions of the Localism Act.
- 2.2 To seek agreement from Members on an approach to effectively respond to these new provisions.

3. Background and Discussion

- 3.1 Over the past decade many communities have lost local amenities and buildings that are of importance to them. There has also been a rise in communities becoming more active and joining together to save and take over assets which are important to them. The Community Right to Bid seeks to encourage more of this community focussed, locally led action.
- 3.2 There are several community rights contained within the Localism Act. This report deals specifically with Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Regulations 2012.
- 3.3 The Community Right to Bid - Assets of Community Value scheme came into effect on 21 September 2012.
- 3.4 The Community Right to Bid - Assets of Community Value legislation places requirements on the following local authorities in England:
- (a) a district council
 - (b) a county council for an area for which there are no district councils
 - (c) a London borough council
 - (d) the Common Council of the City of London, or
 - (e) the Council of the Isles of Scilly

3.5 The Community Right to Bid

Asset of Community Value

- 3.5.1 A building or land in any ownership (including the local authority and the Crown) may be considered an asset of community value if its current principal (non-ancillary) use or recent use has been to further the social well-being or social interests of the local community and is likely to do so in the future.

Residential property cannot be treated as an asset of community value and certain types of land e.g. land licensed/some non-licensed sites for use as a residential caravan site and operational land of statutory undertakers (transport and utilities).

The Process

Nomination

- 3.5.2 Subject to meeting certain requirements, voluntary or community bodies can nominate assets to their local authority. These bodies include: -

- Parish Councils
- Community interest groups with a local connection – either a charity or a community interest company (that does not distribute profits to their members, a company limited by guarantee or an industrial and provident society)
- An unincorporated group whose members include at least 21 members on a local electoral register and whose activities are concerned with the area in which they are nominating or an adjoining area
- A neighbourhood forum (as constituted under section 61F of the Town and Country Planning Act 1990 and the Localism Act) can nominate an asset from their own area.
- A neighbouring parish council can also nominate an asset.

- 3.5.3 A nomination must include: -

- A description of the nominated land or building and its proposed boundaries
- Any information the nominator has about the freeholders, leaseholders and current occupiers of the site
- The reasons for nominating the asset and why the nominator believes the asset meets the definition of a community asset
- The nominator's eligibility to make the nomination

- 3.5.4 A nomination can be made at any time – including after an asset has been put on to the market. No restrictions on sale arise from nomination, it is only the listing which will cause the statutory provisions to be invoked.

Listing

- 3.5.5 Local authorities must maintain and publish a list of assets of community value that have been nominated by authorised organisations and that meet the criteria set out at Section 88 of the Regulations.

- 3.5.6 The local authority will also maintain a list of assets that were nominated but not listed. This list must also be published.

Considering listing an asset

- 3.5.7 The local authority must make a decision within 8 weeks of receiving the nomination.
- 3.5.8 The local authority must advise the owner or occupier of the land or buildings and the nominator of its decision.
- 3.5.9 When the local authority adds or removes an asset from the list, it must inform the owner, occupier, the successful community nominator, any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in.
- 3.5.10 The local authority must advise local land charges that an asset has been placed on or removed from the list of assets of community value. The local authority must also apply to the Land Registry for entry of a restriction on the Land Register when an asset is listed or when the owner of a listed asset changes.

Reviewing a listing decision

- 3.5.11 Owners can request the local authority to review its decision to list their asset. This must be done within 8 weeks of the date that the notice was given to the owner that their asset has been listed. The asset remains listed while this review is carried out.
- 3.5.12 The review must be carried out by an officer of appropriate seniority who was not involved in the decision to list. The review must be completed within 8 weeks unless a longer period has been agreed in writing. The owner and the local authority will meet their own costs.
- 3.5.13 If the owner is not satisfied with the local authority review they have a right of appeal to the First Tier Tribunal.
- 3.5.14 The local authority must inform the owner of their right to an independent appeal when the owner is advised of the outcome of the internal review. The owner has 28 days from the date of this notification to appeal.

Moratorium

- 3.5.15 If an owner of a listed asset wishes to dispose of this asset they must notify the local authority. This triggers an interim 6 week moratorium period on the disposal of the asset.
- 3.5.16 The local authority must update the list of assets of community value to show the owner's intention to dispose of the asset. The updated list must give the dates of the interim and full moratorium end dates. The local authority must inform the nominator that the asset is to be disposed of.
- 3.5.17 During this moratorium period the nominator or other community interest groups may advise the local authority in writing that they wish to be treated as a potential bidder. The local authority will advise the owner or occupier of the land or building in question and this will trigger the full moratorium period – a period of 6 months including the interim moratorium period. This moratorium period gives the community interest group the time to produce business plans, identify finances and gain community support to be able to purchase the asset. The community interest group

do not have to provide any evidence of financial resources to make such a bid at the time of making the bid.

3.5.18 During these moratorium periods the owner or occupier of the asset of community value cannot sell the asset unless it is to a community interest group.

3.5.19 However, it should be noted that some disposals of listed assets are exempt from the moratorium requirements e.g. disposals between family members, transfers of assets between connected companies, disposals due to insolvency, disposals between businesses where the asset remains a going concern.

Compensation

3.5.20 Private owners can claim compensation for loss and expense incurred through their asset being listed or previously listed. Any claims made to the local authority must be in writing and state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.

Review of a compensation decision

3.5.21 Owners not satisfied with the local authority's response may request a review within 8 weeks of the date of the notification of the compensation decision.

3.5.22 The local authority must review their decision and notify the owner of its decision within 8 weeks of receiving the request.

3.5.23 An owner can appeal to a Tribunal against the local authority's decision. This must be submitted within 28 days from the date of receipt of the local authority's decision.

Enforcement

3.5.24 The Regulations provide a penalty for non-compliance and measures to minimise the chance of a disposal not being compliant with the scheme.

3.5.25 The local authority must advise local land charges that an asset has been placed on or removed from the list of assets of community value. The local authority must also apply to the Land Registry for entry of a restriction on the Land Register when an asset is listed or when the owner of a listed asset changes.

3.5.26 When a listed asset is disposed of the Land Registry will need to be provided with a certificate from the conveyancer that disposals of listed assets have complied with the moratorium requirements.

3.6 Bassetlaw District Council's Response

3.6.1 Set out below is the District Council's response to its new responsibilities in relation to the Community Right to Bid.

Action	Owner
Design of nomination forms	Community Engagement and Performance
Guidance notes for Parish Councils and community interest groups on the Community Right to Bid	Legal
Engage parish councils and community interest organisations to advise them of this new community right and the process to be followed to exercise this community right.	Planning Policy
Face to face engagement with the Parishes on this new community right. Training session to take place – date to be confirmed	Planning Policy
Compilation of the list of assets of community value	Planning Policy/GIS/Information Team
Compilation of the list of land and buildings nominated but not listed	GIS/Information Team
Updating of lists to reflect disposals, interim and full moratorium periods	GIS/Information Team
Addition of assets of community value to the local land searches register	GIS/Information Team
Notification to the Land Registry to enter a restriction on the Land Register against assets of community value	GIS/Information Team
Receipt and assessment of nomination forms	Legal
Point of contact for community interest groups, owners and occupiers of land and buildings in relation to the scheme – including all correspondence	Legal
Setting up process for internal review	Legal
Carrying out internal reviews	Director as appropriate
Oversight of external reviews	Legal

4. Implications

a) For service users

There are no direct implications for service users.

b) Strategic & Policy

The Community Right to bid fits with objectives within our Corporate Plan about how we engage and work with the third sector – specifically linking to Ambition Three – Involved Communities and Locality Working.

c) Financial - Ref: 13/904

The Council has been allocated £13,420 in 12/13 as part of a New Burdens Fund. This will be earmarked to be used to offset any compensation claims arising from private property owners for provable losses arising from this scheme. There is no provision to compensate local authorities for any losses on assets due to the Community Right to Bid.

The Department of Communities and Local Government will also pay any costs arising from compensation claims that exceed £20k in a financial year up to March 2015.

Any compensation costs that cannot be met from either the earmarked New Burdens Fund or met by the Department for Communities and Local Government will in the first instance in any year be met from the corporate contingency pot. If there are insufficient funds in the corporate contingency pot then a Cabinet report will be required requesting additional funds.

d) Legal Ref: 356/11/12

The Council must comply with the statutory duties as set out within Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

e) Human Resources

Existing personnel from Planning Policy, Legal and the GIS/Information Team will be managing different elements of the Community Right to Bid scheme.

The impact on current resources will need to be kept under review. It is not possible at this stage to quantify the amount of officer time that will need to be spent on addressing this new responsibility as it is uncertain what demand there will be to list assets of community value and undertake subsequent steps thereafter.

f) Community Safety, Equalities, Environmental

This part of the Localism Act seeks to address inequalities by allowing communities time to prepare to bid for assets of community value - giving them a greater chance to compete with other potential purchasers.

g) Whether this is a key decision, and if so the reference number.

Yes - 354

5. Options, Risks and Reasons for Recommendations

5.1 The Council has a statutory duty to respond to its new responsibilities as set out in Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Regulations 2012.

6. Recommendations

6.1 That Cabinet approve the processes as set out at 3.6 of this report so that Bassetlaw District Council can meet its statutory responsibilities in respect of the Community Right to Bid.

6.2 That this approach be approved and adopted by full Council in December 2012.

Background Papers

CLG – Non Statutory Advice note for local authorities
- October 2012

Location

Community Engagement and
Performance