

Report to the Cabinet

Report reference: C-026-2013/14
Date of meeting: 9 September 2013



**Epping Forest
District Council**

Portfolio: Asset Management and Economic Development
Subject: Assets of Community Value
Responsible Officers: Colleen O'Boyle (01992 564475).
Chris Overend (01992 564247).
Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) To approve the procedure and policy attached to this report to ensure that the Council complies with the Community Right to Bid (Assets of Community Value) requirements.

Executive Summary:

This report sets out the duty placed on local authorities under the Localism Act 2011 ("the Act") and The Assets of Community Value (England) Regulations 2012 ("the Regulations") to administer the Community Right to Bid (Assets of Community Value).

The Community Right to Bid places a new duty on local authorities in England and Wales to maintain two lists; a list of assets of community value successfully nominated by the local community and a list of assets that were nominated, but were unsuccessful in meeting the eligibility criteria of assets of community value.

If land or buildings on the list of assets of community value come up for sale, the local community will be given six months to prepare a bid to try to buy the land or asset.

This report sets out the procedure to be put into place to ensure that the Council complies with the new duty.

Reasons for Proposed Decision:

To comply with a legal obligation introduced by the Localism Act 2011 and to agree a procedure to ensure the requirements are met.

Other Options for Action:

An alternative or modified procedure could be adopted, but there must be a procedure to deal with such bids as may be made.

Report:

1. The "Community Right to Bid" places a new duty on local authorities in England and Wales to "maintain a list of land in its areas that is land of community value" as nominated by

the local community. If land or buildings on this list come up for sale, the local community will be given six months to prepare a bid to try to buy the land or asset.

2. The Council must also maintain a list of assets identified in unsuccessful nominations.
3. The provisions of the community right to bid:
 - (a) 1.3.1 **Do not restrict** who the owner of a listed asset can sell their property to, nor at what price;
 - (b) 1.3.2 **Do not confer a right of first refusal** to community interest groups, nor enable a community group to trigger disposal of a site; and
 - (c) 1.3.3 **Do not place any restriction on what an owner can do with their property**, once listed, if it remains in their ownership. Planning policy determines permitted uses for sites, but the Council could decide that listing as an asset of community value is a material consideration if an application for change of use is submitted.

Defining an “asset of community value”

4. The Act defines assets in terms of the purpose to which they are being, or have been used. The asset must be within the Council’s area, but there is a duty on local authorities to cooperate on sites that cross local authority boundaries. All ownership is covered, be it public or private, and whether there is a single owner or multiple owners.

5. A building or piece of land is an asset of community value if it is at least partly within the Council’s area, its main use has recently been to “further the social wellbeing or social interest of the local community” and could do so in the future, and is defined regardless of the nature and number of owners.

6. The table listed in Appendix 2 of this report provides a simple overview of what constitutes an “asset of community value”.

7. There are exclusions within the Act, e.g. Residential properties, unless they are integral to an asset of community value, such as living accommodation within a public or caretaker’s flat within a community centre, Statutory undertakers (as defined in S263 of the Town and Country Planning Act 1990) for instance utilities, transport providers, the Civil Aviation Authority and the Post Office.

8. Assets of community value could include land or buildings where the main purpose is as follows:

- (a) The provision of public services directly to the public for the purposes of education, health and wellbeing or community safety, including:
 - Nurseries and schools;
 - Children’s centres;
 - Health centres, surgeries and hospitals; and
 - Day care centres, residential care homes;
- (b) Sport, recreation and culture including:
 - Parks and open green spaces;
 - Sports and leisure centres;
 - Libraries;

- Theatres; and
 - Museums or heritage sites;
- (c) Community services including:
- Community centres;
 - Youth centres; and
 - Public toilets; and
- (d) Local democracy including town and civic halls.

9. Also included is an economic use which provides an important local social benefit which would no longer be easily available if those services should cease. In these cases it is the social value of the business that counts, not just the nature of the business. This could include for example, village shops and pubs.

Nominations

10. Only the local community can nominate an asset for inclusion in the list. Nominations must come from:

- A body designated as a neighbourhood forum (under Section 61F of the Town and Country Planning Act 1990);
- A parish or town council;
- An unincorporated body:
 - Whose members include at least 21 individuals; and
 - Which does not distribute any surplus it makes to its members;
- A charity;
- A company limited by guarantee which does not distribute any surplus it makes to its members; or
- A community interest company.

11. A public or local authority may not be a voluntary or community body, but this restriction does not apply to a parish or town councils.

12. Bodies other than a parish or town council must have a local connection with land in the Council's area.

13. Unincorporated bodies must also have at least 21 local members who are registered at an address in the local authority's area, or a neighbouring authority's area as a local government elector.

14. A nomination must include:

- (a) a description of the nominated land including its proposed boundaries;
- (b) a statement of all the information which the nominator has with regard to:
 - (i) the names of the current occupants of the land; and
 - (ii) the names and current or last known addresses of all those holding a freehold or leasehold estate in the land;
- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is community value; and
- (d) evidence that the nominator is eligible to make a community nomination.

Maintaining the List

15. Every nomination must be considered and all nominations which fit the definition of an asset of community value must be included on the list.

16. The Council must give written notice of inclusion on the list to:

- the person who nominated the asset;
- the owner (the freeholder or a qualifying leaseholder); and
- any lawful occupier.

17. The list must be available for “free inspection” and the authority must “provide a free copy of the list on request”. The Council must also define the format and content of the lists and how to best make these publicly available, setting out a simple procedure covering entries on the lists, modification of entries and removal. An outline process map is attached at Appendix 1.

Land Charges

18. If land is included in the Council’s list of assets of community value then:

- (a) inclusion in the list is a local land charge; and
- (b) the Council is the originating authority for the purposes of the Local Land Charges Act 1975.

19. This also requires that the Council must remove the restriction as soon as practicable after removing the land from the list of assets of community value.

Sales and Moratorium Periods

20. If a local authority receives notice from an owner that they intend to dispose of an asset which is on the list of assets of community value (disposal means either the sale of the property or the granting of a lease of at least 25 years duration), they must publicise this fact by:

- (a) amending the published list with the relevant information – that a notice has been received, and the dates of the interim and full moratorium periods and the protection period;
- (b) notifying in writing, the body that made the initial nomination; and
- (c) publicising the matter locally.

21. The local community has a 6 week *interim* moratorium period (from the date the initial notice is received from the landowner) to express interest in writing to the local authority that “they wish to be treated as a potential bidder for the land”. There is no required format for this expression of interest. Submitting an expression of interest does not commit the group to making a bid. Whereas only certain groups can nominate an asset, **any** community group can express an interest at this point and can trigger a moratorium period.

22. If no expression of interest is received, the landowner is free to dispose of their land. If an expression of interest is received, the authority must notify the landowner and provide them with information about the expression of interest and who submitted it.

23. If an expression of interest is received by the local authority, the landowner may not dispose of their land for six months. This is the six month *full* moratorium period which gives the local community time to prepare a bid if they wish to do so. They are not obliged to prepare or to submit a bid.

24. If a landowner receives a bid they are not obliged to accept it. The landowner and any eligible community interest group may come to a mutual agreement and complete the sale before the 6 month period is complete if they so wish.

25. There is an 18 month protected period (from the date that the initial notice is received from the landowner) during which the landowner is protected from further attempts to block the sale of the property.

Exemptions from the Moratorium Process

26. Some types of disposal are exempt from the moratorium process *even* if the asset is listed. The Act and Regulations list the following exemptions:

- disposal through the gift of an asset;
- disposal of an asset containing a business which uses the asset and which is a “going concern” (e.g. a shop or public house still in operation);
- disposal within a family or partnership or between trustees of a trust or between companies in a group;
- disposals in the execution of a will or arising from various legal proceedings including separation agreements between spouses or civil partners;
- disposal of an asset that is part of a larger estate, part of which is not listed, but where the whole estate is owned by the same person and is a single lot of land;
- disposals made under any statutory provision relating to incapacity including physical or mental impairment;
- disposals from one NHS body to another;
- disposals for ongoing educational provision;
- disposals between connected companies; or
- disposals as a result of bankruptcy or insolvency

Compensation

27. The Act allows private property owners who believe that they have incurred losses as a result of complying with the procedures, to apply for compensation from the local authority. The definition is:

“That the person making the claim has, at a time when the person was owner of the land, and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed”.

28. The Regulations provide that the following types of claim may be made:

(a) a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused:

(i) by relevant disposals of the land being prohibited by Section 95(1) of the Act during any part of the relevant 6 weeks that is on or after the date on which the responsible authority receives notification under Section 95(2) of the Act in relation to the land; or

- (ii) in a case where the prohibition continues during the 6 months beginning with that date, by relevant disposals of the land being prohibited during any part of the relevant 6 months that is on or after that date; and
- (b) A claim for reasonable legal expenses incurred in a successful appeal to the First Tier Tribunal against the responsible authority's decision:
 - (i) to list the land;
 - (ii) to refuse to pay compensation; or
 - (iii) with regard to the amount of compensation offered or paid.

29. Claims for compensation must be made in writing to the Council before the end of 13 weeks after the loss or expense was incurred or finished being incurred. The owner must state the amount of compensation sought for each part of the claim; and supporting evidence must be provided.

30. The Regulations state the public bodies and departments mainly supported by public funds and subject to public audit under the Audit Commission Act 1998 and the National Audit Act 1983 are not entitled to compensation.

31. Where the Council has carried out a compensation review, the person who requested the review may then appeal to the First Tier Tribunal against the decision.

Corporate Procedure

32. The outline procedure is shown in Appendix A below. The timelines given are set out in the Regulations. Corporate responsibility for the Community Right to Bid will sit with the Chief Executive and community bodies will be invited to submit nominations to the Policy and Research Officer. Nominations will be determined by the Director of Corporate Support Services in consultation with the Portfolio Holder for Asset Management and Economic Development.

33. The Leader and Portfolio Holders for Community Wellbeing and Finance and Technology shall form any appeal panel.

34. The Policy and Research Officer will be responsible for maintaining the list of assets nominated successfully as assets of community value and a separate list of nominated assets which were unsuccessful.

35. The Policy and Research Officer shall amend the lists in the light of any appeals.

36. The Policy and Research Officer shall cause the list of assets of community value to be published on the website and make copies available free of charge, on request.

Resource Implications:

Unknown at this stage although there will be officer time involved and there is the potential for compensation claims.

Legal and Governance Implications:

The report is designed to meet the legal requirements of the Localism Act 2011.

Safer, Cleaner and Greener Implications:

None

Consultation Undertaken:

Draft policy and procedure discussed by Management Board. Documentation prepared by a small working party of the PLP.

Background Papers:

None.

Impact Assessments:

Risk Management

To fail to adopt a procedure would risk the Council responding ad hoc to requests which may lead to uncertainty, missed timescales, inconsistent decisions and compensation claims.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No