

Gloucester City Council

Meeting:	Overview and Scrutiny Committee	Date:	8 July 2013
	Cabinet		10 July 2013
	Constitutional and Electoral		
	Working Group		16 July 2013
	Council		18 July 2013
Subject:	Community Right to Bid (Assets of community value) – proposed procedure		
Report Of:	Cabinet Members for Regeneration and Communities and Neighbourhoods		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
Contact Officer:	Sue Mullins, Group Manager Legal and Democratic Services		
	Email:	sue.mullins@gloucester.gov.uk	Tel: 396110
Appendices:	Appendix 1 – Draft Community Right to Bid Policy		

1.0 Purpose of Report

- 1.1 To outline the policy and procedure required for dealing with the Community Right to Bid for assets of community value to meet the requirements of the Localism Act 2011 and to approve consequential delegations to Officers.

2.0 Recommendations

- 2.1 Overview and Scrutiny Committee is asked to consider the information contained in the report and make any recommendations it considers appropriate to the Cabinet.

- 2.2 Cabinet is asked to **RESOLVE:**

- (1) that the contents of the report be noted; and
- (2) that unsuccessful nominations shall be held for three years;

and to **RECOMMEND** that:

- (3) Authority be delegated to the Asset Manager to determine nominations for the inclusion of local assets on the Council's list of assets of community value;
- (4) Authority be delegated to the Group Manager Planning and Economy to carry out internal reviews of any decision to list an asset under Section 92 of the Localism Act 2011;

- (5) Authority be delegated to the Head of Financial Services, in consultation with the Asset Manager and the Cabinet Member for Performance and Resources to determine claims for compensation for listed land;
- (6) Authority be delegated to the Corporate Director of Resources, in consultation with the Group Manager for Planning and Economy and the Cabinet Member for Performance and Resources to determine appeals in respect of compensation claims for listed land;
- (7) Authority be delegated to the Asset Manager, in consultation with the Cabinet Members for Regeneration and Communities and Neighbourhoods and the Group Manager Legal and Democratic Services to finalise the detailed policy and procedure for dealing with assets of community value;

2.3 Constitutional and Electoral Working Group is asked to **RESOLVE** that the contents of the report be noted and to **RECOMMEND** that:

- (1) Authority be delegated to the Asset Manager to determine nominations for the inclusion of local assets on the Council's list of assets of community value;
- (2) Authority be delegated to the Group Manager Planning and Economy to carry out internal reviews of any decision to list an asset under Section 92 of the Localism Act 2011;
- (3) Authority be delegated to the Head of Financial Services, in consultation with the Asset Manager and the Cabinet Member for Performance and Resources to determine claims for compensation for listed land;
- (4) Authority be delegated to the Corporate Director of Resources, in consultation with the Group Manager for Planning and Economy and the Cabinet Member for Performance and Resources to determine appeals in respect of compensation claims for listed land;
- (5) Authority be delegated to the Asset Manager, in consultation with the Cabinet Members for Regeneration and Communities and Neighbourhoods and the Group Manager Legal and Democratic Services to finalise the detailed policy and procedure for dealing with assets of community value;

2.4 Council is asked to **RESOLVE** that:

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- (2) Authority be delegated to the Group Manager Planning and Economy to carry out internal reviews of any decision to list an asset under Section 92 of the Localism Act 2011;
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- (5) Authority be delegated to the Asset Manager, in consultation with the Cabinet Member for Regeneration and Communities and Neighbourhoods and the Group Manager Legal and Democratic Services to finalise the detailed policy and procedure for dealing with assets of community value.

3.0 Background and Key Issues

- 3.1 Sections 87 – 103 of the Localism Act 2011 ('the Act') contain the provisions relating to assets of community value. The Assets of Community Value (England) Regulations 2012 ('the Regulations') brought these sections into effect on 21 September 2012 and places the responsibility for dealing with assets of community value onto district councils. The aim of the legislative provisions is to help community groups to protect buildings or land which are of importance to their communities' social wellbeing or social interests, which include cultural, sporting or recreational interests.
- 3.2 There are two main parts to the process: nomination and listing assets, and the moratorium.

Nomination and Listing of assets

- 3.3 Parish Councils and community organizations, including any neighbourhood forums constituted under the Act or community interest groups with a local connection (e.g. a charity), can nominate local assets to the Council for inclusion on the list of assets of community value. Nominations can also be received from parish councils adjoining the local authority's area. Nominated assets may be owned by anybody, including the Council itself or the Crown.
- 3.4 The nomination has to include the following information:
 - A description of the nominated land, including its proposed boundaries;
 - Any information the nominator has about the freeholders, leaseholders and current occupants of the land;
 - The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act;
 - The nominator's eligibility to make the nomination.
- 3.5 Nominations can be made at any time, including after an asset has been put onto the market. However, it should be noted that no restrictions on sale arise from nomination – the asset has to be listed for the statutory provisions to apply.
- 3.6 Section 88 of the Act clarifies that a building or land is "of community value" if, in the opinion of the Council, either:
 - (a) *an actual use of the building or land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and*

(b) It is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

or

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

- 3.7 There are exceptions set out in Schedule 1 to the Regulations and these include, for example, residential property. Any excepted land is not of community value and therefore may not be listed.
- 3.8 The local authority has 8 weeks from receipt of the nomination to decide whether or not the asset should be included in the list. If the asset is properly nominated, is in the Council's area, falls within the definition in Section 88 of the Act and is not excluded, the Council must list it and inform the owner, relevant parish council, if any, and other specified persons, of the inclusion of the asset in the list. The listing must also be registered as a local land charge and, if the land is registered, the Council must apply for a restriction on the Land Register.
- 3.9 In determining nominations, the Council has some discretion in assessing whether or not a nominated asset falls within the definition in Section 88 of the Act. In particular, there is discretion around assessment of:-
- (a) 'non-ancillary use' - i.e. that the use is not simply 'supporting' a main use;
 - (b) 'recent past'- the Government has stated that 'recent' might be viewed differently in different circumstances;
 - (c) how realistic the opportunity is for the use to continue (albeit in a different way) - this may include consideration of the 'fitness for purpose' of the asset for its current use in the future.
- 3.10 If the owner objects to their property being placed on the list, they have 8 weeks from the date written notice of the listing was given or any longer period allowed by the Council in writing, to make a written request for internal review of the decision to list (Section 92 of the Act). The Regulations prescribe that this review must be carried out by "an officer of the authority of appropriate seniority who did not take part in the making of the decision to be reviewed". The internal review must be completed within 8 weeks of receipt of the review request or such longer period as may be agreed with the owner in writing. The asset remains listed whilst the review is carried out.
- 3.11 Schedule 2 to the Regulations sets out the procedure for the review:
- The review is to be carried out by an officer of "appropriate seniority" who did not take part in making the original decision;

- The owner can appoint a representative to act on their behalf;
- The local authority has to notify the owner of the review procedure as soon as practicable after receipt of the written review request;
- If the owner requests an oral hearing, an oral hearing must be held;
- Both the owner and their representative can make representations, orally and in writing, to the reviewer;

- 3.12 Each party bears their own costs associated with the review. If the owner is not satisfied with the outcome of the internal review, they have a right of appeal against the Council's review decision and should be notified of this right in the review decision letter. The appeal is to the General Regulatory Chamber of the First Tier Tribunal and needs to be made within 28 days of the Council's review decision being sent to the owner. Appeals can be on both points of law and fact. Again, the property remains listed during the appeal process. The owner can make a claim for compensation in respect of legal expenses incurred in a successful appeal to the Tribunal.
- 3.13 If the Council does not agree that the nominated asset meets the definition in Section 88 of the Act, or it is in an excluded category, the asset must be placed on a list of assets nominated but not listed. An asset must be moved to the list of unsuccessful nominations if an internal review or Tribunal decision is that an asset should not be listed. It is a matter for the Council how long it holds unsuccessful nominations on this list. Officer recommendation is that unsuccessful nominations should be held for three years.
- 3.14 The asset will remain on the list for up to five years. At the end of this time, assets can be re-nominated and the same process will apply to that nomination. It should be noted that the listing of an asset creates no obligation for the owner of the asset to sell it and there is therefore the possibility that some assets listed will never be made available to interested groups or organizations.

Moratorium

- 3.15 Nothing further happens with a listed asset unless and until the owner decides to dispose of it, either through freehold sale or the grant or assignment of a qualifying lease. In these situations, unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired.
- 3.16 Exempt disposals are set out partly in the Act and partly in the Regulations and include, for example, disposals by personal representatives in accordance with a will, sale of land on which a business is carried on (as a going concern), transfers in pursuance of a court order and sales by lenders under a power of sale. There is no requirement to notify the Council of an exempt disposal, however, it would clearly be helpful to do so and the Council can include advice on this in any explanation sent to owners about how the moratorium works.
- 3.17 In the case of any relevant disposal which is not exempt or to a community interest group, the owner may not dispose of the asset during a 6 week interim moratorium period. This period starts from when the owner notifies the Council of their wish to enter into a relevant disposal of the asset, under Section 95(2) of the Act.

- 3.18 On receipt of the owner's notification of their intention to dispose of the asset, the Council is required to update the list, giving the interim and full moratorium end dates and the end date of the protected period. The interim moratorium period is 6 weeks, the full moratorium period is 6 months and the protected period is 18 months, all running from notification of the owner's intention to dispose of the asset.
- 3.19 During the 6 week interim moratorium period, community interest groups may make a written request to the Council to be treated as a potential bidder for the listed asset. If no written requests are received during this period, the owner is free to sell their asset at the end of the 6 week period.
- 3.20 If a community interest group does make a written request to the Council to be treated as a potential bidder within the 6 week interim moratorium period, then the full 6 month moratorium will operate. This runs from the date of the owner's notification to the Council of their intention to dispose of the asset. During this full moratorium period, the owner may continue to market and negotiate sales but may not exchange contracts or enter into a binding contract to do so later. The only exception during the full moratorium period is a sale to a community interest group. At the end of the 6 month moratorium period, the owner is free to sell to whomever they choose and at whatever price and no moratorium can apply for the remainder of the protected period.

Compensation

- 3.21 It is recognized that these provision could have a financial impact on some owners and there is a compensation scheme for private property owners (but not for public bodies). The Regulations allow an owner of listed land or previously listed land to claim compensation for loss or expense incurred in relation to the land which would not have been incurred if the land had not been listed. The types of claims which can be made include, for example, a delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period or for legal expenses incurred in a successful appeal to the Tribunal.
- 3.22 The time limit for claiming compensation is whichever is the earlier of 13 weeks from the end of the interim or full moratorium period or from the date when the land ceases to be listed. The Regulations require claims to be made in writing, stating the amount of compensation sought and providing supporting evidence. The burden of proof is on the owner.
- 3.23 The claim has to be considered by the Council. Unlike the other processes associated with the community right to bid, there is no time limit specified for the Council to reach a decision on the claim. However, there is an expectation that the Council will reach a decision as soon as is reasonably practicable when it has all the relevant information.
- 3.24 The Government has stated the following in its non-statutory advice note for local authorities on the Community Right to Bid:

“As with other costs incurred by local authorities in meeting the requirements placed on them, we have reflected the estimated costs of compensation within the new burdens funding. The compensation elements of new burdens funding are

estimated on the basis of 40 successful claims for compensation across all administering local authorities over a year.

In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.”

- 3.25 The Council is therefore required to fund compensation claims of up to £20,000 in any financial year, with the ability to reclaim any compensation paid over and above this limit from the Government.

4.0 Alternative Options Considered

- 4.1 The Council is required to comply with the legislative provisions relating to the Community Right to Bid and there are no alternative options.

5.0 Reasons for Recommendations

- 5.1 It is important that Members are aware of the Right to Bid process and the Council's responsibilities for that process. As the legislation prescribes that officers must conduct certain parts of the process, certain delegations are required to enable the process to be administered appropriately.

6.0 Future Work and Conclusions

- 6.1 Officers will continue to prepare the detailed procedure and standard documentation, where required.

7.0 Financial Implications

- 7.1 There is no cost associated with entry of any listing onto the Local Land Charges Register. The cost of applying for a restriction on the Land Register is minimal at £50.
- 7.2 There is also a cost associated with the staff time required for administration of the nomination processing/listing and internal review processes. These are difficult to quantify at this stage as much will depend on the volume of nominations received. However, these costs will be borne within existing resources.
- 7.3 The most significant costs that could potentially arise relate to the cost of any appeal to the First Tier Tribunal referred to at paragraph 12 of the report and the compensation costs referred to at paragraphs 3.24 and 3.25. *The Council has received £7,800 as part of its New Burdens funding in respect of assets of community value [Finance confirmation awaited]*

(Financial Services have not been consulted in the preparation this report.)

8.0 Legal Implications

- 8.1 The legal implications are set out in the main body of this report.

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

- 9.1 If the Council fails to have a procedure for dealing with nominations of assets of community value, statutory timescales could be missed leading to Ombudsman complaints and reputational damage.
- 9.2 The Right to Bid process creates an opportunity for the Council to assist in enabling the retention and/or bringing back into use of assets of community value.

10.0 People Impact Assessment (PIA):

- 10.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

11.0 Other Corporate Implications

Community Safety

- 11.1 None

Sustainability

- 11.2 None

Staffing & Trade Union

- 11.3 None.

Background Documents: None