

Report to Cabinet

Subject: Community Right to Bid

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Wards Affected

Borough-wide

Purpose

To determine the procedure the Council will adopt for dealing with nominations for buildings or land to be considered as assets of community value in Gedling Borough under the provision of the Localism Act 2011 and delegate certain functions to officers.

Key Decision

This is not a Key Decision

Background

1.1 The Localism Act became law in November 2011 and the Community Right to Bid provisions came into force on 21 September 2012. The Community Right to Bid gives the local community the opportunity to nominate public and private assets to be part of a register of 'assets of a community value' held by the local authority. The Government is concerned about the loss to communities of local facilities such as shops, pubs, libraries and open spaces which have been closing or sold and developed for private, non-community use. The aim of the Community Right to Bid (CRB) is to help to reverse this trend, enabling communities to keep local facilities open as buildings or land which further the social wellbeing of those who live or work there.

1.2 Nominations

Nominations can only be made by community groups e.g. Parish Councils, Registered Charities, or a voluntary or community body with a local connection. A local authority, other than a Parish or Town Council cannot itself make a nomination, nor can individuals.

1.3 Assets of Community Value

A building or land can be nominated as an 'asset of community value' if the current use of the building or land 'furthers the social well being or social interests of the local community'; or there was a time in the recent past when its use matched that criterion and it is realistic to think that there is a time in the next five years when the criterion will be satisfied again. In this context, 'social interest' includes each of the following:

- Cultural interests
- Recreational interests
- Sporting interests

1.4 Procedure for listing

A property can only be listed as an asset of community value in response to a 'community nomination', which the Localism Act defines as one made by:

- A parish council in respect of land in the parish
- A voluntary or community body with a local connection. This expression is further defined in regulations but, in broad terms, means a social enterprise (whether incorporated or not) or charity.

The Council will have 8 weeks to make a judgement as to whether the property meets the definition in the Act or whether it falls within one of the excluded categories. If the property is properly nominated, is in the borough and is not excluded the Council must list it on its List of Assets of Community Value. If the Council does not agree that the property meets the definition or it is in one of the excluded categories, it must also list these unsuccessful nominations on a separate schedule.

Review of a listing

If the owner objects to their property being listed they will have a right to an internal review of the decision to list. If they are still not happy, the owner will have a right to appeal to an independent Tribunal.

1.5 Triggering the Moratorium

Once an asset has been listed nothing further will happen unless and until the owner decides to sell, either through a freehold sale, or the grant or assignment of a qualifying lease. The owner will only be able to dispose of the property after a specified window has expired. The first part of the window is a six week interim period which will apply in all cases from the point the owner notifies the local authority of his intention to dispose. This will allow community interest groups to make a written request to be treated as a potential bidder. If none do so in this period, the owner is free to sell their asset at the end of the six weeks.

If a community interest group does make a request during this interim period, then the full six month moratorium will operate. During this 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. There is one exception – the owner may sell to a community interest group during the moratorium period. After the moratorium period either six weeks or the full six months, the owner is free to sell to whomever they choose at whatever price, and no further moratorium will apply for the remainder of a protected period (18 months from the date the owner notified the Council of the intention to dispose).

Certain types of disposal will be exempt from the scheme, such as disposals made in connection with a divorce settlement between spouses or civil partners; or a disposal made by a mortgagee exercising its power of sale.

1.6 Compensation

All owners, other than public authorities, will be entitled to claim compensation for loss or expense incurred as a result of listing and complying with any of the procedures required by the scheme. The council will be responsible for assessing such claims and, if the relevant criteria are met, paying the appropriate amount of compensation.

1.7 Review of compensation decision

Where an asset owner has made a claim for compensation and is not satisfied with the outcome it can request the Council to review either both of its decisions in relation to:- whether compensation should be paid to that person, and if compensation is to be paid, the amount of that compensation. The Council must complete the review within eight weeks from receiving the written request for the review or such longer period to be agreed with the owner/representative in writing.

1.8 Enforcement

Where an asset had been listed the Council will enter on the Local Land Charges Register the fact that it has been listed. In addition, the Council will apply to the Land Registry for a restriction to be registered against the title. Where an asset is removed from the list the Council will apply to cancel these restrictions.

Proposal

- 2.1 Appendix 3 to this report contains a draft procedure detailing how the Council will deal with nominations under the legislation. The draft procedure proposes that the initial nominations should be considered by the Service Manager with responsibility for the estates function. The legislation provides that an owner who does not agree with the decision to list their land can request a review. This process may involve a hearing and the draft procedure proposes that the review is undertaken by the Corporate Director.
- 2.2 With regard to claims for compensation, the draft procedure proposes that the Service Manager with responsibility for the estates function is responsible for determining compensation claims in consultation with the Chief Financial Officer. The provisions for compensation review are the same as those for a listing review and it is proposed that compensation reviews are also conducted by the Corporate Director.
- 2.3 The Council intends to publish two lists on its web site:
 - One for nominations received for assets of a community value
 - One for nominations received for assets not of a community value, stating the reasons why the nomination has been refused.

Other than publishing the two lists of successful and unsuccessful nominations, there is no statutory requirement on the council to promote the scheme. It is recommended that the council provides basic information on its website about CRB and how a community nomination may be submitted.

Alternative Options

- 3 There are relatively few alternative options for the Council to consider, given that the legislation defines what action the Council is obliged to take and many of the criteria for assessment. However, the Council needs to consider what procedure it adopts in order to comply with the Act. Alternative options include delegating responsibility to different officers in the Council. However it is considered that the proposals in the report will enable the most effective and efficient decision making.

Financial Implications

- 4 There are cost implications to the Council in setting up, publicising and administering a list of assets of community value, handling requests for a review of the listing decision, communicating with interested parties when an owner wishes to sell a listed asset, and dealing with compensation claims from asset owners.

The Government has estimated that for a typical council, the scheme will require 19 days (FTE) of officer input in year one, and between one and twelve days for each subsequent year the scheme exists.

The scheme recognises that these provisions may have some financial impact on owners and provides a compensation scheme for private property owners. This will not be available to public bodies. The local authority will be responsible for administering the compensation scheme, including assessing and determining compensation awards. Owners and former owners will have rights of review and appeal regarding the authority's compensation

The cost incurred by the council in operating the scheme during the first three years of operation can be recovered from the Government. Thereafter, all operating costs and compensation pay outs will have to be met by the council directly and provision for funding this will need to be reflected in the Medium Term Financial Strategy. The financial support will officially finish in March 2015 with a review taking place in September 2015 by which time Local Authorities will have an idea of how much financial responsibility they have to bear.

Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium; or for legal expenses incurred in a successful appeal to the Tribunal.

In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments over £20,000.00 of

compensation costs in a financial year. This could occur through a local authority paying out over £20,000.00 in one financial year either on one large claim or as a combined total on a number of smaller claims. Claims under £20K will be borne by the Local Authority

Appendices

- 5 Appendix 1 - An example of the successful and unsuccessful lists referred to above
Appendix 2 - The Nomination Form
Appendix 3 - Community Right to Bid Procedure

Background Papers

- 6 Community Right to Bid: Non-statutory advice note for local authorities.

Recommendation(s)

THAT:

- (a) Authority for the determination of whether or not assets are listed as Assets of Community Value be delegated to the Service Manager with responsibility for the estates function;**
- (b) Authority be given for the determination of reviews against listing of an asset by the owner be delegated to the Corporate Director;**
- (c) Authority for the determination of whether or not compensation is payable to an owner of an asset and if so what amount be delegated to the Service Manager with responsibility for the estates function in consultation with the Chief Financial Officer;**
- (d) Authority for the determination of reviews against the level of compensation awarded or refusal to award compensation be delegated to the Corporate Director.**
- (e) The Community Right to Bid Procedure at Appendix 3 be approved.**

Reasons for Recommendations

- 7.1 To enable the Council to comply with the Localism Act 2011 which is a statutory requirement.
- 7.2 To ensure efficient decision making and prevent the Executive from being overwhelmed by a large number of operational matters.