



| <u>Committee and Date</u> | <u>Item</u> |
|---------------------------|---------------|
| 21 June 2017 | |
| | <u>Public</u> |

Community Right to Bid: Process Amendment

Responsible Officer Tim Smith – Head of Business Enterprise and Commercial Services
e-mail: tim.smith@shropshire.gov.uk Tel: 01743 258676 Fax

1. Summary

The Localism Act 2011 introduced a range of new community rights including the Community Right to Bid, which commenced September 2012. This gives local community groups, voluntary bodies and town and parish councils the opportunity to nominate land and buildings that further the social interest or wellbeing of a local community. Examples of this include parks and open spaces, sports and leisure centres, village shops, village pubs, libraries and heritage sites.

Successful nominations are maintained in a list of assets of community value and in the event of a proposed sale of a nominated asset a community organisation has a 6-month opportunity to raise capital and bid to acquire the asset.

Minor amendments to the process are now proposed to ensure it is efficient and effective.

2. Recommendations

- 2.1. That Cabinet approves the amendments to the Community Right to Bid process.
 - 2.1.1 Remove “Constituted Community / Voluntary Group from the list of organisation’ that can nominate (this type is not a qualifying organisation under the Legislation). This type of body could come under the “unincorporated” body provided it meets the requirements of this definition.
 - 2.1.2 Request more detailed information from the nominator, Parish Council and Community Enablement Officer (to enable more effective and efficient consideration of whether the asset should be listed as an Asset of Community Value).

The amended nomination form is attached as Appendix 1.

REPORT

3. Risk Assessment and Opportunities Appraisal

There are no perceived risks in making the proposed minor amendments to the Community Right to Bid process.

The proposed amendments have been developed following officer review and community feedback on the current process.

4. Financial Implications

There are no financial implications associated with the proposed amendments.

5. Background

5.1 The Localism Act 2011 came into effect in November 2011 and contained a number of Community Rights including the Community Right to Bid. This Community Right was introduced on 21.09.12 following approval of the Assets of Community Value (England) Regulations 2012 by Parliament earlier in the month. Non-statutory guidance on the implementation of the Community Right to Bid was issued by DCLG on 04.10.12.

5.2 The Community Right to Bid gives opportunity to communities to nominate Assets of Community Value (ACV). If the nominated land or property is included within the List of Assets of Community Value, the legislation imposes a 6 month moratorium on the owner of the nominated asset. This will potentially prevent them from selling the asset for up to 6-months to give the community an opportunity to prepare a bid to purchase the asset. There are however no obligations on the owner to accept the bid from a community interest group for the asset.

5.3 The definition of an Asset of Community Value is where its main use must further the social interest or wellbeing of the local community and it must be realistic to think that such a use can continue. Social interest includes cultural, recreational or sporting interests. A suggested definition of social wellbeing is those economic, social or environmental things that people value in their life and contributes to them reaching their potential.

5.4 The definition is also retrospective in that it can also apply to land or a property that was used in the recent past to further the social interest or wellbeing of the local community and it is realistic to think that it can be brought back into use in the next five years to achieve the social interest or wellbeing of the community.

5.5 The implementation of this Community Right is passed to those authorities who are designated as local planning authorities in England, therefore Shropshire Council has this responsibility.

- 5.6 There are three key parts of the implementation of this Community right; the listing of the asset, the appeals procedure and the proposed sale of the asset; and those are explained in more detail in the next sections.

The listing of Assets of Community Value

- 5.7 Only specific organisations are able to nominate an Asset of Community Value. Shropshire Council is not permitted to make nominations. Those organisations are specified within the regulations and set out below:
- A. A body designated as a neighbourhood forum
 - B. A parish council
 - C. An unincorporated body whose members include at least 21 individuals, with a local connection and does not distribute any surplus it makes to its members
 - D. A charity
 - E. A company limited by guarantee, which does not distribute any surplus it makes to its members
 - F. An industrial or provident society, which does not distribute any surplus it makes to its members
 - G. A community interest company
- 5.8 The local connection is defined in the regulations as being in the local authority's area i.e. Shropshire or a neighbouring authority's area i.e Telford and Wrekin, Herefordshire, Staffordshire, Worcestershire and Chester and Cheshire West or Cheshire East
- 5.9 Proof of local connection is confirmed by checking the person is registered on the Electoral Register at an address in the local or neighbouring authority's area
- 5.10 The Community Right to Bid process is overseen by the Head of Business Enterprise & Commercial Services and administered on a day to day basis by the Strategic Asset Management Team. The Decision to List a nominated Asset as an Asset of Community Value is taken by the Strategic Asset Manager.
- 5.11 The legislation requires the Council to make a decision on the nomination and to provide notification to the owner and nominating body within 8 weeks of receipt. If successful, the nominating body, owner and, where relevant, the lawful occupier of the asset are notified and an entry is made as a Local Land Charge, and application made to the Land Registry to register a restriction on the property.
- 5.12 Both successful and unsuccessful nominations are required to be recorded on two lists, one for each category, which are available for public inspection. The entries have to be maintained for a period of five years unless altered or removed by virtue of disposal or change of circumstance no longer warranting listing.

Appealing against a nomination as an asset of community value

- 5.13 The legislation gives an owner of a nominated asset of community value the opportunity to appeal against the decision to nominate the asset. A separate Senior Officer carries out the review. The appellant has the opportunity to make oral or written representations and in the event of a request for an oral hearing,

arrangements will be made to hear the appeal. The review, including any panel hearing, has to be either dealt with within 8 weeks of the request or a longer period by agreement between the parties.

- 5.14 The legislation further provides for the opportunity for an unsuccessful appellant to appeal to a First Tier Tribunal and in the event of an appeal the Council is required to present its case to the Tribunal. An owner may be able to claim compensation for reasonable legal expenses from a successful hearing at the Tribunal to overturn the listing decision.

The proposed sale of a nominated asset of community value

- 5.15 The owner of a nominated asset of community value is required to notify the Council when they wish to sell the nominated asset. Following receipt of the notification, the Council advises the nominating body and also advertises the receipt of the nomination to the wider community. At that point a community interest group - either the Parish Council or one of the groups listed in category D – G in the list at paragraph 6 above and having a local connection to the land - can advise the Council that they intend to make a bid for the asset. This has to be done within 6 weeks from notification to the community and nominating body of the owner's intention to sell.
- 5.16 If notification is received then the owner has to comply with a 6-month moratorium period, during which period the owner has to give the opportunity to the community interest group to submit a bid and cannot make any disposal of the asset. The owner may in this period agree terms for the sale to the community interest group, and is permitted to sell to the group within this period.
- 5.17 Assuming no sale to a local community interest group, at the end of the 6-month period the owner is able to dispose of the asset as they choose, with no obligation to sell to the community interest group. The owner is then protected for an 18-month period from the date of their notification that they wished to sell against any additional notifications from a community interest group to acquire the asset.
- 5.18 There are a series of sales of listed assets of community value which are exempt from this process and those include disposals as a result of a court or tribunal order, settlement of a separation agreement, right of pre-emption, option, settlement of a will, made within the same family, a business to business 'going concern' sale or transfer to a previous owner from whom the asset was acquired by compulsory purchase, sale of a church or land for health service provision or for an Academy.
- 5.19 The legislation gives the owner of an asset the right to claim compensation from the Council if they believe that they have incurred loss and expense in complying with either or both the 6-week initial notification period and 6-month moratorium period, which has resulted in delay in entering into a binding legal agreement to sell the asset. In the event that the Council declines the claim for compensation, the owner has the opportunity to appeal initially to the Council and if unsuccessful to the First Tier Tribunal. Compensation is not payable to public sector bodies whose assets are involved in this process.

6. Additional Information

Since the implementation of Community Right to Bid, Shropshire Council have received 106 nominations. Of these:

- 74 were successful
- 2 were partially successful
- 12 were unsuccessful
- 14 were withdrawn
- 2 are nominated; decision pending.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet paper: Localism Act 2011 – Community Right to Bid 17 October 2012

Cabinet Member: Portfolio Holder for Communities Joyce Barrow

Local Member

All Divisions

Appendices

Appendix 1 – Amended nomination form.