

COMMUNITY RIGHT TO BID

Cabinet – 7 February 2013

Report of the: Chief Executive Designate

Status: For Decision

Executive Summary: This report summarises the duty placed on local authorities in the Localism Act 2011 to administer Assets of Community Value. Assets of Community Value, also known as the Right to Bid, allow relevant bodies to request that a local building or area of land is added to a list for having a value to the community. If an asset is placed on the List of Assets of Community Value it requires the land owner to allow the relevant body up to six months to determine whether they wish to bid to buy the asset once it is decided that the asset will be put up for sale. After the six month period ends the land owner is free to sell their property on the open market to whomever they choose.

This report updates Members on the Councils procedures for administering the Right to Bid and proposes that a Members Advisory Group is established to assist the Council in making a decision on each nomination that it receives.

This report supports the Key Aim of the Corporate Plan ‘ Effective Management of Council Resources’

Portfolio Holder Cllr. Mrs Davison

Recommendation to Cabinet: It is resolved that Cabinet:

- (a) Endorse the Council’s procedures for the administration of the Right to Bid process;
 - (b) Approve that a Members Advisory Group is established to assist the Council in determining nominations under the Right to Bid; and
 - (c) Nominate 12 Members to sit on the Members Advisory Group and to nominate a Chairman and Vice Chairman of the Group.
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Reason for recommendation: The Council has a duty under the Localism Act 2011 to accept and consider nominations to register Assets of Community Value. By adopting a clear set of effective and efficient procedures the Council will have a consistent and transparent approach to how it will assess nominations and ensure that all relevant parties are properly informed as the process develops. Failure to adopt a clear and effective procedure may result in confusion on what qualifies as a community asset and could lead to relevant bodies missing an opportunity to bid for an asset.

Introduction

- 1 Part 5, Chapter 3 of the Localism Act 2011 provides the legislative framework for Assets of Community Value. Now being termed by Government as the Right to Bid, the legislation allows for relevant bodies to request that a building or other land is registered as having a value to the community by furthering the social wellbeing or social interests of the local community. Local authorities must consider each nomination they receive and either register the asset as being of community value or add it to a register of unsuccessful nominations.
- 2 The Assets of Community Value section of the Localism Act was enacted on 21 September 2012. Subsequent to enactment the Government published the final regulations that local authorities required to ensure the processes they adopt in managing nominations under the Right to Bid scheme are in accordance with legislation.
- 3 This report provides Members with an update on the legislation and regulations that the Council is required to follow in determining its approach to the Right to Bid and sets out a proposal for a decision making process that will help ensure informed and effective determination of nominations for community assets.

Community Right to Bid Guidance

- 4 The Localism Act and associated regulations issued by the department for Communities and Local Government set out the processes that the Council must follow in considering its approach to the Right to Bid.
- 5 To assist Members, officers and community groups the Council has developed its own Community Right to Bid Guidance. The Guidance is a summary of the key elements of the legislation and regulations and provides information on how to nominate an asset under the Right to Bid.
- 6 The Community Right to Bid Guidance is available as background information to this report on the Council website (www.sevenoaks.gov.uk/righttobid) and includes information regarding:
 - Those groups eligible to nominate assets for inclusion on the list of community assets;
 - What type of assets can be nominated for inclusion on the list of community assets;
 - The requirements on the Council; and
 - The disposal of assets which are included on the list of community assets.
- 7 A summary of the details of each of these requirements is set out in the following sections of this report.

Nominating an asset

- 8 Nominations for assets of community value must be made by voluntary or community bodies. These are defined as:

- A body designated as a neighbourhood forum under the Town and Country Planning Act;
 - Town and Parish councils;
 - Unincorporated bodies with at least 21 individual members and which does not distribute any surplus it makes to its members;
 - Charities;
 - Company limited by guarantee which does not distribute any surplus it makes to its members;
 - Industrial and provident society which does not distribute any surplus it makes to its members; and
 - Community interest companies.
- 9 Each of these groups (except Town & Parish Councils in which the asset is located) will need to demonstrate a local connection. A local connection can be summarised as the body's activities being wholly or partly concerned with the local authority's area or a neighbouring local authority area
- 10 Nominations for community assets must all be made in writing and must include the following details:
- Evidence that the nominating body is eligible to make a nomination;
 - A description of the nominated asset including its proposed boundaries – for example, as demonstrated by Land Registry title documents and supporting maps which are less than one month old;
 - A statement of all information which the nominator has with regard to the names of current occupiers and the names and current, or last known addresses of all those holding a freehold or leasehold estate in the land; and
 - Reasons for thinking that the Council should conclude that the land is of community value.
- 11 To assist groups in making their nominations the Council has developed its own nomination form. The Nomination Form, is available as background information to this report on the Council website (www.sevenoaks.gov.uk/righttobid) and has been designed to collect all of the information the Council requires to make its decision on the community value of the asset nominated.

Community Value

- 12 Both privately and publicly owned land and buildings may be nominated where it is considered that the asset has 'community value'. Community value is defined as:
- The principle use of the asset currently, or in the recent past, has furthered the social wellbeing or cultural, recreational or sporting interests of the local community; and
 - That there will continue to be a use of the asset that furthers the social wellbeing or cultural, recreational or sporting interests of the local community.

- 13 Where an asset does not currently demonstrate 'community value', it may still be nominated as a community asset. The nominating body would be required to demonstrate that the asset's main use did further the social wellbeing or cultural, recreational or sporting interests of the local community in the recent past and that it is realistic to think that it will do so again in the next five years.
- 14 The legislation does provide for a limited number of exemptions where land or buildings cannot be considered as being of community value. These can be summarised as residential property or land attached to a residential property; land covered by the Caravan Sites Act; and land used by public utilities.

The role of Sevenoaks District Council

- 15 The council has a duty to consider each nomination it receives for assets to be listed as having 'community value'. From the date at which a nomination is received the council has eight weeks to make its decision.
- 16 The council is required to take all practical steps to notify the relevant Town or Parish council, the owner of the asset, the freeholder and any leaseholder of the land and any lawful occupant that the asset is being considered for listing as a community asset. In addition the council has committed to informing the relevant local District Council Member(s) where a nomination has been received for an asset in their ward area.
- 17 Once the council has reached a decision on each nomination it is required to notify the same groups of the decision that has been reached and the reasons the council has arrived at its decision.
- 18 The right to appeal the council decision is reserved to the owner of the asset. Appeals must be submitted in writing within eight weeks of the date the council gave written notification of its decision to list the land.
- 19 The Council is required to publish two lists detailing the nominations made by community bodies and the decision the council has made in respect of each of the nominations.
- 20 The List of Assets of Community Value will be a record of all successfully nominated assets. It will record details of the community group making the nomination and details of the location and description of the asset.
- 21 The List of Assets Nominated by Unsuccessful Community Nominations is a record of those assets that the council decided were not of community value and are therefore not included in the other list. The intention of this list is to make it transparent to community and voluntary bodies those assets where a decision has been made, the reasons for that decision and the date from which the council would accept a further nomination in respect of that asset.
- 22 Assets will be listed for a period of five years before a further nomination will be required to maintain the assets listing. Each list must be published on the Council website and copies of the lists must also be available for inspection at the Council Offices.

- 23 Where an asset is deemed to be an Asset of Community Value it is the responsibility of the council to also ensure that it is recorded as a local land charge against that property or parcel of land.

Decision Making Process

- 24 The legislation sets out that the decision on whether an asset is of community value is an officer decision. It also prescribes that any appeal against the council's initial decision on the community value of an asset must be decided by an officer not involved in making the initial decision and who is senior to the officer making the initial decision.
- 25 The Council has established a small group of officers to assess each nomination. Chaired by the Head of Community Development, the Group also includes the Head of Legal & Democratic Services, the Head of Housing & Communications, the Group Manager – Planning, the Professional Services Manager and the Policy & Performance Manager.
- 26 To provide information on the local context and to advise officers in making an assessment of the community value of each asset nominated it is proposed that a Members Advisory Group is established. It is proposed that up to 12 Members would be available to sit on a group with a quorum of three. Within the 12 Members it is requested that Cabinet recommend a Chairman and Vice Chairman of the Group.
- 27 To help prevent conflicts of interest arising it is recommended that Members that are the landowner, sit on a Town or Parish Council that owns an asset or otherwise have a direct interest in a community or voluntary body submitting a nomination would not be able to sit on the Members Advisory Group for the consideration of the community value of that asset.
- 28 It is envisaged that the Officers Group would meet within two weeks of a nomination being received to ensure that the nomination is valid and contains sufficient information for a decision on the community value of the asset to be made. The Members Advisory Group would meet no sooner than four weeks after a nomination has been received and no later than six weeks after a nomination has been received. This would allow sufficient time for Officers to communicate the outcome of the nomination within the eight week timescale set out in legislation.
- 29 It is proposed that wherever possible the Council seeks to consistently make decisions on nominations in six weeks. This target timescale will be applied to all nominations to ensure consistency of approach and fairness to all nominating groups and landowners whose assets may be subject to the Right to Bid.

Disposal of a Community Asset

- 30 Where an asset is included in the list of assets of community value, the owner is required to notify the council in writing of their intention to dispose of the asset.
- 31 Once notified the Council must set out in writing to the asset owner the regulations that need to be followed before the asset can be disposed and the moratorium

time periods that take effect. In addition the Council must notify the nominating body in writing, update the list of assets of community value and publish details in the area where the asset is situated that a notice of intention to dispose of the asset has been received.

Moratorium Periods

- 32 On the date the council receives a notification from an asset owner of their intention to dispose of an asset an interim moratorium period applies for six weeks. During this six week period, community and voluntary groups which can demonstrate a local connection may submit an intention to bid.
- 33 If the Council does not receive an intention to bid in this six week period the land owner will be informed that they can proceed with their disposal with no further constraints from the assets of community value legislation.
- 34 If an intention to bid is received by the council from a suitable community group a full six month moratorium period is triggered. During this six month period the asset owner cannot dispose of the asset. This six month period is intended to enable the community group to prepare to submit a bid to the owner to purchase the asset.
- 35 For clarity, the final sale of the asset can take place under normal market conditions. There is no obligation for the community group to make a bid and the group has no rights of purchase over other potential buyers. The owner is under no obligation to sell the asset to the community group or any other person. If the owner decides to sell to the community group, they may do so within the six month moratorium period.
- 36 Once the six month moratorium period has passed, and if the community group has not successfully bought the property, a further 12 month protection period is triggered. During this protection period the asset may be sold by the owner on the open market without the risk of any further moratorium period being triggered.

Compensation

- 37 With the exclusion of public authorities, all other owners of an asset included in the list of assets of community value are entitled to make a claim for compensation from Sevenoaks District Council.
- 38 The claim for compensation can only be in respect of incurred loss or expense in relation to the asset which would not have been incurred if the land had not been listed. Compensation claims must be made in writing within thirteen weeks after the loss or expense was incurred or finished being incurred.
- 39 If the asset owner is not satisfied with the council's decision on their compensation claim they may ask for a review of the decision. The request for review must be made in writing within eight weeks of the date of the council's initial decision.
- 40 Sevenoaks District Council is able to present a claim to Government for the costs of any compensation awarded, but there is no guarantee that this will be funded in

full. Members may wish to note that the Governments own impact assessment estimates that the average value of compensation claims will be £2,000.

Key Implications

Financial

- 41 The administration of the Right to Bid is considered by Government as a new burden. As such New Burdens Funding of £7,706 was received in October 2012 for costs associated with the 2012/13 financial year.
- 42 The Council is also required to assess and make payment on any claims for compensation where land owners are able to demonstrate that as a direct result of the delay of the sale of their asset as a result of complying with the Right to Bid they have incurred losses.
- 43 Payment of compensation will be made by the Council who will then be required to submit a claim to Government for reimbursement. This process carries a level of financial risk to the authority.
- 44 The Council's own assets are also subject to the Right to Bid. As a public authority the Council is not entitled for compensation for any losses incurred as a result of complying with the legislation.

Community Impact and Outcomes

- 45 The Right to Bid affords local voluntary and community groups the opportunity to be given a period of time to accumulate funds and develop bids for assets that are of value to the local community. Maximising opportunities through the Right to Bid provides an opportunity for positive community outcomes by supporting the retention of assets as community assets that support improved social wellbeing or cultural, recreational or sporting interests.

Legal, Human Rights etc.

- 46 Failure to administer the Community Right to Bid in accordance with regulations will leave the Council in breach of the duties placed upon it by the Localism Act 2011.

Resource (non-financial)

- 47 None.

Value For Money and Asset Management

- 48 The Council will seek to deliver the administration of the Community Right to Bid within existing resources. By developing clear guidance for community groups, and implementing effective decision making processes will minimise the need for additional resources and deliver value for money.
- 49 There is potential for the Council's assets to be nominated as being of community value. This places the Council under the same constraints as all other owners of community assets within Sevenoaks District when considering asset disposal.

Equality Impacts

| Consideration of impacts under the Public Sector Equality Duty: | | |
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| Question | Answer | Explanation / Evidence |
| a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups? | No | The legislation under the Right to Bid promotes community ownership of assets of community value and affords charities and other community groups a window of opportunity to develop bids to purchase assets that support their and local community objectives. |
| b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity? | Yes | Please see above. |
| c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above? | | None required. |

Conclusions

50 The Localism Act 2011 places a duty on the Council to administer the Community Right to Bid in accordance with legislation, regulations and statutory guidance. Right to Bid Guidance and a Nomination Form have been designed to support community and voluntary groups in nominating assets of being of community value, whilst also supporting the needs of the Council in administering the scheme in an efficient manner. A decision making process has been proposed for Members consideration which recommends the formation of a Members Advisory Group to provide information on the local context and to advise officers in making an assessment of the community value of each asset nominated

Risk Assessment Statement

51 The Council has set out Guidance and a proposed decision making process that ensures compliance with legislation. Adopting a robust and consultative approach to decision making minimises the reputational risk that may be associated with decisions taken on the community value of privately and publicly owned assets in Sevenoaks District.

52 The Council faces a level of financial risk through the enactment of the Right to Bid as the body responsible for assessing and making initial payment of compensation claims, and by virtue of its own assets being subject to the regulations and moratoriums on disposal, but unable to claim any compensation for losses incurred.

Background Papers:

Community Right to Bid Guidance
www.sevenoaks.gov.uk/righttobid

Community Right to Bid Nomination Form
www.sevenoaks.gov.uk/righttobid

Localism Act 2011
<http://www.legislation.gov.uk/ukpga/2011/20/contents>

Community Right to Bid Regulations
<http://www.legislation.gov.uk/uksi/2012/2421/contents/made>

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