

Southend-on-Sea Borough Council

Agenda
Item No.

Report of
Corporate Director for Corporate Services
To

Cabinet
on
18 June 2013

Report prepared by:
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**The Community Right to Bid and Assets of Community Value
Policy and Resources Scrutiny Committee
Executive Councillor: Councillor A. Moring
A Part 1 Public Agenda Item**

1. Purpose of Report

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.

The purpose of the report is for Cabinet to approve the procedure to be put in place to comply with the Community Right to Bid.

2. Recommendations

- 2.1 That the Community Right to Bid and Assets of Community Value procedure (as set out in section 11 and **Appendices 1 & 2**) be approved.
- 2.2 That the Head of Finance and Resources be granted delegated power to determine whether assets nominated should be included in the List of Assets of Community Value and paragraph 4 of the Delegation Scheme in Part 3 Section 3 of the Constitution be amended accordingly.
- 2.3 That the Corporate Director for Corporate Services be granted delegated power to deal with reviews requested by an owner pursuant to S.92 of the Act and the Regulations and paragraph 4 of the Delegation Scheme in Part 3 Section 3 of the Constitution be amended accordingly.

3. Background – Community Right to Bid

- 3.1 The Community Right to Bid gives community groups a chance to prepare and bid to buy community buildings and facilities that are important to them.
- 3.2 The right covers private as well as public assets.

- 3.3 Local authorities are required to keep a list of all these Assets of Community Value which have been nominated by Community groups. The local authority must also maintain a list of assets identified in unsuccessful nominations. Both lists shall be kept on the Council's website.
- 3.4 If an owner of a listed asset wants to sell it they have to notify the local authority. The local authority then, in turn, has to notify any interested parties.
- 3.5 If local groups are interested in buying the asset they have 6 months to prepare a bid to buy it before the asset can be sold.
- 3.6 The provisions of the Community Right to Bid:

Does not restrict who the owner of a listed asset can sell their property to, nor at what price;

Does not confer a right of first refusal to community interest groups, nor does it enable a community group to trigger disposal of a site;

Does 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.

- 3.7 It will therefore be important to ensure that appropriate and accurate information regarding the new Community Right to Bid is communicated to the Town Council and community groups. The Community Right to Bid might best be viewed as an important tool for parish and community groups who have a clear strategic use or purpose for a community asset, probably backed with an outline business plan, and by sufficient resources to purchase the asset or the ability to raise this in a prompt manner.

4. Defining an “asset of community value”

- 4.1 The Act defines assets in terms of the purpose to which they are being, or have been used, not in terms of the nature of the asset itself, i.e. not in terms of historical or architectural merit, or location or rarity value. 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, whether in public or private ownership, and whether there is a single owner or multiple owners.
- 4.2 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 used 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.
- 4.3 The table below provides a simple overview of what constitutes an “asset of community value”.

Is a building or other land an "asset of community value"?					
Nature of Use	Long Past	Recent Past	Present	Future	Covered by the Act
The main use of the land or building furthers the social wellbeing or social interests of the local community at the present time AND it is realistic to think that this can continue into the near future (even if the type of social use of benefit might change)			Yes	Yes	Yes
The main use of the land or building furthered the social wellbeing or social interests of the local community in the recent past AND it is realistic to think that this could happen again in the next five years (even if the type of social use or benefit might change)		Yes		Yes	Yes
The main use of the land or building furthered the social wellbeing or social interests of the local community some years ago but is not presently in use for a social purpose	Yes				No
The land or building has not recently been, and is not currently, in use for a primarily social purpose					No
The land or building has been empty or derelict for many years and remains so today					No

- 4.4 Residential properties are excluded from listing, unless it is 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) will be excluded from listing. These include organisations such as utilities, transport providers, the Civil Aviation Authority and the Post Office.

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

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
- Day care centres, residential care homes

Sport, recreation and culture including:

- Parks and open green spaces
- Sports and leisure centres
- Libraries
- Theatres
- Museums or heritage sites

Community services including:

- Community centres
- Youth centres
- Public toilets

Local democracy including town and civic halls

- 4.6 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.

5. Nominations

- 5.1 Only local community groups 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 linked by guarantee which does not distribute any surplus it makes to its members; or
- A community interest company

- 5.2 A public or local authority may not be a voluntary or community body, but this restriction does not apply to a parish council.

- 5.3 Bodies other than a parish council must have a local connection with land in the Council's area. This is deemed to be the case if the body's activities are wholly or partly concerned with the local authority's areas or with a neighbouring authority's area.
- 5.4 In the case of an unincorporated body, companies limited by guarantee, or an industrial and provident society, any surplus made must be wholly or partly applied for the benefit of the local authority's area, or the benefit of a neighbouring authority's area. 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.
- 5.5 A parish council is deemed to have a local connection with land in another parish council's area if any parts of their boundaries are shared. A parish council is also deemed to have a local connection with land in a local authority's area if the parish is within that local authority area, or any part of the boundary of the parish's area is also part of the boundary of the local authority's area.
- 5.6 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:
 - a. The names of the current occupants of the land, and
 - b. 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

6. List making

- 6.1 Every nomination must be considered and all nominations which fit the definition of an asset of community value must be included on the list.
- 6.2 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 if there is one, or if there are sub-leaseholders, then the leaseholder who is most distant from the freeholder)
 - Any lawful occupier
- (The owner is defined as the freeholder, or, if there is a lease of at least 25 years, the leaseholder).
- 6.3 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 publically available, and set out a simple procedure covering entries on the lists, modification of entries and removal. A process map is attached at **Appendix 1**.

6.4 The most efficient way to keep the list available for “free inspection” will be to maintain it on the Council’s website. The intended website text which includes a template for the list is attached at **Appendix 2**.

7. Land charges

7.1 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

7.2 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.

8. Sales and moratorium periods

8.1 If a local authority receives notice from an owner that they intend to dispose of an asset 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:

- 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 protect period
- Notifying in writing, the body that made the initial nomination
- Publicising the matter locally

8.2 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.

8.3 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.

8.4 If an expression of interest is received by the local authority, the landowner may not dispose of their land for six months (from the date that the initial notice was received by the local authority from the landowner). This is the 6 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.

8.5 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.

8.6 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.

9. Exemptions from the moratorium process

9.1 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
- Disposals as a result of bankruptcy or insolvency

10. Compensation

10.1 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”.

10.2 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 building agreement to sell the land which is wholly caused
 - a. 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
 - b. 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:
 - a. To list the land

- b. To refuse to pay compensation, or
- c. With regard to the amount of compensation offered or paid

10.3 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.

10.4 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.

10.5 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.

11 Corporate Procedure to deal with the Community Right to Bid and Assets of Community Value.

11.1 This section (together with **Appendices 1 & 2**) sets out the Corporate Procedure for dealing with the Community Right to Bid and Assets of Community Value. It is based on a standard approach prepared by the Public Law Partnership, adapted to meet Southend's requirements.

11.2 **Appendix 1** is a process map showing how the process will operate.

Appendix 2 is a clear explanation of the procedure which will appear on the Council's website. Two lists appear at the end:

- The List of Assets of Community Value; and
- The List of Unsuccessful Community Nominations

11.3 Nominations will be considered by the Head of Finance and Resources who will decide (having regard to the provisions of the Act, the Regulations and all other material considerations) whether any particular nominated asset should be included in the List of Assets of Community Value.

(a) If the nomination is rejected then the reasons shall be given to the person making the nomination and the asset shall be included in the List of Unsuccessful Community Nominations. There shall be no right of appeal against such a rejection.

(b) If the nomination is approved then the asset shall be included in the List of Assets of Community Value subject to the owner having a right of appeal to the Corporate Director for Corporate Services under s.92 of the Act and Regulation 10 and Schedule 2 of the Regulations. (An owner who is still dissatisfied may appeal to the First Tier Tribunal under Regulation 11 of the Regulations).

12. Other Options

12.1 The Council is required to deal with the law relating to the Assets of Community Value and the Community Right to Bid. The procedure could be drafted slightly differently if required.

13. Reasons for Recommendations

13.1 The recommendations are made to ensure that the Council complies with the requirements of the Localism Act.

14. Corporate Implications

14.1 Contribution to Council's Vision & Corporate Priorities

Excellent Council

14.2 Financial Implications

The primary financial implication is that of the compensation which may be payable which is dealt with in section 10 of this report.

14.3 Legal Implications

These are set out in the report.

14.4 People Implications

The maintenance of the two Lists will have resource implications which are at this stage not known as the number of potential nominations is not known.

With one or two exceptions, only a small number of authorities have received applications to date although this number is growing all the time as awareness rises. Generally the number of applications is small, however one authority has received around 200 nominations to date.

Leigh Town Council has indicated its intention to nominate around 20 assets in Leigh although at this stage the nominations are incomplete and further information is required.

14.5 Property Implications

These are addressed generally in the report. The particular implications for any nominated property will be different and each case will need to be considered on its own facts.

14.6 Consultation

The Government consulted on the Localism Act. The Council has not undertaken any further consultation on this element of the legislation.

A number of briefing sessions have been held for Members and the community in relation to the Localism Act, including on 24 January, 15 May and 16 July 2013, covering the Community Right to Bid measures, with updates provided in policy briefings. In addition, briefings on the Localism Act and localism agenda and related implications have been undertaken with the faith, voluntary and community sectors (for example, at the Inter-faith summit, on 28 November 2012).

14.7 Equalities and Diversity Implications

In line with the CLG's impact assessment it is difficult to assess at this stage the potential impact the measure will have on the nine equality groups with protected characteristics, although, on the face of it, there would appear to be the potential for equality groups who fall within the remit of the act's definition, to pursue nominations.

14.8 Risk Assessment

Case specific.

14.9 Value for Money

Case specific.

14.10 Community Safety Implications

Case specific.

14.11 Environmental Impact

Case specific.

15. Background Papers

- Localism Act 2011
- The Assets of Community Value (England) Regulations 2012 (SI2012/2421)
- Asset Transfer Unit Implementing the New Community Right to Bid Effectively – A Practical Guide for Local Authorities November 2012
- Public Law Partnership – A Practical Guide for PLP Members for implementing the new Community Right to Bid

16. Appendices

Appendix 1 – Process Map – Community Right to Bid and Assets of Community Value

Appendix 2 – Community Right to Bid and Assets of Community Value – Procedure and Lists (for website).