

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting: 19th August 2013
Report of: Director of Economic Growth and Prosperity
Subject/Title: Community Right to Bid Policy
Portfolio Holder: Councillor David Brown, Strategic Communities

1.0 Report Summary

- 1.1 This paper invites Cabinet to agree to the recommendations that aim to create a revised and strengthened policy by which Cheshire East Borough Council will manage and administer the Community Right to Bid.
- 1.2 The Community Right to Bid is a function of the Localism Act 2011 that the Council must administer. It is designed to allow community groups time to assemble bids for assets that both they and the Council consider to be of 'community value' by evoking a moratorium period when a listed asset is to be sold. The Right **does** apply to privately held assets as well as those owned by the Council. The Right **does not** force the asset owner to sell to any bidding community groups; sales are still controlled by market forces following the moratorium period.
- 1.3 The process and criteria by which the Council will administer the Right is further detailed in the appended documents. Appendices 1 and 2 constitute the suite of information that will be made available to inform the public with regards to the Right: a nomination form and a guidance document. Appendix 3 is a flowchart summarising pictorially the proposed process through which Cheshire East will administer the Community Right to Bid.

2.0 Recommendations

- 2.1 To approve the following criteria to govern the assessment of nominations. As set out in the detailed process delineated in Appendices 1 and 2, the Council will require the following information to be furnished by groups when nominating an asset to the register of 'assets of community value' so that the appropriate assessment can be made:
 - The address and location of the property
 - Details of the owner and current occupants
 - The extent of the site and its proposed boundaries
 - Details and documents proving that the nominating group is constitutionally eligible to nominate

- Details evidencing that the nominating group has a sufficient 'local connection' to nominate
- Why it is felt the asset is of community value. This should entail evidence that:
 - the asset currently boosts the social well-being and interests of the community
 - If the asset is not currently used for community benefit, it was used to sustainably further social well-being and community interests in the recent past
 - the asset will sustainably further social well-being and community interests in the future
 - the asset will benefit different sections of the community if its use is targeted at one or more community groups
 - the asset currently has a beneficial social impact for the community
 - the asset currently has a beneficial economic impact for the community

2.2 To approve the responsibilities set out in the below relating to the Community Right to Bid:

- 2.2.1 The Director of Economic Growth and Prosperity be delegated authority to consider and administer nominations and any appeals for compensation that should arise.
- 2.2.2 The Monitoring Officer be delegated authority to undertake internal reviews of nomination and compensation assessments should this be required.
- 2.2.3 As required, the Director of Economic Growth and Prosperity and the Monitoring Officer will liaise with the appropriate Portfolio Holders to discharge these duties.
- 2.2.4 The Director of Economic Growth and Prosperity, as per 2.2.1, will discharge the above delegations by putting in place arrangements for an appropriate officer steering group consisting of representatives from the Assets, Resilient Communities, Economic Development and Regeneration, Legal, and Development Management teams.

3.0 Reasons for Recommendations

- 3.1 The provisions of the Localism Act 2011 and the Assets of Community Value Regulations (2012) stipulate a number of necessary functions that local authorities must comply with regarding community rights. These are explained more fully in the appended guidance document (Appendix 2).
- 3.2 Cheshire East currently possesses a procedure for negotiating the Community Right to Bid, but a more formal policy is required to make the process as effective, clear, and efficient as possible.

3.3 The Community Right to Bid is designed to foster greater participation and self-reliance within communities, encouraging local people to take ownership of assets and functions that they deem valuable to the community. Therefore, putting in place a clear policy in relation to the Right will help to achieve strategic outcome 1 in the Cheshire East Three Year Plan 2013-16: *'Our local communities are strong and supportive. Individuals and families are self-reliant and take personal responsibility for their quality of life. Communities are cohesive, with a strong sense of neighbourliness. There is genuine civic pride and mutual respect.'*

3.4 **Process**

The process by which the Right will be administered has been informed by the need to address the views of a variety of stakeholders (be those internal departments whose expertise the process would benefit from, or political representatives) whilst still retaining proportionality and responsiveness. This process is detailed in the appended documents.

3.5 Appendices 1 and 2 constitute the suite of information that will be made available to inform the public with regards to the Right: a nomination form and a guidance document.

3.6 Appendix 3 is a flowchart summarising pictorially the proposed process through which Cheshire East will administer the Community Right to Bid. The flowchart breaks the Right down into four stages and then delineates the recommended process for each stage. These stages are:

- Nomination
- Review
- Sale
- Compensation

3.7 The Council's administrative functions relating to the Community Right to Bid are to be performed by an officer steering group consisting of representatives from Assets, Resilient Communities, Economic Development and Regeneration, Legal, and Development Management. For each nomination, a case officer from this group will be assigned to coordinate the activities of the group in:

- maintenance and publication of the list of assets of community value
- maintenance and publication of the list of unsuccessful community nominations
- initial assessment of community nominations
- correspondence relating to nominations, the moratorium period, and applications for compensation

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 Ward members will be informed and consulted when an asset is nominated within their ward. They will then be invited to input into the decision-making process as to whether the asset is listed as of 'community value'.

6.0 Policy Implications

- 6.1 The Government has published an Impact Assessment of Community Right to Bid (DCLG, 21 June 2012). The equalities impact assessment found that there were no foreseeable adverse impacts on any single equality group. The policy change was considered to provide greater opportunities for those affected by closure and disposal of private and public assets to obtain and run them. It is stated that mechanisms of support will be considered for those who require it, targeting those who lack the skills, expertise and knowledge to make a competitive bid for an asset.
- 6.2 With regard to human rights implications, the Government's Impact Assessment recognises that imposing a moratorium on sale of a listed site will be an interference with the owner's property rights under Article 1 of Protocol 1 to the European Convention on Human Rights. It is stated that the interference is justified in the general interests of the community. The provision for compensation is considered to contribute to making the temporary restriction on sale a proportionate way of achieving the benefit for the community. Attention is also drawn to the right for a landowner to request an internal review by the local authority of its decision to list their land.
- 6.3 The Government's Impact Assessment (DCLG, Community Right to Bid – Impact Assessment, 21 June 2012) considers that the provisions will potentially promote greater social cohesion and build social capital strength as opportunities are being made available for communities to identify assets they consider are important and to develop them to best fit their needs.

7.0 Financial Implications

- 7.1 There will be resource implications in enacting the Community Right to Bid, given the number of tasks necessitated by the legislation. The Council is obliged to, at various points of the process, contact and engage community groups, asset-owners, and local communities which will consume the time of the officer steering group.
- 7.2 Moreover, there are further potential resource commitments through the provision in the legislation for internal listing and compensation reviews, which

must be undertaken by an appropriately senior officer. Compensation claims can be raised if the asset owner feels they have incurred a financial loss through their property being listed or previously listed. Internal reviews can be triggered when the asset owner does not agree with the Council's assessment of nominations or compensations claims.

- 7.3 Should an appeal be made to First Tier Tribunal then this would be likely to place considerable resource demands on the Council. An asset owner can appeal to a First Tier Tribunal if they disagree with the outcome of an internal review of a nomination assessment or compensation claim.
- 7.4 It is anticipated that these resource implications will be absorbed into existing budgets and service capacity, with representatives from relevant teams working on actions arising from the Right on a case-by-case basis as applicable.
- 7.5 A successful award of costs against the Council at First Tier Tribunal could have considerable financial implications. The Council is required to compensate the owner or former owner of listed land where they have incurred loss or expense through their asset being listed or previously listed. DCLG guidance states that the estimated costs of providing this compensation have been subsumed into the Council's funding. Additionally, if the Council pays out over £20,000 in one financial year (either on one large claim or as a combined total on a number of smaller claims) then the Council may write to the Community Assets Team at DCLG with a request for financial support providing evidence of the compensation costs incurred.

8.0 Legal Implications

- 8.1 Part 5 of Chapter 3 of the Localism Act 2011 makes provision for local authorities to maintain a list of assets in the area that are considered to be of 'community value'. It goes on to provide that owners of assets listed as of 'community value' may not dispose of them until the Council has been notified in writing, the relevant moratorium period has ended, and the protected period (18 months from the date of the disposal notification) has **not** ended.
- 8.2 The Assets of Community Value (England) Regulations 2012 have been enacted under the Localism Act 2011.

9.0 Risk Management

- 9.1 There is a risk that the Council may fail to correctly deal with community nominations for assets of community value, or fail to correctly fulfil its obligations under the disposal of listed land procedures. This may result in assets of community value not being appropriately identified, land disposals being unacceptably delayed or alternatively allowed to proceed when the moratorium period should have applied. There are also risks in terms of unnecessary resource implications if reviews and appeals are frequent, encompassing

prospective legal costs associated with the First Tier Tribunal process.

- 9.2 These risks can chiefly be reduced by the Council putting in place a clear policy to deal with its responsibilities and interpret the legislation correctly from the outset. The proposed processes and procedures set out in this report should help reduce these risks by implementing formal arrangements and responsibilities; these will ensure that the Council correctly discharges its obligations and correctly assesses all nominations and compensation claims, reducing the scope for errors, reviews, and appeals.
- 9.3 More importantly, there is a risk that the Council's extant process for managing the Community Right to Bid is insufficient. This increases the likelihood of the above risks until remedied. There is also a legacy risk that a number of community groups have sought to evoke the Right and have not been appropriately assisted by the Council, or some nominations have not been addressed in accordance with the legislation. This risk is being mitigated by the emerging officer steering group retracing, collating, and taking responsibility for any requests or submissions regarding the Right.

10.0 Background and Options

- 10.1 The Localism Act 2011 introduced the Community Right to Bid for Parish Councils and other local groups such as community and voluntary bodies to nominate a building or other land as an 'asset of community value'. Local authorities are required to consider such nominations, and maintain and publish a 'list of assets of community value'. The owner of any land or buildings on the list is required to give notice and comply with a moratorium period before they sell or dispose of the land/building in order to give community groups an opportunity to bid for the land/building should they wish to do so.
- 10.2 Full details of the Community Right to Bid, the legislation and regulations surrounding it are contained in Appendix 2.
- 10.3 There are relatively few options for the Council to deliberate over, 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 how it enacts these obligations procedurally. Sections 2 and 3 propose and delineate a process for administering and managing the Right. Alternative options included assigning responsibilities and authority to other departments within the Council. The recommendations were selected because they provide sufficient levels of representation and expertise from relevant officers and members, whilst also representing a proportionate and suitably fluid arrangement. Market research was conducted to establish the best practise of other councils and can be viewed by contacting the report writer.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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