

CHESHIRE EAST COUNCIL

Communities Overview and Scrutiny Committee

Date of Meeting:	March 2016
Report of:	Steph Cordon/Sharon Angus-Crawshaw
Subject/Title:	Community Rights Update

1.0 Report Summary

- 1.1. As a Residents First Council, the successful implementation of the Community Right to Bid has enabled our communities to nominate assets of importance to them, for these in turn to be assessed and for lists of approved and unsuccessful nominations to be published on the Cheshire East website. This report provides an update on the delivery of Community Rights process currently facilitated by Partnerships and Communities.
- 1.2. The report also references the Community Right to Challenge, which is another element of the Localism Act that enables communities to bid to take over local services they think they can run differently and better.

2.0 Recommendation

- 2.1 That Committee notes the content of the Report and makes comment where necessary.

3.0 Reasons for Recommendations

- 3.1 We know that people in Cheshire East value and love the places they live in. They want great local public services, to protect the things that make their neighbourhood special and to help their community grow and develop in the right way. The Localism Act 2012 has given our communities legal powers and new opportunities to preserve what they like and change what they don't like about the city, town or village they live in.
- 3.2 Since the implementation of the Community Right to Bid process Cheshire East Council has received 22 nominations for a wide variety of assets across the Cheshire East area. These are listed in Appendix 1. A clear process has been implemented to deliver the Community Right to Bid initiative. This includes: - a regular meeting structure to support the assessment process; ensuring that valid nomination forms are submitted with detailed information and with supporting evidence; asset owners are provided with the reasons why an asset has been nominated; website information is regularly updated; and, an updated policy and guidance and clear process charts are published.

- 3.3 From the 6th April 2015 Public Houses listed as Assets of Community Value (ACV) require planning permission to change their use or be demolished. In addition, planning permission will be required to change the use or demolish a pub from the point of nomination. As a result CAMRA have been active in encouraging groups to nominate their local pub and we have recently received a number of enquiries and applications for public houses.
- 3.4 We also have an ambitious approach to Transfer and Devolution and actively encourage community groups and Town and Parish Councils to approach us with any ideas they have regarding the future management of our assets and services. Our aim is to explore ideas at the earliest opportunity, where local communities want to deliver local services.
- 3.5 Whilst we are proactive and open to approaches for transfer or devolution, the Localism Act still requires the Council to have a process in place to consider expressions of interest received under the Community Right to Challenge. There is a statutory duty placed on all Local Authorities to consider expressions of interest. A separate report on Community Right to Challenge outlining a process to do this is being taken to Cabinet in March 2016.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 It should be recognised that if the numbers of Community Right to Bid nominations received continue to increase this will put pressure on existing staff workloads, and could result in the process not operating to the deadlines required by the legislation and as outlined in Policy and Guidance.
- 6.2 There are further commitments required through the provision in the legislation for internal listing and compensation reviews, which must be undertaken by an appropriately senior officer and also to strict deadlines. 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.
- 6.3 A Community Right to Challenge Policy and Guidance Document is required under the Localism Act 2011 which needs to include what the procedure and process is where accepted expressions of interest will lead to a procurement exercise, how the service will be commissioned, and how information about the Community Right to Challenge will be communicated and made available publicly.

7.0 Financial Implications

- 7.1 There are human resource implications in enacting the Community Right to Bid, given the number of tasks necessitated by the legislation and reflected in our process. The Council is obliged to, at various points of the process, contact community groups, asset-owners, and local communities. Regular monthly meetings are arranged and facilitated, and a number of officers from a range of services are required to undertake duties.
- 7.2 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 We currently have a claim from an asset owner to the First Tier Tribunal, seeking to challenge the results of an internal review and to have a listed asset removed from the Register. This process will be carried out via a paper review and implications to date have been on staff time to prepare responses to the appellant. We will use this opportunity to better understand how the Tribunal process operates, and they state that the overriding objective of the Tribunal is that cases are dealt with fairly and justly including: avoiding unnecessary formality and doing what is possible to enable a party to participate fully in the proceedings. At this stage it is not known if any costs will be incurred.

9.0 Risk Management

- 9.1 The processes and procedures that have been developed and implemented should mitigate risks associated with the Community Right to Bid including failure to correctly deal with community nominations for assets of community value; failure to correctly fulfil obligations under the disposal of listed land procedures (community right to bid which 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 compensation and legal costs associated with the First Tier Tribunal process, and having an open and robust process will help to meet those risks.

- 9.2. Community Right to Challenge could have huge implications on service delivery if not considered properly. The Council needs to be prepared for challenges to the services it delivers and commissions and be clear about the processes it follows in contracting its services. It also needs to have a clear rationale as to why any challenges would be rejected and on what grounds. The creation of appropriate policy and guidance documentation, and a robust process to ensure that the statutory duty under Community Right to Challenge legislation is fully met, is vital.

10.0 Background and Options

- 10.1 A report was taken to Cabinet on 19th August 2013, to agree recommendations that aimed to create a revised and strengthened policy by which Cheshire East Borough Council would manage and administer the Community Right to Bid under the provisions of the Localism Act and the Assets of Community Value Regulations (2012).
- 10.2 The aim of the Community Right to Bid is to empower communities wishing to protect valuable local assets (land and buildings) by requiring the Council to maintain a list of assets in its area which are of community value. If an asset then comes up for sale, the community group will be given time to make a bid to buy it on the open market.
- 10.3 The Right does not restrict in anyway who the owner of the asset can sell their property to or at what price, and it does not confer a right of first refusal to community or voluntary groups.
- 10.4 A building or land will be listed as an asset of community value if, in the opinion of Cheshire East Borough Council, the following criteria are met:-
- Current primary use of the building/land or use of the building/land in the recent past furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community
- It is realistic to think that now or in the next five years there could continue to be primary use of the building/land which will further the social well-being or social interests of the local community (whether or not in the same way as before)
- 10.5 In April 2015 legislation changed in relation to Public Houses that are nominated for listing and then subsequently listed. From the 6th April 2015 pubs nominated as Asset of Community Value will require planning permission for demolition or change of use.
- 10.6 The Community Right to Challenge allows relevant bodies to challenge the Council to run local services that they think they can run differently and better. There is a statutory duty placed on all Local Authorities to consider expressions of interest.

- 10.7 If a relevant group submits a valid expression of interest to run a Council service the Council must consider the proposal and either reject the proposal, request that modifications be made or accept the proposal.
- 10.8 A Cabinet Report about a Community Right to Challenge Policy is currently being prepared. This sets out roles for the Head of Governance and Democratic Services and the Head of Communities, who will be authorised to carry out the initial validation of expressions of interest and to reject any that are not valid, to be responsible for overall management of each procurement exercise and to create appropriate policy and guidance documentation and a robust process to ensure that the statutory duty under Community Right to Challenge legislation is fully met. It also proposes to implement a 30 day period each year for accepting Expressions of Interest on Community Right to Challenge starting from 1 September 2016.

11.0 Access to Information

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

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