



To: The Leader
Report by: Patsy Dell, Head of Planning Services
Relevant scrutiny committee: Strategy and Resources 15/10/2012
Scrutiny Committee
Wards affected: All

Localism Act 2011: Community Right to Bid - Update

Key Decision

1. Executive summary

- 1.1 The Leader and Scrutiny Committee considered a report summarising the new Community Right to Bid on 9 July 2012.
- 1.2 The Leader resolved to:
 - i. Note the new requirements under the Localism Act.
 - ii. Agree the Council's approach to this new duty as set out in the officer's report.
 - iii. Delegate responsibility for determining whether assets are listed on the register of assets or not to a panel of three senior officers from Property Services, Planning and Community Development convened by the Head of Planning Services.
 - iv. Bring back a further report to the Strategy and Resources Scrutiny Committee on 15 October 2012 to agree the Council's final approach to this duty once Regulations had been published.
- 1.3 The Regulations were published on 20 September and took effect on 21 September. The report outlines how they affect the Right to Bid.

2. Recommendations

The Leader is recommended:

- 1) To agree the Council's approach to the Community Right to Bid duty as set out in the report;

- 2) To delegate responsibility for determining compensation applications and appeals against compensation decisions to the Director or Resources;
- 3) To delegate responsibility to the Director of Environment to determine reviews (appeals) against listing of assets by the owners and;
- 4) To delegate responsibility for the implementation and operation of the provisions of the Localism Act relating to assets of community value to the Head of Planning Services.

3. Background

3.1 The report to Strategy Scrutiny Committee in July gave an overview of new Community Right to Bid. In summary, it comprises the following elements:

- Voluntary community bodies with a local connection will be able to identify land and buildings (“land”) within the City as being of community value. Examples might include a local shop, pub, swimming pool, playground or other facility that is of value to the community.
- If the City Council accepts the nomination, the land must be included in a list of “assets of community value”. The Council must also keep a list of rejected nominations.
- An owner is entitled to request a review by the Council of a decision to add land to the list of assets of community value. An owner is entitled to a further appeal to the First Tier Tribunal, which is part of HM Courts and Tribunals Service.
- If an owner wishes to enter into a “relevant disposal” of the land, then they must first notify the Council of their intention. This triggers an “interim moratorium period” of six weeks, during which community interest groups may submit a written request to be treated as a potential bidder in relation to the land. A “relevant disposal” cannot take place during this period.
- If no request to be treated as a potential bidder is received, the owner is entitled to go ahead with the disposal, provided that it is completed within eighteen months of when they notified the Council of their wish to dispose.

- If a request to be treated as a potential bidder is received, the full moratorium period comes into play. This lasts for six months from the date of the owner's notice of a wish to dispose. Again, a "relevant disposal" cannot take place during this period.
- Community interest groups have no rights other than to seek to negotiate to buy the land. The owner is under no obligation to sell to a community interest group.
- If the moratorium period expires either without a community interest group bidder coming forward, or without a successful purchase by such a group, then the owner is entitled to go ahead with a disposal, provided it is completed within eighteen months of when they notified the Council of their wish to dispose.
- An owner is entitled to compensation for loss or expense that they would not have occurred but for the listing. Again, there are rights of review and appeal.

4. Details of the procedures

4.1 Submitting a nomination

The regulations define in more detail the voluntary or community bodies that may nominate land as being of "community value". To do so, they need to fall within a defined class of bodies and also have a "local connection".

The following count as "voluntary or community bodies":

- A body designated as a "neighbourhood forum" for planning purposes under provisions introduced by the Localism Act;
- A parish council;
- An unincorporated body (i.e. not constituted as a company or similar body) whose members include at least 21 individuals and which does not distribute any surplus it makes to its members;
- A charity;
- A company limited by guarantee or an industrial and provident society, provided they do not distribute any surplus it makes to their members;
- A community interest company.

A voluntary or community body will be treated as having a local connection if:

- Its activities are wholly or partly concerned with the City or with a neighbouring Council's area (which in the City's case means South Cambridgeshire);

- If it is an unincorporated body, a company limited by guarantee or an industrial and provident society, it applies any surplus it makes wholly or partly for the benefit of Cambridge or South Cambridgeshire;
- If it is an unincorporated body, it must have at least 21 “local members”. A “local member” is someone who is registered in Cambridge or South Cambridgeshire as a local government elector.

Community nominations must include certain information, including the nominator’s reasons for thinking that the Council should conclude that the land is of community value.

Not all land may be listed as being of community value. The Regulations exempt “residences” along with land connected with residences, caravan sites and operational land held by statutory undertakers.

4.2 Considering a nomination.

Once a nomination is made, the Council must accept the nomination if it is from a qualifying body and the Council concludes that the land is of “community value”. The Council has eight weeks from the date of nomination to make a decision.

Land will be of community value if the Council decides that:

- A current use of the building or other land “furthers the social wellbeing or social interests of the local community” and it is realistic to think that the use can continue; or
- In the recent past a use of the building or land furthered the social wellbeing or social interests of the local community and it is realistic to think that the use could be resumed within the next five years. (The July report to the Leader and Strategy Scrutiny recommended that “the recent past” should be considered as being the past five years from the date of nomination. (Minute 12/62/SR.)

Social interests are said to include (in particular) cultural, recreational and sporting interests. But interests of a different nature may still amount to social interests.

Officers suggest that, in assessing whether land is of community value, account is taken of whether there is:

- broad and inclusive use of the asset across the community, or
- use by a particular section of the community that would not otherwise be provided for or is under-provided for in the locality e.g. children, elderly people.

The Leader decided, at the last meeting (Minute 12/62/SR) to delegate responsibility for determining whether assets are listed on the register of assets or not to a panel of three senior officers from Property Services, Planning and Community Development convened by the Head of Planning Services.

4.3 Rights of review and appeal

There is no right of review or appeal against a decision not to list land as being of community value. Legal challenge is still possible through the Judicial Review Process.

An owner has a right to ask for a review of a decision to list land. The request must be made within eight weeks of the decision.

The regulations state that the review must be carried out by “an officer of the authority of appropriate seniority who did not take part in the decision to be reviewed. The regulations do not allow for a review by members. Officers recommend that the Director of Environment be given delegated authority to nominate reviewing officers (including himself) for this purpose.

Owners have a right to a hearing and to legal representation.

Owners dissatisfied with a review decision have a right to appeal to the First Tier Tribunal, which is part of the court system and deals with appeals against administrative decisions.

4.4 List of assets

The Council must maintain a list of assets of community value. It must also maintain a list of rejected nominations, along with the reasons for rejection. Entries on the list of assets of community value are to be removed after a period of five years from the date of nomination. Entries on the list of rejected nominations may, but need not, be removed from the list after five years. In the interests of good housekeeping, officers recommend that rejected nominations be removed from the list after five years.

4.5 Moratorium period

If land is listed as being of community value, then the owner must give the Council notice before entering into a “relevant disposal” of the land. It is important to note that not all dealings with the land will amount to a relevant disposal. Dealings that are not relevant disposals will not be caught by the moratorium period and the owner does not have to let the Council know about them.

There is a long list of dealings that fall outside the class of relevant disposals, but the main areas (expressed in broad terms) include:

- Disposals ordered by a court;
- Disposals connected with separation or similar agreements made between spouses or civil partners;
- Disposals by way of gift;
- Disposals connected with the administration of the estate of a deceased person;
- Disposals within families;
- Disposals of land, and a business carried out on the land, as a going concern;
- Disposals connected with the administration of trusts;
- Disposals under statutory provisions relating to physical or mental incapacity;
- Disposals made in pursuance of legally enforceable rights (option agreements etc) entered into before the land was listed;
- Disposals connected to insolvency or debt recovery;
- Disposals within company groups;
- Disposals of a single plot of land owned by a single owner, which is part-listed as being of community value;
- Disposals of redundant Church of England churches;
- Disposals of educational land for educational purposes.

As explained in section 3 of this report, notice of a wish to enter into a “relevant disposal” triggers an “interim moratorium period” of six weeks, during which community interest groups may submit a written request to be treated as a potential bidder in relation to the land. A “relevant disposal” cannot take place during this period.

If no request to be treated as a potential bidder is received, the owner is entitled to go ahead with the disposal, provided that it is completed within eighteen months of when they notified the Council of their wish to dispose.

If a request to be treated as a potential bidder is received, the full moratorium period comes into play. This lasts for six months from the date of the owner’s notice of a wish to dispose. Again, a “relevant disposal” cannot take place during this period.

Community interest groups have no rights other than to seek to negotiate to buy the land. The owner is under no obligation to sell to a community interest group.

If the moratorium period expires either without a community interest group bidder coming forward, or without a successful purchase by such a group, then the owner is entitled to go ahead with a disposal, provided it is

completed within eighteen months of when they notified the Council of their wish to dispose.

4.6 Enforcement

The City Council has no express enforcement duty and there is no criminal sanction against non-compliance by an owner. The sanction provided is that a non-compliant disposal will be ineffective. (That is, unless the owner has made all reasonable efforts to find out if the land is listed, and does not know at the time of disposal that it is listed.)

4.7 Compensation

An owner is entitled to compensation for loss or expense which they would not have occurred but for the listing. Again, there are rights of review and appeal.

Officers recommend that the Leader delegates responsibility for determining compensation applications to senior officers from Property Services and Finance convened by the Head of Planning Services.

The regulations state that the review must be carried out by “an officer of the authority of appropriate seniority who did not take part in the decision to be reviewed. The regulations do not allow for a review by members. Officers recommend that the Director of Resources be given delegated authority to nominate reviewing officers (including himself) for this purpose.

Owners have a right to a hearing and to legal representation.

Owners dissatisfied with a review decision have a right to appeal to the First Tier Tribunal, which is part of the court system and deals with appeals against administrative decisions.

The Government’s impact assessment suggests an average cost of £2,000 per compensation claim for expenses, and the cost of a loss in asset value compensation of £10- £50k per claim. These costs are payable by the city council.

5.Implications

5.1 Financial Implications

As explained above, the Government’s impact assessment suggests an average cost of £2,000 per compensation claim for expenses, and the cost of a loss in asset value compensation of £10- £50k per claim. These costs are payable by the city council. The city council must also meet its own

costs of carrying out listing and compensation reviews. There will also be a Land Registry fee of £50 per asset payable by the city council, which will place a restriction on the Land Register on any asset accepted as having been successfully listed as an asset of community value. There may be legal costs associated with appeals to the First Tier Tribunal.

The city council's start up administration costs for the Community Right to Bid scheme will be paid by the Government. They have estimated that these should be around £1,200. There are no details as yet of how this funding can be claimed.

Given the expected interest in this locally officers anticipate that this will not meet the council's costs but this will be kept under review as the scheme comes into effect.

5.2 Staffing implications

The Community Right to Bid provisions are largely an administrative process that will be managed and administered by the Planning Service with the day-to-day administration undertaken by the Guildhall Business and Information Services Unit. At this stage, it is unclear as to the staffing capacity that will need to be put towards this activity. It is expected that there will be a significant number of initial nominations that will need to be processed. This will be kept under review.

There is likely to be some call on the Council's Legal Services in assisting with aspects of the process (identifying owners, advising on the regulations and providing or securing representation at appeals to the First Tier Tribunal).

5.3 Equal Opportunities Implications

Equalities Impact Assessment: Not applicable. The Community Right to Bid scheme is primarily an administrative process defined by legislation and regulation with very little scope for the Council to exercise discretion or introduce change,

5.4 Environmental Implications

Climate change rating: Nil.

5.5 Consultation

Consultation has been undertaken with officers from the Planning Service, Community Development, Property Services, Legal Services and Corporate

Strategy on those aspects of the Community Right to Bid provisions that are at the discretion of the Council as to how they are implemented.

5.6 Community Safety

There are no community safety implications.

6. Background Papers

6.1 These background papers were used in the preparation of this report:

- a) Localism Act 2011
- b) The Assets of Community Value (England) Regulations 2012
- c) Report to the Leader and Strategy and Resources Scrutiny Committee – 9 July 2012.
- d) Minutes of the meeting of Strategy and Resources Scrutiny Committee of 9 July 2012 and Record of the Leader's decision.

7. Inspection of Papers

7.1 To inspect the background papers or if you have a query on the report please contact:

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