

Forest Heath District Council

(This report is a key decision. This report has been subject to appropriate notice of publication under the Council's Access to Information Rules)

Report of the Cabinet Member for Families and Communities

CABINET

4 SEPTEMBER 2012

CAB12/025

COMMUNITY RIGHT TO BID – IMPLEMENTATION (Forward Plan Reference: SEP12/13)

Summary and reasons for recommendation(s)

From the Autumn, community groups will be able to nominate local land or buildings as “assets of community value” that cannot be sold without the community group first being informed and given the opportunity to prepare a bid. The new powers are known as the “Community Right to Bid” and, with some exceptions, can be applied to land or buildings that are in public or private ownership.

Forest Heath District Council needs to be ready to deal with nominations from community groups as well as the associated listing, review, notification and compensation processes. This paper seeks Cabinet's agreement to a proposed approach to dealing with the Community Right to Bid. A similar report is being considered by St Edmundsbury Council at its Cabinet meeting on 12 September 2012.

Recommendation(s)

It is recommended that Cabinet:

- 1. Agrees to the proposed approach to dealing with the Community Right to Bid described in Paragraphs 9-14 and Appendices B and C;**
- 2. Recommends to Council that a delegation be made such that nominations under the Community Right to Bid should be handled by Officers once in force; and**
- 3. Gives Delegated Authority to the Chief Executive or relevant Head of Service , in consultation with the Portfolio Holder for Families and Communities, to amend minor details of the operation of the scheme should it be necessary in light of changes in the Government's final regulations and advice notes.**

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How will the recommendations help us meet our strategic priorities?

1. The Community Right to Bid provides an opportunity for constructive dialogue with communities in relation to how they may wish to shape the place in which they live. It also provides an opportunity to re-examine the roles of community groups and their relationship with the Council. Dealing effectively with nominations made under the Community Right to Bid will help the Council in achieving its 2012-16 Strategic Plan objective of “enabling communities to use the opportunity to keep important assets in community ownership. In turn, this should contribute to “supporting stronger, more active communities”.

Wards affected.

2. All.

Key issues

What is the Community Right to Bid?

3. The Community Right to Bid, previously known as the Community Right to Buy” was introduced by the Government in the Localism Act 2011, alongside other community rights such as the Community Right to Challenge. The Government has published draft regulations that would implement the Community Right to Bid which it expects to come into force in October 2012. At that point, the Government will publish advice notes¹.
4. Under the Community Right to Bid (“the Right”), community groups, including Parish Councils, are able to nominate non-residential buildings or land within their communities as “assets of community value” which cannot be sold without the community group being given the opportunity to put together a bid to purchase the asset. The Right does not give any preferential treatment to community groups in the sale of the asset: rather it gives them the time to prepare bids so that they have a realistic chance of purchasing the asset. The Right applies to both publicly owned and privately owned assets though not to individual residences.
5. The Government has made available £19m to community groups to support them in putting together bids. This is available through the Social Investment Business Group website and is intended to support groups in building the internal capacity to take over ownership of assets and to carry out feasibility studies.
6. The Government’s intention is that the Community Right to Bid will be used to help community groups to purchase assets such as village shops, community centres, woodlands used for recreation, pieces of land, children’s centres, library buildings and local pubs that have become commercially unviable and would otherwise no longer be available for use by the local community. The Right covers assets currently owned by the

¹ DCLG had advised that draft advice notes would be available during summer 2012, but these have not yet been published

Council as well as some assets in private ownership. It will be important for the Council to ensure a robust asset management strategy in order to consider bids for its own properties.

7. A helpful description of how the Right works **from the point of view of a community group** is available on the Government's Community Rights website at: <http://communityrights.communities.gov.uk/what-are-community-rights/community-right-to-bid/> The text from this webpage is reproduced at Appendix A.
8. A detailed process diagram of **how a local authority must deal with a nomination** made under the Community Right to Bid is attached to this paper at Appendix B. The diagram shows the four main aspects of the Right, namely nomination by a community group; review of a listing by the owner of an asset; the moratorium periods once an asset comes up for sale; and compensation of the owner as a result of delays in selling the asset.

The Council's overall approach

9. As for the Community Right to Challenge, the Council needs to decide how it wants to treat the Community Right to Bid.
10. In the first instance, it is recommended that information about the Right is published on the Council's website; a short note is included in the weekly "Wavelength" bulletin for all staff; and that a briefing note is sent to all Councillors explaining the Right and its implications for communities and asset owners.
11. The information on our website should set the Right in the context of the Council's wider approach to working with communities on asset management. It should also stress that community groups should not only be nominating assets but also preparing themselves to put in bids where appropriate, directing them to the support available from the Government referred to in paragraph 4.
12. It is recommended that these initial actions are followed by constructive discussion with community groups and that opportunities for feedback from asset owners are sought in order, to ascertain what level of potential interest there is in the Community Right to Bid, what level of concern it has generated and to inform the Council's longer term approach. It will be important for the council to ensure it has its own robust asset management strategy in order to consider bids for council owned properties..
13. Where Council assets are listed under the Community Right to Bid, the Council should consider any bids from community groups at the point of disposal as part of its wider asset management strategy. Decisions about disposal should therefore take account of social value as well as financial gains.

Dealing with nominations made under the Community Right to Bid

14. Appendix C sets out a proposal for how nominations made under the Community Right to Bid should be handled within the Council . This is based on a delegation being sought from Council (on 12 December) to allow all aspects of the process to be dealt with by officers, keeping ward members and portfolio holders informed at key points in the process (see flow chart at Appendix B). It is proposed that the majority of the process is handled by officers in Community Services. This will have some initial implications for staff time as the process is established. However, it will not become clear for a while how many nominations will be made in the longer term (see section on Financial and Resource implications below for further details).
15. Some aspects of the process remain a little unclear to date, and further guidance will be needed before the process and calls on staff time can be finalised. For example, the DCLG impact assessment says that "local authorities must remove assets from the list after 5 years by default. However, prior to this they will need to write to interested community organisations to inform them of this, and allow them to make a case for keeping the asset on the list". This is not included in the draft regulations and so has not been formally included in the process diagram or proposal for roles and responsibilities at this stage.

It is recommended that Cabinet:

- **agrees to the proposed approach to dealing with the Community Right to Bid described in paragraphs 8-12 and appendices B and C;**
- **recommends to Council that a delegation be made such that nominations under the Community Right to Bid should be handled by officers once in force;**

Other options considered

16. The new Right is likely to come into effect for all local authorities in October 2012. The Council will then have no option but to implement it. The proposals outlined in paragraphs 8 – 14 and the associated appendices are considered to offer the best way forward when balancing the interests of promoting viable and sustainable communities whilst also respecting the interests of private property owners, who may be small businesses. The processes proposed are intended to ensure propriety and allow Council decision-making to be done in an efficient and effective way.

Community impact

17. The Department for Communities and Local Government assessed the impact of the proposed Community Right to Bid in January 2011 and then again in June 2012 (to reflect changes made as a result of the consultation). The assessment found that there were no impacts on statutory equality, sustainable development, health, environmental or rural duties. There were impacts on small firms and on Human Rights (see

Legal / policy implications below). The Impact Assessment is available here:

<http://www.communities.gov.uk/publications/communities/righttobidia>

What consultation has been undertaken and what were the outcomes?

18. The Government consulted on the proposed Community Right to Bid from 4 February – 3 May 2011. The respondents included a wide range of voluntary and community groups as well as local authorities (including Forest Heath District and St Edmundsbury Borough Council).

Financial and resource implications

19. There will be costs to the Council of setting up a list of assets of community value; managing the list and 5-yearly reviews; compensation for loss of asset value; and enforcement. The following table shows the expected costs across all 353 local authorities in England, as estimated by the Department for Communities and Local Government in its impact assessment for the Community Right to Bid. We can expect Forest Heath's costs to be at the lower end of the estimates and we should also expect to achieve some savings by administering the process jointly across Forest Heath and St Edmundsbury Councils.

Cost area	Total estimated cost across all English LAs (DCLG figures)	Approximate cost per English LA (FHDC analysis)	Time period
Setting up list of assets of community value	£379,000	£1075	Per year, 1 year only
Managing the list process and 5-yearly reviews	£2,500,000	£7100	Per year
Compensation for loss of asset value	£233,000	£660	Per year, over 9 years
Enforcement	£35,000	£100	Per year, over 10 years

20. The Government said in its response to the House of Lords Secondary Legislation Scrutiny Committee that "costs to local authorities will be covered by central Government (via the New Burdens principle) during the spending review period (to 2014-15). After this period, local authorities will have to cover their additional costs from within their budgets"

Costs of compensation

21. Owners of assets who believe that they suffered loss as a result of the process can claim compensation from the Council. Forest Heath District Council therefore needs to prepare itself for possible compensation claims which could be burdensome both in terms of staff time and the cost of any successful claims.

22. However, DCLG estimates that there will only be between 4 and 22 successful claims per annum at around £2000 per claim. This is based on experience from the equivalent Scottish scheme under which there have only been 2 claims since 2004.
23. Following consultation with local authorities in January 2012, the Government is also providing a safety net for local authorities facing claims of over £20,000 in one year, either from a single claim or a number of separate claims. Verified claims of over £20,000 will be met by the Government. The Government's has also encouraged local authorities to look at how best to manage the risk of claims, possibly through individual or mutual insurance.

Approach to meeting the costs to West Suffolk

24. It is expected that the work of administering the Community Right to Bid will be able to be absorbed within current workloads across Forest Heath and St Edmundsbury Councils. The Councils need to develop an approach to meeting the costs of any successful compensation claims and it is proposed that the option of taking out insurance be pursued.

Risk management implications

25. The process of nominating an asset to be listed is very simple: a community group only needs to say that it furthers the social wellbeing and social interests of the local population. The Council may therefore receive a flurry of initial nominations that whilst in themselves wouldn't be too burdensome, might be followed by a flurry of requests for reviews by asset owners, which would need more staff time. However, based on experience of the equivalent Scottish Government power, DCLG estimate around 700 listings across English local authorities each year (i.e. 2 per authority), of which 115 might reach disposal (i.e. less than 0.5 per authority). There is also a risk that this might be perceived as the Council interfering with the rights of individual property holders and effective communication in relation to the Council's role is important.
26. It is possible that there will be changes to the proposed scheme once Parliament agrees the final version of the regulations and DCLG published advice notes.

→ It is therefore recommended that Cabinet gives delegated authority to the Chief Executive or relevant Head of Service, in consultation with the Portfolio Holder, to amend minor details of the operation of the scheme should it be necessary in light of changes in the Government's final regulations and advice notes.

Legal/Policy implications

27. Imposing a moratorium on the sale of property listed as an Asset of Community Value will be an interference with the owner's property rights under Article 1 of Protocol 1 to the European Convention on Human Rights. However, the Government considers that the interference is

justified in the general interests of the community and that the provisions around review, compensation and appeal help to make the temporary restrictions on sale a proportionate way of achieving the benefit for the community. Further details are given in paragraph 85 on p37 of the Government's impact assessment:

<http://www.communities.gov.uk/publications/communities/righttobidia>

Documents attached

Appendix A: Summary for community groups of Community Right to Bid process

Appendix B: Process diagram for Community Right to Bid

Appendix C: Proposed roles and responsibilities

Background papers

Assets of Community Value – draft regulations:

http://www.legislation.gov.uk/ukdsi/2012/9780111526293/pdfs/ukdsi_9780111526293_en.pdf

Community Right to Bid – impact assessment:

<http://www.communities.gov.uk/publications/communities/righttobidia>