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**Meeting:** Executive  
**Date:** 5 February 2013  
**Subject:** Community Right to Bid  
**Report of:** Cllr Maurice Jones, Deputy Leader & Executive Member for Corporate Resources

**Summary:** The report proposes to brief Executive on the regulations relating to the Community Right to Bid provisions in the Localism Act, and to outline Central Bedfordshire's approach to implementing the regulations.

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**Advising Officer:** Edwina Grant, Deputy Chief Executive/Director of Children's Services  
**Contact Officer:** Peter Fraser, Head of Partnerships & Community Engagement  
**Public/Exempt:** Public  
**Wards Affected:** All  
**Function of:** Executive  
**Key Decision** Yes  
**Reason for urgency/ exemption from call-in (if appropriate)** Not applicable

## **CORPORATE IMPLICATIONS**

### **Council Priorities:**

The Community Right to Bid could impact to some degree on any of the Council's priorities, depending upon what the asset is currently used for, or could be used for in the future. For example, a building (or land) could be of benefit to the local community if it is used for:

- Job skills support, CV writing, creating jobs, managing growth and enabling businesses to grow - enhancing Central Bedfordshire
- Providing skills and learning opportunities - improved educational attainment
- Sport and leisure activities - promote health and wellbeing and protecting the vulnerable
- Community hall / village hall / allotments etc - better infrastructure and great universal services
- Enabling communities to deliver some local services themselves that may lower demand for other public service support in the future - value for money, freezing council tax.

**Financial:**

1. Private owners of an asset which is nominated as a community asset may claim compensation for loss and expense incurred through the asset being listed. The Council will be responsible for considering any claims made and agreeing the nature and value of any compensation. The financial risk to the Council is up to £20,000 compensation in any financial year. This could be for a single claim, or multiple claims in any year that exceed £20,000.

**Legal:**

2. This report describes the Council's duties in relation to Assets of Community Value under the Localism Act 2011 – the Community Right to Bid. The arrangements are also governed by regulations made under the Act but the guidance that has been issued is described as 'non-statutory'.

**Risk Management:**

3. The key risks are:
  - Being able to respond within the eight work period if a significant number of assets are nominated for listing.
  - A delay of up to six months for the disposal of listed assets.
  - Up to £20,000 compensation to be paid to private owners of listed assets.
4. The risks above will be monitored closely through the Localism risk log. It is unlikely that a significant number of assets will be received for listing at any one time, and the process requires the nominating organisation to include information to assist the decision making process. Central government has agreed to meet compensation payments above £20,000 in any financial year, and this facility applies only to assets in private ownership (see paragraphs 33-37).

**Staffing (including Trades Unions):**

5. Not applicable.

**Equalities/Human Rights:**

6. Public authorities have a statutory duty to advance equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics. The Community Right to Bid provides an opportunity for an asset to be purchased for the benefit of the community as a whole, which could have a beneficial impact in terms of advancing equality at a local level.

**Public Health:**

7. A building or land can be nominated by a local community organisation if it is currently used to further the social wellbeing or social interests of the local community and it is realistic to think it can continue to do so. This may include using the asset in a way that contributes to public health and wellbeing.

**Community Safety:**

8. Not applicable.

**Sustainability:**

9. Not applicable.

**Procurement:**

10. Not applicable.

**Overview and Scrutiny:**

11. This matter has not been considered by Overview and Scrutiny.

**RECOMMENDATIONS:****The Executive is asked to:**

1. **agree that the Service Director, Business Services, in consultation with the Deputy Leader and Executive Member for Corporate Resources and the Section 151 Officer, will decide if an asset should be listed;**
2. **agree that if a decision to list an asset is appealed by the asset owner, a review will be undertaken by the Deputy Chief Executive and Director of Children's Services in consultation with the Deputy Executive Member for Corporate Resources and Lead Member for Localism;**
3. **agree that any claims for compensation made by a private owner should be decided by the Service Director, Business Services, in consultation with the Deputy Leader and Executive Member for Corporate Resources and the Section 151 Officer; and**
4. **agree that if a compensation decision is appealed, a review will be undertaken by the Deputy Chief Executive & Director of Children's Services in consultation with the Deputy Executive Member for Corporate Resources & Lead Member for Localism.**

*Reason for Recommendations: To ensure the Council is able to fulfil its statutory duties in relation to Assets of Community Value under the Localism Act 2011 – the Community Right to Bid.*

**Executive Summary**

The Community Right to Bid provisions are part of the Localism Act 2011 which came into force on 21 September 2012. It gives local community groups, such as town and parish councils, charities, voluntary organisations and social enterprises a right to nominate a building or land for listing by Central Bedfordshire Council as an asset of community value for up to five years. Once an asset is nominated, CBC will have eight weeks to make a judgement about whether the asset meets the definition for listing and respond in writing. When a listed asset is to be sold, community groups will be given six weeks to say whether they want to be treated as a potential bidder for the asset and six months to develop and submit a bid.

After this period the owner of the asset can sell it to whomever they choose and at whatever price. This paper sets out the decision-making process to determine if an asset should be listed and how it will be treated if and when it is sold, including any subsequent compensation claims from private owners of listed assets.

## **Introduction**

12. The Community Right to Bid provisions came into force on 21 September 2012.
13. The provisions give local community groups a right to nominate a building or other land for listing by Central Bedfordshire Council (CBC) as an asset of community value. When a listed asset is to be sold, local community groups will have a fairer chance to make a bid and buy it on the open market.
14. These provisions do not restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do not confer a right of first refusal to community groups.

## **Nominating and Listing Assets**

15. Parish councils and community organisations can nominate local assets to CBC to be included on a list of assets of community value for up to five years. The nominated asset may be owned by anybody, including CBC and the Crown.
16. The definition of a community organisation includes social enterprises, community interest companies, charities, a company limited by guarantee that is non-profit distributing, co-operatives and other incorporated bodies whose Articles of Memorandum and Association state that the company's objects are in the interest of the community.
17. Nominations can also be accepted from any unincorporated group with a membership of at least 21 people who appear on the electoral roll within the local authority, or a neighbouring local authority. This will enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.
18. Parish councils can nominate an asset in its own area, or in a neighbouring parish area (a parish which shares a border with it).
19. CBC cannot list land on its own initiative – it must be nominated.
20. A nomination must include the following information for CBC to consider:
  - (a) A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries; for instance as shown on the Land Registry plan if the land is registered, nor is it necessary for all parts of the nominated site to be in the same ownership.
  - (b) Any information the nominator has about the freeholders, leaseholders and current occupants of the site.

- (c) The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
  - (d) The nominator's eligibility to make the nomination.
- 21. Once an asset is nominated, CBC will have 8 weeks to make a judgement about whether the asset meets the definition set out in Section 88 of the Act, or whether it falls into one of the excluded categories.
- 22. Residential property is excluded, including gardens, outbuildings and other associated land in the same ownership as the associated residence. There are two further categories of assets excluded from listing:
  - (a) land licensed for use as a residential caravan site; and
  - (b) operational land of statutory undertakers.
- 23. CBC must take all practicable steps to inform the following if an asset has been nominated:
  - (a) the parish council in which the land lies (or partly lies);
  - (b) the owner;
  - (c) if the owner is not the freeholder then the holder of the freehold estate, and any other leaseholder apart from the owner; and
  - (d) any lawful occupant (which could include a licensee).
- 24. If the nominated asset is properly nominated, is in CBC's area, meets the definition, and is not excluded, then we must list it and inform all of the parties specified above. The same parties should also be informed when an asset is subsequently removed from the list.
- 25. If an asset has been included on the list, an owner has the right to request the local authority to review its decision 8 weeks from the date written notice of the listing was given, or a longer period allowed by CBC in writing. The property will remain listed while the review is carried out. If the owner remains in disagreement with the listing after the internal review they have a right of appeal to an independent Tribunal.
- 26. If CBC does not agree that the nominated asset meets the section 88 definition, or it is in one of the excluded categories, they must place it on a list of assets to be nominated but not listed. Both lists must be made available for free inspection by any person and CBC must provide a free copy of either to anyone who asks for it. The two lists may be combined into one document. The list of unsuccessful nominations must include reasons for the asset not being listed.
- 27. It is for CBC to decide how long they hold unsuccessful nominations on the list. The intention of this is to ensure transparency and to avoid multiple nominations of an asset that does not meet the definition. Assets will be removed from either list no later than five years after the date of entry onto the list.

## **Moratorium**

28. Once an asset has been listed nothing further will happen unless the owner decides to dispose of it.
29. The owner will only be able to dispose of the asset after a specified window has expired. The first part of this window is a 6 week interim period, which will apply from the point the owner notifies CBC of the intention to dispose of it. The nominating community group must be informed to allow it to make a written request to be treated as a potential bidder. If none do so during this period the owner is free to sell their asset at the end of the 6 weeks.
30. If a written request is received this will trigger a 6 month moratorium (again from the point the owner notifies the local authority). CBC must let the owner know as soon as practicable that a request has been received. During this period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.
31. CBC will be required to update the list to show the owner's intention to dispose of an asset and to give the interim and full moratorium end dates, and the end date of the protected period.
32. After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the start date of when the owner notified CBC of wishing to sell).

## **Compensation**

33. The scheme recognises that these provisions may have some financial impact on owners, and provides a compensation scheme for private property owners who have experienced loss and expense incurred through the asset being listed. CBC will be responsible for administering the compensation scheme, including assessing and determining compensation awards. This will not be available to public bodies.
34. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.
35. The time limit for making a compensation claim is 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.
36. CBC must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. Owners and former owners will have rights of review and appeal regarding our compensation decisions.

37. The Government will meet the costs of compensation payments over £20,000 in a financial year. This could occur through one large claim of over £20,000, or as a combined total on a number of smaller claims.

### **Enforcement**

38. The scheme provides for various mechanisms to encourage compliance by requiring local authorities to:
- (a) inform owners and other interested parties that an asset has been listed;
  - (b) enter on the local land charges register the fact that an asset has been listed; and
  - (c) in the case of registered land, apply for a restriction of the Land register.
39. Additionally, to give a strong incentive to owners to comply with the scheme, non-compliant sales will be void; meaning that the change of ownership has not taken place. However, this penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.
40. The provisions do not place any restrictions on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However, the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

### **Land which may and may not be listed as an asset of community value**

41. If CBC receives a nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in Section 88 of the Act. A building or other land is deemed to be of community value if in the opinion of CBC:
- (a) the building or land is currently used to further the social wellbeing or social interests of the local community; and
  - (b) it is realistic to think that it can continue to be used to further the social wellbeing or social interests of the local community (whether or not in the same way).
42. Section 88 (2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

### **CBC's process for deciding if an asset should be listed**

43. CBC needs to determine who should make the decision on whether an asset should be listed or not, and the process for doing so. It is proposed that the process should be as follows:

- (a) Any requests for an asset to be listed should be made in writing to the Head of Asset Management.
- (b) The Head of Asset Management should inform the Head of Partnerships & Community Engagement who will notify:
  - the relevant Ward Members;
  - the Lead Member for Localism; and
  - the local parish council (if it is not the parish council making the nomination).
- (c) The Head of Asset Management will inform the asset owner and any other parties specified in the Act, and seek their comments.
- (d) The Service Director, Business Services, in consultation with the Deputy Leader and Executive Member for Corporate Resources and the Section 151 Officer, will decide if the asset should be listed.
- (e) If the asset is listed the Head of Asset Management will notify the asset owner and the parties specified in the Act, and publish the asset on the list.
- (f) If the decision is taken for the asset not to be listed the Head of Asset Management will notify the asset owner and the parties specified in the Act, and publish the asset on a list of unsuccessful nominations.
- (g) The owner has up to 8 weeks to object to the asset being listed and request that the decision be reviewed. An internal review will be undertaken by the Deputy Chief Executive and Director of Children's Services in consultation with the Deputy Executive Member for Corporate Resources & Lead Member for Localism.

44. If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal (HM Courts and Tribunals) within 28 days from the date of notification of the decision of the internal review.

### **CBC's process for disposing of a listed asset**

45. If a listed asset comes up for disposal, the process will be led by the Head of Asset Management and include:
- (a) informing the nominating community group, to allow them to make a written request to be treated as a potential bidder;
  - (b) notifying the owner and other specified parties if a written request has been received; and
  - (c) updating the published list to show the owner's intention to dispose of an asset and setting out the interim and full moratorium end dates, and the end date of the protected period.
46. The Head of Asset Management will ensure that listed assets are removed from the list as soon as practicable after disposal, or no later than five years from the date of entry onto the list.



## **CBC's process for agreeing compensation amounts**

47. Private owners may claim compensation for loss and expense incurred through the asset being listed. Claims must be made in writing to the Head of Asset Management within 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date the land ceases to be listed. The Service Director, Business Services, in consultation with the Deputy Leader & Executive Member for Corporate Resources and the Section 151 Officer, will consider the claim and give written reasons for its decision.
48. The owner has up to 8 weeks to request a review of the decision. An internal review will be undertaken by the Deputy Chief Executive & Director of Children's Services in consultation with the Deputy Executive Member for Corporate Resources & Lead Member for Localism.
49. If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal (HM Courts and Tribunals) within 28 days from the date of notification of the decision of the internal review.

### **Appendices:**

Appendix A – Diagram of the process to decide if an asset should be listed or not

**Background Papers:** (open to public inspection)

None

