



# Cabinet Meeting

23 April 2014

<b>Report title</b>	Community Right to Bid/Assets of Community Value	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Peter Bilson Economic Regeneration and Prosperity	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Tim Johnson, Education and Enterprise	
<b>Originating service</b>	Planning	
<b>Accountable employee(s)</b>	Tom Podd Tel Email	Planning Officer 01902 555638 tom.podd@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	N/A	

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## Recommendation(s) for action or decision:

The Cabinet is recommended to:

1. Approve the proposed processes to deal with nominations, appeals and compensation in respect to the Community Right to Bid.
2. Delegate authority to the Head of Planning to determine nominations for the listing of assets of community value, and to determine any claims for compensation arising from the listing of an asset;
3. Delegate authority to the Assistant Director Regeneration in consultation with the Cabinet Member for Economic Regeneration and Prosperity to determine any review against a decision to list an asset and any appeals against compensation claims.

## **1.0 Purpose**

- 1.1 The purpose of this report is to set out and agree the decision making process for determining nominations made under the 'Community Right to Bid'.

## **2.0 Background**

- 2.1 The Localism Act 2011 introduced a range of new powers for local communities. One of these new powers is the Right to Bid/Assets of Community Value. The 'right to bid' gives communities the right to nominate buildings or land for listing by the local authority as an Asset of Community Value (ACV). It applies to land and buildings in both private and public ownership. Once listed, communities have a right to bid for assets when they are put up for sale.
- 2.2 It is important to note that this is a 'right to bid' and not a right to purchase or manage assets. Owners of assets are under no obligation to sell to the community and can sell to anyone, at any price. The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. The right to bid is a distinct process from the 'Community Asset Transfer' process where Council owned assets are transferred to the community to run. Under the 'right to bid', the Council's role is to administer the process, determine nominations and compensation claims and ensure the regulations are followed.
- 2.3 The Assets of Community Value Regulations (which give the detail of the scheme) came into effect September 2012. A significant number of nominations are not expected (see paragraph 3.4.4) but it is considered prudent to put in place an agreed procedure.

## **3.0 Process**

- 3.1 A summary of the key stages and decision making is set out below.

### **3.1 Nominations**

- 3.1.1 Voluntary/community groups with a local connection can nominate land and buildings as being of community value. The decision on whether a site or building should be designated as an ACV is a technical one. A building or other land may be considered an ACV if:
- the actual current use (not an ancillary use) of the building or other land is one that furthers the social wellbeing or social interests of the local community; and
  - it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community (whether or not in the same way as the current use).

Or

- there was a time in the recent past when an actual use (not an ancillary use) of the building or other land is one that furthered the social wellbeing or interests of the local community; and
- it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further the social wellbeing or social interests of the local community (whether or not in the same way as before).

- 3.1.2 Given the above criteria, there are a wide range of possible community assets. Assets could include for example nurseries, health centres, community centres, youth centres, parks and open spaces, sports and leisure centres, libraries, theatres, pubs and markets.
- 3.1.3 It is recommended that the determination of nominations be co-ordinated by the Planning Service within Regeneration in consultation with key service areas to include Estates and Valuation, Asset Management, Legal Services, Community Recreation, Neighbourhood Services and through the Council's agreed asset management governance and reporting groups as appropriate. It is also recommended that ward Councillors are consulted. The decision whether to list will be taken by the Head of Planning.
- 3.1.4 If the nomination is successful an entry is made as a local land charge and an application is made to the Land Registry to register a restriction on the property.
- 3.1.5 Both successful and unsuccessful nominations are required to be recorded on two lists which will be available for public inspection and will be published on the Councils website. Listed assets will stay on the list for five years (unless successfully appealed) at which point they must be re-nominated and the process started again.

## **3.2 Appeals**

- 3.2.1 An owner is entitled to request a review by the Council of a decision to add an asset to the list. The regulations state that a review must be carried out within eight weeks of the request or a longer period by agreement between the parties and must be undertaken by an officer of the Council. As part of the appeal process the owner has the opportunity to make oral or written representations. It is proposed that this review is carried out by the Assistant Director for Regeneration in consultation with the Cabinet Member for Economic Regeneration and Prosperity.
- 3.2.2 If the original decision is upheld, an owner is entitled to a further appeal to the First Tier Tribunal, which is part of HM Courts and Tribunals Service.

## **3.3 Selling a listed asset**

- 3.3.1 If an owner wishes to sell a listed asset they must notify the Council of their intention to do so where it applies to a "relevant disposal" (Certain disposals are exempt, a full list is set out in Annex three of the 'Community Right to Bid: Non-statutory advice note for local authorities' (2012)) as defined in the Assets of Community Value (England) Regulations 2012 and Localism Act. . This triggers an "interim moratorium period" of six weeks. The Council must notify the nominating group of the owners plans to sell the asset and any

community interest group may submit a written request to be treated as a potential bidder during the interim moratorium. The asset cannot be sold during this period.

- 3.3.2 If no request to be treated as a potential bidder is received, the owner is entitled to go ahead with the sale of the asset, provided that it is completed within 18 months of when they notified the Council of their wish to dispose.
- 3.3.3 If a request to be treated as a potential bidder is received, the full moratorium period is triggered. This lasts for six months from the date the owner notified the Council of their intention to sell. Again, a “relevant disposal” cannot take place during this period unless the owner agrees to sell to the community interest group in which case the sale can be completed.
- 3.3.4 If the full 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 18 months of when they notified the Council of their wish to dispose.

### **3.4 Compensation**

- 3.4.1 An owner is entitled to compensation from the Council if they believe they have incurred any loss and expense resulting from the listing of an asset. As with nominations, if an owner is not satisfied with the original decision of the Council they have the right to appeal initially to the Council and if unsuccessful to the First Tier Tribunal. Compensation is not payable to public sector bodies whose assets are involved in this process.
- 3.4.2 It is proposed that the same process is followed for compensation claims and appeals as is proposed for determining nominations.
- 3.4.3 Without knowing the likely number and nature of nominations in Wolverhampton, it is difficult to predict the likely costs associated with the new legislation.
- 3.4.4 Locality (a national network of over 700 community led organisations) undertook an analysis of the number of nominations in each local authority area between November 2012 and April 2013. This showed that there had been 398 nominations in England (an average of 1.1 per local authority). However 229 (58%) of these were within just four local authorities. Discounting those four authorities, the average would be 0.5 nominations per authority.
- 3.4.5 The Department for Communities and Local Government (DCLG) Impact Assessment calculated (based on the Scottish scheme) that approximately every one in 4.5 listings would result in a successful compensation claim and that in England they estimated an average of £2,000 per compensation claim. Although these figures would suggest compensation as being insignificant, there is no limit to what could be claimed.
- 3.4.6 Where a local authority considers that compensation should be paid, it is left for the authority to determine how much compensation will be appropriate.

#### **4.0 Financial implications**

- 4.1 In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k in a financial year up to March 2015, whether this is the result of a single large claim or multiple smaller claims. There is currently no commitment to cover the cost of compensation payments beyond 2015.
- 4.2 Any costs falling on the Council up to March 2015 will therefore be met from the new burdens funding and contained within existing approved Planning budgets.  
[TK/01042014/U]

#### **5.0 Legal implications**

- 5.1 The Localism Act 2011, Part 5, Chapter 3 and the Assets of Community Value (England) Regulations 2012 place a requirement on local authorities to maintain a list of assets of community value. The Council is required to administer the 'community right to bid' process. Decisions must be made in accordance with the Localism Act and associated Regulations and the legal impact of these provisions are summarised as follows:-
- 5.2 An asset will only be able to be placed on the list if it is nominated by a qualifying community interest group and the Council determines that the asset has community use value. The decision on a nomination will need to be on the basis that "use [of the building or land] furthers the social wellbeing or social interests of the local community"
- 5.3 This Council will not be able to nominate assets itself to go on the list
- 5.4 Community value can only be judged on the basis of an asset's recent past, current and likely future community use and not its heritage or other value
- 5.5 Residential land and properties are specifically excluded and will not be able to be nominate. [RB/09042014/F]

#### **6.0 Equalities implications**

- 6.1 The Council is required by law to administer the 'community right to bid' process. Decisions must be made in accordance with the Localism Act and associated Regulations. The groups nominating assets will be monitored and kept under review to assess whether there are any equalities implications in the way the process is administered and how equality can be furthered.

#### **7.0 Environmental implications**

- 7.1 Giving communities a chance to purchase local assets could help keep building in active use or prevent some assets from being left derelict thereby improving the built environment

## **8.0 Human resources implications**

8.1 There are no human resources implications arising from the recommendations.

## **9.0 Corporate landlord implications**

9.1 The right to bid/assets of community value provisions will apply equally to Council owned assets and private assets. Nominations for Council assets to be listed will be reported through the Council's agreed asset management governance and reporting groups as appropriate.

## **10.0 Schedule of background papers**

10.1 Community Right to Bid: Non-statutory advice note for local authorities, DCLG, 2012  
The Assets of Community Value (England) Regulations 2012