



DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR FINANCE AND ADMINISTRATION

TOPIC – LOCALISM ACT: THE COMMUNITY RIGHT TO BID

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Wednesday 17 October 2012.

Contact Officers: Antonia Perkins, Head of Policy, Tel: 01962 848 314, Email: aperkins@winchester.gov.uk

Case Officer:

Committee Administrator: Nancy Graham, Tel: 01962 848 235, Email: ngraham@winchester.gov.uk

SUMMARY

The Government has introduced a Community Right to Bid (CRtB). The provisions came into force on 20 September. The purpose of the new provisions is to prevent the loss of local amenities of great importance to communities, for example the village or housing estate shop, pub, community centre, hall etc.

The Act requires local authorities to maintain a list of assets of community value which have been nominated by local communities. When listed assets come up for sale or change of ownership, the Act gives community groups the time to develop a bid, and raise the money to bid to buy an asset when it comes on the open market. The Act also requires local authorities to administer a compensation scheme for

landowners who are adversely affected by complying with any of the procedures required by the scheme.

A community nomination for inclusion on the list must come from a parish council, or a 'locally connected' voluntary or community body and it can be for land or buildings in the nominee's local area. The local authority is required to decide within 8 weeks if the nomination should be listed, and it must notify all interested parties that the nomination is under consideration. It then must publish its decision whether or not to include the asset on the list.

The criteria for inclusion are defined in detail by Government Regulation and the decision-making is, therefore, essentially an administrative process but with judgement being made in the application of the criteria for inclusion on the nomination list.

It is recommended that authority is delegated to the Head of Policy in consultation with the Head of Legal Services to assess nominations for inclusion on the List of Assets of Community Value against the definition of community value as set out below.

If a building or piece of land is listed as an 'asset of community value' and the owner wants to dispose of the asset, they must inform the local authority. This will then trigger a moratorium period. During a moratorium period the owner cannot conclude the sale of the asset. There are two moratorium periods to note, both of which start from the date the owner of the asset notifies the local authority of their intention to sell the asset:

- a) An interim moratorium period of six weeks during which a community group wishing to bid for the asset must notify the local authority that they wish to be considered as a potential bidder. If this does not happen the owner can proceed to a sale.
- b) A full moratorium period of six months during which a community group can develop a proposal and raise the capital required to purchase the asset.

If the land is sold in contravention of the moratorium the sale is deemed ineffective. This is back up by changes to land registration rules in respect of listed land. However, there are circumstances set out in the draft regulations when the disposal of an asset that is listed as having community value can be exempt from the regulations concerning the moratorium period.

Definition of an Asset of Community Value

The City Council will need to have a clear understanding of what constitutes an asset of community value so that community groups have clarity as to what they can nominate and what they cannot. The City Council will also have to administer and

fund compensation for landowners who have incurred loss or expense in relation to land which would be likely not to have been incurred if the land had not been listed.

A building or piece of land will be deemed to have community value if:

- The use of the land or building currently, or in the recent past, furthers the social wellbeing or cultural, recreational or sporting interests of the local community. It will be up to the local authority to define the term 'recent past' as it may reasonably differ from one case to another.
- This use of the land/building (as described above) will continue to further the social wellbeing or interests of the local community.
- The use of the building or land is not deemed 'ancillary', i.e. of secondary purpose. This means that the use of the land or building to further social wellbeing or interests of the community must be its principal use.
- It does not fall within one of the exemptions set out in the draft Regulations

Compensation and review

The owner of listed land may be entitled to apply to the City Council for compensation 'of such amount as the authority may determine' if they can show they have incurred loss or expense which would not have occurred if the land had not been listed. This does not apply to public and publicly funded owners.

The owner of a listed asset also has the right to ask for a review in two circumstances: a review of the City Council's decision to list an asset and a review of a compensation decision. In both cases, draft regulations state that the review should be undertaken by a senior officer not involved in the process. It is recommended that this role is performed by the Corporate Director (Operations). Where a local authority has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal against any decision of the authority on the review.

PROPOSED DECISION

- 1 That the proposed definition of an asset of community value and guidance for potential nominators set out in Appendix 1 is agreed.
- 2 That authority is delegated to the Head of Policy, in consultation with the Head of Legal Services, to assess nominations for inclusion on the List of Assets of Community Value.
- 3 That authority is delegated to the Head of Policy to finalise the process for dealing with Asset of Community Value nominations and to determine compensation applications for adversely affected landowners.

- 4 That authority is delegated to the Corporate Director (Operations) to determine applications for review under the Community Right to Bid.

REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Administration of the Community Right to Bid is a requirement of the Localism Act 2011. The process for dealing with nominations and for when an asset is put on the market is set out in Regulations.

Regulations encourage this to be dealt with as an administrative process led by officers, therefore authority is sought to be delegated to the Head of Policy, in consultation with the Head of Legal Services, to oversee the scheme.

As it is unclear how many nominations will be received it is difficult to anticipate the number of potential claims for compensation from landowners. However it is not anticipated that this will be significant and Government has indicated that they will provide financial support if claims in one year total over £20,000.

RESOURCE IMPLICATIONS:

Local authorities will be expected to fund any compensation claims and will be encouraged to look at how best to manage the risk of claims, possibly through individual or mutual insurance. However it is anticipated that Government will provide 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. In the Government's impact assessment of the CRtB it is anticipated that the total cost of compensation claims nationally will be £233k per annum over 9 years. It is considered prudent that the Council provide a budget of £20,000, achieved by virement from the contingency budget, which, if unspent at the year end, could be carried forward on a rolling basis and kept under review.

The Government recognises the CRtB provisions place an administrative burden on Local Authorities required to maintain a list of assets of community value and is committed to meeting these costs. It has recently announced new burdens funding of £4,873 for 2012/13, 2013/14 and 2014/15. Although this is not ring fenced it is proposed that a budget be set for the same amount for the 3 year period to cover any additional administrative costs.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

A briefing session was held for voluntary groups and parish councils on the Community Right to Bid on 26 September where the proposed process for dealing

with nominations was discussed. Parishes and the voluntary and community sector have also been written to informing them of the new community right.

Corporate Management Team, the Head of Legal Services and the Head of Finance have been consulted on the PHD Notice.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

n/a

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

n/a

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature)

Date of Decision

Councillor Stephen Godfrey – Portfolio Holder for Finance and Administration

Appendix 1

Definition of Assets of Community Value

It is proposed that the following is agreed as guidance for officers compiling the list of Assets of Community Value as well as for groups nominating potential assets of community value

Which uses might be considered to “further the social wellbeing or social interests of the local community”?

The Act notes that “social interests” includes “cultural, recreational and sporting interests”. The accompanying phrase “social wellbeing” can apply to a broad set of activities. The Council will use a broader working definition of the term including, for example, land or buildings where the main purpose is as follows:

<p>The provision of public services directly to the public for the purposes of education, health and wellbeing or community safety</p>	<p>Including:</p> <ul style="list-style-type: none"> • Nurseries and schools • Children’s centres • Health centres, surgeries and hospitals • Day care centres, residential care homes
<p>Sport, recreation and culture</p>	<p>Including:</p> <ul style="list-style-type: none"> • Parks and open green spaces • Sports and leisure centres • Libraries • Theatres • Museums or heritage sites
<p>Community services</p>	<p>Including:</p> <ul style="list-style-type: none"> • Community centres • Youth centres
<p>Local democracy</p>	<p>Including:</p> <ul style="list-style-type: none"> • Town and civic halls
<p>Any economic use (e.g. a business such as a shop) which also provides an important local social benefit which would no longer be easily available if that service should cease In these cases, it is the social value of the business that counts, not just the nature of the business</p>	<p>In line with policies for Rural Rate Relief, this includes facilities such as village shops or pubs which:</p> <ul style="list-style-type: none"> • are within the boundaries of a qualifying settlement • have a rateable value of not more than £12,500 from 1 April 2010 • are either the only pub or shop in the settlement

	<p>A 'qualifying' settlement is:</p> <ul style="list-style-type: none">• wholly or partly within the Authority's area• appear to the billing authority to have had a population of 3,000 or less on the preceding 31st December, and• are wholly or partly within a designated rural area.
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NB: The table above will be used as guidance, and is not intended as definitive criteria.

ii) What does “realistic to think that this can continue into the near future” mean?

This will be interpreted as follows:

For a use which is **currently ongoing**, the working assumption is that the present use could continue into the future, unless the Council is able to identify evidence that this is unlikely to be the case. In other words, where an asset is presently in social use there should be a **presumption of continued viability**, unless clear evidence suggests otherwise.

For a **social use which has lapsed** and needs to be re-established, the Council will take a view on the realism of re-establishing this. It may take the view that a new approach, including a community enterprise approach, might help to re-establish services that were previously not viable.