

ACTION TAKEN BY CABINET MEMBER (EXECUTIVE FUNCTION)

Subject	Consultation on London Borough of Barnet policy for strengthening the assessment criteria for listing assets under the Community Right to Bid
Cabinet Member	Customer Access and Partnerships
Date of Decision	11/02/2014
Date decision comes into effect	11/02/2014

Summary	The council has developed a draft policy intended to strengthen the criteria for assessing nominations under the Community Right to Bid. The additional criteria are designed to take account of the local context and priorities of the borough, building on the broad criteria set out by Government. This report is to commence a formal 6 week consultation on the changes.
----------------	---

Officer Contributors	Dion Watts, Policy Officer, Commissioning Group
Status (public or exempt)	Public
Wards affected	All
Enclosures	Annex A - Draft London Borough of Barnet assessment criteria for defining Assets of Community Value
Reason for exemption from call-in (if appropriate)	N/A
Key decision	No

Contact for further information: Dion Watts, Policy Officer, Commissioning Group (ext. 2001)

1. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 1.1 The Corporate Plan for 2013/14-2015/16 is the council's key strategic document and includes the following objectives:
- To create the right environment to promote responsible growth, development and success across the borough
 - To support families and individuals that need it – promoting independence, learning and well-being
 - To improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study
- 1.2 In September 2012, the London Borough of Barnet adopted its Local Plan, replacing the Unitary Development Plan (adopted May 2006). Barnet's Local Plan provides a 'folder' of separate documents, the most important of which is the Core Strategy. This contains the 'vision' for the Local Plan and the most fundamental, cross-cutting objectives and policies that the local authority and its partners will seek to deliver.
- 1.3 In December 2010, the Coalition Government introduced the Localism Bill as part of its objective to shift power back into the hands of individuals, communities and local authorities, and give local people a real share in growth. The main features of the Bill are:
- introduction of new freedoms and flexibilities for local government
 - introduction of new rights and powers for communities and individuals
 - reform to make the planning system more democratic and more effective
 - reform to ensure that decisions about housing are taken locally

The Localism Act, which enshrined these reforms into statute, came into effect in 2012.

2. RISK MANAGEMENT ISSUES

- 2.1 Statutory criteria for determining whether an asset is an Asset of Community Value are broad and do not take account of local circumstances. A number of local authorities have started formulating their own local criteria for listing assets under the Community Right to Bid as an addition to the criteria specified in Section 88 of the Localism Act 2011. Guidance from the LGA and Locality ('Empowering communities: making the most of local assets') encourages councils to adopt this very approach, provided there is consultation with the local community when formulating the authority's policy.

3. EQUALITIES AND DIVERSITY ISSUES

- 3.1 Under the Equality Act 2010, the Council must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 3.2 Once the consultation exercise has taken place, the proposed changes to how the council will exercise its judgment when making decisions about listing assets under the Community Right to Bid will be reviewed in light of requirements described above to ensure that they will not adversely affect any particular group.

4. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 4.1 The only costs associated with the consultation will be the staff time relating to its implementation and evaluation, for which a budget exists.

5. LEGAL ISSUES

- 5.1 If buildings and/or land are listed as an asset of community value, then if the owner wishes to sell it, a 6-month moratorium period ensues which gives the local community the opportunity to put together a bid and raise funds to purchase it. The moratorium period is triggered if the land or building is to be sold, leased for more than 25 years or otherwise disposed of with vacant possession. A local land charge is placed on the land and a restriction on the title at the Land Registry. Any purported disposal in breach of the provisions of the Community Right to Bid legislation is void.
- 5.2 The landowner whose asset is listed is given a right for an internal review by a senior Council officer and a further right to appeal to the First Tier Tribunal if they feel aggrieved by the decision. They can also claim compensation for any loss as a result of his asset being listed, which is payable by the local authority. Compensation could include any loss in value of the land or building suffered as a result of the listing or loss arising from a delay in selling the asset because of the listing.
- 5.3 Conversely, a nominating community group may not call for an internal review should their application to list an asset be unsuccessful, nor do they have any right of appeal to the courts.

5.4 The criteria for determining whether an asset should be listed are set out in section 88 of the Localism Act 2011 and are as follows:

- is the asset currently furthering the social interests or social wellbeing of the local community?; or
- (if the asset is disused) was there a time in the recent past when the asset furthered social interests or wellbeing?;

and, if so:

- is there is a realistic chance of the asset continuing to do so, or (in the case of resumed use) doing so again in the next five years?

5.5 Social interests are stated to include sporting, cultural and recreational interests, but this is not an exhaustive definition. There is no definition in the Act of what is meant by 'social wellbeing'.

5.6 There is no further guidance as to what the key terms in these definitions mean nor how local authorities should go about exercising their judgement in applying them. It is for the nominating organisation in the first instance to argue why it considers the nominated asset meets the definition in the Regulations.

5.7 There is nothing in the legislation or regulations made under it preventing local authorities from making policies around how they will exercise their judgement when assessing whether a nominated asset meets the statutory criteria. Other local authorities have formulated policies by which they have regard during the assessment process to their own priorities and local circumstances. The guidance from the LGA referred to above suggests that that approach is to be encouraged, provided appropriate consultation with the local community takes place when formulating or amending the local authority's policy.

6. CONSTITUTIONAL POWERS

6.1 Council Constitution: section 3 (Responsibility for Functions) – paragraph 4.3 enables Cabinet Members to discharge the executive functions that fall within their portfolio, whether or not they are also delegated to officers except for matters specifically reserved to Council, Cabinet or cabinet committees.

7. BACKGROUND INFORMATION

7.1 Under the Localism Act, a company, other incorporated body, parish or town council, or a group of 21 individuals having a connection with the local neighbourhood can apply to nominate a local building or land as

an Asset of Community Value. This applies to council and non-council land and buildings.

- 7.2 The council intends to strengthen the criteria against which assessments are made to take into account local circumstances and priorities of the borough. This is to avoid inconsistent decisions that are not linked to the council's strategic priorities. Analysis has shown that a number of other authorities have started formulating their own local criteria as an addition to the criteria specified by DCLG.
- 7.3 The council has developed a draft set of additional criteria (Annex A) which reflect the priorities set out in the council's Corporate Plan and the Core Strategy set out in the Local Plan.
- 7.2 The council will consult on these additional criteria with local residents, businesses and voluntary and community groups, via an online survey, for a period of 6 weeks.

8. LIST OF BACKGROUND PAPERS

- 8.1 None

9. DECISION OF THE CABINET MEMBER(S)

I authorise the following action

- 9.1 That this report authorises the commencement of a 6 week consultation. The consultation period will be from 11 February 2014 until 22 March 2014.

Signed



Date

11th Feb 2014

ANNEX A –

Draft London Borough of Barnet assessment criteria for defining Assets of Community Value

- When assessing nominations for inclusion on the Register of Assets of Community Value in Barnet, the council will consider the criteria set out in section 88 of the Localism Act 2011 – whether the principal use of the nominated asset furthers the social interests or social wellbeing of the local community and may realistically continue to do so (whether or not for the same use).
- When interpreting these key phrases to make decisions on what constitutes the social interests and social wellbeing of the local community, the council will consider:
 1. The extent to which the nominated asset is considered to be essential to the special character of the area.
 2. The strategic priorities set out in Barnet's Corporate Plan at the time, which are currently:
 - i. Promote responsible growth, development and success across the borough;
 - ii. Support families and individuals that need it – promoting independence, learning and well-being; and
 - iii. Improve the satisfaction of residents and businesses within the London Borough of Barnet as a place to live, work and study
 3. The Core Strategy set out in Barnet's Local Plan at the time, which includes social, economic and environmental objectives and policies, and provides the overarching framework for delivering sustainable development in Barnet.
 4. Barnet's diverse and growing population and the physical and social infrastructure required to meet its aspirations.
- The council will consider nominations on a case by case basis, with particular regard to:
 - The realistic prospect of the asset's principal use continuing or resuming its contribution to social interests or wellbeing within the next five years
 - The sustainability of the asset's contribution to social interests or wellbeing
 - The commercial viability of the nominating group, including the ability to raise funds