

	<h2>Community Leadership Committee</h2> <h3>25 June 2014</h3>
Title	<h2>Community Right to Bid: Consultation and recent developments</h2>
Report of	Stephen Evans – Assistant Director, Commissioning Strategy
Wards	All
Status	Public
Enclosures	Appendix 1: Summary DPR, Consultation on proposed changes to the Community Right to Bid
Officer Contact Details	<p>Stephen Evans, Assistant Director, Commissioning Strategy stephen.evans@barnet.gov.uk 020 8359 3021</p> <p>Elissa Rospigliosi, Commissioning & Policy Advisor elissa.rospigliosi@barnet.gov.uk 020 8359 7158</p>

<h2>Summary</h2>
<p>The Localism Act 2011 introduced the Community Right to Bid, a new right for local people to nominate buildings or pieces of land that they believe contribute to the social interests or wellbeing of their local communities to be listed on a register of Assets of Community Value (ACVs), managed by the local authority.</p> <p>The Right applies to public and private property, although there are a number of exceptions under the legislation, including private residences.</p> <p>Once an asset has been listed as an ACV, a restriction is placed on it which means that if – and only if - it is to be either sold or leased for a period of 25 years or longer, and a constituted voluntary or community group puts in a proposal to buy it, then the sale or lease is delayed for six months to give the community time to raise funds to bid for it at market value. The owner is under no obligation to accept this bid and can sell the property to whomever they wish once the six months is over.</p> <p>In Barnet, eight assets have so far been nominated as ACVs. Six have been listed and one rejected. A nomination was received in May 2014 to list the New Barnet Community Centre as an ACV and this report asks the Committee to make a decision on this</p>

nomination.

Past nominations, and enquiries from local community groups and landowners, have suggested that there is some confusion over the purpose of the Right and what it means in practice. If this remains unclear, it could mean that local communities are unable to make use of their rights or to access support they may need.

This confusion falls under three headings:

- Firstly, 'social interests or wellbeing' is not clearly defined in the Localism Act, and under the previous administration, the Council consulted on proposals to develop this further, with reference to local priorities. This report presents the results of the consultation.
- Secondly, more clarity is needed about the impact which listing an asset has on the landowner's ability to sell it for profit. The restrictions the Act places on assets have very limited impact in practice – the nominating group or other community groups do not gain a 'right of first refusal' as a result of the listing, and there are a number of exemptions in place which restrict its impact on public sector assets in particular. Again, this needs to be clarified so that the Council, landowners, and community groups all have appropriate expectations of their rights and responsibilities under the process.
- Thirdly, it is important to clarify that when the Council is considering disposing of an asset, it will need to balance the direct benefits of community use of the asset against the need to promote economic growth in the Borough and to manage expectations about whether there is a realistic prospect of such an asset being transferred to the community using the Community Right to Bid.

The issues which have arisen from administration of the Act locally therefore suggest the need for clearer guidance on the policy and process, and this is supported by the results of the consultation.

The report also proposes that the Council looks for opportunities to promote its ambitions with regard to community participation through the Community Right to Bid policy and through links between this and the developing Community Asset Strategy, balancing these, as appropriate, against the need to generate income from its own assets and to promote economic growth more broadly.

Recommendations

- 1. That the Committee note the results of the consultation held prior to the election on the Council's approach to Community Right to Bid and the issues that have arisen from administration of the Right locally.**
- 2. That, in light of the confusion surrounding the Community Right to Bid, the Committee agrees the need for clearer guidance to be issued by the Council.**
- 3. That the Committee agree that the Council, where appropriate, should make more strategic use of the Localism Act and the Community Right to Bid in order to achieve its ambitions with regard to community participation and to**

the developing Community Asset Strategy.

- 4. That the Committee agree that New Barnet Community Centre should be listed as an Asset of Community Value and added to the Register, in response to the nomination received in May 2014.**

1. WHY THIS REPORT IS NEEDED

1.1 The Community Right to Bid

The Localism Act 2011 introduced a new right for groups of local people (a community interest group, a Neighbourhood Forum, or a group of at least 21 residents) to nominate buildings or pieces of land which contribute to the 'social interests or wellbeing' of their local communities to be listed on a register of Assets of Community Value, which is maintained by the local authority.

1.2 Nominations can apply to public or private assets, although certain kinds of asset (such as private homes) are exempt.

1.3 The Act asks the Council to consider whether the main use of the nominated asset contributes to social interests or wellbeing, and whether it is realistic to think it will continue to do this (whether or not the use remains exactly the same).

1.4 The Act defines social interests as 'including cultural, recreational, and sporting interests'. There is no further definition, although it is commonly accepted that 'social interests' also includes issues such as health or education.

1.5 The tests the Council must by law apply when assessing Community Right to Bid nominations are:

- 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?

1.6 If the Council deems that the nominated asset meets the criteria, a restriction is placed on the asset. If – and only if – the owner wishes to sell the asset or to lease it for more than 25 years, and if – and only if – a local, constituted community group expresses an interest in taking it on and continuing its community use, then the sale is delayed for a six month period. This is designed to give the community group the opportunity to raise funds to try to purchase the asset – at market value – before it is placed on the open market.

1.7 The owner is under no obligation to accept the community's bid over any other bid. There is no 'right of first refusal' for the community group, only the right to request the initial delay. The owner is free to work with other potential buyers and stimulate the wider market during the delay period. Once the six months

is up, and if no bid is then accepted, there is an eighteen month period during which no one can exercise the Community Right to Bid on that asset.

- 1.8 The Act therefore has no impact unless an asset is being put up for sale or long term lease *and* local feeling about it is strong enough that local people have a constituted group in place to put in a proposal to buy it. Even if all these conditions are in place, the only limitation is the six-month delay, after which the owner can sell the asset to whomever they wish.
- 1.9 The Council has ambitions to promote economic growth in the Borough and assets have an important part to play in supporting this. When deciding how to dispose of its own assets, the Council will always need to balance the immediate needs of the community against these wider priorities and to ensure that it obtains best value from its assets as required of it by the Local Government Act 1972, which may include consideration of the future value of the land, including future receipts from Council Tax were the land to be developed for residential property.
- 1.10 Nothing about an asset's being listed would prevent the Council from selling it on the open market rather than to a community group, should the former option be deemed to offer best value. The Act also gives a number of exemptions to the six-month delay, and among these are disposals where the asset is to be used as a school or for the purpose of providing health services, which limits its potential impact on the Council.
- 1.11 **Links with the planning process**

The Community Right to Bid has limited impact on the planning process. The Council would already take account of the community value of an asset in the course of a planning decision and so a listing would not by itself be a material factor. The planning history of an asset may have some impact on the Community Right to Bid process as, if an asset is not currently in community use, the Council must decide whether the prospect of its coming back into community use is realistic. In such a case, the planning history may be a useful indication of whether the asset is likely to come back into community use or, for example, to be brought forward for development.
- 1.12 **The Community Right to Bid in Barnet**

In Barnet, eight assets have been nominated so far. Six have been listed and one rejected.
- 1.13 Contact with community groups and landowners through the Community Right to Bid process has suggested that both have some misconceptions about the policy and the rights it confers, such as
 - whether listing an asset means it is likely to come up for disposal in the near future (it does not – listing an asset as an Asset of Community Value has no bearing on whether it is likely to come up for disposal in the future, it simply places a restriction on that asset if it does);
 - whether or not communities gain the right of first refusal if it does (they do not – the asset owner is under no obligation to sell or lease the asset to a community group even if they submit a formal bid), and

- whether a community bid will be considered more favourably than one from a private sector organisation (each bid should be considered on its own merits).
- 1.14 This degree of misunderstanding about the Right to Bid means that community groups may have expectations of their rights under the Localism Act which cannot be fulfilled, and may commit resources to developing bids which may not be successful, particularly if an asset has been listed as an ACV but where the owner has no intention to dispose of it.
- 1.15 It also means that community groups who are interested in getting more involved in providing services and activities in their local areas may find it more difficult to access the support and resources which are available to them. As a result the Council may miss opportunities to make use of and increase community capacity.
- 1.16 **Other policy on community assets: Community Asset Transfer**
- There have been other policies aimed at giving the community greater powers to take on and run local assets, such as Community Asset Transfer.
- 1.17 Community Asset Transfer is not the same process as the Community Right to Bid. The main difference is that in Community Asset Transfer, public bodies can proactively choose to transfer the ownership or management of their assets to the community, often at less than market rates.
- 1.18 Community Asset Transfer is a proactive process into which public bodies enter voluntarily and involves only public sector assets, while the Community Right to Bid affects both public and private assets and involves communities establishing a pre-emptive legal right to do something very specific in relation to a building or piece of land.
- 1.19 The requirements on communities and the expectations they can have of taking control of an asset are very different depending on which process is being used, so it is important that the meaning of each policy is made clear to communities.
- 1.20 Contact with the community through the Community Right to Bid process has suggested that there is confusion about the difference between it and Community Asset Transfer.
- 1.21 **Defining social interests and wellbeing**
- ‘Social interests or wellbeing’ is very broadly defined in the Localism Act, and because of this its practical meaning is still emerging.
- 1.22 Some local authorities have offered further definitions and guidance to communities about what they might consider to constitute social interests or wellbeing.
- 1.23 It is important that communities are as clear as possible about what this means so that they understand whether assets are likely to pass the statutory tests and do not spend time nominating those which do not.

1.24 The Council has felt that because the Localism Act's criteria, as defined by the Government and set out in paragraph 1.5, are so broad, the way in which nominations are assessed could be made more responsive to the needs of Barnet's residents.

1.25 To do this, the Council proposed amending local policy in order to give more information about local priorities which contribute to social or community wellbeing, and how it would take these and other criteria into account when considering whether to list an asset.

1.26 **Consultation and responses**

This draft policy was consulted on between 11 February and 24 March 2014.

It proposed that:

- Local priorities should be defined with reference to one or more of the following:
 - The distinctive character of the local area
 - The priorities set out in the Council's Corporate Plan
 - The priorities set out in the Council's Core Strategy
 - The needs of the Borough's growing population.
- When assessing nominations against the statutory tests, the Council should consider the following
 - Whether it was realistic to think the asset's main use would continue its contribution to social interests or wellbeing, or would resume this within the next five years
 - Whether its contribution was sustainable
 - The commercial viability of the nominating group, including their ability to raise funds.

1.27 There were 29 responses to the consultation, and the overall response to the proposals was unfavourable.

1.28 Respondents argued that:

- 'Local area' does not mean the whole Borough and so truly local priorities for a community or area might not be the same as those set out in overarching strategies for the Borough
- Residents are likely to have better knowledge of these local priorities than the Council does, and nomination of an asset might actually be evidence of this
- The Act already allows the Council to consider whether an asset's contribution is sustainable or realistically likely to continue, while the commercial viability of the nominating group is irrelevant.

1.29 **Discussion**

The Localism Act implicitly supports the view that social interests or wellbeing should be defined at the lowest possible level – certainly below local authority level. The Act devolves its power to local communities, not local authorities.

1.30 The Council's proposals referred to priorities which have been set at Borough level, but while the Council might still need to consider those priorities when

considering an asset's contribution to social interests or wellbeing, it would need to do so only if they are relevant to the particular local community in question.

- 1.31 The commercial viability of the nominating group is not usually relevant at nominating stage, though might become so if a group were trying to make the case for a future social or community use of an asset and needed to show that this was based on a sustainable business model.

Recommendation: The Council should produce clear guidance to accompany the Community Right to Bid policy:

- explaining the criteria which might be considered in relation to nominations as and when these are relevant to the community or local area in question.
- giving examples of when and how these criteria might be relevant, reflecting the points in paragraphs 1.30 and 1.31 above.
- clarifying how a listing will be taken into account when an asset is disposed of, including the need to balance considerations of best value and economic growth against the immediate needs of voluntary and community groups.
- setting out the limitations of the Right for both communities and landowners.
- clarifying the relationship between the Right and other policy areas such as Community Asset Transfer.
- signposting community groups, through the appropriate routes, to information about available support for their activities, including routes by which they may explore taking control of assets.

Recommendation: the Council should make strategic use of the Community Right to Bid process as an opportunity to engage with communities, to:

- build our understanding of priorities within small local areas.
- identify existing capacity.
- engage with local groups to identify and signpost them to support where this would benefit both them and the Council.
- identify issues relating to assets to contribute to the Council's Community Participation Strategy and Community Asset Strategy.

1.32 **Specific nominations and the nomination of New Barnet Community Centre**

Specific nominations to register an asset as an Asset of Community Value are made to the Council using a nomination form. Nominations need to be made by a community interest group, a Neighbourhood Forum, or a group of at least 21 residents. The Council has eight weeks to make a decision on the nomination and to respond. Previously, these decisions were taken by the Cabinet Member for Customer Access and Partnerships. Under the Committee system, future decisions are now to be taken by the Community Leadership Committee.

- 1.33 The Council has received a nomination from New Barnet Community Association to list the New Barnet Community Centre as an Asset of Community Value.
- 1.34 The centre is a community hub from which the Community Association carries out a range of activities supporting local wellbeing. These are delivered to a broad cross-section of the community including children, young people, and adults with learning disabilities. The asset therefore passes the first statutory test, furthering the community's social interests or wellbeing, and it is recommended that the asset is recognised as an Asset of Community Value and added to the register.
- 1.35 The New Barnet Community Association's lease runs until 2019, suggesting that the current use will continue for the foreseeable future and meaning that the asset passes the second statutory test.

Recommendation: New Barnet Community Centre should be listed as an Asset of Community Value and added to the Council's Register.

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is more in line with both the spirit of the Localism Act and the views from the consultation if, rather than making a formal change to the policy to restrict listing in line with Borough-wide priorities, the Council instead issues guidance clarifying the priorities we might consider if they were relevant for the particular local area.
- 2.2 Better guidance about the Community Right to Bid, and coordination between this and other processes relating to community assets, would help resolve issues around communities' expectations of their rights under the Act and the need to signpost them to other resources.
- 2.3 New Barnet Community Centre passes both statutory tests required under the Localism Act for it to be considered an Asset of Community Value.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Council could adopt the draft policy despite the responses to the consultation, but this would mean ignoring the stated views of residents interested in the policy area.
- 3.2 The Council could make no changes at all to the policy or process, but this would miss opportunities to make the process run more smoothly for residents and to realise additional benefits for the Council.

4. POST DECISION IMPLEMENTATION

- 4.1 The guidance will be prepared, reviewed with residents, published on the Council's website, and communicated to the community.

- 4.2 The strategic uses of the Localism Act will be developed within the Council's Community Participation Strategy and Community Asset Strategy.
- 4.3 New Barnet Community Centre will be added to the register of Assets of Community Value and the nominating group informed of the outcome.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 This decision contributes to the Corporate Plan's objective to promote family and community wellbeing and support engaged, cohesive and safe communities by helping communities understand their rights more effectively and gain control of assets where it is appropriate for them to do so.

5.1.2 The decision will also improve local people's life opportunities by empowering them, contributing to the Health and Wellbeing Strategy's priority to increase wellbeing in the community.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 There may be financial implications arising from the listing of Council assets, such as the impact of any time delay if the Council wishes to dispose of a listed asset, though these are likely to be limited for the reasons set out above in paragraphs 1.7-1.10. These will be considered as part of the development of the Council's Community Asset Strategy.

5.2.2 Improved guidance should reduce the demand of processing nominations on Council services. It may entail greater input from other services as communities become more involved with the Council but this involvement will bring its own benefits.

5.3 Legal and Constitutional References

5.3.1 Council Constitution Part 15, Responsibility for Functions, Annex A states the terms of reference of the Community Leadership Committee, including 'to approve any non-statutory plan or strategy within the remit of the Committee that is not reserved to full Council or Policy & Resources'.

5.4 Risk Management

5.4.1 There is an inherent risk within the Community Right to Bid process that other initiatives will be endangered by the six month delay period, should that be triggered. This is to be mitigated by clearer awareness of the limitations of rights under the Act, and by work with communities to enable them to access assets by other paths where this is desirable and possible.

5.4.2 There is a risk that the guidance will not be clear enough to resolve these issues, which will be mitigated by testing it with residents.

5.5 Equalities and Diversity

- 5.5.1 The recommended guidance will make the process clearer and more accessible to all, promoting equality of opportunity.
- 5.5.2 Strategic use of the Community Right to Bid will enable the Council to improve its understanding of the needs and priorities of the local community, and promote good relations between different groups.
- 5.5.3 The nomination of New Barnet Community Centre foregrounds the Community Association's commitment to equality of access to the building.

5.6 Consultation and Engagement

- 5.6.1 These proposals have been shaped in response to consultation carried out with residents, as detailed in the body of the report.
- 5.6.2 Residents will be involved in reviewing the guidance to ensure it is clear and comprehensible.

6. BACKGROUND PAPERS

- 6.1 The Summary DPR setting out the reasons for the consultation is attached as Appendix 1.