

**REPORT TO THE MEETING OF THE EXECUTIVE 5 DECEMBER 2012**

**PORTFOLIO: OVERALL STRATEGY AND POLICY DIRECTION**

**REPORT FROM HEAD OF LEGAL, ESTATES AND MEMBER SERVICES**

**SUBJECT: COMMUNITY RIGHT TO BID**

**1 DECISION BEING RECOMMENDED**

- 1.1 That the procedures outlined in this report are approved to ensure the Council complies with the statutory obligations placed on it in relation to the Community Right to Bid, including authority to determine appeals and claims for compensation.
- 1.2 That information on any buildings or other land to be included in the list of assets of community value be included in the Members' Bulletin.

**2 REASON/S FOR RECOMMENDATION**

- 2.1 So that arrangements are introduced to accord with statutory guidance.

**3 SALIENT INFORMATION**

- 3.1 The Assets of Community Value (England) Regulations 2012 provide local community groups with an opportunity to bid for buildings or other land when they come onto the open market, which they consider important to their community's social well-being. The Act does this by providing an early warning system of an intention by an owner to sell such assets and enables the sale to be delayed for up to six months to allow a community group the time to put together a bid to buy the asset.
- 3.2 The right applies to public and privately owned land (and there are very few exceptions), residential land (including land connected to a residence and land used by statutory undertakers for transport and utility purposes) being examples. The provisions do not require the landowner to sell the asset to a community group nor force any sale; they merely provide a window of opportunity for a community group to prepare and submit a bid to buy the asset.
- 3.3 A community group (a Parish Council or a voluntary or community body with a local connection, i.e., an unincorporated body whose members include at least 21 individuals and which does not distribute any surplus it makes to its members, a charity, etc.) may make a 'community nomination' to the Council nominating a building or other land for inclusion in the Council's list of assets of community value.
- 3.4 The regulations set out what is required in a nomination, as follows:-

- A description of the nominated building or land including its proposed boundaries;
  - A statement of all the information, which the nominator has with regard to the names of the current occupants of the land and the names of all those holding a freehold or leasehold stake in the land;
  - The nominator’s reason for thinking that the asset is of community value; and
  - Evidence that the nominator is eligible to make a community nomination.
- 3.5 A draft of the proposed nomination form is attached to the report as appendix 1.
- 3.6 Upon receiving such a nomination the Council has eight weeks to decide whether or not the land should be included in the list.
- 3.7 The Localism Act defines an “asset of community value” as an asset that ‘furthers the social well-being or social interests of the local community’. ‘Social interests’ cover cultural, recreational and sporting assets, but aren’t limited to these.
- 3.8 It is vital that communities can demonstrate that the asset’s main use currently falls within this definition and show that it is realistic to think that the main use of the asset can continue to meet this definition (even if the exact use is different).
- 3.9 Alternatively, communities could demonstrate that the main use of the asset in the recent past has fallen within this definition and it is realistic to think that there is a time in the next 5 years when its main use could again fall within this definition.
- 3.10 So a long-derelict site, which an enterprising community group wishes to develop as a community facility, is unlikely to be considered an “asset of community value” because it fails to meet the requirements on current or recent use. Similarly, the main use of an agricultural field, which is used once or twice a year for a village carnival, wouldn’t have a main use that meets the “assets of community value” definition.
- 3.11 Whilst the regulations have left it to individual Councils to decide on whether a nominated asset is in fact a community asset, it is proposed that nominations be considered by the Head of Legal, Estates and Member Services initially to confirm that the application fulfils the criteria and to seek the views of the local Parish Council (if they are not the applicants), the owner and the Ward Councillors. A Portfolio Holder report would then be prepared.
- 3.12 If the Council decides to include an asset on the list it must notify the owner of the land. Once notified, the landowner can request the Council to carry out an internal review and it is proposed that the Appeals Committee assumes this

role. The landowner can request that the internal review is dealt with by way of an oral hearing and may appoint a representative. There is no right for a community group to request an internal review if the application is not accepted but Authorities are required to maintain a list of assets that have been unsuccessfully put forward.

- 3.13 If the landowner is not satisfied with the outcome of the internal review they can appeal to the First Tier Tribunal.
- 3.14 The impact of land being listed will be felt when the landowner wishes to dispose of the land (either by sale of the freehold or a lease of over 25 years). If the landowner wishes to sell the land they must inform the Council of their intention to do so. The Council will notify the original nominating community group and the Parish Council (if they are not the nominator). The landowner is then not able to dispose of the land until a six week “interim moratorium period” (beginning with the date the landowner gives notification of intention to sell) has ended without any community interest group making a written request to be treated as a potential bidder of the land. Where such a request is made during the six week period the landowner cannot dispose of the asset until the six month “full moratorium period” has expired (beginning with the date the landowner gives notification of intention to sell).
- 3.15 The regulations provide that an owner or former owner (other than the public authority) of listed land or previously listed land is entitled to be compensated by the Local Authority “of such amount as the Authority may determine” in the circumstances where the person making the claim “has incurred loss or expense in relation to the land, which would be likely not to have been incurred if the land had not been listed”. No limit is set upon the amount of compensation that can be claimed, provided the owner can show that they have incurred the loss from the delay directly due to the listing. The advice note published by the Government on the legislation relating to assets of community value indicates that the Government will meet the costs of compensation payments of over £20,000 of compensation costs in a financial year.
- 3.16 Other than publishing the list of successful nominations, there is no statutory requirement on the Council to promote the scheme.
- 3.17 The Council needs to ensure that arrangements are in place for administering the scheme in response to community nominations and, once a nomination is successful, publishing the statutory list of the assets(s) concerned.
- 3.18 A diagram showing the stages of the process is attached to the report as appendix 2.

#### **4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Council is required to comply with the legislation.

**5 LEGAL IMPLICATIONS**

- 5.1 The Community Right to Challenge and Community Right to Bid are statutory schemes, which the Council must implement in accordance with the Legislation and Statutory Guidance.

I confirm that the above recommendation does not depart from Council policy and that appropriate consideration has been given to any budgetary and legal implications.

SMT Lead Officer Signature: \_\_\_\_\_

**Head of Legal, Estates and Member Services**

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**Background Papers:-**

None.

For further information please contact Albert Bugeja (Head of Legal, Estates and Member Services) on:-

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If you would like this report in large print, Braille or another language please contact 01702 318111.

## Nomination for listing as an Asset of Community Value

### Nominated Land

<p><b>Area to be covered</b></p> <p>Please describe the nominated land including its proposed boundaries and exact location, address, postcode and a map attachment if possible.</p>	
<p><b>Ownership</b></p> <p>Please state all the information you have on:-</p> <ol style="list-style-type: none"><li>1. The names of current occupants of the land, and</li><li>2. The names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;</li></ol> <p>Please include a copy of the land registry entry where possible.</p>	

## **Community Value**

Your reasons for thinking that Rochford District Council should conclude that the land is of 'community value', having regard to the definition in the Localism Act.

Reference should be made to the following:-

- Current or recent use of the land and/or building
- How the nominated land and/or building meet the social interests of the local community as a whole
- Why the nominated land and/or building usage is seen as having social value for the local community
- How strongly the local community feel that the land and/or building usage furthers their social interest.

Please attach any relevant documents to the application form.

**Eligibility to Nominate**

Please provide evidence that you meet the definition of a community nominator as set out in the regulations (i.e. a Parish Council or Voluntary or community body with a local connection).

If an unincorporated group please provide a list of 21 names on the local electoral register.

**Your details**

Parish	
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Community Area	
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Your Organisation	
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Contact Name	
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Position held	
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Address	
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Postcode	
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Telephone	
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Email	
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I confirm that all information provided is accurate and complete

Name	
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Signature	
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Date	
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