

REPORT TO THE EXECUTIVE MEETING

Meeting: Executive
Date: 25th March 2013
Subject: Assets of Community Value
Report of: Matthew Bills, Neighbourhood and Green Spaces Officer
Portfolio Holder: Cllr Janette Ackerley
Status: For decision

1 Purpose of the Report

- 1.1 To inform executive of Harborough District Council's responsibilities in promoting assets of community value, and to seek approval for policies and procedures on discharging Council responsibilities with regard to this. This includes the following:
- a. A list of Assets of Community Value to be compiled as required
 - b. The policies by which the list will be managed and responsibilities discharged (Appendix 5)
 - c. Criteria for determining when an asset is to be included in the list (Appendix 5)
 - d. Management, by officers, of the list of assets when an approach has been made by the community, including an appeals process (Appendix 5)
 - e. A toolkit for assisting the community in applying for and managing assets of community value (Appendix 6)

2 Recommendations:

- 2.1 That members note the Council's duties with regard to Assets of Community Value and the Localism Act 2011.
- 2.2 That members approve the compilation and management of a list of Assets of Community Value within the [Localism Act 2011 Part 5 Chapters 2 and 3](#) and the [Assets of Community Value \(England\) Regulations 2012](#).
- 2.3 That members consider and approve the proposed policies and regulation as required by chapter 3 of the Localism Act 2011 and contained in Appendix 5.
- 2.4 Members note and approve the toolkit for assisting the community in applying for and managing assets of community value in Appendix 6.

3 Summary of Reasons for the Recommendations

- 3.1 Community Asset Transfer is an established mechanism used to enable the community ownership and management of publicly owned land and buildings. The Community Right to Bid allows communities to bid to purchase privately owned assets, within certain criteria, and obliges Local Authorities to maintain a list of Assets of Community Value.
- 3.2 The Government has introduced a Community Right to Bid through the Localism Act 2011. The Community Right to Bid allows communities and parish councils to nominate buildings or land for listing by the local authority as an asset of community value.
- 3.3 The Local Authority is obliged to maintain a list of Assets of Community Value ([Localism Act Section 87 \(1\)](#)) however it is for a local authority to decide the form and contents of its list of assets of community value. ([Localism Act 2011 Section 87 \(6\)](#)).
- 3.4 The lists must be published by making it available for free inspection at a place in its area and by providing one free copy to any one person on request ([Localism Act Section 94](#)) Inclusion in the list is a local land charge ([Localism Act Section 100](#) (prospective legislation)) and is detailed in [schedule 4 of Assets of Community Value \(England Legislation \) 2012](#)
- 3.5 The Authority should make provision for assisting Community Groups when applying to transfer an Asset of Community Value, and as such there will be a requirement for an approved process to give consistency of approach and understanding for Officers and Community alike.
- 3.6 A toolkit of information will provide a sufficient resource of useful information to enable communities to 'self help' and reduce the burden on officer time.

4 Impact on Communities

- 4.1 The Government aims to address concerns that when local buildings and land that are of great value to the community, such as a village hall or local pub, go up for sale they are purchased by a private bidder before the community has the opportunity to put together the funding to take it over themselves.
- 4.2 An asset can be listed if its principal use furthers (or has recently furthered) their community's social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future.
- 4.3 When a listed asset comes to be sold, a moratorium on the sale (of up to six months) may be invoked, providing local community groups with a better chance to raise finance, develop a business plan and to make a bid to buy the asset on the open market

5 Key Facts

- 5.1 Community ownership of assets is not new and has a well documented history going back hundreds of years. However community ownership and management of land and property has been given more weight as a result of influential reports, Government policy and the work of community based organisations.
- 5.2 The Community Right to Bid (Assets of Community Value in legislation) is one of a raft of new initiatives introduced in the Localism Act 2011, and came into force when it had completed its final Parliamentary stage in autumn 2012.
- 5.3 The Community Right to Bid allows communities and parish councils to nominate buildings or land for listing by the local authority as an asset of community value. An asset can be listed if its principal use furthers (or has recently furthered) their community's social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. When a listed asset comes to be sold, a moratorium on the sale (of up to six months) may be invoked, providing local community groups with a better chance to raise finance, develop a business plan and to make a bid to buy the asset on the open market.
- 5.4 A brief background to the Localism Act and other parts of the legislation can be found at Appendix 3
- 5.5 Encompassed within the Community Right to Bid legislation, Local Authorities must keep a 'List of Assets of Community Value'; the legislation sets out in detail the process they must enter into and what information they must include. The legislation also outlines the definition of an asset of community value, what groups can legitimately nominate, the appeals process for land owners, timescales for groups interested in buying land or property on the list, and compensation available to the owners of land or property on the list.
- 5.6 Further detailed information concerning the legislation can be found at Appendix 4.
- 5.7 A building or other land is an asset of community value if its main use has recently been, or is presently, used to further the social wellbeing or social interests of the local community and could do so in the future. The Localism Act states that "social interests" include cultural, recreational and sporting interests. The regulations list a number of situations where land or buildings are exempt from inclusion on the list or operation of the moratorium. These include homes, hotels, assets being transferred between kindred businesses, and Church of England land holdings.
- 5.8 A variety of community organisations can nominate land and buildings for inclusion on the list: parish councils, neighbourhood forums (as defined in Neighbourhood Planning regulations), un-constituted community groups of at least 21 members, not-for-private-profit organisations (e.g. charities). Community organisations must also have a local connection, which means

their activities are wholly or partly concerned with the area, or with a neighbouring authority's area.

- 5.9 If a community organisation nominates land or buildings that meet the definition of an Asset of Community Value, and the nomination process was undertaken correctly (i.e. came from a group entitled to nominate), then the Local Authority must include the asset on its list. Assets will remain on the list for at least 5 years.
- 5.10 If the council decides that the nomination doesn't meet the criteria, then they must write to the group who nominated the asset and provide an explanation. They must also keep a list of unsuccessful nominations for at least 5 years. Landowners can ask local authorities to review the inclusion of an asset on the list, and this triggers an appeal to an independent body, called a First Tier Tribunal.
- 5.11 The Community Right to Bid does not give the right of first refusal to community organisations to buy an asset that they successfully nominate for inclusion on the local authority's list. It does however give time for them to put together the funding necessary to bid to buy the asset on the open market.
- 5.12 If an owner wants to sell property/land that is on the list, they must tell the local authority. If the nominating body is keen to develop a bid, they can then call for the local authority to trigger a moratorium period, during which time the owner cannot proceed to sell the asset. There are two moratorium periods. Both start from the date the owner of the asset tells the local authority of their intention to sell. The first is the interim moratorium period, which is 6 weeks, during which time a community organisation can decide if they want to be considered as a potential bidder. The other is a full moratorium period, which is six months, during which a community organisation can develop a proposal and raise the money required to bid to buy the asset.
- 5.13 The regulations list some situations where the Moratorium will not be applied, even when it is an Asset of Community Value on the list. These exceptions include the sale of assets from one partner or another (for example in a divorce).
- 5.14 In August 2012, the government announced grant funding which community organisations can apply for in order to make use of the Community Right to Bid or Community Asset Transfer. The Social Investment Business is managing the £16 million grants programme 'Community Ownership and Management of Assets' on behalf of the Department for Communities and Local Government.
- 5.15 Not all land and buildings are assets. Land and buildings for transfer only constitute being assets if they are capable of generating net revenues or if there is a stable source of subsidy in the form of grants or endowments from elsewhere. Where there has been underinvestment it may mean that significant refurbishment or maintenance costs are required. Restrictions on future use may mean that well intentioned plans are simply not feasible. If

projects are to be successful at delivering community benefit for the long term, an objective assessment of viability is important.

- 5.16 The Authorities obligations concerning Assets of Community Value are complex, and additional regulations will need to be adopted by HDC to meet the requirements that are set out in the Assets of Community Value (England) Regulations 2012.
- 5.17 An information sheet has been prepared for parishes which will form part of the toolkit to help voluntary and community groups through the process. This is contained at Appendix 6a.
- 5.18 A nomination form has been drafted for communities to apply for an asset of community value to be included on the list. This is contained at Appendix 6b
- 5.19 Frequently asked questions have been prepared for general enquiries about the Community Right to Bid process, the appeals process if those involved are not happy with the Authorities decision and questions regarding the disposal of an asset. The sheets can be found at Appendix 6c and 6d

6 Legal Issues

- 6.1 Assets of Community Value (**ACV**) are a creation of [Chapter 3](#) of the Localism Act.
- 4.1 There is an obligation to maintain lists of land that is of community value ([S.87\(1\)](#)) and land which has been the subject of unsuccessful attempts to have it listed. ([S.93\(1\)](#)). Regulations provide for the form in which the list is kept, the contents of each entry, how the list is to be modified as required and for removal of entries. Save as provided for by regulations ([Regulation 6](#)) the local authority can decide on the form and contents of the list. ([S.87\(6\)](#)). The lists must be published by making it available for free inspection at a place in its area and by providing one free copy on request. ([S.94](#)). Inclusion in the list is a local land charge. ([S.100](#)) and also detailed in [schedule 4 of Assets of Community Value \(England Legislation \) 2012](#).
- 6.2 Land of community value falls into two categories. Firstly the existing use category i.e. land is of community value if, ***in the opinion of the authority***, the current non-ancillary use furthers the social wellbeing or social interests of the local community (social interests includes cultural, recreational and sporting interests) ([S.88\(6\)](#)) and it is realistic to think that there can continue to be a non ancillary use serving those objects. ([S.88\(1\)](#)).
- 6.3 Two questions are relevant here
 - 1) When is a use “non-ancillary”
 - 2) What evidence needs to be presented to the local authority in determining whether in their opinion a relevant use is “realistic”.

- 6.4 The Localism Act is silent on both these issues. It is therefore necessary for the Authority to compile criteria for inclusion on the list of community assets so that a consistent approach can be applied.
- 6.5 The second category of land in community value is the land in past use. If in the opinion of the local authority there is a time in the recent past when an actual non-ancillary use fulfilled the two objectives and it is realistic to think that in the next 5 years there could be a non-ancillary made which met either of the two objectives then it is land of community value ([S.88\(2\)](#)). The Authority must also determine what 'recent use' is as the Act is silent on this point.
- 6.6 Regulations provide for excluded categories of land and buildings ([The Assets of Community Value \(England\) Regulations 2012 \(schedule 1\)](#)) and in framing these categories matters likely to be relevant include ownership, occupation, the use to which the buildings and land are put and value for any purpose.
- 6.7 Land may only be included in its list of ACV in response to a community notification or where permitted by regulations. ([S.89\(1\) & \(3\)](#)) A community nomination is a nomination made by a parish council (England) or community council (Wales) or by a voluntary or community body with a local connection. There is no definition of voluntary or community body in the Localism Act but regulations made by the Assets of Community Value (England) Regulations 2012 define this ([Regulation 5](#)) and deal with the conditions which need to be met to establish a local connection. ([S.89\(4\)](#))
- 6.8 On receipt of a community nomination, the local authority must consider it and accept it if the land is in the authority's area and satisfies the actual or past use definitions. It must then be entered on the list of ACV. ([S.90\(1\)-\(4\)](#)) Where a nomination is unsuccessful, the authority must provide written reasons for its decision not to include the land.
- 6.9 Written notice of changes to the list of ACV (inclusion or removal) must be given to the owner, occupier, the person making the nomination and any other specified persons. ([S.91\(2\)](#)) unless it is not reasonably practicable to give a notice, in which case the authority must instead take reasonable alternative steps for the purpose of bringing the notice to the person's attention. The notice must "*draw particular attention*" to the consequences of the inclusion of the land and the right to ask for a review of its inclusion. A review may be requested by the owner (not occupier) of the land and regulations set a time limit for the review request to be made [Schedule 2](#). Regulations govern the procedure to be followed on review; these include provision for the decision on review to be taken by a different and more senior person than the original, whether the person making the appeal is entitled to an oral hearing and for provision of a right of appeal on the decision of the review. [Schedule 2 sections 3 to 9](#)
- 6.10 On receipt of a review request made in time, the authority is obliged to review the decision and to give notice of its decision and the reasons for it. ([S.92\(2\) & \(3\)](#)) Where the decision is that the land has been wrongly included in the list,

the authority must remove it and serve notice on the person who originally nominated it. [\(S.92\(4\)\)](#)

- 6.11 Land once entered on the list is to be removed after 5 years (or such other period as the appropriate authority provides by regulation) unless it has already been removed. [\(S.87\(2\) in accordance with provision made in regulations\)](#)
- 6.12 Where land is included on the list of land nominated by unsuccessful community nomination, it will stay on the list for at least 5 years. [\(S.93\(3\)\)](#)
- 6.13 The consequence of inclusion of land in the list of ACV is that the owner is prohibited from entering into relevant disposal (i.e. disposal of the freehold or grant/assignment of a qualifying leasehold with vacant possession) [\(S.96\(2\)\)](#) unless three conditions (i, ii and iii below) are met or the disposal is an excluded disposal.
Those conditions are:
- i) the owner has notified the authority in writing of his wish to enter into a relevant disposal;
 - ii) the interim moratorium period has ended without the local authority having received a written request from a community interest group to be treated as a potential bidder in relation to the land or the full moratorium period has ended; and
 - iii) the protected period has not ended.
- 6.14 This means that what is provided for is a six week period for a potential bidder status to be notified and 6 months from the date of notice of disposal for the community interest group to purchase the land. After the full moratorium period has expired the landowner is free to dispose of the land to anyone until the protected period expires. Thereafter, the procedure has to be repeated.
- 6.15 “Community Interest Group” is defined by [Regulation 12](#). They have six weeks from the date the landowner gives notice of disposal to request to be treated as a potential bidder [\(S. 95\(6\)\)](#) and if they do, 6 months from the date of notification to acquire the land.
- 6.16 Certain disposals are excluded. Namely disposals:
- (a) by way of gift, disposal by personal representatives of a deceased person in satisfaction or entitlement under a will or on intestacy;
 - (b) by personal representatives to pay the debts of the deceased or taxes, costs of administering the estate or legacies;
 - (c) from one member of a family to another; (To a spouse, civil partner or lineal descendant of a grandparent – [s.95\(7\)](#))
 - (d) of land part of which is listed in the list of ACV and part of which is not; (A “part-listed disposal” which will be described in regulations)
 - (e) of land in business use sold at the same time as the business as a going concern;
 - (f) occasioned by a person ceasing to be or becoming a trustee;
 - (g) by trustees in satisfaction of an entitlement under the trusts or in the exercise of powers under the trust to re-settle trust property;

- (h) occasioned by a person ceasing to be or becoming a partner in a partnership;
- (i) in such other cases as regulations may prescribe. ([See section 95\(5\) for the full list of excluded disposals.](#))

6.17 On receipt of a notice to make a relevant disposal, the local authority must:

- i) enter the notice,
- ii) the date they received it
- iii) the ends of the initial and full moratorium periods
- iv) the protected period on the list. ([Section 97\(2\)](#))

6.18 They must also give written notice to the person who made the nomination for inclusion on the list and make arrangements for publicity in the area where the land is situated. ([Section 97\(3\) & \(4\)](#))

6.19 Where a community interest group makes a written request to be treated as a potential bidder within the 6 week initial moratorium period, the local authority must pass on the request or the details of it to the owner as soon as reasonably practicable. ([Section 98\(2\)](#))

6.20 Provision for compensation for loss arising in connection with the Assets of Community Value provisions may be made by regulations of the Authority. ([Section 99](#) and [Regulation 14](#))

6.21 Provision will need to be made for enforcement by regulations. This will include provision to prevent or reduce the likelihood of contraventions and the consequences of such breaches including the setting aside transactions made in breach of [section 95\(1\)](#). ([Section 101\(1\) & \(2\)](#))

6.22 The regulations and proposed policies wording for HDC to adopt is contained at Appendix 5 for consideration by the Executive.

7 Resource Issues

7.1 The new responsibilities for the Authority will be an additional burden on officer time. The additional work, if received in a controlled manner, should be manageable within existing resources. There, however, may be peaks of work if several nominations are received within a short period, however as indicated in paragraph 9.2 it is planned to roll out information to Parish Council and Community Interest Groups on an individual basis, keeping the risk of an influx of numerous applications to a minimum. Those sections affected will be Legal Services, Planning Policy, Land Charges and possibly Enforcement.

7.2 The Authority is currently recruiting a fixed term corporate asset manager who will be an additional resource for asset management; the Parish Liaison Officer post and the Community Partnerships team will also have a role in promoting and managing assets of community value.

8 Equality Impact Assessment Implications/Outcomes

- 8.1 An Equality impact assessment has been completed and is contained at Appendix 7. DCLG completed an impact assessment for the Community Right to Bid which is attached at Appendix 7a

9 Impact on the Organisation

- 9.1 The duties placed on the District Council will involve officer time in preparing and maintaining the list of Assets of Community Value. The sections likely to be involved will be Strategic Planning, Procurement, Enforcement and Land Charges.
- 9.2 The community rights within the Community Right to Bid legislation will be communicated to parish Councils and other community interest groups on an individual basis. This should help to spread the nominations received for Assets of Community Value over a period of time and reduce the pressure on limited District Council resources to manage the process.

10 Community Safety Implications

- 10.1 There are none associated with this report

11 Carbon Management Implications

- 11.1 There are none associated with this report

12 Risk Management Implications

- 12.1 There is a reputational risk to the Authority if the due process is not followed and assets of importance to the community are sold or disposed of without the opportunity given to communities to bid.
- 12.2 There is a risk that compensation may be claimed by asset owners for loss associated with the Community Right to Bid. This is a reputational risk for the Authority as the HDC policy states that compensation will not be paid to asset owners.

13 Consultation

- 13.1 Consultation has taken place with members of SMT concerning the proposal. The Service Managers comment on the resourcing aspect and shared information obtained from Uttlesford District Council. In this case the Community Right to Bid had been heavily promoted without necessary staff resources and the Planning Manager had been forced to handle the whole of the workload. Hence the decision to promote the list of Assets of Community Value on an individual basis. Experience of other Authorities had also shown that it was necessary to ensure the right information was collected in the first place. The advice of SMT was that HDC should manage carefully

communications on this this initiative in order to avoid a large workload at the outset.

14 Options Considered

14.1 There is not an option to do nothing, as the obligations within this report are set out in legislation

15 Background Papers

15.1 Localism Act 2011

Previous report(s): *none*

Information Issued Under Sensitive Issue Procedure: N

Ward Members Notified: N

Appendices: *list any appendices here including title and filename in brackets (e.g. Performance Data 2010 (perfdata.doc)).*

1. **Community Right to Bid Flowchart for Nomination of Asset**
2. **Community Right to Bid Flowchart for Disposal of Asset**
3. **Definitions of Localism Act, and other Community Rights**
4. **Obligations for HDC as set out in legislation**
5. **Proposed policy wording for Community Right to Bid Process**
- 6a. **HDC Community Right to Bid Information Sheet**
- 6b. **HDC Community Right to Bid Nomination Form**
- 6c. **FAQs for Appeals Procedure Community Right to Bid**
- 6d. **FAQs for Disposing of an Asset of Community Value**
7. **Equality Impact Assessment Community Right to Bid**
- 7a. **DCLG Impact Assessment**