

Bath & North East Somerset Council

MEETING:	Economic and Community Development Policy Development and Scrutiny Panel
MEETING DATE:	27 September 2012
TITLE:	Assets of Community Value- Update
WARD:	ALL
AN OPEN PUBLIC ITEM	
List of attachments to this report: NONE	

1 THE ISSUE

1.1 This report updates the Panel on the progress in implementing the provisions of the Localism Act relating to assets of community value.

2 RECOMMENDATION

The Policy Development and Scrutiny Panel is asked to agree that:

2.1 The update information contained in the report be noted

2.2 Members consider and comment on the guidelines for identifying assets which further the “social wellbeing or social interests of the local community” set out in Paragraph 4.13

2.3 Members note the work of the Resources Policy Development and Scrutiny Panel in relation to community assets

2.4 The outcomes of the Panel’s discussions are reported to October Cabinet as part of the report on this issue

2.5 The implementation of these provisions be monitored and a report be prepared following 12 months of operation

3 FINANCIAL IMPLICATIONS

3.1 There are no direct financial implications arising from this report. However, there are financial implications arising from the implementation of these provisions, which relate to:

- Set-up costs – this has mainly required staffing resources within Policy and Partnerships and Property Services with the involvement of other services across the Council as required
- Ongoing management costs - this is dependent on scheme take-up but it is currently considered that this can be absorbed within current staffing budgets across relevant services
- Compensation arrangements- there are currently no estimates of the potential cost of operating the compensation scheme in Bath and North East Somerset as this will depend on a range of factors including take-up of the scheme, number of listed properties coming up for sale and the level of compensation determined in particular circumstances. The Government have stated that authorities will be indemnified to 2015 against any compensation claims over £20k (including a number of individual claims adding to more than £20k).

3.2 Cabinet allocated at its meeting of May 2012 a sum of £10k as a contingency for unresourced provisions of the Localism Act within the Community Empowerment Fund, This will be the first call for any specific additional resources required for implementation of the scheme. The Government have also stated that funding for the scheme will be made available to local authorities through “new burdens” but no further information is available on this at present.

4 THE REPORT

4.1 The Panel at its March meeting received an update report on the Localism Act and resolved to request officers to provide regular updates on the provision of Localism Act, especially on issues that are within Panel’s remit. The Resources Policy Development and Scrutiny Panel received a report at their July meeting on the wider issue of the how the Council can engage local communities through its own community assets. An update report setting out examples of practice in other areas was presented to the Resources Panel on 17th September and discussions at that meeting will be reported to this Panel.

4.2 After some delay, the national regulations arising from the Localism Act on “assets of community value” have now been published. This provision places a duty on Councils, from October 12th 2012, to maintain a local register of such assets, using criteria laid down in the Act and regulations. Once an asset is placed on the register specific provisions apply when there is a proposal for sale in order to provide an opportunity for the community to prepare a “bid” for the asset. Assets of Community Value can be owned by public bodies (including the Council) or by private concerns.

4.3 A report will be presented to Cabinet on 10 October recommending the process to be adopted by the Council for implementing these provisions. In particular, the

Council will need to be clear on the process and criteria for placing assets on the register.

- 4.4 The Government's aim in introducing these provisions is to help local community groups to protect uses within buildings or land which are of importance to their community's social well-being. Councils must list a nominated asset if it considers that it furthers the social well-being or social interests of the community, or has done so recently and it is realistic to think that it will continue to do so. The asset will remain on the list for up to five years. If the asset still meets the definition after five years, it can be renominated and relisted
- 4.5 If the owner of a listed asset wants to sell it, Community Interest Groups (defined in regulations and including parish councils in the area the asset sits) will then have six weeks to lodge a non-binding expression of interest, in which case a window of opportunity of a further four and a half months-making a total of six months-will come into effect. This will give more time to prepare a Business Plan and raise the necessary capital. During this "window", the owner may market and pursue discussions about the sale of their asset but may not exchange contracts although the owner may sell to a community interest group during the moratorium period. At the end of the window, the owner will be free to sell to whoever they wish and for a "protected period" will not again be subject to delay. Entry onto the register of assets of community value will be a land charge and non-compliant sales will be ineffective.
- 4.6 There is a compensation scheme enabling owners to claim for costs or loss incurred as a direct result of any delay in sale due to compliance with the procedures, which is understood to include the result of the delay itself and also any changes in values caused directly by the delay. There is also a right of internal officer review of a compensation decision and of appeal to an independent tribunal on a point of law against the review decision.
- 4.7 Although the asset owner is ultimately free to sell to any party at any price (so long as the process is followed), this does give an opportunity to local groups to bid to own local facilities and as such links well with the Council's overall approach to localism, engagement and community assets. In addition, it should be noted that change of use whilst the property remains in the same ownership is determined by planning policy, not by the assets of community value provision.
- 4.8 The key initial duty on the Council is to establish, maintain and publicise the List of Assets of Community Value as well as a list of assets where nominations have not been successful. If the nominated asset meets the statutory definition of an asset of community value, as set out below, the local authority must list it. An asset is one of community value if "in the opinion of the authority—

(a)an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b)it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

OR

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.”

4.9 In determining whether a nominated community asset should be listed, the Council will therefore need to consider

- (1) The detailed provisions of the Act and subsequent regulations.
- (2) Its general duty to take all and only relevant matters into consideration when making its decisions

4.10 There are a number of “technical” criteria which must be met for a nominated asset to be considered for listing. These include:

- The nominating body must be a voluntary/community body or parish council with a “local connection”
- The use must not be an exempt one- eg residential, statutory undertakers’ assets

4.11 The Government have been clear that where the Act and regulations allow discretion it is for the local authority to decide how the scheme will work in its area. Particular areas of discretion include:

- (1) The definition of “recent past” – the Government have stated that “ ‘recent’ might be viewed differently in different circumstances”. Officers are recommending that a consistent definition for this time period for Bath & North East Somerset be adopted as “within the last 3 years”
- (2) The definition of “non-ancillary” use – ie that the use is not simply “supporting” a wider use
- (3) The assessment of how realistic the opportunity is for the use to continue (albeit in a different way)- this may include consideration of the “fitness for purpose” of the asset for its current use in the future

4.12 The Council has discretion as to what the key criteria relating to furthering the “social wellbeing or social interests of the local community including cultural, sporting or recreational interests”, so long as it meets the Act and regulations and acts in accordance with general public law principles and applies relevant factors.

4.13 it is recommended therefore that guidelines be adopted so that officers can “score” nominations to assess whether they further social wellbeing or social interest. This will use evidence submitted from the applicant, by the owner/occupier of the land or parish council in response to notification and information and evidence held by the Council, including discussions with relevant service areas such as Planning Services. The views of local ward councillors will also be fed into this. The use of these criteria is designed to allow for a degree of consistency of approach whilst recognising the differing contexts, needs and

settings of community assets in our communities. The suggested guidelines are set out below:

Criteria	Example Evidence	Weighting
<p>C1. Who benefits from the use?</p> <p>Does it meet the social interests of the community as a whole not simply the users/customers of the specific service?</p> <p>Who will be impacted if the usage ceases?</p>	<ul style="list-style-type: none"> • Policies/approach of organisation using the asset • Numbers of users/members/customers • Testimonials of service provided/outcomes • Accessibility of asset (eg DDA compliance) • Equalities impact • Number of volunteer hours drawn in by the facility • Equalities impact • Positive impacts on health and wellbeing • Positive impact on local natural environment and wildlife • Positive impact on cultural, sporting or recreational activities • Involvement in the community in running/managing it 	25%
<p>C2. What aspect of the usage can be related back to a social outcome in the Council's Policy and Budget framework?</p>	<ul style="list-style-type: none"> • What services has the asset delivered to the community? • Are these services referred to in the following? <ul style="list-style-type: none"> ○ Sustainable Community Strategy ○ Corporate Plan ○ Local Development Framework ○ Local Transport Plan ○ Joint Strategic Needs Assessment ○ Other plans/policies. 	25%
<p>C3. Why is the usage seen as having social value in the context of the community on whose behalf the application is being made?</p>	<ul style="list-style-type: none"> • Impacts on community pride, cohesion and sense of place- eg hosting community-wide events • Contribution of the usage to the specific community - eg to helping accessibility of services in that community • Positive impact on sustainable living • Positive impact on specific local communities and areas of need • Rural/urban differential impacts 	25%
<p>C4. How strongly does the local community feel about the usage as furthering their social interests?</p>	<ul style="list-style-type: none"> • Evidence supplied by local stakeholders to support the nomination request- eg surveys, petitions etc • Evidence of soundness of process for gathering community feedback and views. • Reference to and evidence from Parish Plan/Community Plan or other local document as to the importance of this asset locally • Evidence from elected representatives including B&NES elected members 	25%

4.14 It is recommended that a minimum score of 55% will be required for this aspect of the process. In addition, nominations will need to demonstrate that it is realistic

to think (for “current” uses) there will continue to be social use of the building or other land or (for “recent” uses) that it is realistic to think that there will be community use again within the next five years.

4.15 It is proposed that the Divisional Director Policy and Partnerships would use all this evidence to make the decision within 8 weeks of the nomination being made and enter this onto the public decision register. A list of both successful and unsuccessful nominations will be made available through the Council’s website, as will nomination form and guidance notes. An owner will have the right to request a review of a decision to list a property within 8 weeks and for the review to be determined within 8 weeks (unless otherwise agreed with the owner). The provisions require that the review be undertaken by a senior officer not involved in the initial decision. The owner will have the right to request an oral hearing and to be represented. There is a right of external appeal by an owner who is dissatisfied with the outcome of an internal review. This is will be heard at an independent tribunal.

4.16 This is new legislation and the interpretation of some provisions may only be clarified by subsequent case law. It will be important therefore that those administering the scheme are given the flexibility to amend it to react to emerging regulations and case law. It is also recommended therefore that a review and analysis of the scheme take place following the 12 months of operation

4.17 As well as being responsible for notifying owners and occupiers of listings and receipt of notices, the Council will be required to publicising the possible sale of a listed asset in case of a “relevant disposal” (the sale of the freehold, or the grant or assignment of a lease for 25 years or more, but only where the disposal will give the new owner 100% vacant possession). Some disposals are exempt, including transfer through gift, within a family, inheritance, or where the listed community asset forms part of a larger estate. Owners will be entitled to claim compensation for loss or expense directly caused by operation of the moratorium procedures required by the scheme and it is proposed that the Divisional Director Property Services determine applications for compensation.

5 RISK MANAGEMENT

5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

6 EQUALITIES

6.1 An EqIA has not been completed on this report but has been completed for the recommended approach and no impacts on equalities strands have been identified. The Government’s own EqIA for this aspect of the Localism Act identified that “there are no foreseeable adverse impacts on any single equality group.

6.2 However, it is considered that the exercise of discretion by the local authority is a result of the new provision requires that transparent guidelines be introduced to reduce the possibility of differential impact. Equalities considerations have also been built into the suggested guidelines for assessing social value. In addition, the Council will help support groups and communities who need the most assistance to take advantage of the new community right. A number of

presentations have been made to local partnership groups on the new community rights and the Council is contributing to a training event organised by the B&NES Local Councils Association on the provisions of the Localism Act.

- 6.3 It is also recommended that the process agreed for listing of assets in Bath & North East Somerset be reviewed after 12 months of operation and an analysis of impacts be undertaken.

7 CONSULTATION

- 7.1 Consultation in this report has taken place with the Chair and Vice-Chair of the Panel, the Strategic Director - Resources and the Divisional Director, Policy and Partnerships

8 ISSUES TO CONSIDER IN REACHING THE DECISION

- 8.1 *Social Inclusion; Customer Focus; Sustainability; Property; Corporate; Other Legal Considerations*

9 ADVICE SOUGHT

- 9.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Andy Thomas, 01225 394322
Background papers	Assets of Community Value (England) Regulations 2012
Please contact the report author if you need to access this report in an alternative format	

APPENDIX Background and Briefing Materials relating to Community Asset Transfer and Assets of Community Value

1. Localism Act and Assets of Community Value

[Bath & North East Somerset Council Quick Guide to the Localism Act](#)

Locality Website- [community right to bid](#)

2. Supporting materials and information relating to Community Asset Transfer

[“Making Assets Work”](#)- the Quirk review

[Asset Transfer Unit](#)

Asset Transfer Unit – [Example Asset Transfer Strategy](#)

[Multiple Asset Transfer Programme](#)

[Community Organisations Controlling Assets: A Better Understanding](#) (Summary of report from Joseph Rowntree Foundation)

3. Examples of Asset Transfer Policies from other Councils

[Bristol City Council](#)

[Ashfield District Council](#)

[Portsmouth City Council](#)