

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

19 November 2012

Report of the Management Team

Part 1- Public

Executive Non Key Decisions

1 COMMUNITY RIGHT TO BID

To set out the details of the Government's recently introduced Community Right to Bid, the Borough Council's responsibilities and to agree proposals for how these should be discharged.

1.1 Community Right to Bid

- 1.1.1 The Community Right to Bid has been introduced as part of the Government's Localism Act and has recently come into force. It allows town/parish councils and local community groups the opportunity to nominate a local site or building to be included on a register of 'assets of community value'. A copy of the guidance note issued by the Government is attached at **Annex 1** to this report.
- 1.1.2 It should be noted from the outset that the inclusion of any asset on the register **does not** provide a right for a parish/town council or community group to acquire the property. There is no 'community right to buy'. However, should the landowner wish to dispose of an asset included on the register, there will be a moratorium that will impose a delay of its disposal of up to six months. This could allow time for the town/parish council or community group to consider whether it is able to raise funding and purchase the asset itself. Even if this is achieved, there is no obligation on the landowner to sell the asset to that body.
- 1.1.3 The key criteria to be used when making a judgement as to whether an asset should be included on the register are as follows:
- The extent to which the current (main) use of the asset furthers the social well-being or social interests of the local community; and,
 - The extent to which the current (main) beneficial use of the Asset might realistically continue in the future.
- 1.1.4 Land uses specifically excluded from this process are residential property and any garden/adjoining land, licensed caravan sites and operational land used by statutory undertakers.

1.1.5 In summary, the process for nominating an asset to the register is as follows:

- a town/parish council or community group must first request that a community asset should be included on the register to be held by the Borough Council.
- The Borough Council must assess each nomination received and decide whether the asset meets the criteria as set out by Government. If it decides it does not meet the criteria, the site is placed on a separate register of assets nominated but not listed. If it agrees to the nomination, the site is placed on the register of community assets and the owner(s) of the asset have to be informed.
- Landowners then have the right to appeal against that decision. The appeal is made to the Borough Council in the first instance but must be considered by someone other than the person making the initial decision. If the owner remains unsatisfied, he can make a further appeal to an independent tribunal.

1.1.6 There is no restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. Similarly, following the moratorium period, there is no obligation on the landowner to sell to any party even though a bid may have been made by a Parish Council or Community Group. However, the Government Advice Note says that it is open to Local Planning Authorities to decide whether the listing of an asset of community value should be a material consideration should an application for change of use is submitted.

1.2 Compensation Issues

1.2.1 Compensation may be payable to the landowner if, having had his property included on the register, he incurs additional costs as a result of the delay of any sale. The Borough Council would be responsible for meeting the first £20,000 of each claim which the Government says will be covered the new burdens elements of the Council's general financial settlement. However, as the Government has only made provision for meeting the costs of 40 such claims per year, it is unlikely that such provision would cover the actual costs incurred by the Borough Council, particularly if a number of claims came forward. If costs of any claims exceed £20,000, an application can be made by the Borough Council to Government to cover these.

1.3 The Borough Council's Role

1.3.1 The Borough Council must assume responsibility for processing nominations to the community assets register, including any appeals submitted. Importantly, the Borough Council itself has no power to list assets on their own initiative – it must be nominated. We propose that information about the process, a detailed guidance note and an on-line nomination form is uploaded to the Council's website, and in due course, should successful nominations be received, the

register of community assets would also be accessible from that portal (as would the register of assets that have not been accepted). In addition, it must also deal with any compensation claims that arise.

- 1.3.2 The Regulations state that decisions related to the Community Right to Bid must be made by officers of the Borough Council. To keep the process as simple as possible, we suggest that an initial decision on any nomination received is made by the Corporate Services Manager in consultation with the Council's Management Team. Should an appeal be then lodged, the Chief Executive would take responsibility to process this. Local Members will be kept fully informed of any nominations received for assets in their ward. The Central Services Director would be best placed to deal with any applications received regarding compensation. Delegated responsibilities therefore need to be agreed on this basis.
- 1.3.3 Reports about the Community Right to Bid are to be made to the next cycle of meetings of the Parish Partnership Panel and the Tonbridge Forum.

1.4 Legal Implications

- 1.4.1 As set out above and in the guidance note attached as Annex 1 to this report

1.5 Financial and Value for Money Considerations

- 1.5.1 The Community Right to Bid represents an added responsibility for the Borough Council which might prove to be a significant burden if a large number of local assets come forward for nomination. There are also potential financial implications arising from the compensation arrangements as set out above.

1.6 Risk Assessment

- 1.6.1 Such issues would need to be assessed as part of each nomination received.

1.7 Equality Impact Assessment

- 1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Recommendations

- 1.8.1 That the suggested approach to dealing with the provisions of the Community Right to Bid, as set out in this report, **BE ENDORSED**;
- 1.8.2 That delegated authority **BE GIVEN** to:
- (a) the Corporate Services Manager to assess each community asset nomination received; the Chief Executive to determine any subsequent request for review;
 - (b) the Central Services Director to determine applications for compensation; the Chief Executive to determine any subsequent request for review.

Background papers:

contact: Mark Raymond

Nil

Julie Beilby
Central Services Director

On behalf of the Management Team

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Such matters may need to be taken into account when assessing the social interests of any nominated community asset, where relevant.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	n/a	As above
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.