

Wokingham Borough Council - Community Right to Bid Policy

January 2013

1. Introduction and Overview

1.1 The Localism Act (2011) has introduced a new Community Right to Bid (CRTB). CRTB gives communities a right to identify a building or other land that they believe to be of importance to their community's social well-being. If such an asset or piece of land comes up for sale, the community will be given a fair chance to make a bid to buy it on the open market. To the extent that they meet the definition the right includes private as well as public assets (including local authority, NHS or Police assets).

1.2 Local authorities are required to develop, publish and maintain a list of Assets of Community Value. If an owner of a listed asset wants to sell it, they are required to notify the local authority, which would in turn, have to notify interested parties. If local groups are interested in buying the asset they will have six months to prepare a bid to buy it before the asset can be sold.

2. Wokingham Borough Council (WBC) Policy Position on CRTB

2.1 WBC will publicise the Community Right to Bid on its web site and in 'Borough News' and will provide links to the government's Community Rights web site where there is further information, support and advice for community groups interested in exercising the right.

2.2 Whilst WBC is committed to empowering local communities and ensuring they are fully informed, there is a recognition that the initiative in respect of identifying land or property that communities value and would wish to take into community ownership, rests with the communities themselves. The Council will give necessary support where needed but the expectation remains that parish councils, voluntary and community sector groups will take the lead in making nominations.

2.3 The Council will put appropriate structures in place for responding to nominations from relevant bodies and will ensure that nominations are dealt with efficiently and effectively. The structure for responding to nominations is detailed in the agreed *Criteria for Considering a Nomination for Listing as an Asset of Community Value*.

2.4 WBC recognises, as does government guidance, that the provisions will impact the rights of private property owners. To avoid unnecessary bureaucracy that will potentially arise from the associated rights of appeal and compensation, the Council has established clear criteria for supporting or rejecting nominations for listing that are put forward by community groups. The grounds for supporting or rejecting nominations are set out in the *Criteria for Considering a Nomination for Listing as a Asset of Community Value*.

2.5 The criteria will relate solely to the process of nomination for listing. Nothing in the criteria would prevent the Council (or another owner) transferring an asset to a community group outside the terms of CRTB if this will serve to improve local services or enhance local facilities.

2.6 The Community Right to Bid Policy is separate from the Council's planning policy process, but it will reinforce existing planning policies by reinforcing the power of local

communities to protect assets that local people value. The criteria for deciding whether to list land or buildings as Assets of Community Value will support and make reference to the definitions of community facilities used in the Wokingham Borough Core Strategy Development Plan Document.

2.7 Listing as an Asset of Community Value will not place any restrictions on what an owner can do with their property, once listed, if it remains in their ownership, because it is planning policy that determines permitted uses for particular sites.

Criteria for Considering a Nomination for Listing as an Asset of Community Value

1. Decision Making

1.1 The Department of Communities and Local Government has defined an asset of community value as follows:

A building or other land should be considered an Asset of Community Value if:

- its actual current use furthers the social wellbeing and interests of the local community, or a use in the recent past has done so; and
- that use is not an ancillary one; and
- for land in current community use it is realistic to think that there will continue to be a use which furthers social wellbeing and interests or for land in community use in the recent past it is realistic to think that there will be community use within the next 5 years (In either case, whether or not that use is exactly the same as the present or past) and
- it does not fall within one of the exemptions (e.g. residential premises and land held with them)

1.2 The Wokingham Borough Core Strategy Development Plan Document defines community facilities as 'development for health (including preventative social care and community support services), education, play and leisure or culture together with libraries, village/community halls and religious buildings. It also includes burial sites. This is not a definitive list but indicates the type of facilities WBC will normally consider as assets of community value'.

1.3 Bids must be submitted to the Council's Development & Regeneration Department by a parish council or a local voluntary or community organisation with a local connection.

1.4 An Asset of Community Value can be nominated by:

- a parish council in respect of land in the parish council's area
- a voluntary or community body with a local connection

A voluntary or community body is defined as:

- a body designated as a neighbourhood forum within the Town and Country Planning Act 1990
- a parish council
- an unincorporated body:
 - whose members include at least 21 individuals, and
 - which does not distribute any surplus it makes to its members
- a charity
- a company limited by guarantee which does not distribute any surplus it makes to its members
- an industrial and provident society which does not distribute any surplus it makes to its members
- a community interest company

1.5 A voluntary or community body is said to have a local connection if the body's activities are wholly or partly concerned within the local authority area, or within a neighbouring authority's area.

1.6 WBC will expect the nominating group to evidence that the land or building they are proposing to nominate plays (or has played) a significant role in local life and that the activity it supports (or that it is proposed to support) could not reasonably continue if the building was lost to community use. This will normally mean that there are no similar or alternative facilities in the local area that could support the existing or proposed activity.

1.7 When looking to identify an asset of community value, nomination must include the following information:

- a description of the nominated land including its proposed boundaries
- a statement of all the information which the nominator has with regard to:
 - the names of current occupants of the land, and
 - the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land
- the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value
- evidence that the nominator is eligible to make a community nomination

1.8 Nominating groups should be able to demonstrate that there is a continuing demand for the activity they are proposing and that the demand for it is likely to be sustained for at least five years.

1.9 Before formally notifying the Council of their intention to bid for an Asset of Community Value, we would request that local community groups consider their capacity to raise the necessary capital and running costs within the six month window allowed by the regulations.

1.10 Whilst happy to entertain submissions relating to the use of commercial premises (such as pubs or shops) - the Council will nevertheless proceed more cautiously in respect of such premises and will not normally consider commercial premises for listing if there are similar facilities in the local area that are easily accessible to local people. The Council will only consider commercial premises for listing if the nominating body can demonstrate that their loss to the local area would be a significant loss for local people in respect of their social well being.

1.11 An Asset of Community Value should promote active engagement with a broad range or number of people which could be of a social, cultural or recreational nature.

1.12 DCLG guidance recognises that certain categories of land should be excluded from listing. These are specified in the regulations and are:

- a) Residential premises, including sites for mobile homes and boats. For a building which is or includes residential premises this will include land held with the residence under a single legal title, which would go beyond immediate gardens, outbuildings, yards etc and extend to all land held under that title. The exception to the exclusion of residential premises will be premises which include living quarters which are an integral part of a pub or shop and which are

otherwise eligible for listing – these could still be listed as assets of community value.

b) Operational land as defined in Part 11 of the Town and Country Planning Act 1990 – that is land used for transport infrastructure and some other related purposes by specified bodies with statutory powers.

1.13 A range of important types of disposal are exempted from the provisions. These include:

- Disposal under court order
- Separation agreement between spouses / civil partners
- Statutory provision around incapacity
- Legally enforceable arrangement e.g. option to buy, S106, right of first refusal
- Sale to former owner
- Insolvency
- Statutory compulsory purchase
- Land sold for continuing health provision
- disposal of land to be held for the purposes of a school or 16 to 19 academy
- Tenancy under provisions of Agricultural Holdings Act 1986

1.14 When considering whether land nominated by a community nomination should be included in the list, the Council must take all practicable steps to inform:

- a parish council if any of the land is in the council's area
- the owner of the land
- where the owner is not the freeholder:
 - the holder of the freehold estate in the land; and
 - the holder of any leasehold estate in the land other than the owner
- any lawful occupant of the land

1.15 In deciding whether a nominated asset should be listed, the local authority will need to exercise its general duty to take all relevant matters into consideration when making its decision. As this is a new requirement upon local authorities, currently there is little or no experience or case history to draw upon. As this develops relevant learning is to be incorporated within the Council's decision making regulations.

1.16 Once a decision is made on whether to include a local asset within the list, the Council will inform the following in writing:

- The owner of the land
- The occupier of the land
- The community group nominator
- The freeholder
- The holder of any leasehold interest
- Parish Council (where in its area)

1.17 The Council will state the consequences of the inclusion and the right to review and add the details to the Local Land Charges register.

2. Reviews and Appeals

2.1 Reviews and appeals can be requested on both the listing of the asset (by both the owner and nominating local group) and levels of compensation (by the owner).

2.2 In considering appeals against listing as an asset of community value made by owners WBC will take into account the following:

- a) The eligibility of the asset
- b) The eligibility of the nominating body
- c) Any new factors that have come to light since the original decision was made
- d) Any irrelevant or improper matter which the local authority might have taken into account in reaching its original decision

2.3 WBC will not take the commercial effect of a decision to list the land or buildings into account. This is a separate matter that will be dealt with in relation to any claim for compensation.

2.4 A request for a listing review must be made in writing within eight weeks beginning with the day on which written confirmation of the decision was issued to the relevant parties listed above. The Council is able to allow longer periods for submitting requests if it wishes.

2.5 Similarly, a request for a compensation review must be made in writing within eight weeks beginning with the date on which the Council provides the building/land owner with written notification of its decision and reasons. Again, the Council is able to allow longer periods if it wishes.

2.6 Reviews are undertaken by an officer of the Council of appropriate seniority who did not take any part in making the decision to be reviewed.

2.7 Within the review, an oral hearing must be held at the owner's written request. Where no written request for an oral hearing is made by the owner, the authority may decide whether or not to include an oral hearing in the review process.

2.8 The review must be completed within 8 weeks of the Council receiving written request for review. This time can be extended by written agreement with the owner.

2.9 Following a listing or compensation review, an owner of the land may appeal against the decision to the First-Tier tribunal (administered by Her Majesty's Courts and Tribunals Service) within 28 days. Regulations allows for compensation to be paid to the owner of land who has incurred loss or expense in relation to the land which would not have been the case if it had not been listed, and that person may also request a review of any decision relating to compensation (they may make a further appeal to the First—Tier Tribunal on compensation issues).

2.10 The Council is required to maintain a list of unsuccessful nominations, including the reasons why nominations were not approved.

3. Compensation

3.1 Government acknowledges that the provisions of the Act have an impact on the rights of private property owners, and therefore a compensation scheme is provided within the Act to minimise this impact. This enables a private owner of listed land, or previously listed land, to claim compensation for loss or expense incurred while they were the owner of the land.

3.2 Public bodies are not entitled to compensation. The amount of compensation is to be determined by, and paid by, the local authority..

3.3 Compensation claims may arise from a period of delay in entering into a binding agreement to sell the building or land which is wholly caused by the interim or full moratorium periods (e.g. additional maintenance, security and utility costs, loss of value), or reasonable legal expenses incurred in successfully appealing to a tribunal against listing, refusal to pay compensation or the amount of compensation.

3.4 The Government will meet the cost of compensation claims that exceed £20,000 in a financial year up to March 2015, with consideration to follow on funding from 2015 onwards. Costs for compensation under £20,000 are covered by the Council's public liability insurance, although these costs could also be covered by the Council through specific budget provision if this was considered to be preferable.

4. Moratorium Period

4.1 There are three different periods relevant to this process, all being measured from the time the owner informs the local authority that they wish to dispose of the asset:

- An interim window of six weeks, when community groups may express an interest in being treated as a potential buyer of the asset.
- The full window of opportunity of six months which is the time community groups have to pull together a bid to buy the asset.
- The protected period of 18 months which applies only where the owner has not sold their asset at the end of the six month moratorium period. During this time the asset can be sold free from the Community Right to Bid Regulations, and as such no community interest groups may submit a written intention to bid or trigger the full moratorium period.