

## BABERGH DISTRICT COUNCIL and MIDSUFFOLK DISTRICT COUNCIL

<b>From: Head of Communities</b>	<b>Report Number: N34</b>
<b>To: Strategy Executive</b>	<b>Date of meeting: 11 July 2013 15 July 2013</b>

### THE LOCALISM ACT 2011 – COMMUNITY RIGHTS

#### 1. Purpose of Report

1.1 The Localism Act 2011 introduced a range of community rights that are intended to empower local communities. The specific community rights detailed in this report are:

- Neighbourhood Planning,
- The Community Right to Bid for “assets of community value”, and
- The Community Right to Challenge

1.2 This report explains how each of these rights work and proposes a new system for administering these rights. This will include the arrangements for receiving, considering and determining any expressions of interest made as well as ensuring communities are made aware that these rights exist.

1.3 This report proposes that (in general terms) that where decisions to accept or reject expressions of interest (EOI) can be made on the basis of the request being uncontested, or where it fails to meet the criteria or basic requirements of the right, such decisions will be made under officer delegation. However, where such decisions have a significant political impact, are more sensitive or are contested these will be referred to the appropriate Council Committee to determine.

#### 2. Recommendations to Council

2.1 That the introduction of new Community Rights under the Localism Act 2011 and the proposed approach the Councils are taking to deal with these matters be noted.

2.2 That the proposed procedure for administering an expression of interest under the Community Right to Bid for “assets of community value” (as set out in paragraphs 8.23 to 8.33 of this report) be approved.

2.3 That the proposed procedure for administering an expression of interest under the Community Right to Challenge (as set out in paragraphs 8.34 to 8.43 of this report) be approved.

2.4 That the officer scheme of delegation in relation to the Community Rights (as set out in Appendix C of the report) be agreed, and the Council’s Constitution be amended accordingly.

2.5 That the arrangements for setting timescales during which expressions of interest can be made for services already contracted out which are set out in paragraph 8.41 and Appendix A of this report be agreed.

2.6 That the Council should actively raise awareness of the Community Rights and the processes for expressing an interest on the Council's website and in the Council's interaction with Town and Parish Councils, Voluntary and Community Groups.

The Committee is asked to make the above recommendations to Council.

The Committee is to consider making a further recommendation to Council in relation to its consideration of the option to nominate items to be placed on the Register, as referred to in paragraph 8.34.

### **3. Financial Implications**

- 3.1 There are cost implications to the Councils in supporting these rights. Some will be direct costs such as the potential payment of compensation to the owners of property placed on the register of Assets of Community Value (although this is limited to a maximum level – see Appendix D), or taking Neighbourhood Plans (NP) through a formal inspection process and referendum.
- 3.2 Others are indirect, such as the time needed by staff to publicise and administer the register of community assets, communicating with interested parties when an owner wishes to sell an asset or to providing 'appropriate' support to Communities who intend to develop a NP.
- 3.3 Some transition funds will be made available to the Councils to assist with these costs. There are also grants available to help with the direct costs associated with the NP and to support the considerable costs which will be born by communities themselves. As these arrangements are new and untried, it is very difficult to be certain what the precise impact will be on our budgets going forward. This is an area that will require careful monitoring and Members will be informed on the full cost impact once this is known.
- 3.4 The costs, funding and grants for each right are detailed further in Appendix D

### **4. Risk Management**

- 4.1 This report is most closely linked with the Council's Corporate / Significant Business Risk No. SIT3 / *Failure to develop a culture / way of working that ensures the Operational Delivery teams are agile/flexible and able to deliver outcomes.*
- 4.1.1 There are a variety of risks associated with these Community Rights. There are obvious risks associated with not having protocols and processes in place to determine expressions of interest associated with the rights. For example under the Right to Bid, if the authority does not have a protocol in place which states when expressions of interest (EOI's) will be considered, these can be received at any time and may trigger high cost procurement exercises outside of the normal business cycle.
- 4.1.2 In relation to Assets of Community Value (ACV) there is a risk that few or none of the properties successfully nominated are actually put on the market. This would limit or completely negate any opportunity for a community organisation to express an interest in buying it. There are also risks associated with the decisions which are made under these rights.

For example if a property is listed as an Asset of Community Value (ACV) the property owner can make a case for statutory compensation if the listing affects the property value or the owner suffers a loss due to a delayed sale.

4.2 In relation to the Community Right to Challenge, there is a risk that the Councils will receive a number of bids to run services and will be required to administer these and run additional procurement exercises which will need to be resourced.

4.2.1 There are further risks associated with the government grant arrangements for Neighbourhood Planning because it assumes the plan is formally adopted before the main grant is awarded. The Councils will be required to bear the cost of the formal inspection and the subsequent public referendum. Only once a successful inspection is achieved can the main grant be drawn down from government (see Appendix D)

## **5. Consultations**

5.1 The Community Right to Challenge and Community Right to Bid are statutory schemes which the Councils must implement in accordance with legislation and statutory guidance. In developing the various protocols for each of these rights full consideration has been given to these matters. To try and achieve a consistent approach for our Communities, some of whom provide services throughout Suffolk; discussions have also taken place within a County Localism Steering Group, comprising colleagues from Suffolk County Council, St Edmundsbury and Forest Heath District Councils, Suffolk Coastal and Waveney District Councils and Ipswich Borough Council, some of whom have already put protocols in place.

5.2 In addition best practice examples from some authorities that have been front runners in the development of these rights have been explored and much of what is proposed is based on the information provided by these authorities. In particular the support from Broadland District Council and their work on Neighbourhood Planning and Forest Heath District Council on the Right to Bid have been particularly helpful.

5.3 Since the various rights have been enacted work has been carried out with some of our Communities who have made early expressions of interest and their feedback has also helped to develop our protocol proposals.

5.4 In addition to these external arrangements these proposals have been developed by an internal cross service working group with input from the Legal, Business Improvement, Housing Strategy, Communities and Economy services.

5.5 It is proposed that the next step in the consultation process is to carry out a series of Member Briefings on the Community Rights and the protocols we aim to follow. Following these briefings it is suggested that these rights form part of the agenda in the next round of Town and Parish liaison meetings. Working jointly across Suffolk a joint development programme including the localism act, community rights and the locality role for Members will be developed for later in 2013.

## **6. Equality Analysis**

6.1 The Equality Act 2010 requires public authorities to have due regard to the need to: Eliminate discrimination, harassment and victimisation; Advance equality of

opportunity between people who share a protected characteristic and those who do not; and Foster good relations between people who share a protected characteristic and those who do not.

- 6.2 The proposals in this report have no detrimental impact on any of the protected characteristics.

## **7. Shared Service / Partnership Implications**

- 7.1 This is a joint report for Babergh and Mid Suffolk District Councils, with common protocols wherever possible, operated by the integrated staff teams.

## **8. Key Information**

- 8.1 The Localism Act 2011 provides the statutory framework for communities to become more actively involved in developing and delivering local services, more able to influence the development of their locality and to become more self reliant. As part of this a range of Community Rights are available to communities and the District council must be ready to respond when any community wishes to exercise those rights.

- 8.2 The Council's strategic priorities reflect the need for communities to become more self reliant and the involvement in those communities in shaping local services. So whilst it is important that the Council is ready to respond to any community who wishes to exercise its statutory rights under the Localism Act, the Council will seek to work with communities in a range of ways to build their capacity, self reliance and community involvement in achieving positive local outcomes. Nonetheless, the Council should actively raise awareness of these statutory rights.

- 8.3 Through the Suffolk Localism Group approaches to respond to and support these rights have been pooled. This has resulted in (where appropriate) a common approach and broadly similar processes for supporting communities in exercising these rights.

Each of these rights is outlined below in more detail below:

### **Neighbourhood Planning**

- 8.4 Neighbourhood Planning (NP) came into force on the 6th April 2012. It is designed to give local communities a formal say in how their neighbourhoods are developed by producing a plan which becomes part of the District Councils Local Plan. The NP is designed to support the growth agenda and as such it cannot be used to block development of new homes and businesses. Any neighbourhood plan must be compliant with the Local Development Framework (the Core Strategy and other local planning policies) and with the National Planning Policy Framework. However, it may be used to influence the type, design, location and mix of new development.

- 8.5 The preparation of the NP is led by the community. This is most likely to be a town or parish council, although it can be a collection of neighbouring parishes that are recognised as a suitable body to lead this work.

- 8.6 There are five main stages to the development of the NP:

- The Community determines the area they intend to be covered by the plan. The Community determines its aims and objectives leading to the development of the plan
- The plan is published in a draft form
- The Council facilitates the independent inspection of the plan
- The Council organises the Public Referendum
- Following a successful Public Referendum the plan is formally adopted by the Council.

8.7 The Regulations outline key roles and responsibilities for the Councils to support and enable the development of a NP. These are:

- The Council is responsible for receiving and determining requests for the designation of a neighbourhood area. (This is the area to which the Plan will relate). The Council is then required to advertise the request (for a statutory period of six weeks) and consider any representations received.
- In determining the request the Councils must ensure that the area is appropriate and that the neighbourhood areas do not overlap. They are also responsible for publishing a map of the area that is proposed as the designated neighbourhood area.
- The Councils are also required to provide support to the Community to develop the plan by, for example, supplying census data and historic records. Following best practice it is recommended that a statement of the support which is appropriate to the size and scale of the proposal is agreed as soon as reasonably practicable in the process to manage this commitment and control Community expectation.
- To ensure that the NP includes a sustainability appraisal and are in general conformity and overall compliance with statutory requirements.

8.8 After receiving the plan the Councils must publicise the plan for at least six weeks to allow for representations from key stakeholders. If the Councils are satisfied that the plan meets the legal requirements, it appoints an independent expert to carry out an independent examination.

8.9 The Council is responsible for organising the independent examination at which the Plan is considered by the Examiner who either recommends the plan be submitted to public referendum, be subject to modifications and then submitted to public referendum, or refused. This element of the process is managed and funded by the Council.

8.10 The public referendum gives the Community the final say on whether a plan should come into force in their area. There is no minimum participation required and the successful outcome will be determined by a “yes” vote of more than 50% of those who take part. The Council must make all the necessary arrangements and again pay for the referendum.

8.11 If a majority vote in favour of the plan in the referendum then the Council must bring it in to force by adopting the plan. It then becomes part of the formal development plan for the area. If a majority is not achieved the plan is rejected.

- 8.12 Government grant of up to £30,000 is available to assist with the costs of the inspection and the referendum. Up to twenty grants can be applied for in the 2013/14 financial year.
- 8.13 In areas which are completely parished there is strong possibility that many communities will view a NP as an opportunity to shape future development. Where Communities face development which they do not really want there is the risk that the NP will be seen as a vehicle to prevent this development.
- 8.14 To help communities decide if a NP is their best option for meeting their aspirations, we are proposing that dedicated support is provided from the Communities team in the first stages with additional support from Heritage and Planning Policy teams during the development stage. The Ward Member will be invited to take part in this if they wish to do so alternatively they will be kept informed on progress.
- 8.15 Once a Community decide that an NP is the right option for them, support will be agreed by an internal NP project group drawing on resources from Legal, Economy (Development Management, Economic Development, Strategic Housing, and Planning Policy).

### **The Community Right to Bid for “assets of community value”**

- 8.16 From autumn 2012, community groups have been able to nominate local land or buildings as ‘assets of community value’ (ACV). The new powers were first described as the ‘Community Right to Bid’ but have recently be re-named ‘Assets of Community Value’ and, with a few exceptions, can be applied to any land or buildings in public or private ownership.
- 8.17 Under these arrangements community groups, including Parish Councils are able to nominate non-residential buildings or land within their communities as ‘assets of community value’ if the current use of the land or building “furthers the social wellbeing or social interest of the local community”. This includes a time in the past when the building was used for this purpose. Social interest for this purpose includes:
- A cultural interest
  - Recreational interests, and
  - Sporting interests.
- 8.18 If the nomination is agreed by the Council the ‘asset’ cannot be sold without the community group being given the opportunity to put together a bid to purchase the asset on the open market.
- 8.19 If the nominated asset meets the definition of an asset of community value, the Councils must list it in a register. The owner of the asset has the right of an internal review of the Council’s decision, and a right of an independent tribunal as a result of the internal review. Nothing else happens at this stage unless the owner decides to dispose of the asset, either through freehold sale, or the grant or assignment of a lease, granted for at least twenty-five years.
- 8.20 The Right does not give any preferential treatment to community groups in the sale of the asset; rather it gives them the time to prepare bids or raise funds so that they have a realistic chance of purchasing the asset. The Right applies to

both publicly owned and privately owned assets, though not to individual residences.

8.21 There are two very important timescales within this process:

- The first is the initial moratorium period which allows the community to express its written intention to bid. The Councils are proposing that an eight week period should apply in this situation.
- If the group wishes to proceed and actually make a bid for the asset, a second moratorium period of twenty weeks will then apply. After this period expires and it is clear that the sale or lease cannot be realistically determined, the owner will then be free to sell to whomever they choose.

8.22 The Government's intention is that the Community Right to Bid will be used to help community groups to purchase assets such as village shops, community centres, woodlands used for recreation, pieces of land, children's centres, library buildings and local pubs that have become commercially unviable and would otherwise no longer be available for use by the local community. The Right also covers assets currently owned by Babergh and Mid Suffolk District Councils and will sit alongside the Councils' asset management plans and processes.

8.23 The Government had made available £19 million to community groups to support them in putting together bids. This was available through the Social Investment Business Group website and is intended to support groups in building the internal capacity to take over ownership of assets and to carry out feasibility studies.

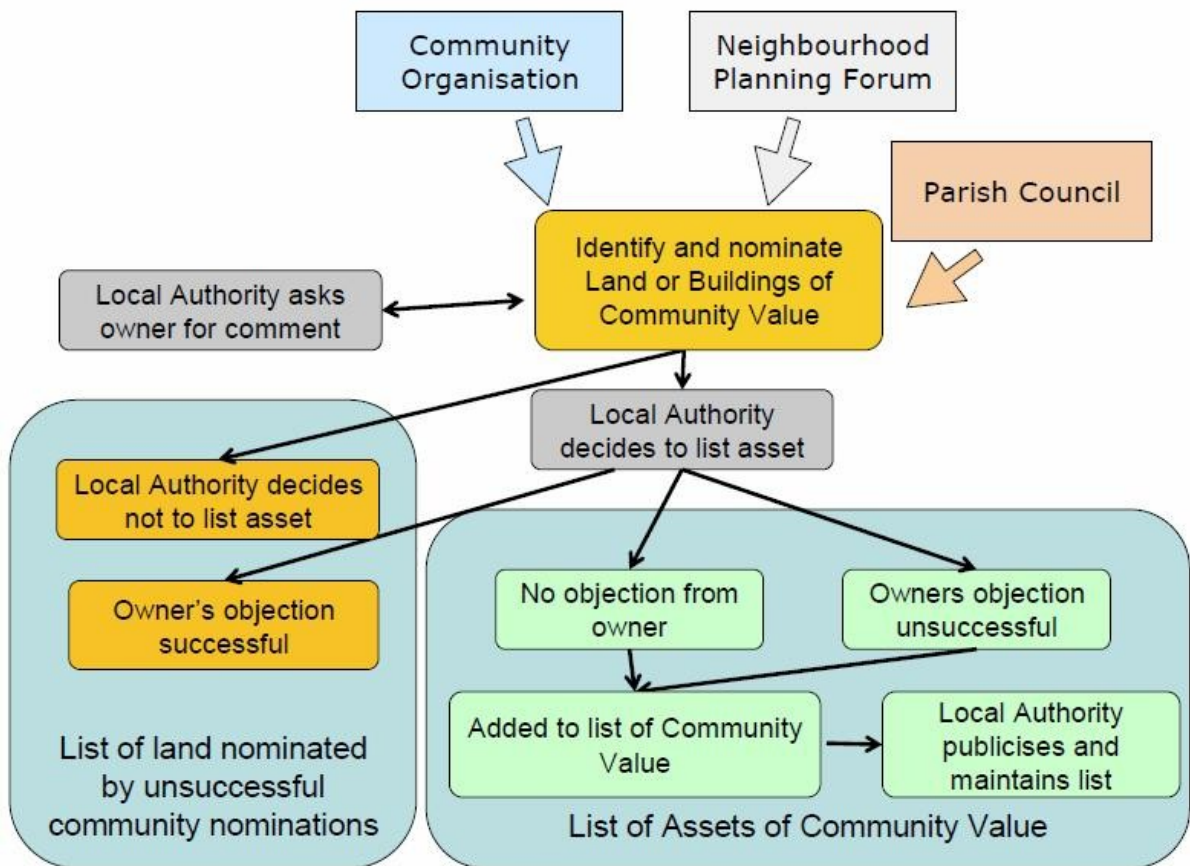
#### **Administration of the Community Right to Bid for "assets of community value"**

8.24 Two flow charts setting out the proposed process for dealing with this community right are detailed below.

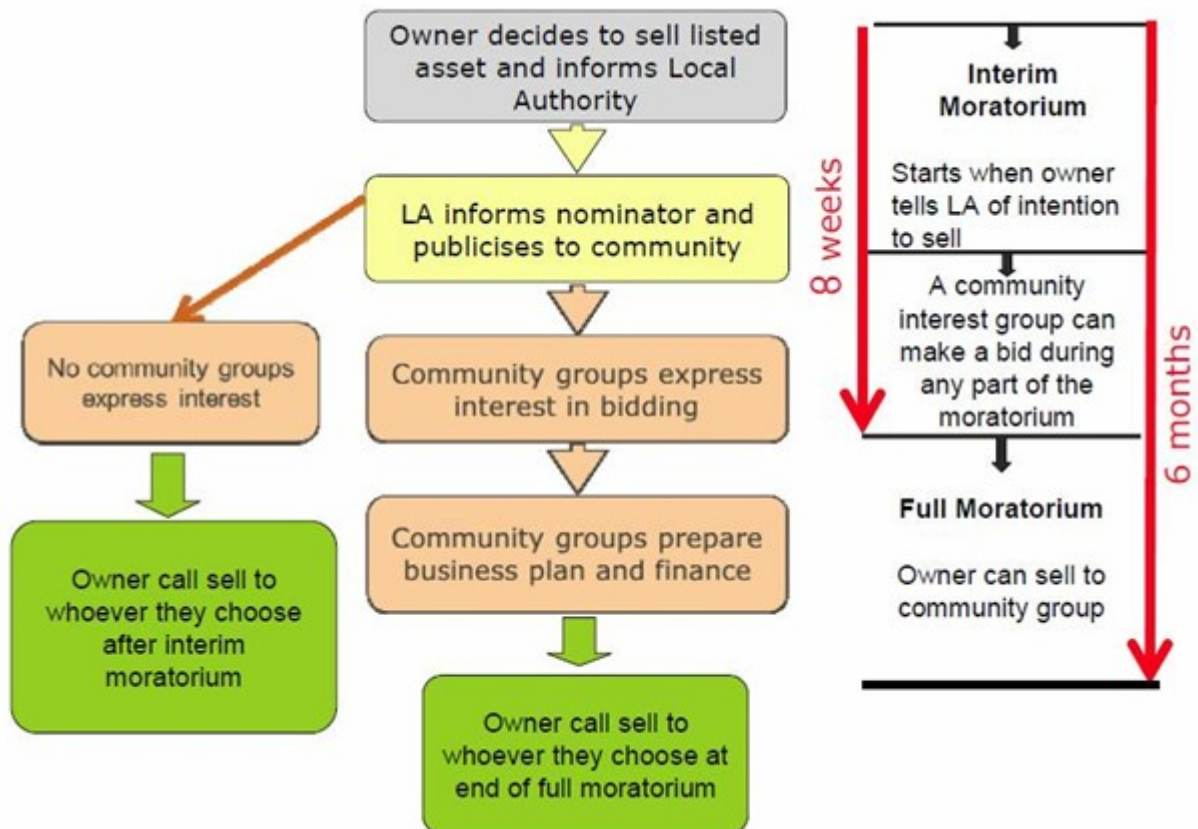
8.25 Regulations describe a detailed process of how the Council must deal with a nomination made under the Community Right to Bid. The four main elements of this process are:

- The nomination of an asset by a community group;
- Deciding if the nomination meets the criteria to be agreed as an Asset of Community Value and placing it on the register;
- The moratorium period once an asset comes up for sale; and
- Compensation for owners if costs or losses are incurred as a result of delays in selling the asset.

**Figure 1:** Summary of the ACV process



**Figure 2:** Summary of the process for selling an asset on the register.





- 8.26 It is recommended that any early expressions of interest are managed within the proposed process but further feedback is sought from Communities submitting these Expression of Interest's (EOI) , from the owners of the asset subject to the EOI and from Council Members in order to improve the process.
- 8.27 Where this right is used by Communities to attempt to protect assets which may be lost to the community (such as a shop under threat of closure) placing such an item on to the register may be a relatively simple decision with no wider political implications. To comply with the requirement to make this decision within an eight week period a scheme of delegation is sought for officers to determine these EOIs.
- 8.28 If the EOI concerns a more controversial property or one with a history of divided opinion these decisions will be referred onto the Strategy or Executive Committees. Alternatively, where a Ward Member objects to the EOI proposal these decisions will be referred to Strategy or Executive Committees.
- 8.29 Where Council assets are listed under the Community Right to Bid, the Council should consider any bids from community groups at the point of disposal as part of its wider asset management strategy.
- 8.30 Guidance is available on what constitutes 'community value'. The Council's criteria for making this assessment will evolve and agreement is sought for these criteria to be amended by the Localism group, in consultation with Management Board, as the Councils experience of working with this right develops. The proposed criteria based on guidance and consultation with the Localism Group and neighbouring Councils is outlined in Appendix A
- 8.31 It is critical that Communities, Property Owners and Councillors do not assume that because an item has been placed on the Register that it will be sold and even if it is sold that the owner is under any obligation to sell to the Community.
- 8.32 It is vital that the Councils provide clear guidance on how requests received should be managed. A scheme of delegation is being sought to allow the process to accept or reject an EOI to be dealt with at an officer level, whilst ensuring Ward Members, County Councillors and Portfolio Holders / Lead Members are informed at key points in the process. It is proposed that the process is led by officers in the Communities service area. This will have some initial implications for staff time as the process is established. However, it will not become clear for a while how many nominations will be made in the longer term.
- 8.33 Guidance for this right requires any item placed on the Register to be reviewed after a five year period. At this point there is no clear indication of the level of Community interest in the Right; as a consequence the knock on effect on services is not yet clear.

8.34 Under this right the Council also has the option to nominate items which it considers should be placed on the Register. A view is sought from Members if they wish to take advantage of this option or to leave the shaping of the register to EOI from the Community?

### **The Right to Challenge (RTC)**

8.35 This duty requires the Council to consider and either accept or reject expressions of interest from community groups who wish to run a council service. If the expressions of interest meet certain criteria laid down in the Act and subsequent regulations, the local authority must run a procurement exercise.

8.36 The Community Right to Challenge aims to give Communities more opportunities to shape and run local public services where they believe they can do so differently and/or better. They may think they could deliver services which are cheaper, make them more responsive to local needs, offer additional social value, or deliver better value for money. The services may be at any scale of activity from very local and small to authority wide.

8.37 Community groups, including voluntary and community bodies; charitable bodies; parish councils; and council employees can submit a written expression of interest to the Council to run all or part of a Council service. The Council must contact the group and let them know within 30 days when a final decision will be made.

8.38 The Council must consider the expression of interest and if it is accepted, should begin a procurement exercise. If it is rejected the Council must let the community group know why and publish the notification on the website. If the Council believes that the expression of interest could be accepted with some modifications, the group will be contacted to discuss whether those modifications are acceptable.

8.39 If a service is already run under contract by a third party, expressions of interest can be made within a specified period prior to a scheduled procurement process starting. If a Council decides not to specify such a period or if the service is run by council staff, expressions of interest can be made at any time. Guidance is provided in the regulations with respect to the validity of the expression of interest and potential grounds for rejection. Certain functions are excluded such as the determination of planning applications although the processing of such applications could for example be included in the Community Right to Challenge. There is currently no provision for appeals against a council's decision to reject an expression of interest.

8.40 The Localism Act allows Councils to set timeframes within which it will receive expressions of interest from community groups. It is proposed that where council services are currently run directly by the Council and there is no specific intention to change this, no window should be set and any expressions of interest dealt with as they arise.

- 8.41 For services where a contract with a third party organisation is already in place, it is proposed that expressions of interest should only be made in specified periods. This is to avoid diverting officers from their service delivery roles outside of the scheduled procurement cycle. It is proposed to set timeframes that would allow time for the points raised by the community groups to be taken account of by the Council when developing the specification for the next round of procurement. The appropriate timeframe will differ depending on the size of the contract and it is therefore proposed that a different timeframe is set for each contract area by the Corporate Manager for Commissioning and Procurement. Work to establish the Council's portfolio of contracts is already underway.
- 8.42 Any EOI to run a council service will be referred to Strategy or Executive Committees for consideration.
- 8.43 As with the other Community Rights, discussions will be held with the neighbouring Suffolk authorities with regard to the assessment criteria for evaluating expressions of interest, to ensure consistency across Suffolk, and where countywide joint services are concerned, to establish a joint decision making process if appropriate.
- 8.44 It is important to note that feedback from the government office suggests that this aspect of the new Community Rights has the lowest level of interest from Communities.

**Other Community Rights**

8.45 The Localism Act also introduced the ‘Community Right to Build’. The ‘Community Right to Build’ is a new power that gives people the right to bring forward small-scale site specific community-led developments. The proposals formed part of the Neighbourhood Planning provisions contained in the Localism Act 2011. Further guidance on this right will be provided in the near future.

**9. Appendices**

Title	Location
A. Community Right to Bid for “assets of community value” - Criteria	Attached
B. Community Right to Challenge- Assessment Proforma	Attached
C. Proposed Scheme of Delegation for Community Rights	Attached
D. Costs, funding and grants associated with Community Rights	Attached

**10. Background Documents**

- 10.1 A plain English guide to the Localism Act  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5959/1896534.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf)
- 10.2 Localism Act 2011  
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted/data.htm>
- 10.3 DCLG statutory guidance on the Community Right to Challenge  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5990/2168126.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5990/2168126.pdf)

- 10.4 Government Community Rights webpage:  
<http://communityrights.communities.gov.uk/>
- 10.5 Statutory Instruments 2012 No. 1313, Local Government, England, “The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012”  
<http://www.legislation.gov.uk/uksi/2012/1313/made>
- 10.6 Statutory Instruments 2012 No. 1647, Local Government, England, “The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012”  
<http://www.legislation.gov.uk/uksi/2012/1647/made>
- 10.7 Forest Heath District Council website example [http://www.forest-heath.gov.uk/info/100003/community\\_and\\_living/583/community\\_rights](http://www.forest-heath.gov.uk/info/100003/community_and_living/583/community_rights)

*NB. With grateful acknowledgement to St Edmundsbury and Forest Heath for significant portions of the material*

### **Authorship:**

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**Community Right to Bid for “assets of community Value” –  
Criteria and Guidance Notes**

**Criteria**

A building or piece of land must meet the following criteria (as outlined in the Localism Act 2011) to become a community asset:

**The building and/or land do not fall within one of the exemptions set out in the Localism Act and regulations.**

If there is evidence that a nomination falls within one of the exemptions it is automatically excluded from listing, and the remaining criteria does not have to be considered. Exemptions include:

- Land and buildings which are primarily residential in purpose, including associated gardens, etc.
- Licensed (and some unlicensed) caravan sites
- ‘Operational land’ owned by ‘statutory undertakers’ as defined in s263 Town & Country Planning Act 1990. These include organisations like the Post Office, Civil Aviation Authority, Transport providers, Utility providers, etc.

**The use of the land or building currently, or in the recent past, furthers the social wellbeing, or the cultural, recreational or sporting interests of the local community.**

Local authorities are left to interpret and define ‘recent past’ themselves and the Councils will consider each nomination on a case by case basis. Those nominating a building or piece of land are advised to include examples of how the community uses the asset. For instance, ‘...the youth centre is used by many community groups including; a weekly Scouts group, morning crèche sessions; fitness classes...’ etc.

**The social use of the building or land is not deemed ‘ancillary’, i.e. of secondary purpose.**

This means that the use of the land or building to further social wellbeing or interests of the community must be its principal use.

**The use of the land/building will continue to further the social wellbeing or interests of the local community in the future.**

Where an asset is *presently* in social use there should be a presumption of continued viability, unless clear evidence suggests otherwise.

For a social use which has *lapsed* and needs to be re-established, the Council will need to take a view on the realism of re-establishing this within the next five years.

Please note: The *type* of social use of the building/land is allowed to change at any time.

## **Guidance:**

### **Which uses might be considered to ‘further the social wellbeing or social interests of the local community’?**

The provision of public services, included those “not for profit” organisations which are delivered directly to the public for the purposes of education, health and wellbeing, or community safety

This includes:

- Nurseries and schools
- Children’s centres
- Health centres, surgeries and hospitals
- Day care centres, residential care homes

Sport, recreation and culture including:

- Parks and open green spaces
- Sports and leisure centres
- Libraries
- Theatres
- Museums or heritage sites

Community services including:

- Community centres
- Youth centres

Local democracy including:

- Town halls
- Civic Halls

Any economic use, which also provides an important local social benefit, in these cases, it is the social value of the business that counts, not just the nature of the business. However, with these facilities the Council also considers whether the social benefit would be easily available elsewhere if the business service ceased. This would include a Village Pub or shop

### **Other Considerations:**

Where the owner of a listed asset, such as a pub, applies for change of use, then the fact that the asset is listed as an asset of community value may be a material consideration in making a decision on whether to grant change of use.

The Local Plan seeks to promote the retention and development of important local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings and public houses. We will take into account the importance of these facilities to the local community when considering planning applications, whether the facility is or is not listed as an asset of community value.

In addition, Neighbourhood Plans can formally allocate assets for a community use in a site allocation proposals map. If there is good evidence to support the case (including for sites which may not meet the definition of an Asset of Community

Value), this would give it additional weight in decision making and could inform, and be informed by, the lists of nominated assets.

Where an asset is council owned, community groups may like to consider a Community Asset Transfer, rather than waiting for the asset to be put up for sale.

## Community Right to Challenge - Expressions of Interest (EOI)

Expressions of interest have to be in writing, and must include certain pieces of information. Councils can refuse to consider an expression of interest that either doesn't include all the required information, or is outside of the time period specified.

The Council must notify a group of the timescale for giving its decision on an EOI within 30 days of receiving it or 30 days after the Council's timeframe for EOIs being received ends.

### Receive EOI

- Dialogue with community groups over future service provision
- Receive Expression of Interest (EOI) to provide or assist in providing a Council service submitted by relevant body
- Portfolio Holder / Lead Member for relevant service informed; Ward member informed.
- EOI copied to the relevant Head of Service
- Check to ensure validity of applicant and EOI. If not compliant reject EOI and notify community group, Portfolio Holder / Lead Member and Ward member and publish decision.
- Compliance criteria to include:
  - Is the EOI in writing and does it meet the requirements in regulation 3 (SI 1313)?
  - Is the service not one of the excluded services in regulation 4 (SI 1313)?
  - Is the group valid? Is it a "relevant body" according to S81(6)?
  - Is the EOI timely? Did it arrive by the Council's deadline?

### Consider EOI

- Would accepting the EOI improve the social, economic or environmental wellbeing of the area? (as per the Public Services (Social Value Act) 2012 and general duty of best value). If not, reject EOI, as at Step 1 above)
- Does the EOI **avoid** all of the grounds for rejection, i.e.
  - inadequate or inaccurate information;
  - unsuitable body;
  - service is stopping;
  - service already being procured or under negotiation;
  - service going to be run by employees;
  - frivolous or vexatious EOI; or
  - accepting the EOI would mean breaching a statutory duty



**Modify EOI if necessary**

- If modification is required, is the community group content with the changes?

**Accept EOI**

- For the EOI to be accepted the following criteria must be met by the bid.

<b>Criteria</b>	<b>Requirement to be met</b>	<b>Evidence required</b>
Legal entity and governance.	A legal entity is required for the Council to contract with.  Effective governance arrangements for the Body are in place.	Details of the type of the lead organisation.  Details of partner organisations (such as consortium members or subcontractors) that will be involved in the provision of the services, their role in delivering the service and how governance will be managed between the partners.
Understanding of the services and the outcomes required.	The Body has a good understanding of the service required and is able to demonstrate that they will be able to provide a service that will deliver the outcomes required.	A description of the service to be provided and an explanation of how the Body will achieve the outcomes required.
Capability and capacity to provide the services.	The Body will have the capability and capacity to provide the service.	Sufficient information to evidence that the Body has or will have access to the resources and skills that are required to provide the service.
<b>Criteria</b>	<b>Requirement to be met</b>	<b>Evidence required</b>

<p>Financial capacity to sustain the provision of the service/goods for the duration of the contract period.</p>	<p>The Body will have access to sufficient funds to finance the provision of the service for the duration of the contract period.</p>	<p>Explanation of how the Body will have access to the required funds. This may involve the requirement to provide the following:</p> <ul style="list-style-type: none"> <li>• Turnover/reported income figures</li> <li>• Bank details</li> <li>• Confirmation that obligations to meet creditors and banking terms have been met.</li> <li>• Confirmation of ability to provide accounts or profit and loss and cash flow forecasts if requested.</li> </ul>
<p>Improvement in the social, economic or environmental well being within the area the service is delivered</p>	<p>Through the provision of the service the Body would be able to deliver an improvement in the social, economic or environmental well being of the area the service is delivered within.</p>	<p>Explanation of how the Body would through the provision of the service be able to improve the social, economic or environmental well being of the area the service is delivered within.</p>
<ul style="list-style-type: none"> <li>• Community group informed, portfolio holder / Lead Member for relevant service informed; Ward member informed. Published on website.</li> </ul>		

**Start Procurement Exercise**

- Council starts procurement exercise for relevant service. *NB. The Council must specify minimum and maximum periods between an expression of interest being accepted and a procurement exercise being started.*

**Community Rights: the proposed Scheme of Delegation**

Proposed scheme of delegations for handling expressions of interest made under the provisions in Chapter 2, Part 5 of the Localism Act 2011 and described in The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (SI 2012 No. 1647); and The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (SI 2012 No. 1313).

It is proposed that all powers in the above statutes relating to “the relevant authority” should be delegated to:

**a) Heads of Service, where it is proposed to accept an expression of interest (s83 (1) a), or reject it on the following grounds;**

Regulation 3, schedule 1, SI 1313	Expression of interest not in writing or does not meet the requirements of the regulation in terms of its form (must include financial information, evidence of capability, information about the service and geographical area, information about outcomes and information about employees)
s81(6)	The community group does not meet the definition set out in regulations
s82(2)	The expression of interest was not made during the prescribed time period for the corresponding service
Regulation 4 (4) (SI 1647)	The relevant service is stopping
Regulation 4 (5) (SI 1647)	The relevant service is provided jointly with the NHS and joint provision is critical to the wellbeing of the service users
Regulation 4 (6) (SI 1647)	The relevant service is already being procured
Regulation 4 (7) (SI 1647)	The relevant service is currently under negotiation
Regulation 4 (8) (SI 1647)	The authority has published its intention to consider the provision of the service by 2 or more employees
Regulation 4 (10) (SI 1647)	Accepting the expression of interest is likely to lead to a breach of a statutory duty

**b) The Strategy or Executive Committee, where it is proposed to reject an expression of interest (s83 (1) b) on grounds of:**

s83(8)	Acceptance of the expression of interest does not promote or improve the social, economic or environmental well-being of the authority’s area
Regulation 4 (2) (SI 1647)	Inadequate or inaccurate information was provided
Regulation 4 (3) (SI 1647)	The relevant body or its subcontractor is not suitable to provide or assist in providing the relevant service
Regulation 4 (9) (SI 1647)	The expression of interest is frivolous or vexatious
	The relevant body is not content to accept proposed modifications to the expression of interest

Please note: For a), it is proposed that Members are informed of expressions of interest relating to their ward or portfolio area i) as soon as they are received and ii) before they are accepted

It is further proposed that all powers relating to the other Community Rights should be exercised under delegated responsibilities as follows:

**For Neighbourhood Planning the Head of Economy to:**

- Designate a Neighbourhood Area where no substantial objections are received to the consultation.
- Ensure legal compliance when a plan is submitted to the Councils.

**For the Community Right to Bid for “assets of community value” the Head of Communities to:**

- Maintain the list of Assets of Community Value.
- Give notification of inclusion or removal of land from list of Assets
- Remove entry from the list following a review
- Publish and make available lists upon reasonable requests
- Give notice of and publicise receipt of notice of intended disposal of land
- Inform owner of request to be treated as a bidder

**For the Community Right to Bid for “assets of community value” the Head of Corporate Organisation in consultation with the Monitoring Officer to:**

- List rejected nominations including all necessary notifications.
- Determine reviews, appeals and claims for compensation.

**For all Community Rights:** Delegates authority to Heads of Service to make amendments to the operational processes and procedures which govern these community rights.

## Costs, funding and grants associated with the Community Rights

### Neighbourhood Planning

Councils have a duty to support the Neighbourhood Planning process by offering technical advice and practical support but as this is new and untried, it will be a learning process for all of those involved. It is likely to involve gathering evidence, help with facilitation or advice on consultation and therefore a commitment in terms of officer time. However, the Councils will be responsible for organising and covering the cost of independent examinations and undertaking a local referendum for a proposed Neighbourhood Plan.

The cost of the examination is unlikely to be of the scale of recent examinations as they require a less involved process. The cost of a referendum will vary according to the area affected by the plan.

Government support currently comprises a grant of £5,000 following the approval of an area determination application, £5,000 once a draft plan has been published and a final grant of upto £20,000 following a successful independent inspection. Grant support of up to £6,000 is available to communities to help them with the costs of developing a NP.

### Assets of Community Value

The Councils will bear the full costs of setting up a list of assets of community value; managing the list and 5-yearly reviews; compensation for loss of asset value; and enforcement. The following table shows the expected costs across all 353 local authorities in England, as estimated by the DCLG in its impact assessment for the Community Right to Bid. The Councils costs can be expected to be at the lower end of the estimates and some savings should be expected to be achieved by administering the process jointly across the two Councils.

Cost area	Total estimated cost across all English LAs (DCLG figures)	Indicative cost per English LA	Time period
Setting up list of assets of community value	£379,000	£1,075	Per year, 1 year only
Managing the list process and 5-yearly reviews	£2,500,000	£7,100	Per year
Compensation for loss of asset value	£233,000	£660	Per year, over 9 years
Enforcement	£35,000	£100	Per year, over 10 years

The Government stated in its response to the House of Lords Secondary Legislation Scrutiny Committee that *'costs to local authorities will be covered by central Government (via the New Burdens principle) during the spending review period (to 2014-15). After this period, local authorities will have to cover their additional costs from within their budgets'*.

The Department for Communities and Local Government has paid a 'new burdens payment' of £4873 in October 2012 to each of Babergh and Mid Suffolk Councils. This payment is not ring fenced and relates to costs associated with new duties under the new Community Right to Bid/ACV. Subject to Parliamentary approval further payments will be paid in both 2013 and 2014. Initial indications (Feb 2013) from DCLG are that Babergh and Mid Suffolk will each receive a grant of £7855 for work to support Community Right to Bid.

### **Costs of compensation**

Owners of assets who believe that they suffered loss as a result of the process can claim compensation from the Council. The District Councils therefore need to prepare themselves for possible compensation claims which could be burdensome both in terms of staff time and the cost of any successful claims.

However, the CLG estimates that there will only be between 4 and 22 successful claims per annum at around £2,000 per claim. This is based on experience from the equivalent Scottish scheme under which there have only been 2 claims since 2004.

Following consultation with local authorities in January 2012, the Government is also providing a safety net for local authorities facing claims of over £20,000 in one year, either from a single claim or a number of separate claims. Verified claims of over £20,000 will be met by the Government. The Government's has also encouraged local authorities to look at how best to manage the risk of claims, possibly through individual or mutual insurance.

### **Approach to meeting the costs to Babergh / Mid Suffolk**

It is expected that the work of administering the Community Right to Bid will be able to be absorbed within current workloads across Babergh and Mid Suffolk Councils. The Councils need to develop an approach to meeting the costs of any successful compensation claims and it is proposed that the option of taking out insurance be pursued.

### **Community Right to Bid**

If an expression of interest triggers a procurement exercise, there will be costs to the Councils of running the procurement exercise although these may be offset to some extent by savings in the running of the service. At this stage it is difficult to make cost estimates without knowing the extent to which the right is likely to be used in Babergh and Mid Suffolk.

CLG has paid a small additional grant (£17k in total across both Babergh and Mid Suffolk Councils) in respect of the new burdens associated with Community Right to Challenge. For 2013/14, initial indications (Feb 2013) from DCLG are that Babergh and Mid Suffolk will again each receive a grant of £8547 for work to support Community Right to Challenge.