



*at the heart of the National Forest*

# Community Rights Guidance

<b>VERSION</b>	<b>2</b>
<b>DATE</b>	<b>November 2014</b>

## **1.0 INTRODUCTION**

- 1.1 The Localism Act 2011 came into force on 15 November 2011 and with it came numerous changes to the laws governing Local Authorities. The government's aim was to "pass power back to where it belongs"; to communities and local people.
- 1.2 The new community rights within the Act aim to encourage community-focused, locally led action by providing important tools to help communities play a bigger part in shaping the places in which they live – whether that's preventing the loss of community assets through the Right to Bid, shaping and running local services through the Community Right to Challenge and Community Asset Transfer or shaping a wider community through neighbourhood planning.
- 1.3 The most creative local authorities welcome innovative ideas from communities about how services can be improved and co-designed to better meet local need, working with community based groups and individuals who believe they can run services differently and better.
- 1.4 This Community Rights Guidance captures one aspect of North West Leicestershire District Council's intention to work efficiently to provide value for money services that meet our communities' needs and aspirations by working with our residents.

## **2.0 ASSETS OF COMMUNITY VALUE**

- 2.1 From local pubs and shops to village halls and community centres, the past decade has seen many communities lose local amenities and buildings that are of great importance to them. As a result they find themselves deprived of the assets that can help to contribute to the development of vibrant and active communities.
- 2.2 The Community Right to Bid aims to encourage more community-focused, locally led action by providing an important tool to help communities who wish to take over and run local assets.
- 2.3 The right gives communities the opportunity to identify assets of community value and have them considered within the legislative framework and where applicable listed as assets. Then if the assets are put up for sale, communities will have more time to raise finance and prepare to bid for them.
- 2.4 Nominations for Assets of Community Value can only be made by;
  - Parish Councils
  - Neighbouring Parish Councils
  - Unincorporated Groups – with at least 21 members listed on the local electoral register and do not distribute any financial surplus to its members
  - Designated Neighbourhood Forums (also known as neighbourhood planning forums)
  - Community Interest Groups with a local connection such as;
    - a) charities
    - b) community interest company, co-operative or community benefit society
    - c) company limited by guarantee that is non-profit distributing
    - d) industrial or provident society that is non-profit distributing

- 2.5 To be an Asset of Community Value, the proposed asset must or has recently furthered the social wellbeing or social interests of the local community and it should be realistic to think it would continue to do so or within the next 5 years its main use could benefit the social wellbeing or social interests of the local community.
- 2.6 Proposed Assets of Community Value cannot be approved for land or buildings that are used solely as residential property including gardens and other associated land, land used as a residential caravan site or operational land of statutory undertakers as defined in s263 of Town and Country Planning Act 1990, p4 of Schedule 1.
- 2.7 "Social interests" are defined to include cultural, recreational and sporting interests. This must be determined based on the consistency and regularity of use, who uses it, whether there is another building within the area used for the same purpose and whether the condition of the asset is such, that it can be determined as being able to withstand further use.
- 2.8 The Council's Community Focus Team processes all Community Rights applications. Upon receipt of a completed pro-forma the nomination will be registered and considered. The Community Focus Team has a template pro-forma and can assist groups to complete this if required.
- 2.9 An evaluation panel led by the Head of Community Services has 8 weeks to make a judgement about whether the asset meets the definition set out in the Localism Act 2011 from the date the nomination is received.
- 2.10 If the evaluation determines that the nomination may not be an Asset of Community Value the Head of Community Services will notify the nominee detailing the reasons why.
- 2.11 If the evaluation determines that the nomination may be an Asset of Community Value the Head of Community Services will notify the landowner accordingly detailing the reasons why, explaining the legislation and impact on the asset and the right to a review of the decision.
- 2.12 The Head of Community Services will also notify the Parish Council in which the land lies, any lawful occupant (which could include a licensee) and the nominee.
- 2.13 The outcomes will be listed on the Council's website.
- 2.14 Whilst the nominee has no right of appeal against a refusal, the landowner does have a right to a review which must be made to the Head of Community Services, in writing, within 8 weeks from the date that written notice was given. The property remains listed while the review is carried out. If the land is owned by the District Council the Head of Community Services will notify the Property Services Section who will refer the nomination to the Asset Management Group who will make a decision whether to exercise the right to review. The notification and appeals processes are consistent with those for private landowners.

- 2.15 The review decision must be made within 8 weeks by someone of appropriate seniority not involved in the original decision and so the Director of Services will chair the review, accompanied by two other representatives from CLT. The review will consider representations from the Head of Community Services and either the landowner or a nominated representative.
- 2.16 If the review panel upholds the original decision the landowner and nominee will be notified accordingly and the asset will remain on the list for a 5 year period. The landowner has a further right to appeal to an independent tribunal within 28 days from the date on which notice of the review decision was sent to the owner.

### **3.0 COMMUNITY RIGHT TO BID**

- 3.1 When an owner of an asset listed as an Asset of Community Value intends to dispose of the asset they must notify the Council who in turn will notify the nominees who originally applied for the asset to be registered. The Council will also publicise the intention to dispose of the asset locally through the Council's website and by informing the Parish Council.
- 3.2 Once advertised an interim moratorium period of 6 weeks commences during which time the nominees must make a written request to be treated as a potential bidder.
- 3.3 There is no obligation to accept the bid of the nominees but where an expression as a potential bidder has been made, a full moratorium period of 6 months from when the asset owner first notified the Council of their intention to dispose of the asset applies.
- 3.4 The outcome of the disposal will be publicised on the Council's list of Assets of Community Value web pages.
- 3.5 Landowners (other than local authorities) may claim compensation for loss and expense incurred through the asset being listed. The claim must be made within 13 weeks from the end of the interim or full moratorium, as appropriate, or from the date when the land ceases to be listed.
- 3.6 Claims must be made in writing with supporting evidence and will be considered by the Head of Community Services. There is no specified time limit for completion of compensation claims. Upon completion the claimant landowner will be notified in writing with reasons for the decision.
- 3.7 The landowner may request a review within 8 weeks of the date on which the Council provides the owner with written notification of the decision.
- 3.8 The Director of Services will chair the review, accompanied by two other representatives from CLT. If the landowner disagrees with the review decision they have a further right to appeal to an independent tribunal within 28 days.

### **4.0 COMMUNITY RIGHT TO CHALLENGE**

- 4.1 The Community Right to Challenge aims to encourage more community-focused, locally led action by providing an important tool, presenting an opportunity for

communities or council employees to take over local services that they think they can run differently and better.

- 4.2 The Community Right to Challenge can be used by;
- A voluntary group whose activities are carried out 'not for profit'
  - A community group whose activities are carried out purely for the benefit of the community
  - A body or trust which is established for charitable purposes only
  - A parish council
  - Two or more employees from the organisation who already provide the service
- 4.3 Expressions of interest to take over running a local service will only be considered between April 1<sup>st</sup> and September 30<sup>th</sup> to enable alignment with budget setting processes.
- 4.4 Any enquiries regarding the Right to Challenge will be forwarded to Community Focus who will check whether the proposed service is out to tender. If it is the enquirer will be advised as to how to engage in that existing procurement process.
- 4.5 The Expression of Interest must be submitted in writing and be addressed to the Community Focus team. It must include;
- Full details about the applicants demonstrating that they are a relevant body (listed in section 2 above).
  - If the group is a consortium or if they intend to use a subcontractor to deliver any part of the service, information about each member of the consortium or sub contractor must be provided.
  - Information about the financial resources of the group, consortium members or intended sub contractors
  - Evidence that by the time of any procurement exercise the group will be capable of providing the proposed method of service delivery
  - Information about the service they are interested to provide and the geographical area in which they intend to supply the service. This can be parts of the district or the whole district.
  - Information about the outcomes they intend to achieve, in particular;
    - a) How provision of services by them will promote or improve the social, economic or environmental wellbeing of the district, and
    - b) How provision of the service will meet the needs of those who receive the services.
- 4.6 Proposals will need to demonstrate how they will promote or improve the social, economic or environmental wellbeing of the district, and meet the needs of those who receive the services.
- 4.7 If the group consists of council employees the Expression of Interest will also need to identify how they intend to engage with other employees who will be affected.

- 4.8 Whilst there are no statutory timescales for consideration of the Expression of Interest the Head of Community Services must advise the proposing group of an intended date when the process will be concluded.
- 4.9 The Council can only reject an Expression of Interest when;
- The required information has not been provided.
  - The Expression of Interest relates to provision of a service that Councillors have already determined to stop providing.
  - There is an existing contract in place with another provider to supply that service and the Council would be penalised for cancelling that contract. In this instance the group will be advised when that contract is due to end.
  - Outsourcing the service would be a breach of some other legislation.
- 4.10 If the Council accepts the proposal, a procurement process must commence in accordance with existing procurement policies and procedures to allow fair competition for the award of the contract.

## **5.0 COMMUNITY ASSET TRANSFER**

- 5.1 The term Community Asset Transfer relates primarily to long leasehold (from 25-99 years) or freehold arrangements to voluntary or community organisations and covers land and buildings.
- 5.2 In 2007 the policy document 'Making Assets Work: The Quirk Review of community management and ownership of public assets' concluded strongly in favour of local ownership and management of public assets, a position which was supported by the previous government through place-shaping and empowerment policy initiatives, including the establishment of the Asset Transfer Unit.
- 5.3 Local authorities are legally able to transfer their land and buildings to community based organisations at 'less than best consideration' (below market value) under the General Disposal Consent (England) 2003, where the asset to be disposed of has an undervalue of less than £2 million.
- 5.4 The legislation also requires that the transfer should help to secure the promotion or improvement of the economic, social or environmental well-being of an area.
- 5.5 Consideration will be made upon receipt of an Expression of Interest from any voluntary, community or not for private profit organisation and Town or Parish Councils who can demonstrate that they are;
- a legal entity, or part of a legally constituted consortia agreement
  - appropriately constituted (e.g. a registered charity, community benefit company or charitable incorporated organisation, not for profit company)
  - have stated community benefit objectives
  - non profit distributing – any surplus must be reinvested to further its social aims / community benefits.

- 5.6 The Council will consider a Community Asset Transfer for most assets (buildings or land) that are in the ownership of the Council where;
- There is a clear and viable purpose for the asset that a transfer would enable and support
  - There are clear governance arrangements operating through open and accountable, co-operative processes, with appropriately robust financial management systems and ability to meet any relevant legislative requirements
  - There are skills and capacity within, or available to the organisation from local providers, to effectively deliver the services specified and manage the asset
  - There is evidence of community support for the proposal
- 5.7 Where there is more than one party interested in the transfer of a specific asset Community Focus will seek to encourage collaboration. If this is not possible all competing bids will be considered and a preferred partner selected.
- 5.8 Organisations will be supported by Community Focus to develop an Expression of Interest for consideration, if required.
- 5.9 If the asset within the Expression of Interest is not listed as an Asset of Community Value, Community Focus will forward the Expression of Interest to the relevant Head of Service (e.g. Head of Housing for Housing Revenue Account buildings and land) to seek their views, based upon financial, social, environmental and sustainability considerations.
- 5.10 Those views will be forward with the Expression of Interest for consideration at the next scheduled Asset Management Group. Asset Management Group can refuse a Community Asset Transfer but must detail justified reasoning for doing so within the minutes.
- 5.11 There is no legal right to appeal a refusal but the applicant organisation can resubmit their amended Expression of Interest if they can satisfy the Asset Management Group's reasons for refusal. The applicant organisation will also be advised of the Council's complaints procedure if they remain dissatisfied.
- 5.12 Asset Management Group can support a Community Asset Transfer and this recommendation will be forwarded to the Director of Services when the group is satisfied that a Community Asset Transfer would;
- support the aims and priorities of the Council
  - enable local delivery and realise community benefits
  - be leased to a financially viable, sustainable organisation
  - ensure services / activities will be delivered with the potential for continued investment and benefits for local residents
- 5.13 The initial decision to progress to Community Asset Transfer will be made, through delegated powers, by the Director of Services. An initial 5 year lease will be offered to test the viability of the Community Asset Transfer.

- 5.14 At the end of year 4 of the initial 5 year lease of every Community Asset Transfer, where the applicant organisation wishes to continue to a long term lease or freehold transfer, an officer report will be brought to Cabinet recommending termination or continuation, based upon performance and community benefits of the first 4 years.