

Taunton Deane Borough Council

Executive – 13 April 2011

Proposals to Introduce a Community Right to Buy – Assets of Community Value – Consultation Document

Report of the Legal and Democratic Services Manager

(This matter is the responsibility of the Leader of the Council, Councillor John Williams)

1. Executive summary

<p>A consultation paper has been released by the Department for Communities and Local Government concerning the proposals to introduce a Community Right to Buy – Assets of Community Value.</p>
--

2. Background

- 2.1 The statutory framework for the Community Right to Buy is provided in Part 4, Chapter 4 of the Localism Bill. This bill was introduced on 13 December 2010 and is outside the scope of this consultation. However the bill includes a number of powers to specify further detail underpinning the Community Right to Buy in regulations. This consultation paper invites views on these aspects. A précis of the consultation document is attached to this report at Appendix 1.
- 2.2 The consultation was considered by the Community Scrutiny Committee on the 8 March 2011 and its responses are set out in the response form attached to this report at Appendix 2.

3. Finance comments

- 3.1 There are no financial implications in this report although if the proposals are implemented there will be resource implications and those implications will be reported upon at a future date.

4. Legal comments

- 4.1 There are no legal implications in this report.

5. Links to Corporate Aims

- 5.1 There are no implications regarding the Corporate Aims.

6. Environmental and Community Safety implications

- 6.1 There are no implications for the environment or community safety.

7. Equalities impact

7.1 An impact assessment is not required in respect of this report.

8. Risk management

8.1 There are no implications from a risk management perspective

9. Recommendation

9.1 The Executive is requested to provide their views on this consultation document and approve it for submission to the Department for Communities and Local Government.

Contact

Contact officer: Tonya Meers
Telephone: 01823 358691
E-mail: t.meers@tauntondeane.gov.uk

Appendix 1

Proposals to introduce a Community Right to Buy – Assets of Community Value

Precis of Consultation Document

Sections 1 and 2 What is the community right to buy?

These provisions will entitle community groups to identify and nominate public or private assets of community value to their local area to be included in the local authority list of assets of a community value.

Once that asset comes up for sale a community group will then have a window of opportunity to bid or buy that property.

A local authority will need to consider if a building/asset has a community value then it will need to be put on to the list. There will be a review process that will need to be put into place.

An asset of community value will also need to be added to the local land charges register and the occupier of the land, if they are different to the owner must be notified.

The list of assets will need to be published along with any assets that were not successfully nominated and they will remain on that list for a period of 5 years.

If an asset is placed on the list, this means that when the owner comes to sell the property they must inform the local authority of their intention to do so. The local authority must then notify the nominating community group and publicise in the local area that the asset has come up for sale and amend their list accordingly.

The Community interest group will then have a window of opportunity to put forward their intention to bid for the asset. If they do not then the owner can proceed with the sale.

If the community group state their intention to bid then the window of opportunity will be extended in order to do that. If the bid is not made within the full window of opportunity then the owner will be free to sell the asset.

There will be a compensation scheme for owners, which, at this stage is envisaged to be paid for by local authorities.

Section 3 Definition of an asset of community value

A combination of approaches are being proposed by the government. They state that the regulations could list types of buildings and land that do not constitute assets of community value and should be excluded from any list but they could also give the local authority the discretion to determine what does constitute an asset of community value in line with some criteria or factors.

The consultation document states that a local authority could consider whether the land or building 'furthers the social, economic, or environmental well being or interests of the local community' but in addition to that they give a range of other factors that could also be taken into account. Members may wish to consider whether all of those factors are relevant such as the ownership or occupation of the land/building or the price or value of the land.

Therefore should the current or former use of the land/building be the deciding factor?

The guidance also suggests that all residential property should be excluded except where the accommodation is tied to the asset of community value or is integral to the working of an asset and the consultation asks whether the authority agrees with this.

Section 4 Ways in which assets may be nominated and listed

The document details who may nominate an asset to be listed and suggests two possible approaches, namely to restrict to community groups which meet a certain criteria or allow nominations by any person with a local connection.

The 'local connection' is being proposed throughout this process.

It is proposed that the nomination process can be opened fairly widely and a local authority can also list land/buildings on their own initiative. It is also envisaged that community planning could be an important route for communities to collectively identify assets of community value.

Section 5 Information to be included in community nominations

This section details what information will be required in order to make a nomination. These will be at a minimum, a description of the land sufficient to identify its boundaries; information about the current owner; reasons for considering that the land/building is or has been an asset to the community; and evidence that the nominator is eligible to make the nomination.

There is also a proposal that local authorities could ask for any further information they deem appropriate.

Section 6 Procedure for listing assets

This process allows for a review process and appears quite straightforward.

Section 7 Notification about inclusion and removal of a listed asset

This section states that the owner/occupier and nominator should be notified that the land/building has been included on the list.

The notification should provide details of the scheme, the consequences for the land owner and the land owners right to ask for a review of the decision.

The process also provides for notification of a removal of an asset from the list either at the end of a specified listing period (5 years) or following an internal review.

It is also envisaged that local authorities will be given power to remove an asset from the list if it considers that it is no longer a community value.

Section 8 Content and publication of the list of assets and of unsuccessful nominations

This section details how the list should be maintained and also include details of any failed nominations.

I would query why we would need to have a list of failed nominations and the relevance of this.

Section 9 Right of appeal for land owners

This section states that an owner can request an internal review of a decision to place their asset on the list and provides that that should be done in writing within 28 days from the date of the notification.

It is proposed that the owner should produce any evidence as to why it should not be included in the list, interestingly this also states that any new factors can be taken into account. I would suggest that this should be limited to any new

factors that were not known at the time of the original objection as otherwise this could just be used as a delay tactic.

The timescale for any review is stated to be 6 weeks and that a senior officer should undertake that review.

There is a possibility that regulations will allow for an oral hearing and in my view this should be only be done if there are any equalities issues that may arise, rather than be the norm as this should be a process that can be decided on written representations and evidence.

It is noted that there is also a possibility of an appeal process and whether this should be through a court or a tribunal. I would suggest that this should be to a tribunal which is likely to keep costs down. The owner will always still have recourse through judicial review should they wish to go down that route.

Section 10 Length of the windows of opportunity

This section provides that there are three windows of opportunity an interim window of opportunity, a full window of opportunity and a protected period.

The interim period allows a period of time for an 'eligible community group' to notify the local authority that they would like to be treated as a potential bidder should the asset come up for sale. If this happens then a full window of opportunity arises. If no-one comes forward then the owner can sell the asset without further recourse to the local authority. It is envisaged that this interim window will be 6 weeks.

If an 'eligible community group' does come forward the period is extended in order to allow the group to bid and it is suggested that this could be 3 months or 6. this timescale includes the previous interim window so that the whole process would be no longer than either the 3 or 6 months.

An 'eligible community group' is likely to be defined as either a parish council or a group with a local connection which satisfies 2 or more of the listed requirements, namely that they are incorporated, they have charitable status, they have an asset lock in a legal form (eg trusts, community interest group, provident societies), or they are non-profit-distributing.

Finally there is a proposed protected period. If an owner notifies the local authority that they intend to enter into a relevant disposal but the owner does not sell their asset that the end of the interim or full window there will be a remainder of a protected period in which they are permitted to sell without triggering another delay and this period is proposed to be 18 months.

Where there is a relevant disposal the new owner should notify the local authority that they have purchased the asset and that it should be removed from the list.

The consultation document only asks if the proposed protected period is sufficient but I would question why it should be removed from the list following a relevant disposal as surely the asset is still of community value?

Section 11 Exempt disposals and permitted sales

The bill makes a provision for regulations to specify relevant disposals that are exempt from the requirements of the scheme.

Vacant possession, a relevant disposal is defined as the disposal of the freehold estate or a grant/assignment/surrender of a lease that is for at least 25 years. If the owner is unable to give vacant possession this will not be a relevant disposal.

However some partial occupation may be permitted.

The consultation document details a number of disposals that will not trigger the window of opportunity which all seem sensible.

In addition the scheme does allow some disposals to take place during the window of opportunity and they are if the sale is to a local parish council or a community interest group.

Section 12 Compensation for land owners

This is likely to be a very controversial area as it is proposing that an owner can apply to a local authority for compensation due to the implications of this scheme. It is suggested that any compensation will be limited to the reimbursement of expenses incurred by a landowner in complying with this legislation.

The government are asking if this is right however I think the response should quite clearly be no and that any claims should be paid for by the government. In addition this would be difficult to budget for and is not helpful to keep money in a contingency budget when local authorities are facing substantial cuts over the coming years and this money could be better spent on protecting front line services.

It is also envisaged that there should be an appeal process for land owners to appeal against a local authorities decision regarding a decision it makes about compensation.

Section 13 Enforcement of regulations

The bill states that the land will be registered as a local land charge as a preventative measure to alert potential buyers.

The government want to set up an enforcement process to deal with any potential breaches of this legislation and this could be that any transfer that hasn't complied with the legislation is void, that the transfer should be set-aside or a compensation payment or other remedies as defined by the court.

There is a proposal that a community interest group would have been entitled to be treated as a potential bidder can lodge a complaint with the civil court on the grounds that the owner has not complied with the statutory requirements of the scheme.

There is a proposal to limit the period for a claim to 6 months from the date of the sale or from the date on which the group became aware of the sale. It is also envisaged that the claim should be made against the original owner and the current owner.

It is envisaged that the court could impose an appropriate remedy and this could be paying compensation or they could order that the sale be set aside or render the transaction ineffective.



Community Right to Buy

Consultation response form

We are seeking your views on the following questions on the Government's proposals to introduce a Community Right to Buy – Assets of Community Value.¹ **If possible, we would be grateful if you could please respond by email.**

Please email: crtbuy@communities.gsi.gov.uk

Alternatively, we would be happy to receive responses by post. Please write to:

Community Right to Buy Consultation Team
Department for Communities and Local Government
5/A3 Eland House
Bressenden Place
London SW1E 5DU

The deadline for submissions is 5pm on Tuesday 3 May 2011.

(a) About you

(i) Your details

Name:	Tonya Meers
Position:	Legal & Democratic Services Manager
Name of organisation (if applicable):	Taunton Deane Borough Council
Address:	Deane House, Belvedere Road, Taunton, TA1 1HE
Email:	t.meers@tauntondeane.gov.uk
Telephone number:	01823 356391

¹ DCLG (2011) Proposals to introduce a Community Right to Buy – Assets of Community Value: Consultation paper.
see: www.communities.gov.uk/corporate/publications/consultations

(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response	<input checked="" type="checkbox"/>
Personal views	<input type="checkbox"/>

(iii) Please tick the *one* box which best describes you or your organisation:

Voluntary sector or charitable organisation	<input type="checkbox"/>	
Local authority (i.e. district, London borough, county council)	<input checked="" type="checkbox"/>	
Parish council	<input type="checkbox"/>	
Business	<input type="checkbox"/>	
Landowner	<input type="checkbox"/>	
Land conveyancer	<input type="checkbox"/>	
Other public body (please state)	<input type="checkbox"/>	
Other (please state)	<input type="checkbox"/>	

(iv) Do your views or experiences mainly relate to a particular type of geographical location?

City	<input type="checkbox"/>	
London	<input type="checkbox"/>	
Urban	<input type="checkbox"/>	
Suburban	<input type="checkbox"/>	
Rural	<input type="checkbox"/>	
Other (please comment)	<input checked="" type="checkbox"/>	We are urban, suburban and rural

(vi) Would you be happy for us to contact you again in relation to this

consultation?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

(b) Consultation questions

Section 3 – Definition of Asset of Community Value

Q1. Do you agree that the regulations should give local authorities the power to decide what constitutes an asset of community value based on a broad definition of 'local community benefit' and a list of excluded assets?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

--

Q2. If yes, (a) do you agree with the factors listed above that the local authority should take into consideration when deciding whether a piece of land or building is an asset of community value?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Further comments:

Members thought that the owner/occupation should not be a factor that needs to be taken into consideration.
--

(b) Should these be set out in regulations?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Further comments:

No guidance would be appropriate to allow for flexibility
--

Q3. We envisage that the definition of 'land of community value' would not include a piece of land or a building which the nominator suggests has a potential use as opposed to former or current use – do you agree?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q4. Are there other areas that you believe should be explored further to strengthen the Community Right to Buy?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes, what?

Access to funding to enable these projects to go ahead.

Q5. Do you agree that all residential property should be excluded from being listed as an asset of community value, except where the accommodation is tied to the asset of community value or is integral to the working of the asset?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q6. Are there other types of land or buildings that should be excluded from being listed as assets of community value?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If yes, what?

Section 4 – Ways in which assets may be nominated and listed

Q7. Do you agree that the nomination process should be open to any group or individual and that they should have a 'local connection'?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q8. How else could an individual or group be defined as having a 'local connection'?

Members were satisfied with the definition set out in the consultation document

Q9. Are there other process(es) by which an asset of community value should be listed?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

Section 5 – Information to be included in community nominations

Q10. Should (a) the regulations specify the minimum information that should be included in a community nomination?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Further comments:

Guidance should be sufficient as there may be other factors that a local authority would wish to take into account, this would then allow for local discretion.

(b) Or should this be left to the local authority's discretion?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Further comments:

This would be in line with the spirit of localism.

Q11. If you think the regulations should specify the contents of a community nomination, is there other information that should be included?

--

Section 6 – The procedure for listing assets

Q12. Do you agree that owners should be informed before the local authority makes a decision whether to list the asset or not?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

--

Q13. Should the local authority be required to follow any other procedures when deciding whether to list an asset?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Section 7 – Notification about inclusion and removal of a listed asset

Q14. Is there anyone else (other than the owner, occupier and nominator) the local authority should inform of inclusion or removal of a community asset from the list?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes, who?

There should be a public notice to notify the community

Q15. Is there other information (other than that listed in paragraph 7.3) that should be included in the notification of inclusion of an asset on the list?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Q16. Do you agree that an asset should be removed from the list of assets of community value once the local authority knows that it has been sold as a result of a relevant disposal?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If No, why not?

It is not clear why it would still not be an asset of community value just because it has been sold if we are talking about the asset rather than ownership.

Q17. Should local authorities be able to remove an asset from the list if it is no longer considered to be of community value?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Further comments:

--

Q18. Is there other information that should be included in the notification of removal of an asset from the list of assets of community value?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Q19. Are there other ways (in addition to those listed in paragraph 7.11) in which an unknown landowner, or an owner whose current address is not known, might be contacted and notified that their land has been included on or removed from the list of assets of community value?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Section 8 – Content and publication of the list of assets of community value and the list of land nominated by unsuccessful community nominations

Q20(a). Do you agree that local authorities should decide the most appropriate ways to publicise the lists and bring them to the attention of the community and other interested parties, beyond what is set out in the Bill?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

(b) If not, what further requirements should be set out in regulations?

--

Section 9 – Right of appeal for landowners

Q21. Do you agree with the suggested period (28 days) for requesting an internal review?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q22. Is there any other information (in addition to what is listed in paragraph 9.3) the owner should provide?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes, what?

A reason why the information the owner is relying upon under a review, was not available at the time to assist the local authority in making its original decision.

Q23. Do you agree with the proposed timescale of 6 weeks for the local authority to complete the internal review?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q24. Do you agree that the review should normally be undertaken by an officer in the local authority who is equal in rank to or more senior than the officer who took the decision to list the asset and who was not involved in the original decision-making?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q25. Do you think that the landowner should be entitled to an oral hearing as part of the internal review?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes, in what circumstances?

But only in limited circumstances such as any disability, illiteracy, or language difficulties, in other words to ensure that the local authority meets its responsibilities under equalities and diversity.

Q26. Should anything else be included in the internal review process?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Q27. Should formal provision be made for landowners to appeal to a court or tribunal if they are dissatisfied with the outcome of the local authority's internal review?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Further comments:

Members thought that a tribunal would a more cost effective route to appeal than through a court. It was noted that judicial review would always be available.

Section 10 – Length of the windows of opportunity and protected period

Q28. Do you agree with the proposed length of the interim period (6 weeks)?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Q29. Are there any other kinds of groups that should be allowed to make a request to be treated as a potential buyer during the interim window of opportunity period, thereby triggering the full period?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes, who?

Members thought that these groups could be restrictive and that others with a local connection should also be allowed providing they can show that they can access sufficient funding.

Q30. Do you prefer option (a) 3 months; or option (b) 6 months; or option (c) other?

3 months	<input type="checkbox"/>
6 months	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

If 'other', how long should the full window of opportunity be?

Q31. Do you agree with the proposed length of the protected period (18 months)?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

Section 11 – Exempt disposals and permitted sales within the full window of opportunity

Q32. To what extent should we allow for cases of partial occupation (as set out in paragraph 11.3)?

Comment:

Members agreed that this should be for each local authority to decide on a case by case basis as it may not be easy to determine on a national basis.

Q33. Are there other disposals (in addition to those listed in paragraph 11.4) that should be exempt?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Q34. Are there other circumstances (in addition to those in paragraph 11.6) under which sales should be permitted within the window of opportunity?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Q35. Do you agree with the list of groups in paragraph 11.7 that could be eligible to purchase an asset during the window of opportunity?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

--

Section 12 – Compensation for landowners

Q36. Do you agree with the proposal in paragraphs 12.3 and 12.4 (that compensation should be based on costs incurred as a result of the procedural requirements of the scheme)?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

--

Q37. Do you agree that compensation claims should be considered and paid for by the local authority?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If No, why not?

Members were unhappy that the local authority should have to put money into a contingency fund in case of claims especially at a time when budgets are tight and the money could be better spent on protecting frontline services. Therefore members thought that any compensation should be paid for by central government.

Q38(a). Do you agree that only private landowners should be entitled to claim compensation?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If No, why not?

The reason is due to the loss in value of the land regardless of ownership therefore it should not matter who the owner is as any land owner would suffer in the same way.

(b) What do you think the definition of 'private landowner' should be?

--

Q39. Do you agree with the proposed time limit of 90 days for making a compensation claim?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, how long do you think the time limit should be?

--

Q40. Do you agree with the proposal in paragraph 12.8?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

--

Q41. Do you agree with the proposal in paragraph 12.10?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If No, why not?

--

Q42(a). Should landowners be entitled to appeal against a local authority's decision about compensation?

Yes	<input checked="" type="checkbox"/>
-----	-------------------------------------

No	<input type="checkbox"/>
----	--------------------------

(b) If Yes, on what basis?

To ensure that all of the correct information was taken into account when making the decision.

Section 13 – Enforcement of the regulations

Q43. Do you agree that an enforcement regime is required?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes:

Q44. Do you have any comments on the process of enforcement?

No the consultation document seems to have covered this.

Q45. Are there alternative approaches to enforcement that you would propose?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, what?

--

Section 14 – Support and Guidance

Q46. What support would be most helpful?

Access to funding to enable local authorities to be able to bid for some of these properties in order to allow them to remain as assets of community value.

(c) Additional questions

Do you have any other comments you wish to make?

END