

Localism “Rights”

The **Localism Act** received Royal Assent in November 2011 after several months' parliamentary scrutiny of the original Localism Bill.

The act seeks to give more say to local authorities and to communities by passing them more decision making power from central government, where local issues are concerned.

The Act passes a number of new rights to communities to give them greater freedom and ability to achieve things in the area in which they live. This guidance sheet is concerned with four of those “Rights”. For general information on the broader parts of Localism Act relevant to communities and local councils, please see guidance sheet number 8. In addition a plain English guide to the Localism Act can be accessed at <https://www.gov.uk/government/publications/localism-act-2011-overview>

For the purposes of this guidance sheet, the Localism Act will be referred to as the “Act” and will cover each of the following rights:

- Community Right to Challenge
- Community Right to Bid for assets of community value
- Right to Plan
- Community Right to Build

Community Right to Challenge*

This enables community groups, parish councils and local authority employees the right to express an interest in running a local authority service if they believe they can achieve this at the same or better standard to the same or better value. It came into force in June 2012 and applies only in England.

In most cases local authorities must consider an expression of interest in providing the service by another body and where they accept this expression they must run a procurement exercise. Some services are excluded from the “right”.

Parish and town (local) councils are not obliged to respond to expressions of interest from other groups but they may submit their own expressions of interest to principal authorities.

Looking Further

* The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 can be read in full at <http://www.legislation.gov.uk/ukxi/2012/1313/made>

The Act says that an expression of interest may be made at any time but that a local authority may specify times in which expressions of interest, particularly for specific services, may be submitted.

A local authority will sometimes set a period of time during which expressions of interest may be made for certain services or generally. It will be common for such periods to be during the phase prior to the commencement of the authority's budgeting process so that any decisions made can be reflected in the forthcoming budget. They may also reflect the tenure of current contracts and commissioning programmes.

Before submitting an expression of interest, it is important to check the current position of the service you believe can be provided at a better standard or value. It may not be viable to express an interest at this time: the service may be being provided via a contractor and a set amount of time has already been agreed; the tendering process may have already begun, or the authority may not be planning to continue this particular service. In addition, it is worth checking if there are any services your local authority already has provision for delegating to local councils or community groups. Doing both of these first will save time and effort if a) there is no position for the service to be taken on at this stage or b) it may be delegated without the need for this process.

Just because an expression of interest has been submitted, the authority does not have to accept it. There may be reasons for not doing so, such as insufficient or inaccurate evidence, the service is not in a position to be taken over at this time or the party expressing the interest is not suitable to take it on.

If, however, it is accepted then a procurement process will begin. Times between the acceptance and the procurement process are set depending on the value of the services concerned. The procurement is open and competitive and anyone can bid to provide the service in line with the local authority's procurement rules.

If you are submitting an expression of interest, it is likely that you believe your local council or community group is in a position to bid for the service. With this in mind, when considering submitting an expression of interest to run a local authority service, a local council or community group must ask itself a number of questions:

- Why do you want to run this service?
- How do you think you can do this more efficiently?
- Can you do it at better value?
- Can you provide a better service?
- Can you evidence any of the above?
- Do you have the resources (including staff time) to operate this service?
- Will it affect your insurance provision?
- How will providing the service at the most local level benefit the community?

This should not put councils or groups off from expressing their interest but rather help you to be realistic about what you can provide. The local authority must consider the social, economic and environmental value of the service being provided more locally.

Community Right to Bid for Assets of Community Value

This right enables parish councils and community groups to nominate land or buildings to be included in a list of community assets kept by the principal authority.

Putting the property on the community asset list will trigger a process, where, in the event the property is put up for sale, a community interest group will be able to express an interest in bidding to buy the land or building. Local communities will ask the principal authority to add a particular asset to the list in order to delay its immediate private sale on the open market and give them the opportunity to put in a bid for the asset.

This includes land or buildings owned by anyone and may include anything which the group believes is an asset of value in the community. This may be a potential recreation ground, a pub, shop or post office or other community relevant building. The principal authority must deem the asset to be of community value for it to go on the list. The idea is to keep or transform buildings and land in the community for public benefit.

It does not give a right to the community interest group to buy the property but to be notified of the owner's intention to sell, and the right to bid for its purchase.

Where assets are listed, the owners must let the principal authority know if they plan to sell or grant a lease of more than 25 years. A six-week window of opportunity to allow a community interest group to register an interest purchasing the asset then begins. If a request is received then a six-month suspension is placed on the sale to enable the group or local council time to potentially secure or raise funds and put in a bid.

Those selling the asset are not obliged to sell it to whoever requested it to be placed on the list but it does provide an opportunity for the community to seek funding before it appears on the open market and then place a bid. There are exemptions such as when it is part of a deceased person's estate or the owner is bankrupt. Full regulations can be found at <http://www.legislation.gov.uk/ukdsi/2012/9780111526293/contents>

Where an asset is owned by a principal authority, local councils and community groups may wish to apply the transfer of publicly owned assets through the Community Asset Transfer process. You can find out more about local processes by contacting your principal authority.

Right to Plan

The Act gives communities the right to draw up a neighbourhood plan. Neighbourhood forums, or where they exist, local councils can coordinate the views of residents, employees and businesses to have a say on development in the area.

In areas which have local councils, they are the only bodies that can draw up a neighbourhood plan. That said, they could adopt the steering group approach with the local council as the lead body. This would mean that a whole range of community groups and stakeholders could be represented to input to the plan. It may be that the neighbourhood plan area covers more than one local council area, meaning that a number of local councils are leading the steering group.

It is important that communities are satisfied that they want a Neighbourhood Plan rather than a Community Led (or Parish) Plan. A community led plan is very much a shared vision or strategy for the future of the area, looking at facilities and social, economic and environmental issues. Neighbourhood plans concern themselves with development, spatial planning, infrastructure and the built environment. This includes transport, businesses, housing, renewable energy and buildings. It is also important that communities are aware that neighbourhood planning may not be used to veto development where it has already been recommended in established local plans but it can be used to influence where development (both residential and business) should go and how it should look.

Planning authorities will support and advise communities which embark on a plan. The plan belongs to the defined neighbourhood area and although planning authorities can advise, their role is not one of influence as to the content of the plan. They will make sure that it has been prepared correctly and ensure that it does not contradict strategic policies or oppose the local plan by rejecting rather than embracing development.

Before being adopted, neighbourhood plans have to be consulted upon, pass an examination stage and be subjected to local referendum.

The examination stage includes confirmation that it meets European and Human Rights obligations, can work in harmony with neighbouring neighbourhood plans, conforms to the concepts of sustainable development and falls in line with certain national policies and the local plan.

The referendum will ask the community questions such as: Do you want the planning authority to use the neighbourhood plan for the area to help it decide planning applications in the neighbourhood area?

Looking Further

Guidance on planning in general and in particular Neighbourhood Planning can be downloaded from <http://www.planninghelp.org.uk/resources/publication>

The referendum is open to electors for the area. The planning authority will have a duty to make the neighbourhood plan if more than 50% of those voting in the referendum vote in its favour.

Another option would be a Neighbourhood Development Order (NDO) which will grant planning permission to certain types of development in certain areas without needing to obtain planning permission (see below for information on the Community Right to Build, which is a type of NDO).

Community Right to Build

This right enables community groups or parish councils to deliver what development the community wants. This may include affordable housing, community facilities and businesses. The development will be of benefit to and will be owned, maintained and managed by, the community. It may arise from the Neighbourhood Planning process or it may come about by itself.

The community right to build can be used by local councils or certain constituted community organisations. A **Community Right to Build Order**, a type of **Neighbourhood Development Order** is put forward. This means that small scale development may be progressed without the need for planning permission. It is important that any submission falls below defined benchmarks to prevent the need for an Environmental Impact Assessment. The idea behind the right is to cut red tape and encourage communities to suggest, define and design the kinds of development that are right for them.

A group or local council will apply to the principal authority to designate a neighbourhood area for a Community Right to Build Order or if one already exists. If one is designated then the Order can be proposed

Again, in order to proceed, the proposals must have the agreement of more than 50% of local electors that vote through a community referendum. In addition they must be in line with Human Rights laws, national policies and the local plan. This is will be checked before going ahead with a referendum. If the Community Right to Build Order receives approval from the required 50% of electors then it will be able to be brought into force.

Looking Further

“My Community Rights” is a website dedicated to providing information about the Community Rights of the Localism Act. Information on Neighbourhood Planning grants can also be found here. It can be accessed at <http://mycommunityrights.org.uk>