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BUILDING · CONSERVATION

Making Heritage Work

Community Right to Buy
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Dear Sirs

PROPOSALS TO INTRODUCE A COMMUNITY RIGHT TO BUY

The Institute of Historic Building Conservation (IHBC) is the professional body of the United Kingdom representing conservation specialists and historic environment practitioners in the public and private sectors. The Institute exists to establish the highest standards of conservation practice, to support the effective protection and enhancement of the historic environment, and to promote heritage-led regeneration and access to the historic environment for all.

Thank you for inviting us to participate in this consultation.

We set out below our answers to the question in the consultation. However we should like to make two preliminary points first.

1. We think that the proposed terminology of "list" and "asset" are ill-advised. There is enormous potential for confusion with "listing" of "heritage assets" under the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 with which community organizations are well familiar. We think alternative terminology (say "register" and "property") are indicated.

2. We are very concerned that the proposals will produce only a theoretical Right to Buy for most communities. This is because the proposals lack 2 major components for successful schemes:

- A source of funding for professional support for making bids for property under the scheme. Whilst community architecture and other support groups exist in some places these are not widespread.
- A source of capital to allow bids to be funded. The risk-averse nature of private sector capital provision and the reduced availability of public sector investment opportunities make this a serious short-coming of the proposals.

Answers to the questions in the Consultation Paper

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?

A1. Yes. These decisions are best locally determined. Top-down definitions would be bound to fail to identify locally important aspects. We think this provision is appropriate subject to LA demonstrating that the local community concerned has actually been asked and considers the 'asset' concerned should be "listed" as a relevant community facility.

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? (b) Should these be set out in regulations?

A2. Yes, but these should not be entirely prescriptive. The normal rules of reasonableness should apply.

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 its former or current use – do you agree?

A3. No. This would be very limiting, especially for small communities in which both existing facilities and opportunities are scarce. It would also deny opportunities for communities to acquire property loved because of its nature (e.g. historic buildings) rather than its use.

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

A4. No.

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?

A5. No, property should be listed according to its community value and not its current use (see answer to Q3.)

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

A6. No.

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

A7. Yes.

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

A8. It would be wise not to define "local connection" too tightly as local groups would be likely to need to consult bodies without them to make cases and prepare schemes. It is unlikely that sectional interest bodies would be able to involve themselves widely at the listing stage and thus a wide definition is unlikely to be problematic.

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

A9. No.

Q10. Should (a) the regulations specify the minimum information that should be included in a community nomination, or (b) should this be left to the local authority's discretion?

A10. This should form part of the local authority's evaluation.

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

A11. No view.

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

A12. This would seem fair and would avoid unnecessary resort to the courts.

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

A13. No view.

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?

A14. No view.

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?

A15. No view.

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?

A16. Yes, so long as the asset can be subject to re-listing.

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

A17. Probably, but the regulations for this should be tightly drafted. Communities should not be put to the trouble of repeatedly preparing evidence against, for example, an owner who is determined to have his property de-listed.

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?

A18. Reasons for removal are essential for the purposes of transparency and legal challenge or ombudsman complaint.

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?

A19. No.

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

A20. Yes, but there should be a register of assets available for inspection at any time and on line.

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

A21. Yes.

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

A22. No.

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

A23. Yes.

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?

A24. This would seem sensible.

Q25. Do you think that the landowner should be entitled to an oral hearing as part of the internal review, and if so in what circumstances?

A25. Only if the community is allowed to participate.

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

A26. The community should be allowed to challenge any assertions made by the owner.

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?

A27. This seems inevitable under the Human Rights Act.

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

A28. An interim period of 6 weeks would appear reasonable. It would be likely that groups would hear of the opportunity before formal notification and often they would have contingency plans for making a bid in any case.

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?

A29. It would be worth considering whether national special interest charities might be included in the list to allow time for a local group to form itself into a charitable or not-for-profit entity.

Q30. Do you prefer option (a) 3 months or option (b) 6 months or do you think the full window of opportunity should be a different length (option (c))?

A30. 6 months should be regarded as the minimum. Bidding organizations require time to get organized and put together cogent bids. A period of less than 6 months would have the effect of frustrating the purpose of the proposal for many groups.

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

A31. Yes, this seems reasonable.

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

A32. We think this should be allowed, as, otherwise, relevant disposals might be frustrated by leaseholds entered into for tactical purposes.

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

A33. No. And it is not clear why some of the proposed exemptions have been included, in particular the bankruptcy exclusion. Village pubs, for example, frequently become vacant through bankruptcy and it would be inappropriate for a community wishing to preserve a local service to be frustrated by such a technicality.

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

A34. No view.

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?

A35. No, unincorporated local environmental groups who do not need to be charities for example would be excluded. Requiring just one or more of the criteria would facilitate wider local opportunity.

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)?

A36. Yes.

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

A37. Yes.

Q38. (a) Do you agree that only private landowners should be entitled to claim compensation? (b) What do you think the definition of 'private landowner' should be?

A38. (a) Yes. (b) "Private owner" should include all types of ownership other than that by public sector agencies.

Q39. Do you agree with the proposed time limit of 90 days for making a compensation claim? If not, how long do you think the time limit for making a compensation claim should be?

A39. Yes.

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

A40. Yes.

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

A41. Yes.

Q42. (a) *Should landowners be entitled to appeal against a local authority's decision about compensation? (b) If yes, on what basis?*

A42. (a) In line with our response to Q27, this would seem sensible. (b) No view.

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

A43. Yes.

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

A44. No.

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

A45. No.

Q46. *What support would be most helpful?*

A46. A good practice guide, in up-dateable electronic form, should be developed initially and revised in the light of experience of cases.

We hope these comments are helpful.

Yours faithfully

A handwritten signature in black ink that reads "James Caird". The signature is written in a cursive style with a large initial 'J'.

James Caird
Consultant Consultations Co-ordinator