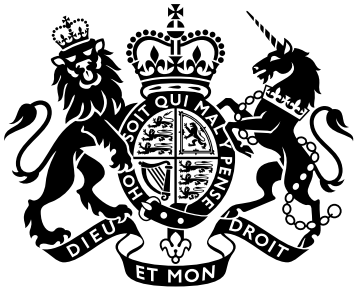

Government response to the Communities and Local Government Select Committee Inquiry into the Community Rights

Presented to Parliament
by the Secretary of State for Communities and Local Government
by Command of Her Majesty

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Introduction

1. The Communities and Local Government Select Committee launched an inquiry into the Community Rights on 9 June 2014. The Committee published its report on 3 February 2015.

2. The Committee has grouped its recommendations around the individual rights and then recommendations aimed at future community engagement. This response addresses all the recommendations in the report.

3. The Government welcomes the report and has considered all the recommendations carefully.

Background

4. The community rights are an important element of the Government's wider drive to devolve power and responsibility to the lowest practical level, matching local enthusiasm with real influence in order to put power in the hands of communities and make it easier for them to take control.

5. The Community Rights to Bid, Build and Challenge and Neighbourhood Planning were all newly introduced as part of the Localism Act 2011. The Community Right to Reclaim Land was an expansion of Public Right to Order Disposal. This was introduced by the Local Government and Planning Act 1980, and gave powers to the Secretary of State to order the disposal of vacant or underused land held by local authorities and a number of named local or national agencies. Linking into the new community rights agenda, the Government decided to treat vacant and underused land owned by government and its agencies in a similar way on a non-statutory basis.

6. All the rights are complemented by other community-centred policy initiatives within the department, such as our support for Community Shares – a way for communities to raise money by offering shares to local people in a community venture, with over £50m raised since 2012; the Our Place programme which is supporting over 150 communities to work with local public services, the voluntary and community sector, and business to agree neighbourhood priorities and how address them; and our work to make it easier to establish new Parish Councils.

7. On 17 February we announced our Community Rights support programme for 2015-16 which is the primary vehicle for our work over the next year. £6 million of funding is supporting this which includes a greater focus on peer to peer support, networking

and sharing the learning from current programmes.

8. The Government welcomes the Committee's consideration and conclusions; the timing is particularly helpful given our stated intention to carry out post-implementation reviews on the Community Rights to Bid and Challenge later this year.

Community Right to Bid

Recommendation 1

We recommend that the Government consult on removing PD rights in respect of change of use from ACVs for the duration of the listing or for five years, whichever is the longer. The issue of any compensation for owners should also be considered. (Paragraph 12)

9. On 26 January we announced greater protections for community pubs that are listed as Assets of Community Value (ACV) and have now introduced secondary legislation to come into force from 6 April. This legislation will dis-apply the permitted development rights for the change of use or demolition of pubs that are nominated or listed for ACV status. The disapplication will be effective for the duration of the listing or five years, whichever is the longest. A planning application will therefore be required for the change of use or demolition of a pub that is listed as an asset, and for the period that the nomination is being considered, allowing for local consideration and providing opportunity for the community to comment.

10. Pubs are the most widely listed assets comprising one-third of all listings to date. The remainder cover a wide range of uses, not all of which have permitted development rights. Currently, there are no plans to make any broader changes in respect of permitted development rights for other assets. However, as part of the Community Right to Bid review, we will consider any evidence suggesting that other types of Assets of Community Value could benefit from a similar approach.

Recommendation 2

We recommend that it consider establishing a fund—similar to that for compensation payments relating to properties listed as ACVs—for compensation claims in relation to Article 4 directions. (Paragraph 14)

11. We do not accept this recommendation. Planning compensation is a matter for the local planning authority making an Article 4 direction in respect of the change of use of any assets other than pubs. An Article 4 direction will no longer be needed in respect of pubs that are listed as Assets of Community Value.

12. Planning compensation may be payable in the 12 month period from the date that the new legislation comes into force.

13. Compensation may not be claimed under the Assets of Community Value legislation for any loss of permitted development rights.

Recommendation 3

We recommend that the Government, as part of its review of Community Rights later in 2015, consult on a proposal to amend its guidance so that ACV listing is a material consideration for local authorities in all planning applications other than those for minor works. (Paragraph 16)

14. We do not accept this recommendation. Current legislation allows local authorities to take Asset of Community Value (ACV) status into account as a material consideration when determining planning applications. This is a matter for local planning authorities and other decision makers who will take a view on what is a material consideration and the weight to be accorded on a case by case basis.

15. Currently, the Government has no plans to alter this approach. However, as part of the Community Right to Bid review, we would welcome evidence demonstrating the need to make any broader changes.

Recommendation 4

We recommend that the Government extend the moratorium on the sale of an ACV to nine months. (Paragraph 20)

16. We refute the claim that the process for nominating an ACV is lengthy and complex. The legislation simply requires 21 people who are on the local electoral register to come together, as a community group, to say why the asset is of local social and community value. We are clear that business plans or any demonstration of the potential future ability of the group to operate viably the land or building in question falls outside the requirements of the legislation.

17. With regard to the moratorium period, Parliament agreed that six months struck an appropriate balance between the property rights of an owner and a reasonable opportunity for communities to put together a bid to buy an asset. However, we are committed to carrying out a review of the effectiveness of the legislation and we would welcome evidence around this issue from community groups who have experienced the moratorium and who have attempted to purchase an asset.

Recommendation 5

We recommend that the Government ensure the moratorium on a sale can be brought to an immediate end if a community group bid has been abandoned. (Paragraph 22)

18. We do not accept this recommendation which fails to understand the broader intention of the legislation which was to create a more level playing field. The moratorium is in effect not only for the community group who listed the asset, or for a group which triggered the moratorium, but is there for any other group which meets the definition of a “community interest group”. As such it would be inappropriate to restrict the moratorium simply because one group’s bid was abandoned. However, as part of the formal review of the effectiveness of the legislation, we would welcome

evidence from asset owners who feel that the sale process was impeded by the moratorium period where it was apparent that no bids would be forthcoming from the community, in order to understand whether any action is required to address this issue.

Recommendation 6

We recommend that the Government consult on (i) allowing for immediate re-nomination where new and material information arises and (ii) the introduction of a nominator's right to appeal against a local authority's decision not to list an asset as an ACV. (Paragraph 26)

19. Currently, around 80% of assets nominated are listed by local authorities and community groups are free to seek a judicial review of the local authority's decision making processes. If new evidence of why the asset is of community value comes to light, the community are currently free to re-nominate the asset immediately.

20. An asset listing does impact on the rights of property owners, who may be small business owners so it is important that the asset owners have recourse to review. Giving communities powers to appeal a listing decision risks tying up asset owners in lengthy and expensive processes.

21. We are prepared to consider this in the review of the Community Right to Bid, but we would need to be satisfied that a nominator's right of appeal would not excessively infringe property owners' rights.

Recommendation 7

We recommend that the Government, as part of its review of Community Rights later in 2015, bring forward proposals to close the loophole in the current legislation which allows an Asset of Community Value to be sold as a going concern when the buyer has no intention of retaining it in its current use. (Paragraph 28)

22. The Government believes that the sale of a business as a going concern should be part of the set exempt disposals, in order to strike a fair balance between the rights of land owners and the needs of community groups. The Government believes that there are adequate safeguards in place to ensure that all disposals of assets of community value will need to comply with the requirements of the scheme.

Recommendation 8

We recommend that Government consider whether a greater proportion of overall funding to support Community Rights be directed to ensure local people are adequately prepared to take on the public assets they are offered. (Paragraph 32)

23. We welcome the Committee's recommendation. Our aim is to extend and build on the Government's programme of work around the community rights and neighbourhood planning. We have redesigned and re-profiled our support offer, taking into account the current demand and need, their efficiency and effectiveness

and feedback from delivery partners and the wider voluntary and community sector and local authorities. From April 2015 we will therefore support communities to take their 'first steps' to making use of the community rights and, in particular, towards taking over ownership/management of publicly owned assets.

24. On 17 February 2015, we announced that 50 local authority/community partnerships will receive advice, support and grants to support the transfer of multiple or complex asset transfers . £500,000 will be made available for pre-feasibility grants in 2015-16.

25. The key objective of this programme is to support at least 50 partnerships between community organisation(s) and local public organisation(s) with progressing ambitious multiple community asset ownership and management projects and / or ground-breaking single asset transfer projects which will produce novel and replicable learning for other places. This includes collating evidence and developing learning products from across the partnerships to enthuse and support other areas to work in this way as well as the identification of Champions from the localities to share learning and experiences and to actively promote neighbourhood level working.

Community Right to Build

Recommendation 9

We consider that it would be better to incorporate the Right to Build process into the larger-scale Neighbourhood Plan process and referendum. (Paragraph 37)

26. In many cases the planning permission route has been the preferred option for communities seeking to take forward development. This is why we have broadened the scope of the funding available to include community groups seeking planning permission for housing development. However, some communities, particularly those already doing a neighbourhood plan, have chosen the Community Right to Build route. There may also be specific circumstances (for example, some instances of proposals in the green belt) where a Community Right to Build order may be an effective means of taking forward development that might be difficult via the planning permission route.

27. We would agree with the Committee that it is sensible to combine the Community Right to Build process with a neighbourhood plan, and this is how the three successful Community Right to Build Orders to date have been taken forward. However, as the Community Right to Build and neighbourhood planning process already mirror each other we do not see the need for further action to incorporate Community Right to Build into the neighbourhood planning process. The existing processes enable Community Right to Build orders to be submitted for examination alongside a neighbourhood plan, and the referendums can be held simultaneously. This means that communities have the opportunity to have their say separately on the long term plan for their area and the specific building proposal.

Recommendation 10

We recommend that the Government reconsider its approach to community-led housing, focusing on funding that enables communities, in conjunction with local partners such as housing associations, to build their capacities and skills, and to choose the means that is right for them for developing community-led projects. (Paragraph 40)

28. The Community Right to Build is part of a suite of community rights. The new support for 2015-18 will be an integrated package covering all community rights, so that communities who are not sure what their needs are, or how the rights can help them, will be able to seek advice on how the community rights relate to their needs.

Recommendation 11

We recommend that Government reconsider, as part of its appraisal of the Community Right to Build in 2015, how community-led housing groups access capital funding. Whatever way local people choose to pursue housing and other projects, there needs to be a more straightforward process for them either to access capital funding directly themselves or to work in partnership with housing associations to access funding. (Paragraph 42)

29. Community Right to Build Orders are a route to gaining permission for development. The Government does not directly fund communities for such development, although, as noted in the report, there are funding streams that may be suitable for some community groups, such as the Homes and Community Agency's Affordable Housing Programme. Groups may also benefit from the Government's Custom Build Services Plot fund, a £150m fund to deliver up to 10,000 serviced building plots by providing a loan to small/medium builders, community organisations, such as Community Land Trusts, and housing associations looking to develop 5 or more serviced plots – these are "shovel ready" plots specifically for custom build – land prepared for house-building, and connected to utilities such as gas and water, so builders can go straight in and build.

Community Right to Challenge

Recommendation 12

We recommend that the Government find out what has happened to groups receiving capacity-building assistance and to those that have made EOIs under the Right to Challenge process. (Paragraph 46)

30. We accept this recommendation. We have recently contacted all groups that have received specialist support through both the Community Right to Challenge and Community Ownership and Management of Assets programmes asking them about the impact of the support they received on their organisation and what they have achieved since. This includes questions as to whether they have submitted an expression of interest under the Community Right to Challenge, whether they have taken part in a procurement exercise and whether they have won a contract. This will

supplement surveys carried out by our support provider, Locality, of organisations that had contacted the advice service, carried out in 2013 and 2014.

Recommendation 13

We recommend that the Government work with local authority commissioners of services to involve communities routinely in the design of services; consider whether certain services might be reserved for community enterprises using either a normal tendering route or a Community Right process; and rename the Right to Challenge in order to reduce the perception that it is confrontational. (Paragraph 50)

31. We will work with local commissioners to examine the impact of the Community Right to Challenge and to consider other means to achieve its broad policy aims.

32. We already engage on a regular basis with local commissioners in order to promote greater use of voluntary and community sector bodies, as well as neighbourhood approaches to service delivery.

33. Programmes such as the Commissioning Academy also stress the importance of working with communities to focus on outcomes. We have jointly published a set of practical case studies for commissioners to use; including examples of community led commissioning – http://publicservice transformation.org/resources/commissioning/better-commissioning-public-services.

34. Additionally, programmes such as Our Place and Delivering Differently in Neighbourhoods are focussed on involvement of communities in the design and delivery of services and will lead to more collaborative approaches to commissioning in local government.

35. We acknowledge the impact that the branding of a particular power can have, and as the Social Investment Business pointed out, the name of the grant support programme for the Community Right to Challenge and the Community Assets programme, was changed to stress its wider applicability to community and voluntary organisations wishing to build their capacity to deliver contracts or acquire assets for community use. We do not see that a wholesale name change is needed, but we will work closely with our support partners going forward to ensure that the language that we use around the right is as open and non-confrontational as possible.

Community Right to Reclaim Land

Recommendation 14

We recommend that the Government, as part of its review of Community Rights later in 2015, issue draft guidance on what constitutes unused or underused land, and consider how to improve access to information on public landholdings. It should also analyse the applications that have been made to determine what has happened to them, and why. (Paragraph 56)

36. We agree with the recommendation that Government should issue draft guidance on what constitutes unused and underused land. We welcome the opportunity to increase transparency and clarity, and will be making guidance publicly available on the Government website.

37. We recognise that access to information on public landholdings is important. We have already taken steps to increase access to information on central government owned land with the launch of the Government Property Finder in 2014. This easy-to-use tool maps central government owned land and property, and supports our aim of increasing transparency and enabling the public to identify land owned by central government.

38. The Government has also taken steps to increase transparency of local authority land assets. On 31 October 2014, it became a legal requirement that local authorities comply with part two of The Local Government Transparency Code 2014. This requires local authorities to publish details of their land holdings and assets, and will enable the public to identify local authority owned sites which they believe could be put to better use.

39. We accept the recommendation to analyse the outcome of all Community Right to Reclaim Land applications. We appreciate that no applications have resulted in a direction to dispose. However, we know that in over half of cases received the authority has already been taking a proactive approach to the site, and has plans to sell, develop, or use the land in question. We will assess whether further action is needed to make the Right more effective.

40. We appreciate that the Committee recognises the complexity of disposal at less than market value. While we are keen to see the Right bringing underused land back into use, we are in agreement that at this stage it would be premature to reconfigure the Right to include a power to demand discounted asset transfer.

Future Community Engagement

Recommendation 15

We recommend the Government seek in 2015 to improve public awareness and use of the Community Rights in the following ways:

- **First, the focus should be on what communities want to achieve, not a prescribed route they have to take;**
- **Second, there should be further investment, similar to that which the Government has provided to the Plunkett Foundation, to enable effective community group member organisations to support local people; and**
- **Third, there should be investment in community group capacity, particularly in deprived areas, with new forms of community engagement that eventually should lead to communities being able to use the existing Rights themselves. (Paragraph 62)**

41. We fully agree with the Committee's recommendations and we are confident that our comprehensive £15.2m support programme for communities in 2015-16 and our work to mobilise communities to use the rights, will address the points made.

42. Through our support for an interactive Advice Service and Network, we are funding an advice line staffed by experts who can talk to communities, understand their problems and what they want to achieve and guide them to the most appropriate support programme for their needs. This contains stretching targets for reaching out and recruiting new members. The funding also supports the creation of the My Community Network to bring together people with a shared interest in neighbourhood working and community activism, to be a place of shared learning, peer mentoring and support. The Network will involve offline activities, as well as online forums.

43. Our work with deprived communities continues to grow. This includes the First Steps programme that we are funding in deprived areas, that will enable those groups that are committed to improving their area but are less clear about how to go about it, to develop Community Action plans. Equally our work on Community Economic Development will work with communities to strengthen their local economy. Additionally, we will continue to support areas to adopt an Our Place approach which is a flexible methodology allowing areas to galvanise public sector service providers, businesses, the voluntary and community sector and the community themselves to tackle the issues that matter most to them and transform services at the neighbourhood level.

44. The current mobilisation strategy has focussed on going through 'trusted voices' (the Localism Alliance) who can reach further into communities via their networks than we can directly. Members of the Localism Alliance include Civic Voice, the Campaign for Real Ale (CAMRA), National Association of Local Councils (NALC), The Theatres Trust and Supporters Direct. The Alliance - who collectively represent over 200,000 individuals and nearly 10,000 grassroots organisations across England - have been working together to help their members in urban, suburban, rural and coastal communities embrace the powers available to them.

45. We are funding two programmes in 2014-15 with the Localism Alliance to promote sustainable engagement with the full suite of community rights. Through the 'Getting Started' programme, they are working with deprived communities to raise awareness of the rights and produce a plan setting out the steps the community needs to take for more local control. 'Use Your Voice, Change Your Community' supports communities in 15 diverse areas across England to list Assets of Community Value, and co-produce community action plans setting out their areas' needs and aspirations, catalysing active engagement with the full range of Community Rights. These programmes will create a pipeline of hundreds of people for the new My Community Network.

46. The future mobilisation strategy will focus on raising awareness of the community rights and increasing take up across all communities, with a particular focus on reaching deprived communities to ensure equitable access to the opportunities. For example, we will be working with housing associations and tenant groups to increase

take up amongst social housing tenants. We raise awareness through local press and social media campaigns. We will work with the voluntary and community sector, Local Authorities, service commissioners and other government departments to get community rights and neighbourhood working onto their agendas, and utilise their networks and programmes to reach new audiences.

Recommendation 16

We recommend that the Government, as part of its review of the Community Rights later in 2015, propose that a basic level of data be retained by all local authorities on take-up of Community Rights. The Government should then periodically analyse that data:

- **First, to understand which groups are using the Rights, why those that do ultimately succeed or fail, and how the Rights might be reformed; and;**
- **Second, to target resources more effectively, in order to improve take-up of the Community Rights. (Paragraph 65)**

47. We welcome the Committee's suggestion for potential issues to address within the scope of the post-implementation reviews of the Community Right to Bid and Challenge. The Government periodically assesses take-up of the community rights to understand their impact and inform future policy and support to communities and will continue to do so.

48. The expansion of our support programme over the coming financial year will also give us insight into how the rights are being used by communities, the successes and failures of those projects and help us identify where there are gaps in our support.

49. At present, local authorities are required to keep lists of Assets of Community Value but are not required to inform the department. Additional data reporting requirements on local authorities are likely to create additional burdens which we would have to consider carefully.

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