



COTSWOLD

District Council

Assets of Community Value – Guidance Notes

Introduction

The Localism Act 2011 introduced the Community Right to Bid. The Community Right to Bid gives Town and Parish Councils and defined community or voluntary groups a right to nominate buildings or land for listing by the local authority as assets of community value.

The purpose of the Community Right to Bid is to assist local community groups to preserve buildings or land which are of importance to their community's social well-being. The Right to Bid provision does this through regulating that when a listed asset comes up for sale there is a delay in the sale process. This delay should give an increased chance for the local community to bid to buy the asset.

The types of local assets that can be nominated

A building or area of land can be nominated as an asset of community value if its main use furthers the social well-being or social interests of the local community. Additionally, it is also possible to nominate a building/ area of land where use in the recent past has furthered these interests and it is realistic to consider that the building/ area of land will further the social wellbeing or social interests of the local community (whether or not in the same way) again in the next five years. The legislation defines social interests as including (in particular) cultural, recreational and sporting interests.

It is possible to nominate assets that are in either public or private ownership. The range of assets that can be considered to enhance a community's social well-being or social interests is wide and it includes, for example – a village shop; community centre; library; local pub; or an area of open space.

Certain buildings and land cannot be listed. Examples include residential property; residential caravan sites; and the operational land of statutory undertakers.

How to nominate an Asset of Community Value

There is further information on the Community Right to Bid process at the following link: <http://mycommunity.org.uk/take-action/land-and-building-assets/assets-of-community-value-right-to-bid/>. The Guide outlines the stages involved in the process including: how to identify assets of community value; the nomination process; triggering a delay in the sale process (the moratorium); bidding for the property; and managing the asset.

The Government's Regulations dictate that only specific eligible voluntary and community organisations can nominate assets of community value. These are Town and Parish Councils and certain voluntary and community groups as set out in the Council's Nomination Form.

The nomination must include specific information so that the Council can decide whether the nominated land or building meets the definition of an asset of community value. The required information is set out in the Council's Nomination Form. A Word version of this form is available on request to enable email submission – please email: legal.services@publicagroup.uk or see our website.

The property owner

The Localism Act sets out a definition of the owner so that only one level of legal proprietary rights qualifies as ownership for the purposes of the Asset of Community Value legislation. In summary, this is the freeholder or, if the asset is leased, the leaseholder with the lease most distant from the freehold which when granted had at least 25 years to run.

What happens following nomination?

On receipt of a completed nomination form the Council informs the following of the nomination: the relevant parish council; the owner (as defined in the Localism Act); all others with a legal estate; and any lawful occupant (which could include a Licensee). The Council will decide on whether to list the asset within 8 weeks. The property will then be added to either the List of Assets of Community Value or the List of unsuccessful nominations. The Council's decision as to whether or not the nominated asset is to be listed as an Asset of Community Value will be notified to the property owner and other interested parties.

A building or land must be listed if it is proposed by a community nomination, is in the District Council's area, and satisfies the definition of land of community value (and is not excluded from being listed).

Registration of the property

Assets that are considered to be of community value and included on the List of Assets of Community Value will have a local land charge registered against them and the Council will apply for a restriction on title with HM Land Registry. The asset will remain on the list for five years or until one of the following circumstances applies: after a relevant disposal (other than an exempt disposal); when an appeal against a listing has been successful; or if the Council forms the opinion that the land or building is no longer of community value.

The Local Land Charge and Land Registry restriction means that if any person carries out a land search before buying the property the fact that the property is listed as an asset of community value will be revealed in the search result.

If the owner's interest is already registered at the Land Registry at the date of listing the Council will apply for the following restriction to be entered against the owner's title:

"No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011."

If an owner's interest is not already registered at the Land Registry then if and when the owner, or a mortgagee, makes a first application to register an owner's interest, the owner, or the mortgagee, must (paragraph 2 of Schedule 4 to the Assets of Community Value (England) Regulations 2012) at the same time apply to the Land Registry to enter the above restriction and notify the Council once this restriction has been registered.

The property owner's right to review and appeal

The owner of land included in the Council's List of Assets of Community Value may ask the Council to review its decision to list the asset. A request for a listing review must be made in writing before the end of a period of eight weeks from the date of the listing decision letter. As soon as is practicable following the request for the review, the Council will notify the owner of the review procedure. The owner and Council will bear their own costs of the review.

The Council's review will be undertaken by an officer of appropriate seniority who did not take any part in making the decision to be reviewed. The property owner may appoint a representative to act on his or her behalf in connection with the review. The Council will provide to any such representative any document which is required to be sent to the owner. The owner/ their representative can make representations to the Council's officer orally and/or in writing. The Council will complete the review within eight weeks of the receipt of the written request for the review, or longer where this has been agreed with the owner.

The initial request for the Council review of a listing decision should explain on what grounds the decision should be reviewed. The review request should be sent in writing to the Council's Legal Services Section at the address given on page 7 of these Guidance Notes.

If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the Council's decision. The written response sent to the property owner following the internal review will set out the details of this further opportunity to appeal. The deadline for this further review stage of appeal is 28 days from the date on which the notice of the decision appealed against was sent to the owner. Appeals may be both on points of law and on findings of fact.

Owners should send the appeal in writing to the First-Tier Tribunal at:

Tribunal Clerk
Community Right to Bid Appeals
HM Courts and Tribunals
First-tier Tribunal (General Regulatory Chamber)
PO Box 9300
Leicester
LE1 8DJ

Or at: grc@justice.gov.uk

What happens once an asset is listed and the owner wishes to sell/ dispose of it?

Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it. Unless an exemption applies, the owner of a building or land that is listed as an asset of community value **must notify the Council in writing of their wish to enter into a “relevant disposal”** of the asset (Section 95(2) of the Localism Act 2011).

A relevant disposal is defined as the sale or transfer of the freehold or grant or assignment of a qualifying lease, of 25 years or more, which gives vacant possession of the buildings and other land. It is the notification of a relevant disposal that triggers the moratorium (delayed sale) arrangements that is explained below.

Not all relevant disposals require written notice to the Council as there are some that do not trigger the operation of the moratorium provisions. A disposal of the type set out in section 95(5) of the Localism Act 2011 or in Schedule 3 to the Regulations (2012) is classified as an exempt disposal and can proceed without triggering the moratorium. The appendix to this Guidance Note summarises the numerous potential exempt disposals i.e. the specific circumstances in which an owner will not need to notify the Council of an intention to sell under Section 95(2) of the Act. Examples of such circumstances include where a business and associated land are being sold as a going concern and a wide range of non-commercial disposals of land, for example through the will of a deceased owner; in a transfer between family members; and through the gift of the property. Please refer to the appendix for the full list of exempt disposals.

In circumstances where an owner is uncertain whether an exempt disposal will be carried out the giving notice of intention to dispose as a precaution is sensible. In that situation, if the owner were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period. There is no requirement in the legislation that in such circumstances the owner has to explain to the Council that the disposal is exempt but it would be helpful to receive this information.

Owners can give written notice of their intention to dispose of a listed asset by contacting the Council’s Legal Services Section

Email: legal.services@publicagroup.uk
(For full address – see page 7)

The moratorium

Where the Council receives an owner’s written notification of their intention to enter into a relevant disposal of the building or land, the Council will then publicise the intended sale in the local community and inform the nominating body. There then follows a 6 week period (referred to as an **“interim moratorium”**) where the sale is delayed and local community interests are given a chance to express a desire to be treated as potential bidders in relation to the listed asset.

If a qualifying community interest group does not submit a written intention to bid for the listed asset, then the asset owner is free to dispose of it on the open market. If a qualifying community interest group does submit a written request for the group to be treated as a potential bidder for the asset, the Council must then oversee a 6 month **“full moratorium”** period where the sale is further delayed. This delayed sale allows time for the community to develop its bid to the asset owner.

A community interest group is defined as a narrower range of bodies than those who can nominate an asset for inclusion on the list in the first place. A community interest group is either: a parish council; a charity; a community interest company; or one of the following (which does not distribute any surplus it makes to its members): a company limited by guarantee; a community benefit society (new name for industrial and provident society). The community interest group must have a local connection with the land.

During either moratorium period, the owner may not make a relevant disposal, except as permitted. The Regulations remove the need to observe the moratorium requirements in two specific different ways:

1. The Regulations allow a relevant disposal to be made during the moratorium if it is to a community interest group. In this situation the owner has notified the Council, but can sell to this particular type of buyer without waiting for the end of the moratorium (either interim or full).
2. As already referenced, there is a variety of types of disposal which are classified as exempt. In such cases the owner (who knows such a disposal will take place) is not required to notify the Council and start the moratorium procedure in the first place (see appendix for exemptions list).

There is no obligation for a community interest group to actually make a bid to purchase an asset and such a group has no rights of purchase over other potential buyers. Similarly, the asset owner is under no obligation to sell the asset to the community interest group or any other person.

The relevant moratorium comes to an end after either: 6 weeks in cases where there has been no community interest; or the full 6 months in cases where a community interest group has expressed interest in being treated as a potential bidder. At the end of the moratorium that is relevant in a particular case, there follows a period that is referred to as the **protected period**. The protected period is a period of 18 months (running from the original date the owner notified the local authority of an intention to sell). Following the end of the relevant moratorium period and during the remainder of the protected period, the owner is free to sell their property to whomever they choose without further delay.

For clarity, it is re-stated here that the start date for all three periods (the interim moratorium; full moratorium; and protected period) is the date the Council receives notification from the owner of the intention to dispose of the property.

Once the protected period ends, if the disposal has not been concluded the process re-starts and the notification and moratorium procedures must again be followed.

The moratorium (delayed sale of a listed asset) is enforced by the restriction placed with HM Land Registry and the entry on the local land charges register. When a listed asset is disposed of, and a new owner applies to HM Land Registry to register the change of ownership, the new owner will need to provide the Land Registry with a certificate from a conveyancer that the disposal did not contravene the moratorium requirements set out in the Localism Act.

Duty to notify the Council of any change in ownership

If an owner sells a building or area of land that is listed as an asset of community value they are requested to inform the Council in writing. Additionally, whilst the property remains listed as an asset of community value any purchaser must notify the Council of specific information:

- That the purchase has been completed; and
- Full details of the name and address of the purchaser, including the registered office and company number where the new owner is a body corporate subject to registration.

Notifications concerning ownership changes should be sent to:

Legal Services Section at Cotswold District Council

Email: legal.services@publicagroup.uk

(For full address – see page 7)

Owner compensation

Private owners or former owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.

The compensation scheme does not extend to public authorities and bodies. These are defined as Government departments, authorities and other such bodies; local authorities and other public authorities defined in relevant legislation.

The Regulations specify a time limit for making a compensation claim that is defined as before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred. Claims must state the amount of compensation being claimed for each part of the claim and must be accompanied by supporting evidence.

The burden of proving the claim falls upon the property owner. The Council will consider and determine any claims for compensation and will provide written reasons for the decision.

In the event that the owner is not satisfied with the Council's response to the compensation claim they may request a review by the Council of the compensation decision. Further guidance on the process involved will be provided in relevant cases.

Any initial compensation claim should be sent to the Council's Community Development Section at the address given on page 7 of this document.

Further information

These guidance notes are intended as an introduction to the asset of community value provisions and the District Council's procedures for overseeing the Community Right to Bid. The document will be subject to periodic updates.

These notes are not exhaustive in their coverage of the asset of community value provisions and they do not provide a statement of the law. Property owners and community interest groups remain responsible for obtaining independent advice in considering their options when faced with choices under the relevant legislation.

For reference, the legislation relating to Assets of Community Value was introduced in the Localism Act 2011 and The Assets of Community Value (England) Regulations 2012:

Localism Act Chapter 3 – Assets of Community Value

<http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3>

Assets of Community Value (England) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/2421/contents/made>

For a detailed overview of how the Community Right to Bid operates, the Government's "Community Right to Bid: Non-statutory advice note for local authorities" (October 2012) provides a relevant resource - see:

<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>

Further general information on how the Community Right to Bid operates and associated considerations can be found here:

<http://mycommunity.org.uk/take-action/land-and-building-assets/assets-of-community-value-right-to-bid/>

Specific advice on the operation of the Community Right to Bid is available through the Government funded body Locality. A web page for queries is available at:

<http://mycommunity.org.uk/help-centre/>

The Council's service area that oversees Assets of Community Value and address for relevant correspondence:

Legal Services
Cotswold District Council
Trinity Road
CIRENCESTER
Gloucestershire
GL7 1PX
Email: legal.services@publicagroup.uk
Tel: 01285 623000

Appendix - Exempt Disposals

Not all proposed sales have to be notified to the local authority. A range of disposals are exempt. A number are set out in section 95(5) of the Act, and others are in the Regulations (Schedule 3).

The following provides a summary of the full set of exemptions set out in an extract from the DCLG publication: “Community Right to Bid: Non-statutory advice note for local authorities”, Department for Communities and Local Government (October 2012)

Extract from Annex A - Exemptions

With regard to the following exemptions (with the exception of the first), the local authority will usually not know that the disposal is taking place, because an owner who is confident that the transfer they contemplate will be exempt will not need to notify the authority of intention to sell under section 95(2) of the Act. In some cases an owner may not be sure whether they are going to succeed in making an exempt disposal or not – for instance if they wish to sell the land together with a business sold as a going concern – and may notify the authority as a precaution. In that situation, if they were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period. There is no requirement in the legislation that in such circumstances the owner has to explain to the local authority that the disposal is exempt. However it would be helpful for them to do so, and authorities might want to include advice to this effect in any explanation they send to owners about how the moratorium rules work.

The full list of exemptions is as follows. The first is in a different category to the remainder, in that the moratorium rules will have been triggered by notification from the owner, but the sale will be able to take place during the moratorium. Categories (b) to (j) are in section 95(5) of the Act, and (k) to (y) are in Schedule 3 to the Regulations. Item (f) – part-listed land – is partly defined in the Act, and partly in the Regulations.

- a. disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13(1)
- b. disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c. disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d. disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e. disposals between family members (“family member” is defined in section 95(7) of the Act as the owner’s spouse or partner and descendants of grandparents – which includes the owner’s own parents, but not the grandparents)
- f. part-listed land – i.e. sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)
- g. sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)
- h. disposals occasioned by somebody becoming or ceasing to be a trustee
- i. disposal by trustees in connection with the trust, as specified
- j. a disposal occasioned by a person becoming or ceasing to be a partner in a partnership

- k. transfers made in pursuance of a court order
- l. transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m. a transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with “incapacity” being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n. a disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before the land was listed (and in this context it should be noted that an option etc entered into *after* the land is listed would count as a relevant disposal under section 96(4) of the Act)
- o. disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 “Compulsory Purchase and the Crichton Down Rules”:
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- p. sale by a lender under a power of sale (i.e. where the land was security for a loan)
- q. disposal of land under bankruptcy or other insolvency proceedings – the wording is “insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986”, which gives a very wide definition of insolvency proceedings
- r. compulsory purchase disposals (see the wide definition of “statutory compulsory purchase” in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)
- s. the grant of an agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- t. transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161(5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)
- u. disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e). See final paragraph below for details.
- v. disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.
- w. disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)
- x. a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy
- y. disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.