



The Community Right to Bid Assets of Community Value Guidance Notes for Nominators

The Localism Act 2011 introduced the 'Community Right to Bid', placing a duty upon local authorities to "maintain a list of land in its area that is land of community value", as nominated by the local community. The following information is to help owners of nominated and listed assets (buildings or land) to understand the implications of the Community Right to Bid and the rights of owners. This guidance is only a summary. It should be read alongside the Government's Non-Statutory Advice note for Local Authorities, available at:

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

What does this Right mean?

The main provisions are:

- i. Local communities can nominate an asset in their local area which promotes the 'social wellbeing' or 'social interests' of the community.
- ii. If the nominated asset meets the statutory definition of an asset of community value, the Council must place it on the List of Assets of Community Value and notify the relevant parties.
- iii. The owner of the asset has a right to an internal review of this listing decision by the Council, and a right of appeal to an independent tribunal if they remain unhappy following the internal review result.
- iv. If any listed asset comes up for sale, the owner of the asset must notify the Council, who in turn will update the List to reflect this and notify the local community. This will enforce an interim moratorium period, which will give the local community an initial six-week period to say if they are interested in bidding to buy the asset.
- v. If no interest is expressed the owner may dispose of the asset and no further moratorium can be invoked for a period of 18 months from the date the Council received the owner's notice of intention to sell.
- vi. If interest is expressed, the Council must notify the owner, who is then not allowed to sell the asset for the full moratorium of six months from the date the Council received the owner's notice of intention to sell. Generally, the only sale permitted during this period is to a local community group; however, some sales are exempt from the moratorium.
- vii. If no permitted sale occurs, after 6 months, the owner is free to sell to whomever they choose at whatever price they choose for a further 12 month period without having another moratorium applied.
- viii. The Council is responsible for administering a compensation scheme to enable asset owners to claim for costs or loss incurred in certain circumstances as a direct result of complying with these procedures.
- ix. Owners have the right of an internal review of a compensation decision by the Council, and if they are unhappy with the outcome of this review they can appeal to an independent tribunal.

What makes an asset ‘land of community value’?

If the asset you own has been nominated by the local community as an asset of community value, the Council has eight weeks to determine whether to place the asset on the list of assets of community value.

The Localism Act 2011 states that:

- *a building or other land in a local authority’s area is land of community value if in the opinion of the authority –*
- *an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and*
- *it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.*

or

- *there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and*
- *it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.*

The definition of ‘social interests’ in the Act includes cultural, recreational and sporting interests. The term ‘recent’ will relate to the circumstances of the subject of each nomination. Realistic continued or future use of the asset will be judged on how likely or whether it is reasonable to consider the property could continue or be brought back into use. Issues such as the viability of the current use are not relevant as the same venture run on a community basis is likely to incur less costs because of potential exemptions to some charges and the use of volunteer labour. The regulations are also clear that the property does not have to continue or resume in the same way as before. Overall a view will be taken on the likelihood of the use continuing or resuming if the community is able to buy it. Factors such as current ownership and planning status will be taken into consideration. In most cases a number of different scenarios are likely to be possible, and so long as amongst these are that the community could successfully purchase and run a community venture the requirement will be met. Consideration will also be given to the findings of other Reviews and Decisions made by the First Tier Tribunal on cases referred to them.

What types of assets are excluded from being listed?

- Land and buildings which are primarily residential in purposes, including associated gardens and outbuildings.
- Licensed (and some unlicensed) residential caravan sites.
- ‘Operational land’ owned by ‘statutory undertakers’ as defined in section 263 Town and Country Planning Act 1990 – which are organisations like The Post Office, Civil Aviation Authority, transport providers, utilities, etc.

Who can nominate assets?

- Town and Parish Councils
- Unincorporated groups. Nominations can be accepted from any unincorporated group with membership of a least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority.
- Neighbourhood forums
- Community interest groups with a local connection. These must have one or more of the following structures:
 - a) A charity
 - b) A community interest company
 - c) A company limited by guarantee that is non profit distributing
 - d) An industrial and provident society that is non-profit distributing

How do you nominate an asset to be considered for the List of Assets of Community Value?

The Council has a nomination form, which details the information you need to provide. This can be found at: <https://www.babergh.gov.uk/communities/community-rights/nomination-form/>

The Councils will only accept and validate fully completed applications that include all relevant and supporting information. Incomplete applications will be returned with a request for missing or supporting information to be provided.

Forms can be completed on line at the above address.

What if you want to withdraw a nomination?

If your community group wishes to withdraw a nomination for whatever reason, please make this request in writing of by e-mail to communities@baberghmidsuffolk.gov.uk as soon as possible. Nominations can only be withdrawn until the point at which a decision on listing is made. This can be at any point up to eight weeks from the date that we received your nomination form.

What is the decision making process?

The process we have adopted to determine the List of Assets is as follows:

1. The Shared Legal Services Team will receive a nomination and carry out a Land Registry search and pass the nomination to the Communities Team.
2. The Communities Team will make a 'Gateway Assessment' of the nomination. (Is the nominating group a valid community group? Does the asset appear to fit the definition of a community asset?). If it is clearly an invalid nomination, the community will be informed with justification for refusal, or asked to resubmit with adjustments.
3. The Communities Team will consider valid nomination forms and any representations owners wish to make over the eight-week decision making period, and an assessment made of the nomination to establish whether it fulfils the requirements of the ACV Regulations and Localism Act.

4. The Assistant Director, Sustainable Communities has delegated authority to make a decision on whether to include the asset on the List of Assets of Community Value.
5. Once the decision to List is made, the asset owner, nominating community group will be informed and any other relevant parties will be notified.

In addition, the Council reserves the right to make other checks in its absolute discretion, such as planning applications, and may use the relevant information it is aware of from other sources to assist in making the decision.

Using the statutory definition of 'land of community value' and based on the nomination form received, the Council has eight weeks from receipt of a valid application to determine whether to list the asset and to notify all relevant parties.

The Council is obliged to publish a 'List of Assets of Community Value' as well as a 'List of unsuccessful nominations' on our websites. These can be found at:

<https://www.babergh.gov.uk/assets/Communities/ACV-Lists/Revised-Overview-Sheet-BDC.pdf>

<https://www.babergh.gov.uk/assets/Communities/ACV-Lists/Revised-Overview-Sheet-MSDC.pdf>

What happens if an asset of community value comes up for sale?

A moratorium will be applied when a listed asset is put up for sale. On receipt of an intention to dispose from the asset owner, there is an initial six-week interim period, during which a community group may express interest in bidding. If one does, a six-month moratorium begins from when the asset is put up for sale, i.e. including the six-week interim period, to allow a community interest group to put a bid together. After a moratorium period has ended, another moratorium period cannot begin for a further 12 months.

There is no community right to buy the asset, just to bid. This means that the local community bid may not be the successful bidder. The owner can, at the end of the moratorium, sell to whomever they choose for whatever price they choose.

Can you re-nominate an asset on the unsuccessful list?

Whilst there is nothing to stop an asset being re-nominated and each nomination will be assessed on its own merit, it should be noted that unless the nominee can evidence new or additional information it is unlikely that the decision will change.

Who can express an interest in the purchase of the listed asset?

Only a 'community interest group' can trigger a full moratorium, unlike a nomination that can be made by a wider range of local community groups, including unincorporated local

groups. This means that a Town/Parish Council in whose area the asset lies or any incorporated community group which meets these definitions:

- It has a local connection, meaning that its activities partly or wholly occur in the local area.
- It is a charity, a company limited by guarantee, a Community Interest Company or an Industrial and Provident Society or Community Benefit Society.

The variation in definitions between which groups can nominate an asset and which groups can trigger a moratorium means the two actions may be completed by different groups. A full moratorium can be triggered by any eligible local community group, not just the one who nominated the asset in the first place.

Are there any exceptions to the Moratorium?

After an asset is listed there are some disposals (by sale, transfer or lease) which will not trigger the moratorium and can proceed without delay.

These are set out in S95(5) of the Localism Act 2011 and can be found at:

Localism Act 2011, Part 5, Chapter 3 – Assets of Community Value
<http://www.legislation.gov.uk/ukpga/2011/20/section/87/enacted>

Is there a right of appeal for nominating groups who disagree with a listing decision?

There is no community right to appeal the Council's decision not to list an asset. However, if the nominee feels that the council has not followed its own or Government guidance correctly the Council's complaints procedure can be used.

How long will an asset stay on the list?

The Council is required to remove an asset from the list, as soon as practicable:

- a) After a relevant disposal (other than an exempt disposal)
- b) When an appeal against a listing has been successful
- c) When it forms the opinion that the asset is no longer of community value
- d) No later than 5 years from the date of entry on the list

What rights do asset owners have?

Listing

Private asset owners have the right to request an internal review of the listing of their asset. They have eight weeks to object to the listing, following notification of their asset being listed. This internal review will be conducted by a Senior Officer at a Neighbouring Authority and a member of Shared Legal Service. The outcome of this review could result in the removal of the asset from the list.

If the owner is unsatisfied with the outcome of the internal review, there is a period of 28 days, following notification of the review decision, in which the owner can lodge an appeal with the First Tier Tribunal.

Compensation

Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. This could be due to a period of delay in entering into a binding agreement to sell which was wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal. The local authority must make a decision on the compensation claim, although no time limit is specified by the Act. If the owner objects to the compensation decision they have a right to an internal review and if they are still unsatisfied with the outcome they have 28 days to appeal to the First Tier Tribunal.

What role does the Council play?

- Accepts and administers nominations from the local community.
- Makes the decision on listing the asset
- Publishes a list of assets of community value and a list of unsuccessful nominations
- Applies to the Land Registry and Land Charges to impose relevant restrictions on the asset as a result of being listed
- Informs owner of listing and conducts internal reviews where necessary
- Informs the nominator of listing and if the asset comes up for sale
- Manages a compensation scheme for owners
- Reviews the list after 5 years

Further information

The following links provide further information or you can contact the Communities Team at communities@baberghmidsuffolk.gov.uk

The Assets of Community Value (England) Regulations 2012

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

My Community (Locality)

<http://mycommunity.org.uk/>

Department for Communities and Local Government:

<http://www.communities.gov.uk/communities/communityrights/righttobid/>