



South Hams
District Council

The Community Right to Bid Assets of Community Value

Guidance Notes for Owners



West Devon
Borough
Council

The Localism Act 2011 introduced the 'Community Right to Bid', placing a new 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 guidance notes, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14880/Community_Right_to_Bid_-_Non-statutory_advice_note_for_local_authorities.pdf.

What does this new Right mean?

The main provisions are:

- i. Local communities can nominate any 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.

Realistic continued or future use of the asset will be assessed on the commercial viability of the proposal (including the ability to raise funds) and the sustainability of that use.

If you have received notification from the Council that your asset has been nominated by the local community as an asset of community value, you will be given the opportunity to comment on the nomination. Following notification, you will be informed of the 'Listing Decision' on or near the eight week deadline date.

What is the decision making process?

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

1. The Community Team will receive a nomination and 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

- clearly an invalid nomination, the community will be informed with justification for refusal, or asked to resubmit with adjustments.
2. The Community Team will consider valid nomination forms and any representations owners wish to make over the eight week decision making period. A recommendation will be made to the Head of Planning, Economy and Community.
 3. The Head of Service, in consultation with local ward Members and Chair of Community Services Committee/Portfolio Holder for Planning, Economy and Community, make a decision on whether to include the asset on the List of Assets of Community Value.
 4. Once the decision to List is made, the asset owner and nominating community group will be informed.

What can I do if I don't agree with the decision to list my asset?

If your asset is placed on the List of Assets of Community Value and you disagree with this decision, you will have eight weeks, from the date of the 'listing decision' letter, to request an internal review. Please make this request in writing to the Community Team. Your asset will remain listed whilst the review is conducted. The Regulations require that the review is undertaken by a senior officer not involved in the original decision. An internal review of the listing decision will be conducted by the Council's Monitoring Officer. The owner may appoint a representative and the Council is required to provide all relevant documents to representatives. The owner/representative can make representations to the Monitoring Officer orally and/or in writing. The Council has eight weeks to conduct internal reviews and the owner and authority will bear their own costs of the review.

If you are unhappy with the outcome of the review of the listing decision, you have the right to appeal to the First Tier Tribunal. This must be made within 28 days from the date on which 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 & Tribunals
First-tier Tribunal (General Regulatory Chamber)
PO Box 9300
Leicester
LE1 8DJ

Or at GRC.Community.Rights@hmcts.gsi.gov.uk

What do I need to do if I wish to sell my listed asset?

If you plan to dispose of your asset through a freehold sale or the grant/assignment of a qualifying lease (i.e. originally granted for at least 25 yrs), please complete the Section 95 Form we sent you along with the decision notice to list the asset. You can also download the form from our website. Send the signed form to the Community Team to officially notify us of your intention to dispose of the asset. You

are legally obliged to notify the Council of this. Once we have been notified, we will calculate the moratorium periods, based on the date we receive notification and inform the community of your intention to dispose of the asset.

What happens once I have notified the Council of my intention to dispose?

Unless an exemption applies you will now only be able to dispose of your asset after a specified window has expired.

The first window is a period of 6 weeks, i.e. the Interim Moratorium period. This time allows community interest groups to express an interest in bidding for your asset.

If a written request is received by a valid community interest group, the moratorium period will be extended to be 6 months in total. If no request is received, the moratorium will end after the initial 6 weeks and you will be able to sell to whomever you choose.

The full moratorium is designed to give local community groups time to raise the funds to purchase the asset. During this period you are allowed to market the property and negotiate sales, but you cannot exchange contracts or enter into a binding contract to do so later. The only exception to this, is that you may sell to a community interest group during the moratorium period.

Following the moratorium period you will be free to sell to whomever you choose. Please note that if you feel you have incurred loss or expense as a result of the asset being listed you have a right to claim compensation for this loss/expense.

If your asset/land is still on the market after 18 months of you notifying us of the sale, a new moratorium period will commence and the above process will begin again.

Can a sale ever be exempt from the moratorium period?

A 'relevant disposal' means the transfer of the freehold or grant or assignment of a qualifying lease, which gives vacant possession of the buildings and other land in question. However some forms of disposal are exempt from the Community Right to Bid process. If you are confident that the transfer you are contemplating will fall into one of the following (or listed) exemptions, you will not need to notify the council of your intention to sell.

The main exemptions are:

- a) Disposals which are gifts
- b) Disposals by personal representatives in accordance with the will of the deceased owner
- c) Disposal to a family member
- d) Sale of the land, on which a business is carried on, together with the sale of that business as a going concern
- e) Disposal of land under bankruptcy proceedings

For a full list of exemptions please contact the Community Team.

How is the moratorium enforced?

The moratorium is enforced by a restriction placed with Land Registry. To prevent enforcement action (that is, the cancellation of a transfer), when a new owner applies to the Land Registry to register a change of ownership of a listed asset, they will need to provide the Land Registry with a certificate from the Council's solicitor that the disposal did not contravene the moratorium requirements.

If a non compliant disposal of a listed asset occurs, the transfer will be 'void', meaning that the change of ownership will not have occurred. If the transfer has been registered on the Land Register in error, it will still be void, and would have to be rectified. This penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.

Owners are encouraged to seek independent legal advice on these points.

Can I claim for compensation?

Please see separate document: Compensation Scheme for the Community Right to Bid for South Hams District Council and West Devon Borough Council.

I am not a private landowner, but a public body, can we claim for compensation?

The compensation scheme does not extend to public bodies who are defined as:

- Government departments, authorities and other bodies to which section 6 of the National Audit Act 1983 applies;
- Bodies which receive the majority of their funding from public sources which may be examined by the Comptroller and Auditor General under section 7 of the National Audit Act 1983; and,
- Local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998.

How long will my 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) or no later than 5 years from the date of entry on the list.

Where can I get further information?

The following links provide further information or you can contact the Community Team at community@swdevon.gov.uk:

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

The Assets of Community Value (England) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/2421/made>

My Community Rights (Locality)
<http://mycommunityrights.org.uk/community-right-to-bid/>

Department for Communities and Local Government:
<http://www.communities.gov.uk/communities/communityrights/righttobid/>