

ASSETS OF COMMUNITY VALUE

BRIEFING NOTE AND ACTION SHEET

Background

The listing of community assets formed part of the Government's localism agenda. The concept of the 'community right to buy' was originally proposed as a 'right of first refusal' but subsequently refined into a 'community right to bid' governed by Ch.3 of Pt 5 of the Localism Act 2011.

The Chapter provides a mechanism whereby a local authority is required to maintain a list of land in its area which is of community value. Local groups may make submissions to that authority as to the land which should be on that list (a 'community nomination').

The listing regime

Land can only be included on the list in response to a nomination by:

- A parish council
- A community council in Wales or
- A voluntary or community body with a local connection.

Certain land is excluded from listing, including private dwellings and operational land of statutory undertakes (as defined in Town and Country Planning Act 1990, s.263).

If the nomination has been made by an appropriate body, the land is in the relevant authority's area and is of 'community value', then the authority must list it, subject to any application for review or subsequent appeal by the owner.

Voluntary or community body with a local connection

Under the regulations, there are seven categories of body which are considered to meet this definition:

- A designated 'neighbourhood forum' (as defined in Town and County Planning Act 1990, s61F), being a body capable of making neighbourhood development orders;
- A parish council;
- An unincorporated body of 21 or more individuals which does not distribute any surplus it may make to its members;
- A charity;
- A company limited by guarantee which does not distribute any surplus it may make to its members;
- An industrial and provident society which does not distribute any surplus it may make to its members; or
- A community interest company.

In addition to meeting one of these constitutional requirements, the body must also have a 'local connection'. The regulations require only that the body's activities are wholly or partly concerned with the local authority's area or a neighbouring authority's area. The 'local connection' test for an unincorporated body also requires that at least 21 of its members are 'local members' and who must be registered as a local government elector in the authority or neighbouring authority's area in order to meet this requirement.

Community value

Section 88 of the Act provides two circumstances under which a building or land is of 'community value':

1. Where, in the opinion of the authority, the actual primary current use of the asset furthers the social wellbeing or social interests of the local community and can continue to do so. Whilst social wellbeing is not defined, social interests are considered by the Act to include cultural interests, recreational interests, sporting interests.
2. Where, in the opinion of the authority, in the 'recent past' an actual non-ancillary use furthered the social wellbeing or interest of the community and it is realistic to think that there is a time in the next five years where there could be such use. 'Recent past' is not defined so presumably this will be a matter for the local authority's judgment.

Clearly, what constitutes a community value use will be determined to some extent by the character of the area in question and this could differ from place to place.

Provided that the formalities for a nomination are met, it is a matter for the local authority to determine whether the nominated asset currently furthers, and can continue to further, the social wellbeing or interests of the community, or that the building or land would have been of community value were it still in use and the authority reasonably concludes that it would be realistic to bring that land or building back into a use of community value within five years.

The Council

The Council is legally obliged to maintain a list of Assets of Community Value nominated by communities where an application to list an asset has gone through the process set out in the Act (see more on this below). If an owner wants to sell a listed asset they must tell the Council who will then give notice to the community of the proposed sale. Eligible community groups will have an opportunity to submit an expression of interest to the Council. On receipt a six month moratorium period will apply that provides community interest groups with a chance to bid to purchase the asset.

Effect of listing

1 Moratorium on sale – the 'community right to bid'

The primary effect of listing is to bring into effect a moratorium on the sale of land or buildings included in the list of assets of community value. An entry on the list remains for a maximum of five years, unless removed earlier. The moratorium operates to prevent a 'relevant disposal' until a series of conditions are met. These conditions are:

- That the owner has notified the local authority that he wishes to enter into a relevant disposal;
- That a period of six weeks then passes without the authority receiving a written request from a community interest group to be treated as a potential bidder for the land ('the interim moratorium period') or where such request has been made, a period of six months has passed ('the full moratorium period'); and
- The 18-month 'protected period' starting with the notification to the authority, has not ended.

2 Moratorium on sale – a 'relevant disposal'

For freehold estates, the disposal is a relevant disposal if it is with vacant possession. For leaseholds, the disposal will only be 'relevant' where it is a lease which, when granted, had at least 25 years to run and is again a grant or assignment with vacant possession. In either case, the disposal is made when an agreement to make it becomes binding. Certain disposals, such as by way of gift, family transfers and assents are not caught by the moratorium.

3 Material planning consideration

The inclusion of land on the list may also be a material consideration in the determination of planning applications, particularly where a change of use is proposed.

4 Compensation

An owner (or former owner) of listed land is entitled to compensation from the authority as a consequence of listing where the claimant was the owner and incurred loss which would have been unlikely to be incurred if the land had not been listed;

- Because of the delay in entering into a binding agreement; or
- Because of the prohibition against relevant disposals within the six months period.

5 Review and appeal

An owner may challenge the authority's decision to list the land in question. Firstly, by way of review by the authority of its own decision to do so and subsequently a right of appeal to the General Regulatory Chamber of the First Tier tribunal.

6 Effect of a non-compliant transfer

A disposal will be ineffective if it is a disposal which contravenes the requirements of section 95 of the Act unless the person making the disposal, having made all reasonable efforts to find out if the land to be disposed of is listed, does not know that it is listed at the time the disposal is entered into. The listed land will also be subject to a restriction entered at the Land Registry as follows: 'no transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene s95(1) of the Localism Act 2011'. Solicitors for prospective purchasers will therefore be aware when community asset land is involved, so that they can be satisfied the transfer or lease is compliant.

Other relevant issues

Grant Funding :

Some grant funding for bodies looking to purchase and run community assets may be available from the DCLG. The capital grants programme to assist the actual purchase has now closed but grants are available in the following two categories:

- Pre-feasibility grants of up to £10K for early investigative work as to the potential for acquiring and running the asset; and
- Feasibility grants of up to £100K to assist in carrying out a detailed feasibility study including business plans, legal and technical needs for running the asset in the manner desired as well as project management.

There are other community grants available – such as the Reaching Communities scheme from the Big Lottery Fund and the Community Builders Fund, which is set up to:

'help support exemplar projects which are unique in their offering to local communities, and help long-term regeneration. They must be innovative, enterprising and ambitious...'

HANDLING APPLICATIONS IN RUNNYMEDE

Task	Action by?
Receive nomination (can be in both electronic and hard copy format) – preference is that Community Asset Nomination Form is used.	Assistant Chief Executive
Conduct appraisal.	Assistant Chief Executive
If nomination successful, land added to the list of Assets of Community Value for 5 years.	CHLG with copy provided to Local Land Charges to note up individual property registration. Restriction recorded against the title at the Land Registry.
If unsuccessful, land added to the List of Unsuccessful Community Nominations.	CHLG with copy provided to Local Land Charges to note up individual property registration.
Lists to be published on the Council's website and regularly updated.	CHLG
Notify owners, occupier and Nominee appropriately.	CHLG
Consider any request for review of decision (within 8 weeks)	CEO or Corporate Head of Resources
Consider any claim for compensation and advise owner accordingly.	CHLG in liaison with CHR
Responsibility for enforcing the Act and answering enquiries	CHLG
Receive Notice of Disposal, acknowledge, advise nominee.	CHLG
Notify owner of expressions of interest and any lack of same	CHLG
Receive notification of completion of disposal and arrange for asset to be removed from List.	CHLG
Notify nominee when asset removed from the list after expiry of 5 year period	CHLG

LIST OF UNSUCCESSFUL APPLICATIONS

(For publication on the Council's website)

Asset Ref (unique ref)	Asset Name	Address	Date Application Rejected
UACV1			

