

briefing produced by GRCC on the Process of the Community Right to Bid as it applies to parished areas (parish/ town councils)



This relates to Part 5, Chapter 3 of the Localism Act 2011 and to the Assets of Community Value Regulations 2012

Separate briefing note can be made available for non parished areas on request

PROCESS	NOTES
<p>IDENTIFY THE ASSET OF COMMUNITY VALUE</p> <p>This is done by the Parish Council (PC) or a community interest group with a local connection- see next section for explanation</p> <ul style="list-style-type: none"> • The asset must be ‘of community value’ • An asset may be land or buildings • An asset can be owned by anybody (including the local authority and the Crown) <p>Definition of an asset of community value excludes:</p> <ul style="list-style-type: none"> • Land licensed for use as a residential caravan site (and some that are not licensed) • Operational land of statutory undertakers • Residential property, including gardens, outbuildings and other associated lands that can be reached from the residence without having to cross land that is not owned by that owner (except if the sections of land are separated by a road, railway, river, canal). • Residential property also includes - Holiday dwelling (let or partly let as a holiday dwelling), Hotels (i.e. effectively let to paying occupants), house in multiple occupation (flats) • Temporarily unoccupied residences <p>However, an asset that has residential property as an integral part of it (e.g. pub flat/ caretaker’s flat) is not excluded from being nominated.</p> <p>Also – A residence may be nominated if the residence is a building that is only partly used as a residence and bu</p>	<p>The asset must be ‘of community value’ and the Local Authority (LA) will be making a decision about It is vital that you are aware of what the LA will consider when it makes a judgement, at a later stage, about whether to accept or reject the nomination.</p> <p>The LA judgement will be based on whether the nominated asset is ‘of community value’ according to Section 88 of the Localism Act 2011. This clause refers to whether the principal (non ancillary) use of the asset furthers (or has recently furthered) the community’s social wellbeing or social interests (i.e. cultural, recreational or sporting interests) and is likely to do so in the future (next 5 years). For the exact wording see Section 88.1 and 88.2 of the Act</p>
<p>NOMINATE THE ASSET (Ask the LOCAL Authority (LA) to place the asset on its ‘List of Assets of Community Value’)</p> <p>In parished communities, nominations can be made by:</p> <ul style="list-style-type: none"> • Parish council (PC) • A community interest group with a local connection (demonstrates that its activities are wholly or partly concerned with the LA where the asset sits) <p>In Gloucestershire nominators will make the request to the Local</p>	<p>NOTE- Each nomination will be treated separately so there is no need for the community to draw up a list of assets unless they want to (or unless the LA has a system in place whereby they only accept nominations during certain windows). If the asset bounds 2 LA areas, those LAs need to co-operate to carry out their functions under the Act</p> <p>A community interest group with a local</p>



<p>Planning Authority (i.e. district council)</p> <p>The nomination must include:</p> <ol style="list-style-type: none"> 1. Description of the nominated land including its proposed boundaries (which do not have to match ownership boundaries or be in the same ownership). NOTE- A map with accompanying notes/ annotated map would show this 2. Any information the nominator has about the freeholders, leaseholders and current occupants of the site 3. Why the nominator feels that the LA should conclude that the land is of community value (i.e. how it meets the definition in section 88 of the Localism Act) 4. How the nominator is eligible to make the nomination (i.e. it is a parish council or matches the definition of a community interest group with a local connection as defined in the Act. <p>Community nominations may be made at any time –including after an asset has been put onto the market. However no restrictions on sale arise from nomination – it is only inclusion on the List of Assets of Community Value which brings the moratorium period into play.</p>	<p>connection can be:</p> <ul style="list-style-type: none"> • A unincorporated group with membership of at least 21 local people who live in the Local Authority area where the asset sits (or a neighbouring local authority) and which is non profit distributing • A charity • A Community Interest Company • A company limited by guarantee that is non profit distributing <p>An industrial and provident society (A.K.A. Community Benefit Societies)</p> <p>Only a community can nominate an asset to go on the list- LAs may not list land on their own initiative.</p> <p>A LA may wish to have a named point of contact for community groups to send their nominations to (NOTE: try planning departments or property services departments)</p> <p>Neighbouring parish councils may make a nomination if the asset is in a neighbouring unparished area (i.e. shares a border).</p>
<p>INFORMING RELEVANT PARTIES OF THE NOMINATION</p> <p>The LA should inform the following of the nomination:</p> <ul style="list-style-type: none"> • Relevant parish council • Owner of the asset • All others with legal estate (e.g. holder of the freehold estate and any other leaseholder) • Any lawful occupant (including licensee) 	<p>LA must take all practicable steps to inform</p> <p>There are no conditions on how much information the LA should provide.</p>
<p>LA DECISION ABOUT THE NOMINATION</p> <p>The LA must make its decision about whether to include the nominated asset on its List of Assets of Community Value <i>within 8 weeks of receiving the nomination.</i></p> <p>If the asset is in the LA’s area, is not excluded and is properly nominated (by a valid organisation) the LA must list it.</p> <p>The LA determines whether the nominated asset meets the definition of an asset of community value (as set out in Section 88 of the Act).</p>	<p>It is ‘the opinion’ of the authority that counts but the decision must be based on Section 88 of the Localism Act 2011</p> <p>The LA will decide the process for making the decision about whether a nominated asset should be included in the list – i.e. one officer makes the decision, a panel, councillors etc.</p>
<p>ADDING A NOMINATED ASSET TO THE LIST</p>	<p>If there is lack of e.g. names and addresses,</p>



<p>If a nomination is successful the asset will be added to the LA's 'List of Assets of Community Value'. The LA must notify:</p> <ul style="list-style-type: none"> • The owner (by written notice – including implications) • The occupier of the land (if not the owner) • The nominator of the asset • Any freeholders or leaseholders of the asset • Parish council <p>The local authority decides on the layout and how to publish the list as long as those lists are available for free inspection by any person and the LA must provide a free copy to anyone who asks for one.</p> <p>LAs are required to add that an asset has been listed to the local land charges register so that prospective new owners can see that the land has been listed. They are also required to apply for an 'entry of restriction' to the Land Register (if the asset is registered) i.e. that, ownership changes, it must be proved that any sale while the asset was on the list did not contravene the Localism Act. Sale of registered land could otherwise be void.</p>	<p>the LA can take reasonable alternative steps to bring the notice to a person's attention e.g. put a notice on or near the asset.</p> <p>If the nomination is unsuccessful- the LA must inform the nominator of the decision and the reason.</p> <p>The LA must also keep a list of those assets which have been unsuccessfully nominated. This must include, for each asset, the reason why the nomination was unsuccessful. It is up to the LA to decide how long they hold unsuccessful nominations on the list.</p>
<p>RIGHT TO REQUEST A REVIEW OF THE LA DECISION</p> <p>If an asset has been included on the list, the owner has the right to request that the LA reviews its decision.</p> <p>This request for review must be made within 8 weeks from the date written notice of the listing was given</p> <p>It is up to the LA to decide the process for review but it must be carried out by an officer 'of appropriate seniority' who did not take part in the decision to list.</p> <p>The owner can make representations to the reviewer orally or in writing. They can appoint a representative to do this.</p> <p>The LA must complete the review within 8 weeks unless a longer period has been agreed in writing and let the owner know the result.</p>	<p>The property will remain listed while the review is carried out.</p> <p>The owner and the LA will bear their own costs of the review.</p> <p>The written response from the LA to the owner, following the review, will notify the owner of the right to appeal to the First Tier Tribunal against the LA's review decision. The appeal must be made within 28 days from the date when the notice of review was sent to the owner. (The owner making the appeal can either be the same owner who requested the review or – if the property has been sold in the meantime- the new owner).</p> <p>NOTE- There is no mention in the regulations or guidance of any right of appeal by the nominator or other if the nomination is unsuccessful. However there is reference in the Localism Act (Section 92.6) to regulations which can be drawn up by the LA to provide procedures to be followed in cases of review and this could include a procedure for an appeal by the unsuccessful community</p>



	against the decision of the review.
<p>MAINTENANCE OF THE LIST BY THE LA</p> <p>The local authority must update the asset’s entry on the List of Assets of Community Value as soon as practicable to show: Date of any notification by the owner to dispose of the asset, subsequent key dates for moratorium periods, if full moratorium is applied and name of community group triggering full moratorium period, plus protected periods. Some of these have to be done within a 6 week period of notification.</p>	<p>New owners of the listed asset are required to inform the LA that they are the owner so that the LA can update its records.</p>
<p>REMOVAL OF ASSETS FROM THE LIST</p> <p>Assets are removed from the list in the following circumstances:</p> <ul style="list-style-type: none"> • When an appeal against the decision by the local authority to add the asset to the list has been successfully made • No later than 5 years from date of listing • If the local authority decides that the asset is no longer of community value • After a relevant disposal 	<p>When an asset is removed from the list the LA must inform:</p> <ul style="list-style-type: none"> • The owner • Any freeholders or leaseholders of the asset • The occupier of the land • The nominator of the asset • The relevant parish council <p>Rationale for removal is sometimes required</p>
<p>WHAT HAPPENS NEXT?</p> <p>Once an asset has been listed nothing further happens unless and until the owner decides to dispose of it, either through freehold sale or the grant of a 25+ year lease (in a way in which the asset is not exempt – see below)</p> <p>The Act and Regulations do not place any restriction on what the owner can do with their asset once listed, as long as it remains in their ownership. E.g. they are permitted to apply for a change of use and the LA will decide if the fact that the asset is listed is a material consideration for making a planning decision.</p> <p>THE OWNER DECIDES TO SELL</p> <ul style="list-style-type: none"> • If the owner decides to transfer ownership they are obliged to notify the LA • The LA, in turn, must notify the nominator that the owner wishes to sell the asset and relevant moratorium dates • The LA must also publicise the fact that notification has been received from the owner that the asset is for sale ‘in the area where the land is situated’ 	
<p>INTERIM MORATORIUM</p> <ul style="list-style-type: none"> • This moratorium lasts 6 weeks from the point when the owner notifies the LA of the proposal to sell. • The aim of this period is to allow community interest groups + PCs time to make a written request (however expressed) to the LA to be treated as a potential buyer of the asset. (NOTE- the Act therefore gives a community group time to convene, plan consider financing and other aspects and come to a decision about whether to bid) 	<p>Exemptions to the moratorium</p> <p>Sale can take place to PC/local community interest group during the moratorium period</p> <p>There are a further 25 listed exemptions to moratoriums including those relating to gifts (including transfer to a Trust’s trustees), between family members, by divorce, by</p>



<ul style="list-style-type: none"> • If a request is received within the initial moratorium period, the LA must, as soon after receiving the request as practicable, either pass on the request to the owner or inform the owner of the details of the request. • If no request is made by a PC/community interest group by the end of the interim moratorium period, the owner is free to sell (to whoever they choose and at whatever price) and no further moratorium will apply for 18 months from initial notification to the LA by the owner of the desire to sell) 	<p>inheritance, agricultural estate needed for administering an estate or by a lender if the asset was security against a loan, or bankruptcy. Also part listed land (where only part of the site is listed), site of a business sold as a going concern, dissolving a business partnership, compulsory purchase, court order, to create/ maintain health services and schools/colleges (not independent schools).</p>
<p>FULL MORATORIUM</p> <ul style="list-style-type: none"> • If a request is made to the LA by a community interest group to be treated as a potential bidder (as outlined above), a full moratorium is triggered. This lasts 6 months from initial notification to the LA by the owner of the desire to sell (i.e. approx 4.5 months additional to the interim moratorium). • During this time, the owner can still market and negotiate sales with others but may not exchange contracts (or enter into a binding agreement to do so). NOTE- The Act however gives the community group time to source finance and negotiate with the owner (or representative). 	<p>Even if the community interest group submits a bid, the owner is not obliged to accept that bid. Once the 6 month moratorium is over the owner can sell to whoever they choose and at whatever price they choose. No further moratorium will apply for 18 months (from initial notification to the LA by the owner of the desire to sell).</p>

Compensation: Private owners (i.e. not public authorities and bodies or those who get the majority of their funds from public bodies) may claim compensation from the LA for loss and expense incurred through the asset being listed or previously listed. This includes a claim for a delay in entering into a binding sale caused by the moratorium. There is further guidance on how owners can make a claim for financial loss, the role of the LA in determining awards and rights of review and appeal. The LA makes the payments but central government has stated that it will meet the cost of compensations that exceeds £20,000 in a financial year, up to March 2015.

Financial support for communities to become ready to bid is available from a national government grant scheme administered by Social Investment in Business.

<http://www.sibgroup.org.uk/communityrights/>

This document is based on the following government publications:

Community Right to Bid – Non-statutory advice for local authorities October 2012

<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/communities/pdf/2229703.pdf>

Localism Act Assets of Community Value – Standard note 06366

<http://www.parliament.uk/briefing-papers/SN06366>

Localism Act 2011 Part 5 Chapter 3

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

The Assets of Community Value (England) Regulations 2012

<http://www.legislation.gov.uk/ukdsi/2012/9780111526293/contents>

