

For information

Briefing Note

Assets of Community Value (The Community Right to Bid) – Assessment and Decision Making Process

Aim of this briefing note: To set out what an Asset of Community Value is, implications of accepting a nomination and the decision making process

The powers for members of a local community to request land/buildings to be listed as an ACV were introduced in 2011 by the Localism Act. The key points are as follows:

- Local community groups can nominate land/building(s) which the Council must list as being of Community Value if, in its opinion

(a) they are primarily being used for a purpose which 'furthers the social wellbeing or social interests of the local community', and it is realistic to think that a use which will further the social wellbeing or social interest of the local community can continue; or

(b) In the recent past the land/building(s) were primarily used for a purpose which furthered the social wellbeing or social interests of the local community and it is realistic to think that, in the next five years, they could be used for a purpose which will further the social wellbeing or social interests of the local community.

NB The current, recent and future use need not be the same provided they "further the social wellbeing" etc.

- If land or buildings are listed, and the owner intends to make a "relevant disposal" (as defined by the legislation) of it, the Council must publicise the disposal, and community groups have six weeks to decide if they want to bid for the property (the 'interim moratorium').
- If a group decides to bid, the owner cannot then dispose of the property for up to six months to allow time for that bid to be prepared (the 'full moratorium').
- The owner is not obliged to accept a community bid and can sell to whoever they wish after the moratorium has passed within an eighteen month "protected period".
- Nominated assets can be in private or public ownership. Owners have a right of to request a review of a listing, and the council may need to compensate owners for losses arising as a direct result of the listing. However as long as the nomination meets all of the statutory requirements the nomination must be accepted if the Council is of the opinion set out in (a) or (b) above.
- Assets remain on the list for five years, unless removed.
- An asset may be removed from the list at any time if the council no longer considers that the land is of community value, or if a review of a listing is successful.
- Inclusion on the list is registered as a local land charge which will be revealed when pre-sale property searches are carried out.

Land that is exempt from nomination includes:

- Residential properties (including HMOs and hotels), unless they are functionally linked to and part of larger premises that are eligible for listing (such as a caretaker's flat within a community centre);
- Caravan sites;
- The 'operational land' of statutory undertakers (utility companies etc).

What uses can be listed?

The Council has only limited discretion over whether or not to list an asset as being of community value. An asset must be listed if the nomination is from an eligible group, the property is not exempt, and the use meets the statutory definition. The council must consider the extent to which the existing or previous main use of the property furthers the social wellbeing and social interests of the local community. If it concludes that the use has done so in the past, the Council must also consider whether it is realistic to think that such a use can continue in the future.

Guidance published by the CLG's Asset Transfer Unit (ATU) suggests that uses that are likely to fulfil the definition are:

- Public services for the purposes of education, health and wellbeing or community safety (e.g. schools, nurseries, health centres, hospitals, day care centres)
- Sport, recreation and cultural facilities (e.g. parks and open spaces, leisure centres, cinemas, theatres, museums)
- Community services (e.g. community centres, youth centres, public toilets)
- Any economic use which also provides an important local social benefit which would no longer be easily available if the service ceased (e.g. local shops, pubs, markets)

When assessing whether or not it is realistic to think that the premises can continue in a use of community value (not necessarily the same use), the ATU guidance suggests that for uses that are currently ongoing there should be a presumption of continued viability, unless clear evidence suggests otherwise. Where a social use has already ceased, a broad view needs to be taken on the realism of re-establishing such a use.

Disposals which don't trigger the moratorium

There are a number of ways that an Asset of Community Value can change hands without triggering the moratorium period. These are prescribed by law and include:

- Sale as a going concern or other than with vacant possession;
- A disposal by one body corporate to another, where the second body is a 'group undertaking' in relation to the first;
- A disposal of land to be held for the purpose of a school, further education institution or academy;
- Disposal by way of a gift.

Implications for NCC Disposals

There is a likelihood that groups may seek to nominate council-owned premises that are being considered for closure/disposal. The Council must consider these nominations in the same way that it would any other and list the premises as an

asset of community value where the statutory requirements are met. If the Council is seeking to dispose of the land separate consideration will need to be given to how the proposed disposal fits into the Council's asset management strategy, and how best value may be achieved but those considerations cannot influence the exercise of the Councils ACV listing functions in accordance with the relevant legislation.

The Decision Making Process

The Council has a statutory duty to make a decision on whether to list the nominated land/building as and ACV within an 8 week period. Within this period there is a statutory requirement to consult all bodies with an interest in the land and current occupiers. It is crucial that all parties with an interest in the land are consulted on any nomination, as any subsequent listings may ultimately be reviewed by a third party tribunal and some categories of owners may seek compensation for any loss or expense that it is likely they would not have incurred had the land not been listed as an ACV.

The current process for determining an ACV is through the Council's formal delegated decision system, with final sign off from the Portfolio Holder for Housing and Planning. A delegated report be uploaded for the Portfolio Holder setting out the recommendation on the nominated ACV and the reasons for that recommendation. Once a decision has been made an officer will notify the nominee of the decision and organise for the decision to be put on the either the register of land of community value or the list of land unsuccessfully nominated for inclusion on the ACV (as appropriate) .

The delegated report will also delegate power to an appropriate officer to determine any subsequent request for review made by the owner should one be received.

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