# Assets of Community Value Policy

## Introduction

The Localism Act 2011 introduced the “Community Right to Bid” and placed a duty upon local authorities in England to maintain a list of assets of community value. This list is known as the Council’s List of Assets of Community Value (“the List”). The Assets of Community Value (England) Regulations 2012 (“the Regulations”) set out the procedure together with the exemptions.

The legislation is to encourage community-focused, locally-led action by providing a tool to help communities looking to take over and run local assets. The scheme will give communities the opportunity to identify assets of community value (“ACV”) and have them listed and, when they are put up for sale, more time to raise finance and prepare to bid for them.

The Council will have a pivotal role in implementing the Community Right to Bid, working with local communities, to decide on asset listing, ensuring asset owners understand the consequences of listing, enforcing the Moratorium period and taking decisions as part of any appeals process.

## Nominating an asset

A community or voluntary organisation or a parish may nominate either a publicly or privately owned building or land which they consider to have “community value” for inclusion on the List. A community asset is a local building or piece of land which the community considers to be of particular value to the local community.

Section 88 of the Localism Act 2011 sets out the definition of a community asset. Land or a building will be considered of community value if in the opinion of the Council if:

* 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 now or in the next 5 years there could continue to be a primary use of the building/land which will further (whether or not in the same way) the social, well-being or social interests of the local community.

Land may also be considered to be an ACV if either there was a time in the recent past when the actual use of the land furthered the social wellbeing or social interests of the local community, or it is realistic to expect that in the next five years there could be such a use of the land.

Assets which are excluded include land and buildings which are primarily residential in purpose, licensed caravan sites, operational land owned by statutory undertakers e.g. railways, ports, roads, the Post Office.

A community or voluntary organisation includes:-

* An unincorporated group of 21 or more people who appear on the local electoral register;
* A community interest group, i.e. a legally constituted organisation such as a charity, a company limited by guarantee that does not distribute profits amongst its members;
* A Neighbourhood Forum designated as such by the local planning authority;
* A Parish Council in respect of land in its own area; and
* A Neighbouring parish council – if the parish council borders an unparished area, then they may nominate an asset with that neighbouring local authority.

The nomination must be in writing by completing the nomination form at **Appendix A** and sent to Legal Section, Town Hall, Torquay, TQ1 3DR. Upon receipt of a satisfactorily completed nomination form the Council shall take the following steps.

## Listing an asset

The Council will have 8 weeks to decide whether or not to list the asset. The Council must decide which nominations are eligible to be listed.

The Cabinet will consider the nomination and decide whether to approve the inclusion of the nominated asset on the List in accordance with Section 88 Localism Act 2011.

If an asset is to be listed the Council must shall take all practicable steps by sending a Decision Notification letter to notify:-

* Any parish council whose area the land is in;
* The registered owner of the land;
* Any other person with a registered interest in the land;
* Any lawful occupant of the land; and
* The nominating body.

A notice must be displayed or attached to the land or building to be included on the list set out at **Appendix B**

If the asset is not to be listed, the Council must notify the nominating body and give reasons why. There is no right of appeal against the Cabinet’s decision.

## Internal Review

The owner of the asset has the right to request an internal review of the decision to include the asset on the List (section 92, LA 2011). The internal review will be undertaken by a Director or Assistant Director of the Council who must not have been involved with the original decision to list the asset.

The owner must request this review within 8 weeks from the date written notice of listing was given (or from the date that alternative steps were completed to bring listing to the owner’s attention). The asset will remain listed while the review is carried out. The owner has the right to request an oral hearing and be represented at this hearing by whomever they wish.

If the reviewer upholds the Cabinet’s decision and decides that the asset will be included on the list, the owner has a right of appeal to a First Tier Tribunal.

A community asset will remain on the successful list for a maximum of 5 years at which point it can be re-nominated and re-listed subject to local interest and continued compliance with the definition of an asset of community value.

If the owner is successful the asset must be moved to a separate list known as List of Unsuccessful Community Nominations. This list must also be published alongside the successful nominations. The Council will decide how long the unsuccessful nomination will remain on this published list with reasons for it not being included on the List of Assets of Community Value. This is to avoid multiple nominations of an asset that does not meet the definition under s.88 LA 2011.

## Appeal

The owner is entitled to appeal to an independent First Tier Tribunal at Tribunal Clerk, General Regulatory Chamber, HM Courts & Tribunals, PO Box 9300, Leicester, LE1 8DJ or email [grc@justice.gov.uk](mailto:grc@justice.gov.uk) within 28 days from the date of the notice of the decision of the internal review was made.

If the owner is successful the asset must be moved to the list of unsuccessful nominations.

If the Council is successful, the asset must remain on the successful list for a maximum of 5 years.

## Local land charge

If land is included in the Council’s list of assets of community value inclusion in the list is a local land charge, and; that authority is the originating authority for the purposes of the Local Land Charges Act 1975. (Section 100, LA 2011).

## Moratorium

Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant of assignment of a qualifying lease (i.e. originally granted for at least 25 years).

Should an owner of a community asset wish to enter into a relevant disposal or a binding agreement to enter into a relevant disposal, they must satisfy each of the following conditions:-

1. A period of six weeks has passed since the notification was received by the Council without the Council having received during that period a written request from any community interest group to be treated as a potential bidder in relation to the asset; (“interim moratorium”);
2. Where the Council has received a written request from a community interest group to be treated as a potential bidder during the six week period from notification being received from the owner; a period of six months has passed since the notification was received from the owner; (“full moratorium period”); and
3. The relevant disposal takes place **within** a period of 18 months since the notification was received by the Council (the owner is free to sell the asset to whomever they choose and at whatever price within this period) (“protected period”).

N.B. There are exceptions listed in Section 95(5) LA 2011 where a relevant disposal can take place without the above requirements being satisfied. The most relevant are: gifts or disposals to family members; disposal of part of a business sold as a going concern; disposals in fulfilment of a planning obligation – option or pre-emption right made before the asset was listed; disposals under statutory compulsory purchase; disposals for the purpose of enabling NHS services to continue; disposals held for the purposes of a school, a 16-19 academy.

The owner is under no obligation to dispose their asset included on the List to a community interest group.

Upon receipt of the notification that the owner wishes to enter into a relevant disposal, the Council must amend the List to include reference to the notice having being received; the date on which the notice was received and the date each of the periods specified above at (a), (b) and (c).

The Council will give written notice to the successful nominated body and a notice will also be displayed or attached to the land or building in respect of which the notice has been received.

The form will be in the form at **Appendix C**.

Any asset included on the List will be removed with effect from the end of the period of 5 years beginning with the date that entry was made. Notification will be given of removal from the List to all those parties notified of the asset’s inclusion on the List and the reasons for the removal will be included in this notice.

## Compensation

Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period or; or for legal expenses incurred in a successful appeal to the Tribunal.

The owner has 13 weeks from the end of the interim or full moratorium period or from the date when the asset ceases to be listed to submit his claim in writing, stating the amount of compensation and supporting evidence. The burden of proving the claim falls on the owner.

There is no time limit for dealing with the claim.

## Internal review of compensation decision

An owner who is not satisfied with the Council’s response to the compensation claim may request an internal review within 8 weeks of the Council’s decision given to the owner. The Council must notify the owner of the result, with reasons, of the internal review within 8 weeks of receiving the request.

The procedure is the same as for the Council’s review of a listing decision.

## Independent Appeal

The owner may appeal to the Tribunal against the Council’s review on compensation within 28 days. Only the owner or the former owner who requested the review may appeal against the review decision.

The appeal will heard by the General Regulatory Chamber of the First-tier Tribunal.

## Enforcement

The Regulations introduce a clear penalty for non-compliance, and measures to minimise the chance of a disposal not being compliant with the scheme. These will be achieved partly by amendment to the Land Registration Rules 2003.

The Council is required to add that an asset has been listed to the local land charges register. This will ensure that all prospective owners will be aware that an asset has been listed, since local land charges apply to both registered and unregistered land.

The Council is required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform the Council that the land has been entered on the Land Register as a result of an application for first registration and also to inform the Council if they have become the new owner of listed land.

The Council is required to apply to the Land Registry for entry of a restriction on the Land Register when they list a building or other land as an Asset of Community Value, or if necessary, where the owner of the listed asset has changed. Form QQ states “No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) Localism Act 2011.”

The Council is required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.

## Further information

### Community Asset Transfer

This is not to be confused with Asset of Community Value. Community Asset Transfer is the transfer of management and/or ownership of land or buildings owned by the Council to a community-based organisation, at less than market value, in order to promote social, economic or environmental well-being.

The Council’s Asset Management Plan provides the details for these types of disposals.

For further information on Assets of Community Value please find the below links:

<http://mycommunityrights.org.uk>

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