

Subject: Assets of Community Value – Nomination of Kings Head, Filby

Report to: Housing & Neighbourhoods Committee – 28 July 2016

Report by: Corporate Policy and Performance Officer

SUBJECT MATTER/RECOMMENDATIONS

Housing & Neighbourhoods Committee is asked to consider the attached nomination for the Kings Head Public House, Filby.

A nomination has been received by a 'community group' asking the Council to list the property as an Asset of Community Value.

Recommendation

Housing & Neighbourhoods Committee is asked to consider the nomination for the Kings Head Public House, Filby and decide whether the property should be listed as an Asset of Community Value.

1. INTRODUCTION/BACKGROUND

- 1.1 The Community Right to Bid was introduced on 21 September 2012 as part of the Localism Act 2011.
- 1.2 Under the Act local groups have the opportunity to nominate a building or other land for listing by the council as an asset of community value. The council must consider any nomination and, where it accepts them, place the property/land on a list of assets of community value. When listed assets come up for sale, the act then give local groups the time to prepare and make a bid for the asset.
- 1.3 The Council set up a procedure to be followed in dealing with nominations received, which was included in a guidance document for Members and Officers.
- 1.4 Once a nomination has been received the Council has eight weeks to make a decision. During that time interested parties to the asset are consulted and checks and research is undertaken to provide information so an informed decision can be made.
- 1.5 Regulation 7 states that "The responsible authority must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination."
- 1.6 Prior to the Committee form of Governance it was agreed that the Cabinet Member for Communities would make the decision (to include on the list of successful nomination or unsuccessful list) regarding the nomination after

being provided with relevant information from officers supporting the process. Under the new constitution this decision comes under the remit of Housing & Neighborhoods Committee.

- 1.7 The officer support is provided by the Group Manager Planning and the Corporate Policy & Performance Officer.
- 1.8 The only other officer involved in the process is the Director of Customer Services, who will conduct a listing review. If an asset has been included on the Successful List, an owner has the right to request the council to review its decision, under section 92 of the Act. The Director of Customer Services is not involved in the decision to list process.
- 1.9 Between March 2013 and December 2015 the Council received 11 nominations; five were successful and listed; four were unsuccessful (one after review listing) as they did not meet the criteria set out in the act; and two were withdrawn by nomination party before a decision was made.

2. NOMINATION OF THE KINGS HEAD PUBLIC HOUSE, FILBY

- 2.1 The nomination was received on 6 July 2016 and the Council has eight weeks to make a decision. The Council wrote to interested parties on 7 July 2016 and informed the owner and leaseholder they have a two week period to notify the Council if they have any objections to the nomination.
- 2.2 The nomination was received from an 'Unincorporated body' which requires the body to provide a signed list of its members, at least 21 of whom must be registered to vote locally or in a neighbouring authority. This list has been checked against the electoral roll and the required number has been met, so the nomination meets that particular part of the legislation.
- 2.3 Research shows that there has been a public house on the land prior to 1800, with one family having an interest in the public house for over 100 years going back to 1841. By 2008 the Kings Head had become a Freehouse, but prior to that it had its beer and spirits provided by the Watney Mann brewery. This is the only public house in Filby. The village previously had two public houses, at separate ends of the village, but the Fox and Hounds closed and was later developed into housing.
- 2.4 The Housing & Neighbourhoods Committee must determine whether the land or building nominated meets the definition of an asset of community value as set out in section 88 of the Localism Act.
 - is at least partly within the local authority's area
 - 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.

(Section 88(1) Localism Act 2011)

Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

The Right does not generally apply to residential property or operational land as defined in the Town and Country Planning Act 1990 Part 2. However, the exception to the general exclusion of residential property from listing is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

- 2.5 A copy of procedural guidance for Members and Officers is attached, this also includes legislative guidance on the process for dealing with assets of community value. This guidance has not been updated since the Committee form of Governance came into place in May, so there is still some references to the single Member decision, but this can be replaced with Housing & Neighbourhoods Committee. Also attached is a leaflet produced by the Council when legislation came into force and DCLG guidance notes.
- 2.6 If the Housing & Neighbourhoods Committee determines that the asset is to be listed it will appear on the Council's list of successful assets of community value and remain on the list for five years, if the determination is not to list the asset it will go onto an unsuccessful list of assets of community value, both lists appear on the Council's website.

3. **FINANCIAL IMPLICATIONS**

None

4. **RISK IMPLICATIONS**

None

5. **CONCLUSIONS**

- 5.1 Legislation states the Council must make a decision within eight weeks of receiving the nomination whether the property should be included on the list as an asset of community value.
- 5.2 The Committee System does not allow for a single Member decision to be taken, so whilst taking this report to Housing & Neighbourhoods Committee is only three weeks into the eight week timescale for the Council to make a decision the committee cycle does not allow for prolonged research and correspondence with interested parties. So in this instance the decision will have to be made in a small window of time.

6. **RECOMMENDATIONS**

- 6.1 Housing & Neighbourhoods Committee is asked to consider the nomination for the Kings Head Public House, Filby and decide whether the property should be listed as an Asset of Community Value.

7. **BACKGROUND PAPERS**

Leaflet created by Council when legislation came in.

Community Right to Bid (Assets of Community Value): Guidance for Members and Officers

DCLG guidance

Areas of consideration: e.g. does this report raise any of the following issues and if so how have these been considered/mitigated against?

Area for consideration	Comment
Monitoring Officer Consultation:	N/A
Section 151 Officer Consultation:	N/A
Existing Council Policies:	None
Financial Implications:	None
Legal Implications (including human rights):	None
Risk Implications:	No
Equality Issues/EQIA assessment:	N/A
Crime & Disorder:	None
Every Child Matters:	None

Assets of Community Value – Nomination Form and Guidance Notes

Introduction

These guidance notes should be read before completing the attached nomination form and in conjunction with the Department for Communities and Local Government's Community Right to Bid: Non-statutory advice note for local authorities.

Section 1 – Nominating Organisation Details

Q1.1	Title of nominating organisation Please provide the formal name of the nominating organisation
Q1.2	Contact name Please provide the name of the person who is responsible for managing the nomination, including position. All Council correspondence will be addressed to this contact.
Q1.3	Contact information Please provide organisation address, telephone number(s) and email address(es) of the contact person to which formal notifications under the legislation will be sent. It is the responsibility of the nominating organisation to notify the Council immediately in writing of any changes in the name of the representative or contact details.
Q1.4	Type of nominating organisation Please tick the organisation type(s) that apply from the list provided. Registration numbers for charities and companies are required, if applicable, in the space provided. Please note for unincorporated body, at least 21 of its individual members must be registered to vote locally or a neighbouring authority.
Q1.5	Local connection Please describe the nature of your organisation's local connection to the asset you are nominating, or the area in which it is located.

Section 2 – Nominated Asset Details

Q2.1	Name of asset Provide name of land or building (eg. Royal Oak/Village Cricket Club)
Q2.2	Address This needs to be accurate and cover the full land title address of the entire asset to be considered, including post code. You should be aware that some assets will cover several addresses, sometimes across different road frontages.

Q2.3	Current/last use This question will help the Council in determining the importance of the asset to the local community.
Q2.4	Description of land/property Please provide information which helps to clarify the exact location and extent of the asset being nominated. This could include: <ul style="list-style-type: none"> • Where the land is registered, the Land Registry Title Information document and map with boundaries clearly marked. • Written description with ordinance survey location, and explaining where the boundaries lie, approximate size and location of any buildings on the land and details of any roads bordering the site • A drawing or sketch map with boundaries clearly marked
Q2.5	Name of occupiers/owners Please provide information which helps to clarify the current ownership and occupiers of the asset, including address(es), if known. Owners and occupiers have an interest in the asset and as such are part of the process.

Section 3 - Supporting Information for Nomination

Q3.1	Why is asset of community value Please set out the reasons for nominating the asset. Why is your organisation making the nomination; what sections of the community use or have used the asset; and in what way will they lose out if it was sold.
Q3.2	Social well-being or social interest of the community Please explain how the current use or recent use of the asset furthers the social well-being or social interest of the local community. Social interest could be cultural, recreational and/or sporting interest, so please say which one(s) apply.
Q3.3	Proposed future use of asset Please set out the reasons why you believe that the asset will continue to be, or its future use will be, of community value. Areas you may wish to include: <ul style="list-style-type: none"> • Types of activities • Evidence of community support • Proposed involvement of community in running/managing it • Local community groups support
Q3.4	How could assets be acquired If the asset is listed, community interest groups (not limited to your organisation) will get the opportunity to bid for it if it comes up for sale. Please set out how you think such a group could fund the purchase of the asset and how they could run it for the benefit of the community.
Q3.5	Further information to support your nomination Please provide any further information to support why you feel that Great Yarmouth Borough Council should decide that the nominated land and/or building is of 'community value'.

Great Yarmouth Borough Council

Assets of Community Value – Nomination Form

(Complete in conjunction with guidance notes)

1. Nominating Organisation Details

1.1 Title of nominating organisation:

Save the Kings Head Filby

1.2 Contact name of organisation representative and position:

John Stroud

1.3 Contact details of nominating organisation and representative:

Correspondence address:

Telephone number:

Mobile number:

Email address:

1.4 Type of nominating organisation:

Tick all that apply

Registration number of Charity/Company

Neighbourhood forum

Parish Council

Charity

Community interest company

Unincorporated body

Company limited by guarantee

Industrial and Provident Society

X

1.5 Please explain what your organisation's local connection is to the Asset you are nominating, or the area in which it is located:

An unincorporated local community group that would simply like to see the pub open and trading again.

2 Nominated Asset	
2.1 Name of the land or building:	The Kings Head Filby
2.2 Address:	Main Rd, Filby Great Yarmouth
Postcode:	NR29 3HY
2.3 Current/last known use(s):	
Public House	
2.4 Please provide a description of the land and/or building and its proposed boundaries (please provide a site plan if possible):	
See Title Plan attached to email.	
Freehold KingsHead RegisterPlanNK74955.pdf	

<p>2.5 Name(s) and address(es) of the current occupants/users/owners of building/land (if known)</p>	<p>The owners are: MARBLE ACQUISITIONS LTD</p> <p>PETERBOROUGH COURT 133 FLEET STREET LONDON EC4A 2BB</p> <p>A number of the group have had several email conversations with Jim Garman (jim.garman@gs.com) the CEO of Marble Acquisitions Limited but the company seem to have little interest in the public house's operation or empathy for the community's wishes to have it operational and supported as valued meeting and social hub of the village.</p>
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3. Supporting Information for Nomination

3.1 Why do you think the land or building you are nominating is an asset of community value:

Our group which is made up of several members of the local community (growing in number every day) would like to nominate the Kings Head Public House, Main Rd, Filby, Great Yarmouth NR29 3HY to be listed as an Asset of Community Value.

The pub has been closed for over 6 months now and despite several community members efforts to make reasonable offers to purchase the building, or lease and operate pub from the owners, they seem content to simply close it and have it non-operational regardless of the community's wish to have their beloved pub available to them on an on-going basis.

It is the community's fear that they may simply, de-licence, demolish or redevelop the site for housing which would leave Filby without a pub at all.

3.2 How does the current (or recent) use of the land or building further the social well-being or social interest of the local community:

The Fox and Hound Public House closed around 2 years ago; consequently the Kings Head became the ONLY PUB in the village until its closure in January 2016. Prior to this it was supported many local and visiting community groups, charity organisations, sporting clubs, musicians and artists. It was frequented by local darts teams, pool teams and quiz groups. It was also a welcome stop for many of the areas visitors and tourists for a good pub meal or a refreshing drink.

It's a very historic and valued part of the community. As we understand the building and pub has been there in some capacity for almost 300 years and we believe if it remains closed it would a great loss to the local community.

3.3 What is your proposed future use of the asset if your nomination is successful:

The group would like to see it restored to an operable and compliant state and reopened as a licenced public house.

3.4 How could the asset be acquired and used in the future:

Either by private purchase or a combination of private and community purchase.

The group are also looking into several other funding sources such as crowd funding and community share options to raise the required funds should the property be made available for purchase.

3.5 Please provide any further information to support why you feel that the Council should decide that the nominated land or building is of 'community value':

We have discussed the nomination with several members of the Parish Council who said they would support the nomination if required but it has not been put forward at a Parish Council meeting at this stage.

Please send the completed form to:

Email: crtb@great-yarmouth.gov.uk

Post: Group Manager Planning
Great Yarmouth Borough Council
Town Hall
Hall Plain
Great Yarmouth
Norfolk
NR30 2QF

Community Right to Bid (Assets of Community Value)

Guidance for Members and Officers

Introduction

The Community Right to Bid was introduced on 21st September 2012 as part of the Localism Act 2011. Under the Act local groups have the opportunity to nominate a building or other land for listing by the council as an asset of community value. The council must consider any nomination and, where it accepts them, place the property/land on a list of assets of community value. When listed assets come up for sale, the act then give local groups the time to prepare and make a bid for the asset.

In summary, this guidance explains:

- What is an asset of Community Value
- Who can nominate an asset
- What must be included in a nomination
- How and when the Council will deal with a nomination
- What happens if the 'owner' wants the listing reviewed
- How does the moratorium work
- Compensation claims
- Enforcement

Reference should also be made to the [Community Right to Bid: Non-statutory advice note for local authorities](#)

1. What is an asset of Community Value?

If the Council receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in section 88 of the Localism Act.

- is at least partly within the local authority's area
- 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.

(Section 88(1) Localism Act 2011)

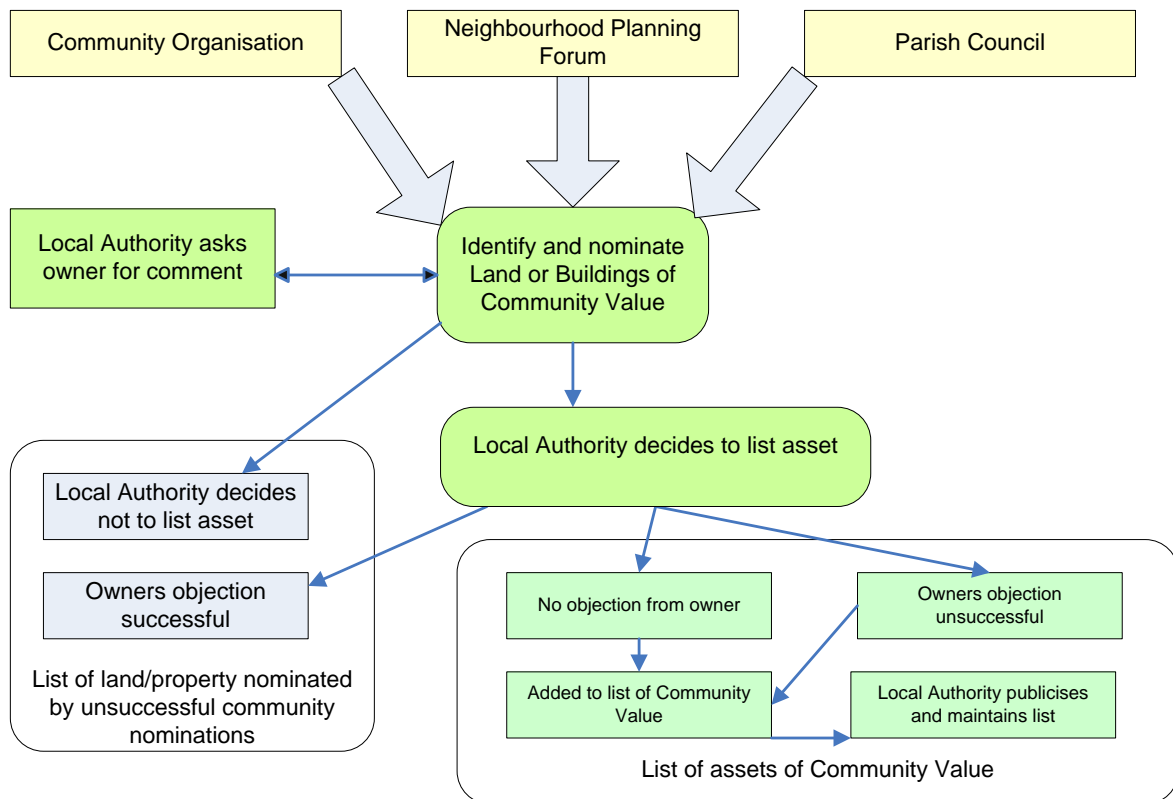
Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

The Right does not generally apply to residential property or operational land as defined in the Town and Country Planning Act 1990 Part 2. However, the exception to the general exclusion of residential property from listing is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

2. Who can nominate an asset of Community Value?

Local authorities cannot list land on their own initiative, it must be nominated. For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located). The voluntary or community bodies which may make community nominations are set out below:

- **Parish Councils.** This may be for an asset in its own area, or in the neighbouring parish council.
- **Neighbouring Parish Councils.** If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.
- **Unincorporated groups.** Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.
- **Neighbourhood forums.** The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community.



3. What must be included in a nomination?

A nomination must include the following information for the council to consider:

- A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.
- Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
- The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
- The nominator's eligibility to make the nomination.

Community groups must send their nominations to:

Group Manager Planning
Great Yarmouth Borough Council
Town Hall
Hall Plain
Great Yarmouth NR30 2QF

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 listing which brings the statutory provisions into play.

4. How and when the Council will deal with a nomination?

The council is required to make a decision in response to a nomination within 8 weeks of receiving the nomination. The Council will undertake a land registry search in the first instance, unless it is confident that they know who the owner is of the nominated land/building. This process will be led by the Group Manager Planning, with the decision regarding the nomination to be made by the Cabinet Member for Communities.

- The council must take all practicable steps to inform the following if an asset has been nominated:
 - a) a parish council (if any) in which the land lies (or partly lies),
 - b) the owner as defined in section 107 of the Localism Act. This definition ensures that only one level of legal proprietary rights will qualify as ownership for the Act. In summary this is the freeholder or, if the asset is leased, the leaseholder with the lease most distant from the freehold which when granted had at least 25 years to run. So if there are a number of leases the leaseholder with a qualifying lease or sub-lease most distant from the freeholder is the owner for the purposes of these provisions.

- c) all others with a legal estate, i.e. if the owner is not the freeholder then the holder of the freehold estate, and any other leaseholder apart from the owner; and
- d) any lawful occupant (which could include a licensee).
- When an asset is added to or removed from the list, the council must inform the owner, the occupier of the land if not the owner, and the successful community nominator of the asset. This is set out in section 91(2) of the Act.
- The council must also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in), that an asset has been added to, or removed from, the list. (See regulation 9 of the Regulations)
- If the council is not able to give notice to any of these people in the usual way, for instance due to lack of names or addresses, it will take reasonable alternative steps to bring the notice to a person's attention. This could include, for instance, a notice attached to the property. (See section 91(2) of the Act.

The council will list all successful and unsuccessful bids (including explanation for why a bid was unsuccessful).

5. What happens if the 'owner' wants the listing reviewed?

If an asset has been included on the List, an owner has the right to request the council to review its decision, under section 92 of the Act. The deadline for the owner to request this review is set out in paragraph 1 of Schedule 2 to the Regulations: it is 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) or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.

Basic procedural rules for the review are set out in Schedule 2 to the Regulations. It will be conducted by the Director of Customer Services, who will not be involved in the decision to list. The owner may appoint a representative and the local authority will be required to provide all relevant documents to the representative.

The owner and/or their representative may make representations to the reviewer orally and/or in writing. The council must complete their review within 8 weeks, unless a longer period has been agreed in writing.

The owner and authority will bear their own costs of the review.

If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the council's review decision. The written response following the internal review should inform the owner of their

right to an independent appeal. The owner making the appeal can be either the same owner who requested the review, or, if the property has been sold in the meantime, the new owner.

An owner's appeal against a local authority listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 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. The property will remain listed during the appeal process.

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)
P.O. Box 9300
Leicester, LE1 8DJ

6. Moratorium

It is the responsibility of the asset owner to contact the Council to notify them of an intention to make a 'relevant disposal'. This terminology is used because not all sales are covered by the Right, there are a number of exclusions specified in the Regulations, these are:

- Transfers made other than for value i.e. a gift
- Transfers between members of the same family i.e. made as a sale as well as a gift
- Transfers due to the inheritance of the asset
- Sales by personal representatives in order to pay estate debts or cash legacies
- Transfers occasioned by resignation or death of partners in a firm or trustees of a trust
- Transfers between trustees, between a trust and settler, and between a trust and a beneficiary
- Business to business transactions of a going concern, where the intention is to continue the existing use of the asset
- Transfers where the listed asset forms part of a larger estate
- Disposals made as a result of pre-existing arrangements
- Transfers between connected companies
- Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules
- Provision of on-going public service delivery

Receipt of notification of a relevant disposal will trigger a 6 week **interim moratorium period** in which community interest groups should decide whether they wish to prepare a bid to purchase an asset. At this stage community interest groups only need to express an interest in bidding, they do not need to provide any details of their bid.

This will trigger a **full moratorium period** of 6 months in total from notification of the relevant disposal during which time a sale is barred and they are able to prepare a bid for the asset. The owner is under no obligation to accept this bid and is free to dispose of their asset as they wish.

If a bid is not received during the moratorium period then the landowner is free to dispose of their asset as they wish and no further moratorium period can be triggered for a protected period of 18 months from the date that the council receives notification of a relevant disposal. This provides the owner with 12 months in which to dispose of the asset freely.

7. Compensation claims?

Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically 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 for legal expenses incurred in a successful appeal to the Tribunal.

The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.

Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner. The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.

Regulations provide that an owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions. Schedule 2 to the Regulations provides that the owner must make the request within a period of 8 weeks, beginning on the date on which the local authority provides the owner with written notification of the decision. The local authority may allow longer for a review request to be made.

The local authority must review their decision, and notify the owner of the result within 8 weeks of receiving the request, with reasons. The procedure for the review, in Schedule 2 to the Regulations, is the same as for the local authority's review of a listing decision.

An owner may appeal to a Tribunal (Independent Appeal) against the local authority's review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules (28 days from receiving the local authority's decision on the compensation review). Only the owner or former owner, who requested the review may appeal against the review decision (i.e. unlike with listing appeals, a new owner who bought the land following a request for a review may not appeal against the compensation review decision).

As with listing appeals, the current position is that the appeal will be to the General Regulatory Chamber of the First-tier Tribunal.

As with other costs incurred by local authorities in meeting the requirements placed on them, the Government has reflected the estimated costs of compensation within the new burdens funding. The compensation elements of new burdens funding are estimated on the basis of 40 successful claims for compensation across all administering local authorities over a year. In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.

Local authorities can write into the department with a request for financial support providing evidence of the compensation costs incurred either in writing to:

Albert Joyce,
Community Assets Team,
5/A4 Eland House,
Bressenden Place
London
SW1E 5DU

or by email at: righttobid@communities.gsi.gov.uk

New Burdens payments will be processed and made available to all administering local authorities in England (as set in section 106 of the Localism Act) on 15 October. The Government will write to local authority finance officers to inform them about the payment. The department will also notify local authorities in the same way for the periods April 2013 and April 2014.

8. Enforcement

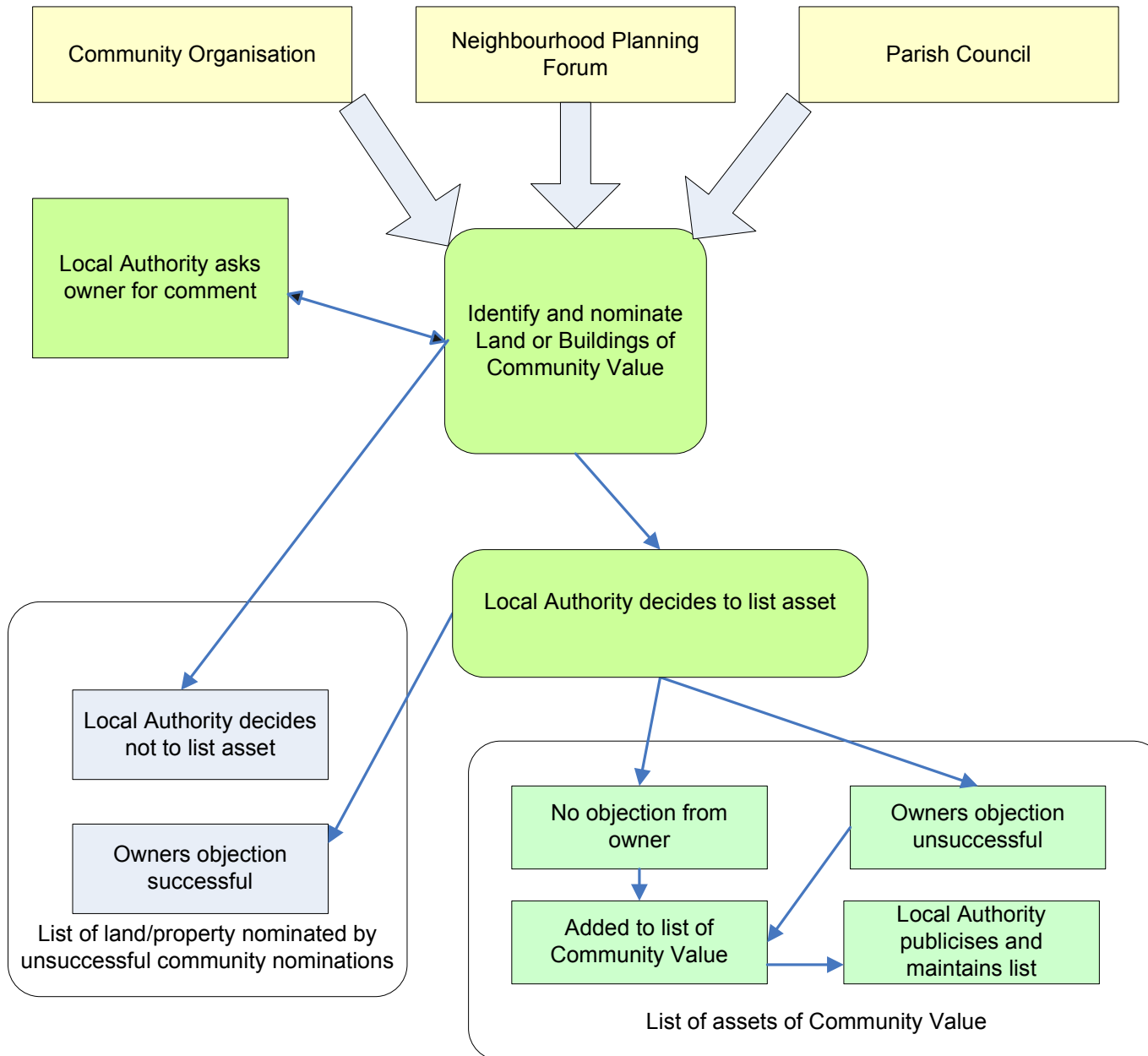
The Regulations introduce a clear penalty for non compliance, and measures to minimise the chance of a disposal not being compliant with the scheme. These will be achieved partly by amendment to the Land Registration Rules 2003.

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

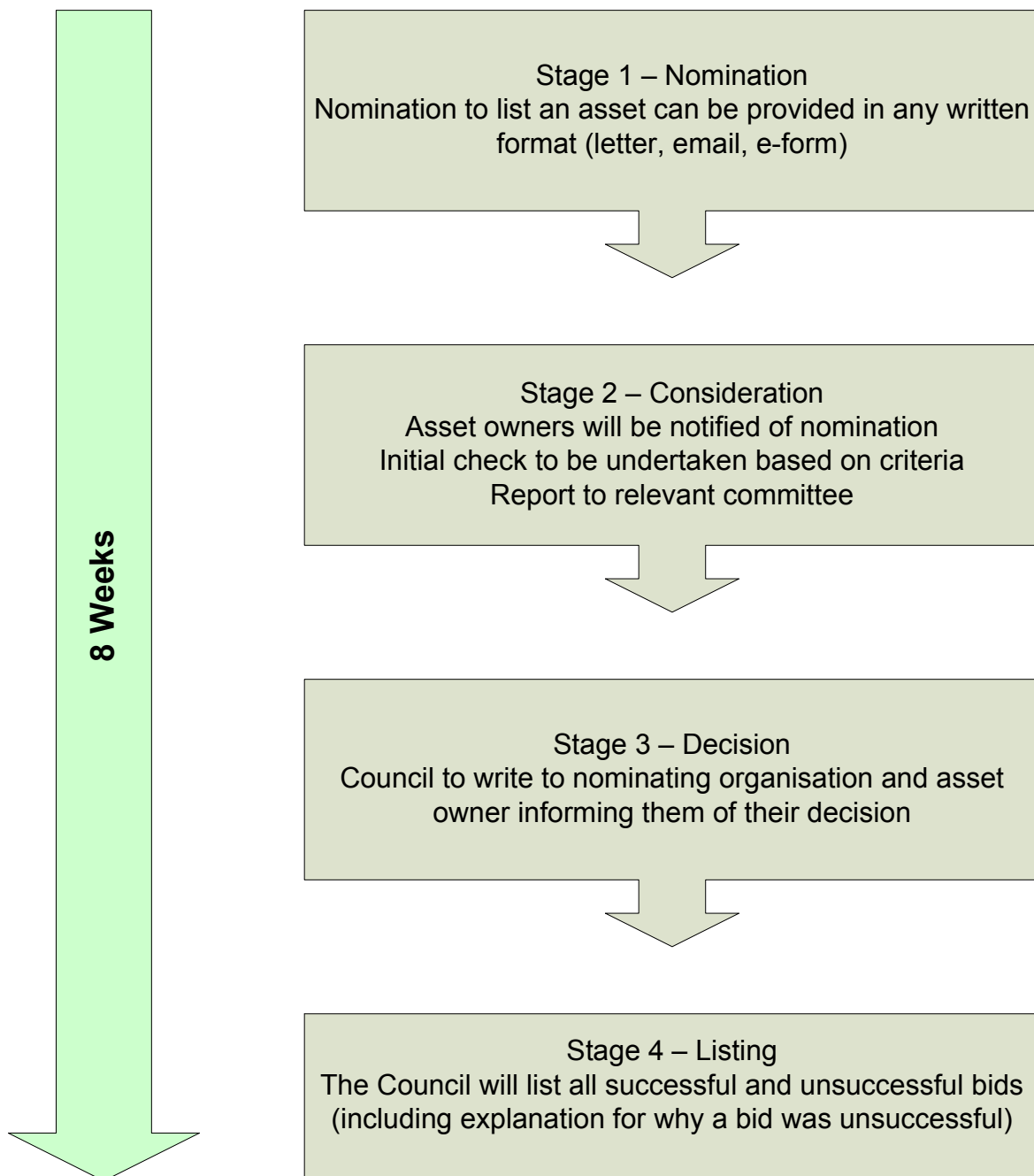
The council is required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform local authorities that the land has been entered on the Land Register as a result of an application for first registration, and also to inform the local authority if they have become the new owner of listed land (together with giving their name and address details).

When a listed asset is disposed of, and a new owner applies to the Land Registry to register a change of ownership of a listed asset, they will therefore need to provide the Land Registry with a certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act (the moratorium requirements).

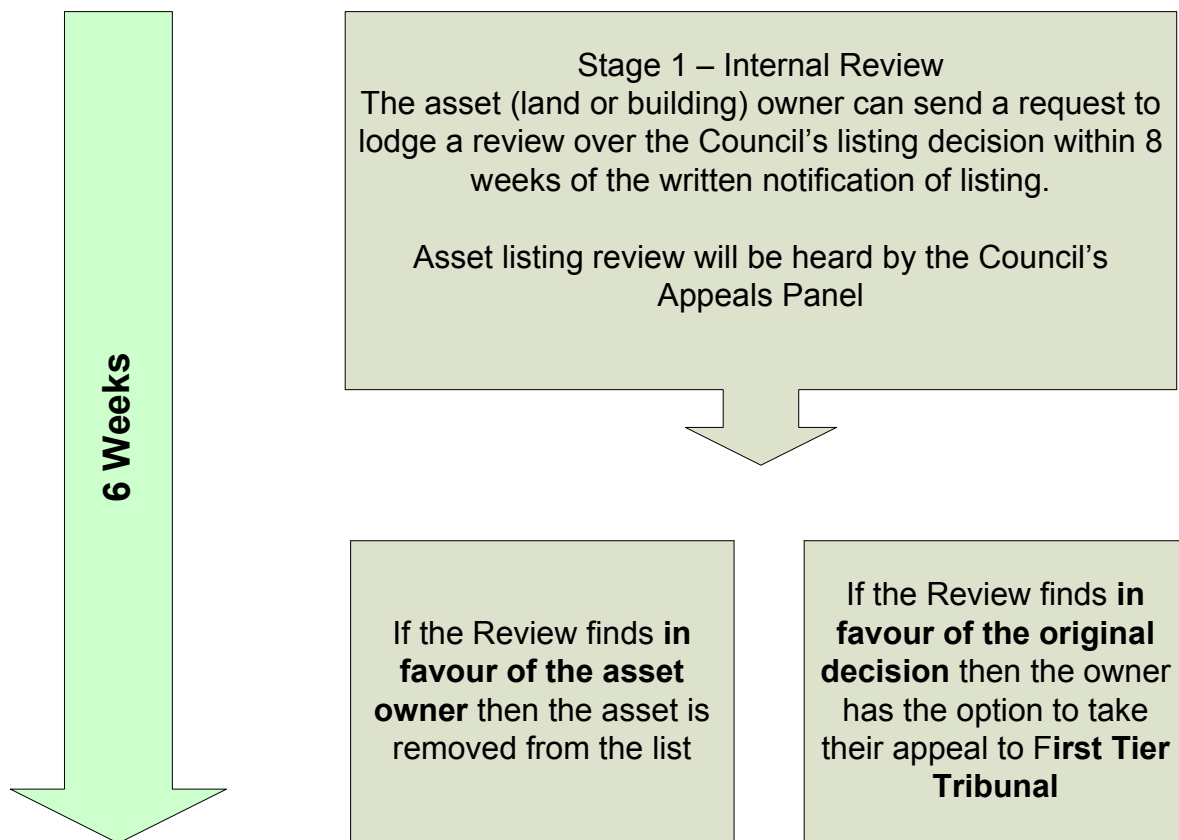
Community Right to Bid - Flowchart



Community Right to Bid - Process Diagram: Listing Assets



Community Right to Bid - Process Diagram: Review & Appeals



Community Right to Bid - Process Diagram: Compensation



Stage 1 - The Initial Claim to the Council

Must be made before the end of 13th week (90 days) after the loss of expense was incurred. The owner can place an application for compensation: this must be written, include amounts sought and supporting evidence.

Stage 2 – The Review of the Council’s decision

Must be made before the end of the 8 week period from which the Council provides the owner with a written response to the outcome of Stage 1. This must be written, include amounts sought and supporting evidence.

Stage 3 - First Tier Tribunal

If owner is unhappy with the Council’s reviewing decision they can opt to take it to a First Tier Tribunal. And request compensation and reasonable legal costs.

Community Right to Bid - Process Diagram: Sale

**Interim Moratorium
6 Weeks**

Interim Moratorium Period

Owners of listed assets will need to contact the Council's XXXXXXXX to advise if they intend to sell the asset.

This triggers an Interim Moratorium Period. The Council will publish the owner's intention to dispose of the asset on its website so that relevant community interest groups can consider whether they would like to place a bid for the asset.

**Full Moratorium
6 Months**

Full Moratorium Period

If a relevant community interest group wants to place an offer, the Full Moratorium Period is launched to enable the group to develop offer to purchase offer.

**Protected Period
12 Months**

Protected Period

Following the end of the Full Moratorium Period, the owner is free to dispose of their asset without further delay within 12 months.

This is called the 'Protected Period'.



Department for
Communities and
Local Government

Community Right to Bid: Non-statutory advice note for local authorities

Part 5 Chapter 3 of the Localism Act 2011 and the Assets of
Community Regulations 2012

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Ministerial foreword



From local pubs and shops to village halls and community centres, the past decade has seen many communities lose local amenities and buildings that are of great importance to them. As a result they find themselves bereft of the assets that can help to contribute to the development of vibrant and active communities. However on a more positive note, the past decade has also seen a significant rise in communities becoming more active and joining together to save and take over assets which are significant for them.

Part 5 Chapter 3 of the Localism Act, and the Assets of Community Value (England) Regulations, which together deliver the Community Right to Bid, aim to encourage more of this type of community-focused, locally-led action by providing an important 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 and have them listed and, when they are put up for sale, more time to raise finance and prepare to bid for them.

This scheme requires an excellent understanding of the needs of the local community. As such local authorities 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 in taking decisions as part of any appeals process

This advice note, which has non-statutory status, is aimed at helping local authorities to implement the scheme so that they can work with their communities to protect the buildings and amenities which are of great local significance to the places where people live and work.

A handwritten signature in black ink, appearing to read 'Don Foster', with a horizontal line underneath.

The Rt Hon Don Foster MP

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Section1

Introduction and scope of advice

- 1.1 The Localism Act (“the Act”) was enacted on 15 November 2011¹, and the Assets of Community Value provisions in Part 5 Chapter 3 were commenced for England at the same time as the Regulations made under those provisions came into force, both on 21 September 2012.
- 1.2 The status of this advice note is non-statutory and applies only to England.
- 1.3 A glossary of terms is at Annex A at the end of this guidance.

¹ <http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3/enacted>

Section 2

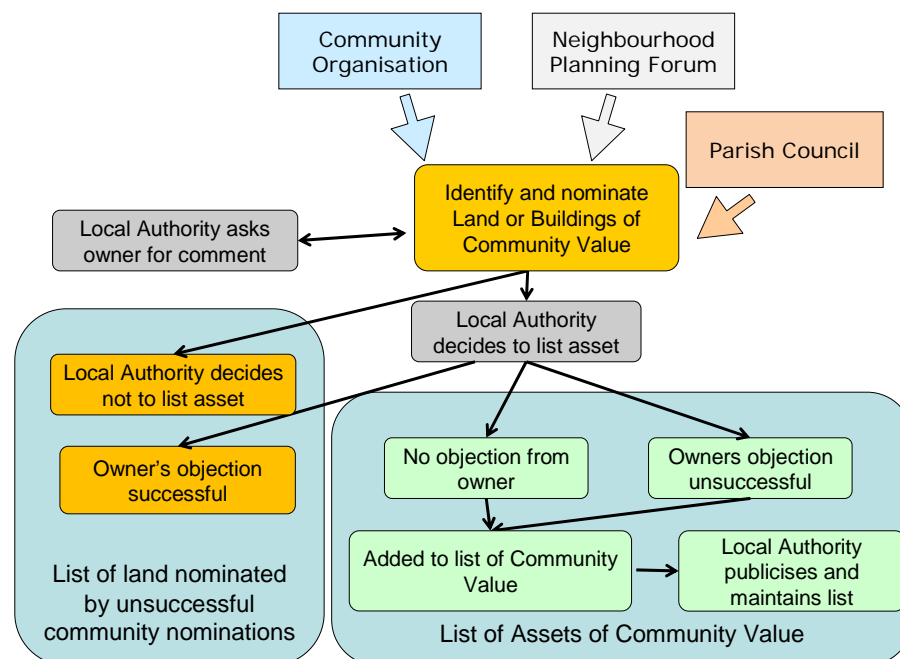
Outline of how the scheme works

- 2.1 The provisions give local groups a right to nominate a building or other land for listing by the local authority as an asset of community value. It can be listed if a principal (“non-ancillary”) use of the asset furthers (or has recently furthered) their community’s social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. When a listed asset is to be sold, local community groups will in many cases have a fairer chance to make a bid to buy it on the open market.
- 2.2 The Assets of Community Value legislation places requirements on the following local authorities in England:
- (a) a district council,
 - (b) a county council for an area for which there are no district councils,
 - (c) a London borough council,
 - (d) the Common Council of the City of London, or
 - (e) the Council of the Isles of Scilly.
- 2.3 The scheme has two main parts: nominating and listing assets and the moratorium.

Nominating an asset

- 2.4 It is open to parishes and community organisations, including neighbourhood forums (as constituted under section 61F of the Town and Country Planning Act 1990, added to that Act by the Localism Act) to nominate local assets to their local authority, to be included on the list of assets of community value. Nominated assets may be owned by anybody, including the local authority and the Crown.
- 2.5 A neighbouring parish council can nominate an asset. Where the land is in a parish area, this means a parish which shares a border with it; or if an asset is in an unparished local authority area, so that there is no immediately adjoining parish council within the same local authority area, a parish council that borders the local authority could nominate an asset.

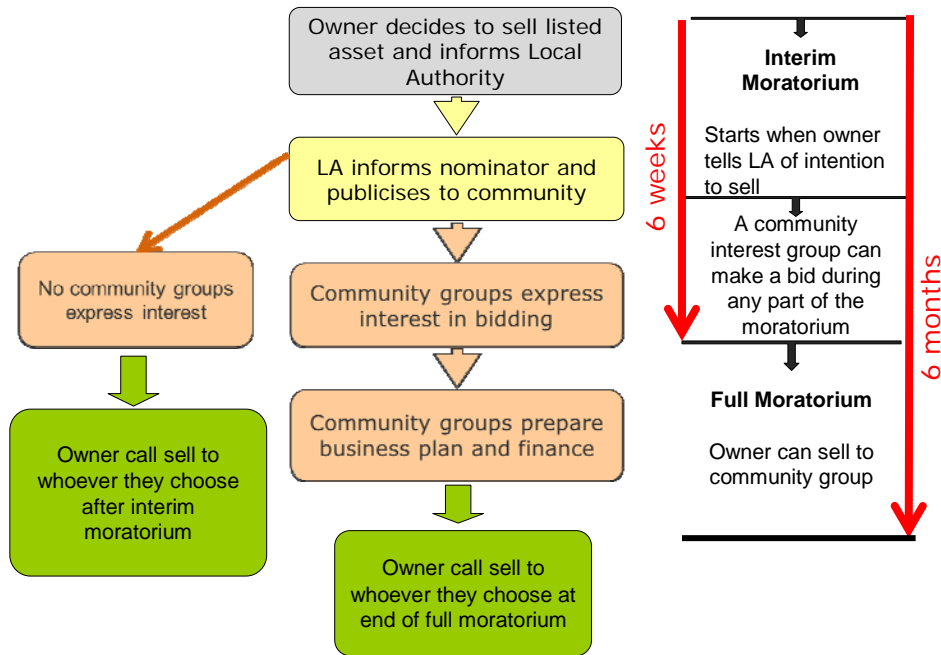
- 2.6 The local authority will then have 8 weeks to make a judgement about whether the asset meets the definition set out in section 88 of the Act or whether it falls into one of the excluded categories, including residential property, set out in Schedule 1 to the Regulations.
- 2.7 If the nominated asset is properly nominated, is in the local authority's area, meets the definition, and is not excluded, the local authority must list it and inform all specified parties (including the parish council). They must also place the asset on the local land charges register and, if the land is registered, apply for a restriction on the Land Register in Form QQ (for details see below under Enforcement).
- 2.8 If the owner objects to their property being placed on the List, they will have a right to an internal review by the council of the decision to list. The details of this process are set out below. If the owner remains in disagreement with the listing after the internal review they have a right of appeal to an independent Tribunal.
- 2.9 If the local authority do not agree that the asset nominated meets the section 88 definition, or it is in one of the excluded categories, they must place it on a list of assets nominated but not listed. If an owner is successful in their appeal against listing at internal review or Tribunal stage then the asset must also be moved to the list of unsuccessful nominations. It is for the local authority to decide how long they hold unsuccessful nominations on this list. The intention of this is to ensure transparency and to avoid multiple nomination of an asset that does not meet the definition.



Moratorium

- 2.10 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 or assignment of a qualifying lease (i.e. originally granted for at least twenty-five years).
- 2.11 Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired.
- 2.12 The first part of this window is a 6 week interim period, which will apply in all cases, from the point the owner notifies the local authority. This will allow community interest groups to make a written request to be treated as a potential bidder. If none do so in this period, the owner is free to sell their asset at the end of the 6 weeks.
- 2.13 If a community interest group as defined in regulation 12 of the Regulations (referring to the bodies in paragraph (1) (d) to (g) of regulation 5) does make a request during this interim period, then the full 6 month moratorium (again from the point the owner notifies the local authority) will operate. During this period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception. The owner may sell to a community interest group during the moratorium period.
- 2.14 After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – the owner is free to sell to **whomever they choose and at whatever price**, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the local authority of wishing to sell). The process and lengths of the moratorium periods are contained in section 95 of the Act².

² <http://www.legislation.gov.uk/ukpga/2011/20/section/95/enacted>



- 2.15 Not all proposed sales have to be notified to the local authority however. A range of disposals will be exempted from the provisions. A number are set out in section 95(5) of the Act, and others are in the Regulations. The full list of exemptions is given in Annex A.

Compensation

- 2.16 The scheme recognises that these provisions may have some financial impact on owners and provides a compensation scheme for private property owners. This will not be available to public bodies. The local authority will be responsible for administering the compensation scheme, including assessing and determining compensation awards. Owners and former owners will have rights of review and appeal regarding the authority's compensation decisions (see Section 10).

Enforcement

- 2.17 The scheme provides for various mechanisms to encourage compliance by requiring local authorities to:
- Inform owners and other interested parties that an asset has been listed
 - enter on the local land charges register the fact that an asset has been listed; and

- in the case of registered land, apply for a restriction on the Land register.

2.18 Additionally, to give a strong incentive to owners to comply with the scheme, non-compliant sales will be void (ineffective), meaning that the change of ownership has not taken place (regardless of whether it has erroneously been registered on the Land Register - which would have to be rectified once the fact that the sale was void was discovered). However 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.

What the provisions do not do

- 2.19 These provisions do **not** restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do **not** confer a right of first refusal to community interest groups (unlike the Scottish scheme).³
- 2.20 The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

³ <http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/Community>

Section 3

List of assets of community value

- 3.1 In addition to the list of assets, local authorities are required to maintain a list of assets nominated unsuccessfully by community nomination. The local authority may remove land from this second list whenever it considers would be appropriate. Local authorities must publish both lists; it is up to them to decide how they publish them, but they must make them available for free inspection by any person and must provide a free copy of either to anyone who asks for it (but are not required to provide more than one free copy of each). The two lists may be combined into one document if the local authority wishes. The list of unsuccessful nominations must include reasons for the land not being listed.
- 3.2 It is up to local authorities to decide on the detailed contents and layout of the lists and when to modify them, except for the following requirements.
- 3.3 Local authorities are required to add to the list of assets, as soon as practicable:
- a) that a notification by the owner of intention to dispose of the land has been received by the local authority and the date this was received
 - b) in all cases under (a), the end dates of the interim and full moratorium periods and the protected period
 - c) where relevant, that the full moratorium has been triggered
 - d) where (c) applies, the identity of the community interest group that triggered the full moratorium
- 3.4 Local authorities are 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 they form the opinion that the land or building is no longer of community value
 - d) or no later than 5 years from the date of entry on the list.

Land which may, and may not, be listed as an asset of community value

3.5 If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in section 88 of the Act. A building or other land in a local authority's area is land of community value if in the opinion of the authority —

- (a) 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;
- (b) 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.

(Section 88(1) Localism Act 2011)

Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

3.6 There are some categories of assets that are excluded from listing. The principal one is residential property. This includes gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal where they are in the same ownership as the associated residence. Details of this are set out in paragraphs 1 and 2 of Schedule 1 to the Regulations. "The same ownership" includes ownership by different trusts of land settled by the same settlor, as well as literally the same individual owner.

3.7 There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

3.8 There are two further categories of assets excluded from listing:

- (a) Land licensed for use as a residential caravan site (and some types of residential caravan site which do not need a licence), in paragraph 3 of Schedule 1 to the Regulations.

(b) Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990, in paragraph 4 of Schedule 1 to the Regulations.

Section 4

Who may nominate

4.1 Local authorities cannot list land on their own initiative - it must be nominated. For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located).

4.2 The voluntary or community bodies which may make community nominations are set out below:

Parish Councils. This may be for an asset in its own area, or in the neighbouring parish council.

Neighbouring Parish Councils. If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.

Unincorporated groups. Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.

Neighbourhood forums. The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community.

Community interest groups with a local connection. These must have one or more of the following structures:

- a) A charity
- b) A community interest company
- c) A company limited by guarantee that is non profit distributing

d) An industrial and provident society that is non- profit distributing (these groups will be renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 when it comes into force)

- 4.3 In this context, non-profit distributing means that any surplus is not distributed to its members but is wholly or partly applied to the local authority area where the asset is based or to a neighbouring authority area.

Section 5

Contents of a nomination

- 5.1 A nomination must include the following information for the local authority to consider:
- I. A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.
 - II. Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
 - III. The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
 - IV. The nominator's eligibility to make the nomination.
- 5.2 Local authorities may wish to consider having a named point of contact for community groups to send their nominations to.
- 5.3 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 listing which brings the statutory provisions into play.

Section 6

Procedure when considering listing

- 6.1 The local authority is required to make a decision in response to a nomination within 8 weeks of receiving the nomination.
- 6.2 The local authority must take all practicable steps to inform the following if an asset has been nominated:
- a parish council (if any) in which the land lies (or partly lies),
 - the owner as defined in section 107 of the Localism Act. This definition ensures that only one level of legal proprietary rights will qualify as ownership for the Act. In summary this is the freeholder or, if the asset is leased, the leaseholder with the lease most distant from the freehold which when granted had at least 25 years to run. So if there are a number of leases the leaseholder with a qualifying lease or sub-lease most distant from the freeholder is the owner for the purposes of these provisions.
 - all others with a legal estate, i.e. if the owner is not the freeholder then the holder of the freehold estate, and any other leaseholder apart from the owner; and
 - any lawful occupant (which could include a licensee).
- 6.3 When an asset is added to or removed from the list, the local authority must inform the owner, the occupier of the land if not the owner, and the successful community nominator of the asset. This is set out in section 91(2) of the Localism Act.⁴
- 6.4 Local authorities must also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in), that an asset has been added to, or removed from, the list. (See regulation 9 of the Regulations)
- 6.5 A local authority which is not able to give notice to any of these people in the usual way – for instance due to lack of names or addresses – can take reasonable alternative steps to bring the notice to a person's attention. This could include, for instance, a notice attached to the property. (See section 91(2) of the Act)

⁴ <http://www.legislation.gov.uk/ukpga/2011/20/section/91/enacted>

Section 7

Procedure to be followed for listing review

- 7.1 If an asset has been included on the List, an owner has the right to request the local authority to review its decision, under section 92 of the Act. The deadline for the owner to request this review is set out in paragraph 1 of Schedule 2 to the Regulations: it is 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) or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.
- 7.2 Basic procedural rules for the review are set out in Schedule 2 to the Regulations. It must be conducted by an officer of appropriate seniority, who did not take part in the decision to list. The owner may appoint a representative and the local authority will be required to provide all relevant documents to the representative.
- 7.3 The owner and/or their representative may make representations to the reviewer orally and/or in writing. The authority must complete their review within 8 weeks, unless a longer period has been agreed in writing.
- 7.4 The owner and authority will bear their own costs of the review.
- 7.5 If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the local authority's review decision. The written response following the internal review should inform the owner of their right to an independent appeal. The owner making the appeal can be either the same owner who requested the review, or - if the property has been sold in the meantime - the new owner.

Section 8

Appeal against a listing review

- 8.1 An owner's appeal against a local authority listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 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. The property will remain listed during the appeal process.
- 8.2 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)
P.O. Box 9300
Leicester, LE1 8DJ
- 8.3 Owners may also send an appeal to the First-Tier Tribunal by email at:
GRC.CommunityRights@hmcts.gsi.gov.uk

Section 9

Moratorium

- 9.1 The moratorium requirements, as set out in section 95 of the Act, apply only to relevant disposals. “Relevant disposal” is defined in section 96. It means a 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 they will not apply to all relevant disposals, as some types of relevant disposal are exempt. These exemptions are partly in the Act and partly in the Regulations; the full combined list is set out in Annex A below. The moratorium provisions apply only to disposals, so for example if a building listed as an asset of community value is to be demolished without being sold, the moratorium rules in section 95 do not apply.
- 9.2 An owner of a listed site may not make a relevant disposal of their asset during the 6 week interim moratorium period (unless it falls within one of the exemptions or is to a community interest group). This interim moratorium runs from the date the local authority receives notification from the owner of their intention to dispose of their listed asset
- 9.3 Once the local authority has been notified of the intent to dispose, they are required to update the list to show the owner’s intention to dispose and to give the interim and full moratorium end dates, and the end date of the protected period. The nominating community group must be informed. The local authority must also publicise all of these matters in the neighbourhood of the asset in question. It is for the local authority to determine how they do this.
- 9.4 During the interim moratorium period a community interest group may request in writing to be treated as a potential bidder for the asset; this will bring the full moratorium period into force. The community interest group does not have to provide any evidence of intention or financial resources to make such a bid. A community interest group must have one or more of the following structures:
- (a) A charity
 - (b) A community interest company
 - (c) A company limited by guarantee that is non profit distributing
 - (d) An industrial and provident society that is non profit distributing
- (these groups will be renamed as community benefit societies by the

Co-operative and Community Benefit Societies and Credit Unions Act 2010 when the relevant provisions come into force)

- 9.5 Once a local community interest group makes a written request to the local authority during the interim moratorium period to be treated as a potential bidder, the owner may not dispose of their asset during the full 6 month moratorium (except as permitted). The local authority must as soon as practicable let the owner know that this request has been received (section 98 of the Act).
- 9.6 There is one type of disposal that may be made during a moratorium. An owner may sell during the interim or full moratorium period to a local community interest group – i.e. one which either did, or would have been eligible to, trigger the full moratorium.
- 9.7 There are a number of types of disposals which are exempt from the moratorium requirements, as set out in section 95(5) of the Act and in Schedule 3 to the Regulations. The full list of exemptions is set out in Annex A.

Section 10

Compensation

- 10.1 Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically 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 for legal expenses incurred in a successful appeal to the Tribunal.
- 10.2 The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.
- 10.3 Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.
- 10.4 The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.
- 10.5 The compensation scheme does not extend to public authorities and bodies. These 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

- 10.6 As with other costs incurred by local authorities in meeting the requirements placed on them, we have reflected the estimated costs of compensation within the new burdens funding. The compensation elements of new burdens funding are estimated on the basis of 40 successful claims for compensation across all administering local authorities over a year.
- 10.7 In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.
- 10.8 Local authorities can write into the department with a request for financial support providing evidence of the compensation costs incurred either in writing to:
- Albert Joyce,
Community Assets Team,
5/A4 Eland House,
Bressenden Place
London
SW1E 5DU
- or by email at: righttobid@communities.gsi.gov.uk
- 10.9 New Burdens payments will be processed and made available to all administering local authorities in England (as set in section 106 of the Localism Act) on 15 October. We will write to local authority finance officers to inform them about the payment. The department will also notify local authorities in the same way for the periods April 2013 and April 2014.

Section 11

Internal review of compensation decision

- 11.1 The Regulations provide that an owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions. Schedule 2 to the Regulations provides that the owner must make the request within a period of 8 weeks, beginning on the date on which the local authority provides the owner with written notification of the decision. The local authority may allow longer for a review request to be made.
- 11.2 The local authority must review their decision, and notify the owner of the result within 8 weeks of receiving the request, with reasons. The procedure for the review, in Schedule 2 to the Regulations, is the same as for the local authority's review of a listing decision.

Independent Appeal

- 11.3 An owner may appeal to a Tribunal against the local authority's review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review. Only the owner – or former owner – who requested the review may appeal against the review decision (i.e. unlike with listing appeals, a new owner who bought the land following a request for a review may not appeal against the compensation review decision).
- 11.4 As with listing appeals, the current position is that the appeal will be to the General Regulatory Chamber of the First-tier Tribunal.

Section 12

Enforcement

- 12.1 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.
- 12.2 Local authorities are required to add that an asset has been listed to the local land charges register. This will ensure that all prospective new owners will be aware that an asset has been listed, since local land charges apply to both registered and unregistered land.
- 12.3 Local authorities are required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform local authorities that the land has been entered on the Land Register as a result of an application for first registration, and also to inform the local authority if they have become the new owner of listed land (together with giving their name and address details) .
- 12.4 Amendments to the Land Registration Rules 2003 have been made to add further safeguards against non-compliance. Local authorities are 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. This restriction will be in a form of wording newly added to Schedule 4 to the Rules, as Form QQ. This is “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) of the Localism Act 2011“. An owner of previously unregistered listed land, who applies to the Land Registry for first registration (or a mortgagee who applies for first registration on behalf of the owner), is required at the same time to apply for a restriction against their own title. The local authority is also required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.
- 12.5 When a listed asset is disposed of, and a new owner applies to the Land Registry to register a change of ownership of a listed asset, they will therefore need to provide the Land Registry with a certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act (the moratorium requirements).

Annex A

Exemptions

With regard to the following exemptions (with the exception of the first), the local authority will usually not know that the disposal is taking place, because an owner who is confident that the transfer they contemplate will be exempt will not need to notify the authority of intention to sell under section 95(2) of the Act. In some cases an owner may not be sure whether they are going to succeed in making an exempt disposal or not – for instance if they wish to sell the land together with a business sold as a going concern – and may notify the authority as a precaution. In that situation, if they were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period. There is no requirement in the legislation that in such circumstances the owner has to explain to the local authority that the disposal is exempt. However it would be helpful for them to do so, and authorities might want to include advice to this effect in any explanation they send to owners about how the moratorium rules work.

The full list of exemptions is as follows. The first is in a different category to the remainder, in that the moratorium rules will have been triggered by notification from the owner, but the sale will be able to take place during the moratorium. Categories (b) to (j) are in section 95(5) of the Act, and (k) to (y) are in Schedule 3 to the Regulations. Item (f) – part-listed land – is partly defined in the Act, and partly in the Regulations.

- a. disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13(1)
- b. disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c. disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d. disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e. disposals between family members (“family member” is defined in section 95(7) of the Act as the owner’s spouse or partner and descendants of grandparents – which includes the owner’s own parents, but not the grandparents)
- f. part-listed land – i.e. sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)

- g. sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)
- h. disposals occasioned by somebody becoming or ceasing to be a trustee
- i. disposal by trustees in connection with the trust, as specified
- j. a disposal occasioned by a person becoming or ceasing to be a partner in a partnership
- k. transfers made in pursuance of a court order
- l. transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m. a transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with "incapacity" being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n. a disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before the land was listed (and in this context it should be noted that an option etc entered into *after* the land is listed would count as a relevant disposal under section 96(4) of the Act)
- o. disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 "Compulsory Purchase and the Crichton Down Rules":
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- p. sale by a lender under a power of sale (i.e. where the land was security for a loan)
- q. disposal of land under bankruptcy or other insolvency proceedings – the wording is "insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986", which gives a very wide definition of insolvency proceedings
- r. compulsory purchase disposals (see the wide definition of "statutory compulsory purchase" in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)

- s. the grant of a agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- t. transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161(5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)
- u. disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e)⁵. See final paragraph below for details.
- v. disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.
- w. disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)
- x. a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy
- y. disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.

Details regarding part-listed land and land with a residence

Similar rules apply for determining how much land constitutes land with a residence (for exclusion from listing in Schedule 1 to the Regulations) and how much land constitutes a single site for qualifying as a part-listed site (as an exempt disposal in Schedule 3 to the Regulations). In order to ensure that the same rules apply to registered and unregistered land, the approach taken has not been based on title. Instead, it is necessary to look at whether the site in question is one coherent parcel of land all owned by a single owner, so

⁵ the disposal is a part-listed disposal of a description specified in regulations made by the appropriate authority, and for this purpose “part-listed disposal” means a disposal of an estate in land –

- (1) part of which is land included in a local authority’s list of assets of community value, and
- (2) part of which is land not included in any local authority’s list of assets of community value.

that it is possible to reach one part from another without crossing land owned by somebody else. However there are two qualifications to be taken into account:

- Firstly, “a single owner” has an expanded meaning covering more than simply the same person or joint owners. It includes also trustees of different trusts of land which was settled by the same settlor – see definition of “single owner” in regulation 1.
- Secondly, where it would otherwise be reasonable to regard the land as one coherent parcel, the fact that it is crossed by a road, railway, canal or river in other ownership is to be ignored.

Annex B

Glossary

<i>Asset</i>	A building or other land
<i>The Community Right to Bid</i>	The name by which the Assets of Community Value scheme is commonly known.
<i>Land of community value</i>	Building or other land whose main (i.e. “non-ancillary”) use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future. See section 88 of the Act.
<i>List of assets of community value</i>	A list maintained by a local authority of land in its area of community value. See section 87 of the Act.
<i>Voluntary or community body</i>	A group which can nominate land, so long as it has a local connection with the land. See regulation 5.
<i>Local connection</i>	The requirement that a group’s activities and use of any profits (where relevant) must be concerned with the local authority area or a neighbouring authority area. In the case of a parish council, the requirement is that it must share a border with the relevant area in which the asset lies. See regulation 4.
<i>Relevant disposal</i>	The transfer of the freehold, or the grant or assignment of a lease originally granted for at least 25 years, giving vacant possession to the new owner. See section 96 of the Act.

Exempt disposal

A relevant disposal for which the land owner does not have to observe section 95(1) of the Act. There are two sorts of exempt disposal:

- one where the owner does notify the local authority of intention to sell, so that the moratorium applies, but can sell during the moratorium to a community interest group;
- fully exempt disposals where the owner can simply go ahead without notifying the local authority at all. These are set out in section 95(5) of the Act and Schedule 3 to the Regulations.

Moratorium period

A period of time during which the owner of listed land cannot make a non-exempt relevant disposal, other than to a voluntary or community body. There are two moratorium periods (see section 95(6) of the Act), both running from the same start date (when the owner notifies the local authority of an intention to sell):

- the interim moratorium - 6 weeks;
- the full moratorium - 6 months.

Protected period

A period of 18 months (running from the date the owner notified the local authority of an intention to sell). Once any moratorium period has finished, the same owner can sell during the remainder of the protected period without having to comply with the section 95 requirements again.

Listing review

A review by a local authority at the request of the owner of their decision to list a building or other land as an asset of community value. See section 92 of the Act, and for procedure on the review Schedule 2 to the Regulations.

<i>Compensation review</i>	A review by a local authority at the request of the owner of their decision in response to a claim for compensation for loss or expense caused by listing their building or other land as an asset of community value. See section 99 of the Act, regulation 16, and for procedure on the review Schedule 2 to the Regulations.
<i>Conveyancer</i>	The owner of listed, or formerly listed, land will in some circumstances have to provide a certificate by a conveyancer that a disposal has not contravened section 95(1) of the Act. "Conveyancer" in this context has the meaning given in rule 217A of the Land Registration Rules 2003, including a solicitor, a barrister, and a licensed conveyancer.
<i>The Act</i>	The Localism Act 2011
<i>Community interest group</i>	<p>A group which, for land with which it has a local connection, may –</p> <ul style="list-style-type: none"> ○ ask to be treated as a potential bidder for listed land which the owner wishes to sell, thus triggering the full moratorium of 6 months ○ buy listed land during the moratorium period ○ nominate land for listing (since the requirements for a voluntary or community body include the requirements for a community interest group). <p>It must be a charity or community interest company, or a non-profit distributing industrial and provident society or company limited by guarantee.</p> <p>See sections 89 and 95, and regulations 5 and 12.</p>
<i>Nomination</i>	A request to the relevant local authority that land be entered on its list of assets of community value, containing the information specified in regulation 6. See also section 89 of the Act.

(Note that although the Act allows for a possible distinction between community nominations and other nominations, the regulations provide only for community nominations – therefore all nominations will be community nominations.)

Local authority

In England, a district council, county council for an area with no district councils, London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly. See section 106 of the Act.

Restriction on the Land Register

An entry on the register preventing dealing with the land until the requisite condition has been complied with – in this case set out in Form QQ to be added to Schedule 4 to the Land Registration Rules 2003:

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) of the Localism Act 2011.

Ineffective transfer of land

A purported disposal of land which in fact does not have any effect – ownership of the land remains with the original owner.

What is an 'asset of community value'?

Building or other land will be considered an asset of community value if:

- Its current use furthers the social wellbeing and interests of the local community.
- that use is not an ancillary one; and
- For land in current community use there will continue to be a use which furthers social wellbeing and interests.

Exclusions from listing

It is recognised that there are some categories of land that should be excluded from being listed. These will be set out in regulations but it's intended to exclude the following:

- Residential properties.
- Operational land used for transport, infrastructure etc by specified organisations.



What is a 'community interest group'?

- A parish council
- Neighbourhood forums
- Unincorporated groups
- A community interest group with a local connection* which is constituted in one of the following ways:
 - A company limited by guarantee.
 - An industrial and provident society.
 - A community interest company.
 - Any other body which is registered as a charity, including a charitable incorporated organisation.

*A local connection means the groups' primary purpose is concerned with the local authority's area or the neighbourhood in which the asset is situated where this is in more than one authority's area.

Commencement

The Community Right to Bid provision came into force on 21 September 2012.

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A guide to the Community Right to Bid (Assets of Community Value)



GREAT YARMOUTH
BOROUGH COUNCIL

