

Community Right to Bid – Assets of Community Value

Further Guidance

This document provides information for community organisations and asset owners about the Council's responsibilities and processes with regard to the Community Right to Bid.

The Council acts as registrar for the Community Right to Bid process and are unable to provide legal advice.

The legislation setting out the arrangements for the Community Right to Bid scheme are the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

Disclaimer: The following information is not and must not be taken as a statement of the law. Owners and community organisations should take legal advice when considering their options under the Community Right to Bid scheme.

Introduction

The Localism Act 2011 introduced the Community Right to Bid. It enables certain groups to nominate land and buildings (assets) that they believe are important to the social wellbeing of their local community. These assets can be nominated for inclusion on a list of assets of community value kept by Durham County Council. If an asset is included on the list of assets of community value and the asset comes up for sale, the community will be given the opportunity to prepare a bid to buy it on the open market.

The Community Right to Bid does not restrict who the owner of a listed asset can sell their property to, or at what price. It does not give the right of first refusal to community organisations.

Assets of Community Value – Localism Act 2011

To qualify as an asset of community value, the asset must meet certain requirements set out in the Localism Act 2011. A building or land can be considered an asset of community value if:

- The asset is currently being used to further the social wellbeing or social interests of the local community, and this is its main use, not ancillary; and
- It is realistic to think that this use could carry on furthering the social wellbeing or social interests of the local community

or

- If the asset is not currently being used to further the social wellbeing or social interests of the local community, but it has done so in the recent past as its main use not ancillary; and
- It is realistic to think there could be a time in the next five years when it could be used again to further the social wellbeing or social interests of the local community

In each case the future community use does not have to be the same as it has been in the present or past. If the proposed usage is different to the current use, it must comply with planning regulations at the time.

The use of the asset must not be deemed to be ancillary. This means that the use of the asset to further the social wellbeing or social interests of the community must be its main use.

Social Wellbeing and Social Interests

This means land and buildings that are currently (or have recently been used or will be used in the next five years to particularly further cultural, recreational or sporting interests.

The use of the asset should also be:

- broad and inclusive across the community; or
- by a part of the community that is not, or would not otherwise be provided in the locality e.g. uses to benefit elderly people or children

County Council Definition of ‘Recent past’

‘Recent past’ is defined by the County Council as being ‘the last five years’. For example, a library that has been closed and unused for three years could still be nominated as an asset of community value if it is reasonable to think that it could be used to provide viable community use within five years.

Types of Assets which can’t be Listed

Schedule 1 of the Assets of Community Value Regulations 2012 identifies land which is not of community value and therefore may not be listed. The three excluded categories are broadly defined as residential property, land licenced for use as a caravan site and operational land of statutory undertakers.

Residential property

This exclusion covers a residence together with land connected with that residence. A residence is defined as a building used or partly used as a residence.

The Assets of Community Value Regulations 2012 further define a residence as a building that is:

- normally used or partly used as a residence but which may be wholly or partly temporarily unoccupied
- let, or partly let, for use as a holiday dwelling
- wholly or partly a hotel or its principal use is to provide accommodation for paying occupants
- a house in multiple occupation

The Assets of Community Value Regulations 2012 state that a building or land is **not** a residence if:

- planning permission or development consent has been given for the construction of residences, but no residences have yet been built
- construction of a building intended to be a residence is underway, but construction is not yet complete
- it was previously used as a residence but planning permission or development consent has been given for a change of use, for example, a decommissioned old people’s home that developers intend to convert into offices

There may be an exception to the residential premises exclusion if residential quarters such as accommodation as part of a pub or a caretaker's flat are an integral part of a building which would otherwise be eligible for listing. You should provide full details if you are nominating an asset which includes residential quarters.

As stated above, the exclusion in the Regulations covers a residence together with land connected with that residence. The exclusion applies to both the building and land held with the residence owned by a single owner. This could go beyond the immediate gardens, outbuildings, yards etc. and extend to all land held by that owner. To be included, every part of the land must be able to be reached from the residence without having to cross land which is not held by the single owner unless the intervening land is a railway, road, canal or river.

Land licenced for use as a caravan site

This exclusion covers land used as a residential caravan site for which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960

Operational land of statutory undertakers

This exclusion covers land used for transport infrastructure (such as land held by railways, airports or highway authorities) and land held by other by statutory undertakers such as utilities undertakers (including gas, electricity, water and sewerage services).

Organisations Eligible to Make a Nomination

Only certain types of organisation are eligible to make a nomination. The types of organisation eligible to make a nomination are defined in Section 89(b) of the Localism Act 2011 and Regulation 5 of the Assets of Community Value Regulations 2012. The onus is on the nominator to prove that it is eligible to make the nomination and that the nominated asset qualifies as an asset of community value.

Eligible organisations are:

- a neighbourhood forum designated as such under the Town and Country Planning Act 1990
- a parish council including a neighbouring parish council whose boundaries share a border with Durham County Council's area
- an unincorporated local voluntary or community group with at least 21 members who are locally registered to vote in County Durham, and does not distribute any surplus it makes to its members
- a charity
- a company limited by guarantee or an industrial and provident society which does not distribute any surplus it makes to its members
- a community interest company

The organisation nominating an asset must be able to show that its activities are all or partly concerned with the County Durham area. It must also not be run mainly for profit, and all or some of its profit must be used for the benefit of the County Durham area.

Public authorities such as the County Council, Police and Health Authority cannot make nominations to the list of assets.

Making a Nomination

The Localism Act 2011 and the Assets of Community Value Regulations 2012 set out what the nomination must contain.

The Council has produced a Nomination Form (<https://www.durham.gov.uk/media/3285/Community-Right-to-Bid-application-form/pdf/AssetsCommunityValueNominationForm2021.pdf>) to ensure that all required information is provided and to help it consider the nomination.

The nomination should include the following information:

- The name and address of the organisation making the nomination, and the main contact person submitting the nomination.
- Written evidence of the status and eligibility of the nominating organisation and that its activities have a local connection with the asset.
- The name and address of the asset
- A description of the land area/site covered by the nomination including an up-to-date plan showing the extent of the asset and clear boundaries
- The name and contact details of the current occupier, owner and anyone else you know of who has a legal interest in the land.
- Confirmation that the asset is not excluded by the Assets of Community Value Regulations 2012.
- The current function of the asset e.g. community centre, local post office and convenience store.
- A description of how the asset currently, has in the past and will in the future boost the social wellbeing and social interests of the community. The nomination must explain how it is proposed that the asset will remain viable in the future. This section should also include details of those sectors of the community who do or may benefit.

Nominations must be submitted on the County Council's Assets of Community Value Nomination Form. All questions in the Nomination Form must be completed and supporting evidence must be provided where required. The Council has produced further guidance to help organisations complete the Council's Nomination Form. Failure to complete the Nomination Form in full and provide the required information may cause your nomination to be invalid.

The completed form and supporting evidence should be returned to right-to-bid@durham.gov.uk or to Durham County Council, Community Right to Bid, Durham County Council, CPAL Strategy and Property Management, County Hall, Durham, DH1 5UL

It should be noted that information included in the Nomination Form may be made available to the owner of the asset should they request a review of the listing decision. Whilst you are not required to inform or have any contact with the occupiers and /or owners, you may want to do so.

There is no limit to the number of assets that a single group can nominate but a separate Nomination Form must be submitted for each asset.

Groups are encouraged to submit joint nominations and bids wherever possible.

Nominations can be made at any time.

The Nomination Process

We will acknowledge receipt of the nomination. A panel of council officers will consider the nomination and assess if the asset should be included in the list of assets of community value using criteria set out in the Localism Act 2011 and the Assets of Community Value Regulations 2012.

A decision will be made within eight weeks of receiving a nomination.

If a nomination is successful or unsuccessful, the Council will give written notice to:

- the landowner
- the occupier
- the relevant parish council

- the organisation who made the nomination
- where the owner is not the freeholder - the holder of the freehold estate and the holder of any leasehold estate

If the nomination is successful, the Council will include the asset on its list of assets of community value. If the nomination is not successful, the Council will include the asset on its list of unsuccessful nominations.

Both the list of assets of community value and the list of unsuccessful nominations are published on the council's web pages at www.durham.gov.uk/right-to-bid. A free hard copy of the lists can be obtained from Durham County Council. The lists are updated on a monthly basis.

Assets will be listed for five years at which point the asset can be nominated again by an eligible community organisation.

Assets listed as being assets of community value will be placed on the local land charges register. If the land is registered it will be notified to the Land Registry as a registered restriction on the property. If the land is not registered, a caution will be registered against the property.

If the Owner or Nominating Body do not Agree with the Council's Decision

The nominating organisation has no right of review or appeal against the Council's decision.

The owner of the asset can ask the Council for a review within 8 weeks of being notified of the decision.

A request for a review should be made in writing and sent to right-to-bid@durham.gov.uk or to Durham County Council, Community Right to Bid, Durham County Council, CPAL Strategy and Property Management, County Hall, Durham, DH1 5UL.

The owner has a right to an oral hearing and to be represented at it by whoever they choose.

The review will be carried out by a senior officer of the authority not involved in the original decision, within 8 weeks of the date the review request was received (or longer if agreed with the owner).

The Council will notify all relevant people of the review decision in writing, within 7 working days of the review date.

If the Council chooses to uphold the original decision and the owner disagrees with the review decision, the owner can appeal to the General Regulatory Chamber of the First-Tier Tribunal which is part of the court system and hears appeals against administrative decisions. (The Procedural rules require that the owner must appeal to the Tribunal within 28 days from the date the Council notifies them of the review decision). Appeals should be made in writing to grc@justice.gov.uk or to:

Tribunal Clerk,
Community Right to Bid Appeals,
HM Courts & Tribunals,
First-tier Tribunal (General Regulatory Chamber),
PO Box 9300,
Leicester LE1 8DJ

The asset will remain on the list of assets of community value during the appeal process.

If the Council does not uphold the original decision, the relevant parties will be notified in writing, the asset will be transferred to the list of unsuccessful nominations and the legal charge will be removed from the asset.

The Assets of Community Value List

Assets must be removed from the list of assets of community value as soon as possible:

- after a relevant disposal (other than an exempt disposal)
- when an appeal against a listing has been successful
- if the Council decides the land or building is no longer of community value
- no later than 5 years from the date listed.

If any assets are removed from the list of assets of community value, the Council will notify all relevant parties.

Further Actions for the Nominating Body

The nominating group should notify the Council of any changes to:

- the name, title and address of the nominating organisation
- the name, title and address of the person leading the nomination
- any change to the make-up of the nominating organisation which may affect its legitimacy to continue to claim the right to nominate and to bid for assets.

No further action is needed by the organisation until the Council informs it that that the owner intends to sell the listed asset.

If the Owner wants to Sell an Asset

If the asset is included on the list of assets of community value, the owner is required to notify the Council in writing of their intention to dispose of the asset in accordance with the requirements of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

It is the owner's responsibility to notify the Council of their intention to make what is referred to as a 'relevant disposal'. The Localism Act 2011 defines a 'relevant disposal' as one where the sale of the asset transfers a freehold with vacant possession, or where it transfers a qualifying leasehold interest with vacant possession (which is a lease which had at least 25 years to run when granted).

Owners of listed assets cannot dispose of them without:

- Notifying the Council that they intend to sell the asset
- Waiting until the end of the 6-week interim moratorium period (see below)
- Waiting until the end of the 6-month full moratorium period if the Council receives an intent to bid from an eligible community organisation (see below)

During the six-month full moratorium 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 to this. The owner may sell to a local community interest group during the full moratorium period.

Disposals not Classed as a 'Relevant Disposal'

Not all disposals will be 'relevant disposals'. Section 95(5) of the Localism Act 2011 and Schedule 3 of the Assets of Community Value (England) Regulations 2012 define the full list of exemptions. The following is a summary of the exemptions, but the Act and the Regulations should be referred to for detailed legal definitions.

The disposal may not be 'relevant' if the asset is successfully listed but at the time of intended disposal:

- a) The asset is to be disposed of under an order made by a court or a tribunal
- b) The disposal is resulting from a separation agreement between spouses or civil partners
- c) The disposal is being made under statutory provisions relating to physical or mental impairment.

- d) The disposal is being made within families
- e) The disposal is connected with the administration of the estate of a deceased person
- f) The disposal is the result of a power of sale of the asset as security for a debt, insolvency proceedings or the result of a statutory compulsory purchase
- g) There is a grant of tenancy of the land under part 4 of the Agricultural Holdings Act 1986(c)
- h) The disposal is within company group
- i) A disposal where only part of the land to be disposed is listed but all of the land to be disposed of is owned by a single owner and all the land can be reached from every other part without having to cross land not owned by that owner. If any intervening land not owned by the owner is a road, railway, river or canal unbroken ownership applies
- j) A disposal of a redundant Church of England church
- k) A disposal for the purpose of enabling continuing health service provision on the land
- l) A disposal for the purpose of enabling;
 - i) a school (excluding independent schools other than those designated as academies under the Academies Act 2010)
 - ii) a 16-19 Academy to continue to be provided or
 - iii) a further education establishment
- m) A disposal where there is a statutory requirement regarding the making of the disposal that could not be met if the moratorium arrangements (section 95(1) of the Localism Act 2011) were in place.

Only 'relevant disposals' need to be notified to the Council. In some instances an owner may not know if they will make an exempt disposal or not - for instance if they wish to sell land together with a business as a going concern but are not sure if they will do so. In such cases owners are advised to inform the Council of their intent to sell the asset as a precaution.

Moratorium periods

Once the owner informs the Council of their intention to instigate a 'relevant disposal' of the asset, the Council will initiate a 6-week interim moratorium period. Details of assets of community value notified for disposal will be published on the Council's Community Right to Bid website with the date from which the 6-week interim moratorium period runs. The Council will notify the nominating organisation and publicise the owner's intention to dispose.

During this 6-week interim moratorium period, an eligible community organisation can ask the Council in writing to be considered as a potential bidder for the asset.

If a written intent to bid is received by an eligible organisation within the 6-week interim moratorium period, then the 6-month full moratorium will be triggered (starting from the date of notification to dispose). The community organisation has the 6-month full moratorium period to raise the capital and make a bid to purchase the asset. Bids should be made directly to the owner of the asset not to the Council.

At the end of the 6-month full moratorium period, then the owner is free to dispose of the asset as they wish (to whoever they choose and at whatever price) and no further moratorium period can be triggered for a protected period of 18 months (from the same start date when the owner notified the Council of its intent to dispose).

The moratorium arrangements also prevent community organisations bidding again for the asset for a protected period of 12 months following the end of the six-month full moratorium period if their original bid or bids were unsuccessful. If, however, a sale is not made within 18 months of the date of notification of intent to sell, local community organisations may re-enter the bidding process.

Groups Eligible to Submit a Bid

In order to be eligible to submit an intent to bid, a community organisation must have one or more of the following structures:

- a charity
- a company limited by guarantee or an industrial and provident society which does not distribute any surplus it makes to its members
- a community interest company

This means that:

- Parish councils may make a bid but only for assets in their local area and not in a neighbouring district
- Unincorporated bodies or neighbourhood forum cannot register an intent to bid or make a bid

Bidding Arrangements

The eligible community organisation has 6 weeks from the date of the Council's receipt of the owners' notification within which to register their intent to bid.

An intent to bid should be submitted in writing to right-to-bid@durham.gov.uk or to Durham County Council, Community Right to Bid, Durham County Council, CPAL Strategy and Property Management, County Hall, Durham, DH1 5UL.

The eligible community organisation does not have to provide any evidence of intention or financial resources at this stage.

Actions for Current and New Owners of an Asset

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 need to provide the Land Registry with a certificate from a conveyancer that the disposal did not contravene section 95(1) of the Localism Act (the moratorium arrangements).

If the disposal contravenes section 95(1) it will be ineffective, that is, new ownership will not be granted. This does not apply if, despite having made reasonable efforts to find out, the owner did not know the asset was listed as an asset of community value.

Owners of assets of community value must inform the Council, as soon as practicable:

- a) that the land has been entered on the Land Registry as a result of an application for first registration
- b) that disposal has taken place
- c) details of the name and address of the person who has become the owner, including where this is a corporate body subject to registration, its place of registration and registered number.

Compensation

The Assets of Community Value Regulations 2012 provide for the owner of an asset listed as an asset of community value to make a claim for compensation from the Council for any loss or expenses incurred

at a time the land was listed which he would not have incurred had the land not been listed. The Regulations should be referred to for further details.

Claims for compensation must be made in writing to the Council within 13 weeks of incurring the loss or expense (or it was finished being incurred), stating the amount of the claim and providing supporting evidence for all parts of the claim.

The Council will consider the claim and will provide written reasons for its decision. The Regulations do not specify a timescale in which the Council must issue a decision, but we will endeavour to reach a decision as quickly as practicable once we have all the necessary information.

If the owner does not agree with the Council's decision, it can request a compensation review within 8 weeks of the notification of its decision (or longer if agreed). The review process is the same as for a review of listing (see above).

If the owner does not agree with the Council's decision following its compensation review, an appeal can be made to the General Regulatory Chamber of the First-Tier Tribunal. Appeals should be made in writing to grc@justice.gov.uk or to:

Tribunal Clerk,
Community Right to Bid Appeals,
HM Courts & Tribunals,
First-tier Tribunal (General Regulatory Chamber),
PO Box 9300,
Leicester LE1 8DJ

Further information

This guidance is intended to provide helpful guidance for landowners and community organisations about the Council's responsibilities and processes with regard to the Community Right to Bid.

All correspondence and enquiries should be sent to the Council at to right-to-bid@durham.gov.uk or to Durham County Council, Community Right to Bid, Durham County Council, CPAL Strategy and Property Management, County Hall, Durham, DH1 5UL.

The government has published legislation and regulations pertaining to the Community Right to Bid which can be found:

[Localism Act 2011 \(Chapter 3\)](#)

[Assets of Community Value \(England\) Regulations 2012](#)

Further advice can be found from Locality aimed at community organisations:

<https://mycommunity.org.uk/what-are-assets-of-community-value-acv>