

**ASSETS OF COMMUNITY VALUE
(Report by the Head of Legal and Democratic Services)**

1. INTRODUCTION

- 1.1 The Assets of Community Value (England) Regulations 2012 came into force on 21 September 2012. The main principles of the Right to Bid as set out in the Localism Act 2011 remain unchanged, but the regulations bring in important detail about the processes and steps which Councils need to have in place and provide some details about the compensation arrangements. This report recommends the arrangements which the Council should put in place in order to deal with applications for listing community assets.
- 1.2 The attached flow-chart at Appendix A, outlines the applicable stages of the application and assessment process.

2. COMMUNITY RIGHT TO BID

- 2.1 This legislation was introduced as part of the Government's policy to assist local community groups in preserving those buildings or lands which they consider to be important to their community's social well-being. It aims to give those in the local community early warning of the intention to sell such assets and to enable them to delay sales by six months to provide time for them to put together a bid to buy the asset. The proposals do not require the landowner to dispose of the asset to a community group, nor force any sale, but are intended to facilitate the transfer into community ownership of property assets felt to have local social value.
- 2.2 A building or land can be considered an asset of community value if:-
 - The current use (which must be the main use and not ancillary), or use in the recent past, furthers the social wellbeing or social interests of the local community ; and
 - It is realistic to think there will continue to be, or will within the next 5 years be, a viable main use that will further, (whether or not in the same way), the social wellbeing or interests of the local community.

"Social interests" are defined as cultural, recreational or sporting interests.
- 2.3 The rights apply to public and privately owned land, unless the land is exempt from listing. The regulations now define exempted land which are very limited, with only residential land (including "land connected with that residence"),

caravan sites and operational land of statutory undertakers, being exempt. All other land is capable of being listed, provided it falls within the definitions set out in the Act.

2.4 The following bodies may make nominations:-

- Parish councils;
- Group of at least 21 local people on electoral roll
- Neighbourhood Forums;
- Community Interest Groups with a local connection (must be charitable/non profit making or similar).

3. NOMINATING AN ASSET

3.1 Briefly, only the above bodies may make a "community nomination" to a local authority, by which they nominate land in that local authority's area for inclusion in the authority's list of assets of community value.

3.2 Community nominations have to comply with certain requirements. They must describe the land, provide ownership/occupier details the nominator has and reasons explaining why the land is of community value, as well as evidence that the nominator is eligible to make a community nomination.

3.3 The Council must take all reasonable steps to notify the parish council, the owner of the land and any occupier that it has received an application. It then has 8 weeks from receiving an application to decide whether or not the land nominated is land of community value with the meaning of s.88 of the Act. The Council has to give reasons for its decision and so will have to consider what the evidence is to justify (or not) putting the land on the register.

3.4 If a decision is made to include the land on the list of community assets, it must also be put on the Local Land Charges register and a restriction put on at HM Land Registry. Councils are required to remove an asset from the list as soon as practicable:-

- after a relevant disposal (other than an exempt disposal)
- if an appeal against listing is successful;
- if they form the opinion that the land/building is no longer of community value;
- after 5 years from the date of entry on the list.

3.5 Applicable Ward Members will be consulted in all instances.

4. LISTING REVIEW

- 4.1 If the local authority decides to list the land, the owner has 8 weeks from being notified of their decision to request a review. The Regulations require an officer (“of appropriate seniority”) who did not take part in making the original listing decision to carry out that review. The Council must complete its review within 8 weeks, unless a longer period is agreed.
- 4.2 The owner may appoint a representative to act on their behalf. The owner may insist on an oral hearing, thus opening up the possibility of a lengthy hearing. If this is not requested representations may be made orally or in writing. The owner and the Council each bear their own costs.
- 4.3 If the owner is not satisfied by the review, they can also appeal to the First Tier Tribunal against the local authority’s decision on a listing review. As listing can also lead to a claim against the council for compensation records must be kept of the decisions at each stage and the reasoning behind them.
- 4.4 If the decision is not to list the land, then this is recorded and the Council must place it on a list of assets nominated, but not listed. The community group can challenge that decision through judicial review.

5. EFFECT OF LISTING - MORATORIUM

- 5.1 The impact of land being listed is felt when the owner wishes to dispose of the land (by either a sale of the freehold or a lease of over 25 years), when they must inform the local authority of their intention to do so. They are then not able to dispose of the land until the interim six week moratorium period has ended without any community interest group making a written request to be treated as a potential bidder in relation to the land. If a community interest group makes such a request within the six week period, the owner is prohibited from disposing of the land (save in certain specific circumstances, e.g. to the local community interest group) for a further six months. Any disposal by an owner during this period (apart from a few exceptions listed in s.95 (5)) is ineffective.
- 5.2 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).
- 5.3 The local authority is under no legal duty to participate in any discussion between the community and the landowners, or to facilitate attempts by the community group or parish council to obtain the land.

6. DISPOSALS EXEMPT FROM MORATORIUM ARRANGEMENTS

6.1 Not all disposals are “relevant disposals” for the purposes of the legislation. The following are examples that are not subject to a moratorium:-

- a disposal to a local community group;
- a disposal resulting from a separation agreement or ordered by the court;
- disposals made within families or connected with the administration of an estate;
- a disposal within company groups;
- a disposal of a school or land used for health service provision;
- a disposal where only part of the land is listed, but all of the land 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.

7. COMPENSATION

7.1 The wording of the regulations relating to compensation payable is extremely wide, and no limit is set upon the amount of compensation that could be requested, provided the owner can show that they have incurred the loss from delay directly due to the listing.

7.2 The Regulations provide that an owner or former owner of listed land or previously listed land is entitled to compensation from the local authority, "of such amount as the authority may determine" in the circumstances where the person making the claim has "incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed".

7.3 The regulations go on to say that for the avoidance of doubt and without prejudice to other types of claim, the following claims may be made:

- arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused by relevant disposals of the land being prohibited during the interim moratorium or full moratorium periods; and
- for reasonable legal expenses incurred in a successful appeal to the first tier tribunal against the council's decisions to list the land, to refuse to pay compensations or with regard to the amount of compensation offered or paid.

7.4 Claims for compensation must be made to the council within 13 weeks of the loss or expense being incurred. They must state the amount of compensation claimed with supporting evidence. The Council must determine the claim and is required to give the claimant written reasons for its decisions.

- 7.5 The process for dealing with compensation claims mirrors the requirements for the listing of such assets. Authorities must identify an appropriate officer to decide whether or not compensation should be payable and if so at what amount. Just as with the listing process, a claimant may ask for a review by the local authority of the compensation decision both in respect of whether the compensation should be paid and if so, the amount payable and, once again, an officer of appropriate seniority who did not take any part in making the decision to be reviewed must carry out the review. The same provisions apply regarding representatives and oral hearings. The person who requested the review may also appeal to the First Tier Tribunal against the review decision.

8. FINANCIAL AND OTHER IMPLICATIONS

- 8.1 In practice, the number of nominations for listing and claims for review and compensation the council will face may turn out to be relatively small, although anecdotal evidence nationally has indicated that there is a considerable amount of interest from community groups already and the funding available from the Government (£16m) tends to support this view.
- 8.2 The Government has indicated that it has included the estimated costs of compensation within the new burdens funding, based on an estimated 40 successful claims across all Councils over a year. In addition the government has committed to meet costs of compensation exceeding £20k in one financial year.
- 8.3 Clearly these additional process requirements will have to be met from within existing resources, thereby impacting upon current capacity.

9. RECOMMENDATIONS

- 9.1 To delegate responsibility for receiving and processing applications to the Corporate Team Manager;
- 9.2 To delegate responsibility for determining whether an asset should be listed on the register of community assets or not, to a panel of 3 appropriate Council Officers (who may be drawn from Planning and Housing Strategy, Environmental & Community Services and Legal & Democratic Services, supported by the Corporate Team) to be designated by COMT.
- 9.3 To delegate responsibility for determining reviews against listing of assets by the owners to the Head of Planning & Housing Strategy after consultation with the Head of Legal & Democratic Services (or their nominees);
- 9.4 To delegate responsibility for putting in place appropriate arrangements for determining requests for compensation and any review requests to the Corporate Team Manager.
- 9.5 That the Corporate Team Manager puts in place arrangements for publishing how applicable groups can go about making a nomination.

BACKGROUND PAPERS

Sections 87- 108 Localism Act 2011

The Assets of Community Value (England) Regulations 2012

Contact Officer: Colin Meadowcroft

Head of Legal & Democratic Services: 01480 388021