



# A GUIDE TO THE LOCALISM ACT 2011 – LIST OF ASSETS OF COMMUNITY VALUE

## Introduction

The Localism Act became law in November 2011 and provisions which relate to assets of community value came into force on 21<sup>st</sup> September 2012. The original intention had been to introduce a right for community groups to be able to buy land or property which has valuable community use. As the legislation passed through Parliament it emerged as a community right to bid for such land and property coming up for sale on the open market.

The aims of the provisions set out in the Act are to provide an opportunity for local community groups and social enterprises to be informed when an important local amenity/building comes up for sale and to provide time for local people to organise themselves so that they can bid to purchase the property, thereby preventing the loss of a facility/service that is considered important to that community. The Act provides a framework for administering the scheme, and the draft Regulations provide further details.

## The Community Group

A community organisation may nominate both publicly and privately owned properties which they consider to have “community value” for inclusion in the List of Assets of Community Value. Only “voluntary and community bodies” with a local connection will have the right to make nominations. The definition of a “voluntary or community body” includes:

- Unincorporated groups with membership of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority,
- Neighbourhood forums,
- Community interest groups with a local connection (either a charity, a community interest company, a company limited by guarantee that is non-profit distributing, or an industrial and provident society that is non-profit distributing).

## The nomination

It is proposed that when a nomination is received the Council will consider the nomination and make a decision whether or not to include the nominated property in the List. This will include an auditable assessment outlining the reasons for this decision. The decision of acceptance or rejection must be made within 8 weeks.

The Council must accept the nomination if the property is in the district and is considered to be of community value. Regulations exclude certain types of property from being listed, such as residential property, land licensed for use as a residential caravan site and the operational property of statutory undertakers.

## Community value

The Act specifies that a property will be considered to have community value if:

- the property's actual current use, or a use in the recent past, furthers the social wellbeing or the social interests (cultural, recreational, or sporting interests) of the local community, and,
- that use must not be an ancillary one, and,
- for property in current community use, it is realistic to think that this use will continue, or for property that has been in community use in the recent past it is realistic to think that there will be community use within the next 5 years (in either case, whether or not that use is exactly the same as the present or past use).

## Listing

If a nominated property meets the criteria it will be added to the List, which should be available to view on the Council's website. The nominating organisation, the owner of the asset, the occupier (if different from the owner), parties with other legal interests in the property and the Local Land Charges Section must all be notified. The Council must also request that a restriction be placed on the property's Land Registry title so that no transfers of ownership can occur unless the owner has complied with the requirements of the scheme.

If the nomination does not meet the criteria it will be added to another list, the List of Assets of Unsuccessful Community Nominations. Once an asset is on either List it will remain there for 5 years. The owner of the asset has the right to request an internal review of the decision to include the asset in the List of Assets of Community Value. It

is proposed that if an owner requests an internal review, this will be completed by the Assistant Director, Property Estates and Assets (who will not have been involved in the original assessment and decision). If the owner is dissatisfied with the results of the internal review they will have the further opportunity to have an independent appeal heard at the General Regulatory Chamber of the First-Tier Tribunal.

## Procedure for sale

When the owner of a Listed property decides to enter into a relevant disposal of that asset, they must notify the Council of their intention in writing. A “relevant disposal” is defined as 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.

Certain disposals will be exempt from the scheme, for example, disposals made as a gift, transfers of property between members of the same family, transfers due to inheritance, disposal of the property as a going concern and several other types of exempt disposals will be set out in the Regulations.

If the disposal of the vacant property is not exempt, then the following process will be set in motion:

- A 6-week “interim moratorium period” begins, in which the owner is not permitted to dispose of their asset.
- The Council notifies the community of the owner’s intention to dispose of the Listed property and provides details on the interim moratorium period. The community notification procedure is likely to involve the display of a notice in the local area of the property, a letter to the group who nominated the asset, information on the Council’s website, email to our circulation list of community groups and possibly a notice in the local press.
- During these 6 weeks, eligible community interest groups must request in writing to be considered as a potential bidder for the property, otherwise the owner will be free to sell on the open market when the 6 week period is over (and will be further covered by a Protected Period – see below).
- If the Council receives a written request from an eligible community interest group to be treated as a potential bidder, it must notify the owner accordingly. A longer “full moratorium period” will then be triggered, in which the community group has time to raise capital and prepare their bid, and in which the owner cannot sell the property (unless it is to an eligible community interest group). This period lasts for 6 months from the date that the owner originally expressed their intention to dispose of the property.
- At the end of the 6 month full moratorium period, the owner is free to dispose of the property to any buyer of their choosing, provided they do so within what is called the Protected Period. They are under no obligation to accept any

community group's offer – the scheme does not offer a “right of first refusal” to community groups. It is simply a method of delaying the disposal of a listed property in order to make sure that local people get a fair chance to bid for properties that are of value to their community and to retain these properties in public use and as part of local life.

The Protected Period lasts for a total of 18 months from the date the owner expresses their intention to dispose of their property. The Protected Period means that if the owner does not dispose of their property at the end of the interim or full moratorium periods, there will be the remainder of the protected period (i.e. 12 months) in which they are permitted to dispose of the property, without triggering any further delays. If no relevant disposal is entered into during this time, when the Protected Period ends, another period of delay may apply to their planned disposal.

If a listed property is sold without complying with the notification and moratorium requirements of the scheme, then any transfer of the property to a new owner will be void. It is also worth emphasising that this process only applies to “disposals” and therefore if a building listed as an asset of community value is to be demolished without being sold, the above moratorium rules do not apply.

## Compensation

There will be compensation available to private owners for any loss or expense incurred as a result of their property being listed or previously listed. An example of a compensation event is a loss of value due to a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period. Most claims for compensation will arise from a moratorium period being applied; however the Regulations will allow for claims for loss or expense arising simply as a result of the property being listed. The time limit for an owner to make a compensation claim will be 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the property ceases to be listed.

## Further information

For further information on Assets of Community Value or to make a nomination please contact [governance@ne-derbyshire.gov.uk](mailto:governance@ne-derbyshire.gov.uk) .