

The Community Right to Nominate and Bid for Assets of Community Value (England)

Introduction

1. Sections 87-108 of the Localism Act 2011 (“the 2011 Act”) give parish councils and other local bodies (e.g. charities, community interest companies or unincorporated bodies that do not distribute profits to their members) the right to nominate an asset of community value to be added to a list maintained by their principal authority. If any listed asset comes up for sale, parish councils and other local bodies in the community will be given a window of opportunity to express an interest in purchasing the asset and another window of opportunity to bid to purchase it. An asset of community value may include for example a community centre, a village shop, tennis courts, or a pub.
2. This Legal Topic Note considers the relevant 2011 Act provisions and the Assets of Community Value (England) Regulations 2012 (“the 2012 Regulations”) and the implications for parish councils.

List of assets of community value

3. S.87 (1) of the 2011 Act places a duty on certain local authorities (defined in s.106 (1) of the 2011 Act to include district councils, London borough councils and county councils) to maintain a list of land in their area that has community value. This list is known as a list of assets of community value.
4. A listed asset will stay on the list of assets of community value for five years from the date it is entered onto the list and it can be removed after that period. It is for a local authority to decide the form and contents of its list, subject to any specific requirements set out in regulations (including for example the form in which the list is to be kept; the contents of an entry in the list; modification of an entry in the list and removal of an entry from the list). If a local authority includes an asset in its list, it is not required to obtain the owner’s consent. Land nominated as assets of community value may be owned by anybody including a parish council.

What is land of community value?

5. S.88 (1) of the 2011 Act defines land of community value. A building or land in a local authority's area is land of community value if in the opinion of the local authority:

- an actual current main use of the building or other land furthers the social well-being or social interests of the local community (e.g. a village hall), and
- it is realistic to think that the main use of the building or other land will continue to further (whether or not in the same way) the social well-being or social interests of the local community.

“Social interests” include cultural interests, recreational interests and sporting interests.

6. A building or land in a local authority's area is also land of community value if in the opinion of the local authority:

- in the recent past an actual main use of the building/ land furthered the social well-being or interests of the local community, and;
- it is realistic to think that there is a time in the next five years when there could be main use of the building or other land that would further (whether or not in the same way as before) the social well-being or social interests of the local community (s.88(2) of the 2011 Act).

7. Examples of buildings used in the recent past to further the social well-being or interests of the local community could include a closed down building that formerly housed a library or a closed community centre that was formerly used by recreational or sporting clubs. “Recent past” is not defined. In NALC’s view the ordinary dictionary meaning of “recent” would apply.

Land that is not land of community value

8. Schedule 1 of the 2012 Regulations defines land which is not of community value and cannot be included in a local authority’s list of assets. This includes a residence together with land that is connected with that residence.

9. “Residence” means a building used or partly used as a residence. A building is also a residence and cannot be listed if (i) it is normally used or partly used as a

residence, but for any reason part of it normally used as a residence is temporarily unoccupied; (ii) it is let or partly let for use as a holiday dwelling; (iii) it, or part of it, is a hotel or is otherwise principally used for letting or licensing accommodation to paying occupants or (iv) it is a house in multiple occupation.

10. Land is “connected” with a residence and cannot be listed if the land and residence are owned by a single owner and all of the land can be reached from the residence without having to cross land owned by another person. Land is still “connected” if a part of the land cannot be reached from the residence because it is separated by land owned by another person and there is a road, railway, river or canal on the land.

Residential land that may be land of community value

11. A building that is partly used as a residence may be land of community value if, but for that residential use, the building would be eligible for listing. For example, a village hall with accommodation for caretaker. A building or land may also be land of community value if (i) it is land on which currently there are no residences but planning permission or development consent has been granted for the construction of residences; (ii) it is a building undergoing construction where there is planning permission or development consent for the completed building to be used as a residence, but construction is not yet complete; or (iii) it was previously used as a residence but is in future to be used for a different purpose and planning permission or development consent for a change of use to that purpose has been granted.

Procedure for including land in the list of assets of community value: community nomination

12. S.89 (1) of the 2011 Act provides that a local authority may only include land of community value in its list in response to a community nomination or where permitted by regulations. A community nomination may be made by a parish council in relation to land which is:
 - in its area (s.89(2)(b)(i) of the 2011 Act);
 - in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area (s.89(2)(b)(iii) and Regulation 4(2) of the 2012 Regulations); or

- in a local authority's area but is not in any parish council's area if (i) the council's area is within the local authority's area, or (ii) any part of the boundary of the council's area is also part of the boundary of the local authority's area (s.89(2)(b)(iii) Regulation 4(2) of the 2012 Regulations).
13. A community nomination may also be made by a voluntary or community body with a local connection with land in a local authority's area or a neighbouring authority's area (s.89 (2) (b) (iii) of the 2011 Act and Regulation 4(1) of the 2012 Regulations). A "voluntary or community body" is defined in Regulation 5 of the 2012 Regulations and includes:
- an unincorporated body (i) with at least 21 members, and (ii) which does not distribute any surplus it makes to its members;
 - a charity;
 - a company limited by guarantee which does not distribute any surplus it makes to its members;
 - an industrial and provident society which does not distribute any surplus it makes to its members; or
 - a community interest company.
14. In accordance with Regulation 6 of the 2012 Regulations a community nomination must include the following:
- a description of the nominated land including its proposed boundaries;
 - a statement of all the information the nominator has about the names of current occupants of the land and the names and current or last known addresses of all those holding a freehold or leasehold estate in the land;
 - the nominator's reasons for thinking that the local authority should conclude that the land is of community value; and
 - evidence that the nominator is eligible to make a community nomination.
15. When a local authority receives a community nomination it must consider it and accept it if the land nominated is in its area and is of community value. If the local authority is required to accept the nomination it must include it in its list of assets of community value (s.90 of the 2011 Act). The local authority must decide whether land nominated by a community nomination should be listed within eight weeks of receiving the nomination (Regulation 7 of the 2012 Regulations). It must take all practicable steps to give the information that it is considering listing the land to:

- the parish council if the land is in the council's area;
 - the owner of the land;
 - where the owner is not the freeholder, the freehold owner and any leasehold owner other than the owner; and
 - any lawful occupant of the land.
16. S.91 and Regulation 9 of the 2012 Regulations provide that the local authority must give written notice of its decision to include in or remove land from the list to a parish council if the land is in the parish council's area as well as:
- the owner of the land;
 - the freehold owner and any leasehold owner (where they are not the owner):
 - the occupier of the land if the occupier is not also the owner;
 - the person who made the community nomination; and
 - any person specified, or of a description specified, in regulations made by the Secretary of State.
17. If it is not reasonably practicable for the local authority to give notice, the authority must instead take reasonable alternative steps for the purpose of bringing the notice to the person's attention.

Review of a local authority's decision to list land as an asset of community value

18. Landowners can ask a local authority to review the authority's decision to include their land on the list of assets of community value (s.92 of the 2011 Act). Schedule 2 of the 2012 Regulations contains the specific procedure that must be followed by a local authority when it reviews a decision. Any request for a review must be in writing and submitted before the expiry of an eight week period from the day on which written notice of inclusion of the land in the list was given by the local authority (or a longer period if the authority agrees). Landowners may appoint any representative to act on their behalf in connection with the review. The review is carried out and determined by an appropriate officer of the local authority not involved with the original decision. A successful review may result in a local authority removing land from the list.
19. Local authorities are also required by s.93 of the 2011 Act to maintain a list of unsuccessful community nominations, known as a "list of land nominated by

unsuccessful community nominations”. The local authority may (but does not have to) remove land from the list after it has been on it for five years.

20. Local authorities must publish their list of assets of community value and their list of land nominated by unsuccessful community nominations (s.94 of the 2011 Act). They must make both lists available for free, public inspection in their area and provide one copy, free of charge, to any person who asks for a copy.

Consequences of land being listed: moratorium periods

21. Inclusion of land in the list of assets of community value will result in a local land charge against the landowner’s title.
22. The listing of an asset as an asset of community value does not give a parish council or other local body the right to purchase it if the asset comes up for sale. The owner is not restricted in terms of who he can sell to or the purchase price. However listing does delay proceedings if the owner wishes to sell the asset.
23. Once land has been listed, nothing will happen until the owner decides to dispose of it by way of a freehold sale or the grant/ assignment of a lease for at least 25 years (a “relevant disposal”). The landowner must notify the local authority that he wants to make a relevant disposal. The local authority must then notify the local body that nominated the asset to be included in the list and give further publicity to the proposed disposal.
24. S.95 of the 2011 Act prohibits a landowner from making a relevant disposal of his land unless he has notified the local authority of his wish to make a relevant disposal of the land and each of the following conditions is met:
 - either (i) the interim moratorium period has ended without the local authority having received a written request from a community interest group to be treated as a potential bidder, or (ii) the full moratorium period has ended.
 - the protected period has not ended.
25. The “interim moratorium period” means a six week period beginning with the date on which the local authority receives the written notice from the owner that he wishes to dispose of the land.

26. The “full moratorium period” means a six month period beginning with the date on which the local authority receives the owner’s written notice of his wish to make a relevant disposal.
27. The “protected period” means an 18 month period beginning with the date on which the local authority receives the written notice.
28. “Community interest group” means a parish council if the land to be disposed of is in the council’s area. A body is also a community interest group if it is (i) a charity, (ii) a company limited by guarantee which does not distribute any surplus it makes to its members, (iii) an industrial and provident society which does not distribute any surplus it makes to its members or (iv) a community interest company, and the body has a local connection with the land (Regulation 12 of the 2012 Regulations).
29. When a local authority receives notice of a landowner’s wish to make a relevant disposal, the landowner may enter into a relevant disposal with a parish council or a community interest group at any time in the 18 month period beginning with the date of receipt of the owner’s written notice (Regulation 13 of the 2012 Regulations).
30. If a local authority receives notice from a landowner that he wishes to dispose of listed land and within the six week interim moratorium period the local authority receives a written request from a parish council or other community interest group to be treated as a potential bidder, the owner may not dispose of the land during the full six month moratorium period. The authority must either pass on the request to the owner of the land or inform the owner of the details of the request as soon after receiving the request as is practicable. The owner may enter into a disposal with a parish council or community interest group (see above paragraph).
31. If a parish council or community interest group does not make a written request to be treated as a potential bidder during the six week interim moratorium period the owner is free to sell the asset at the end of the six weeks to whomever he chooses and at whatever price.
32. The conditions set out in paragraph 24 above do not need to be met in certain circumstances, such as if the disposal is by way of gift and if the person(s) making the disposal is a member of the family of the person(s), to whom the disposal is made.

33. S.97 of the 2011 Act requires a local authority to note on the list entry for a particular asset that it has been notified by the landowner of his wish to make a relevant disposal. The entry must note the date that the authority received the notice and the end dates of the initial moratorium period, the full moratorium period and the protected period. Written notice must also be given to the body who nominated the asset to be included in the list.

Compensation for landowners

34. An owner or former owner of listed land or of previously listed land is generally entitled to compensation from the local authority of an amount that the local authority determines. This does not extend to public authorities such as parish councils. Compensation will be awarded if the owner of the land that was listed incurred loss or expense in relation to the land, and this would not be likely to have occurred if the land had not been listed (Regulation 14 of the 2012 Regulations). A person who has made a claim for compensation may ask the local authority to review its decision as to whether the person should receive compensation and the local authority's decision as to the amount of any compensation.
35. The government has produced non-statutory guidance for local authorities on the community right to bid. This can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14880/Community_Right_to_Bid_-_Non-statutory_advice_note_for_local_authorities.pdf

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
45	Disposal and appropriation of land by local councils	Sets out the general rules on disposal and appropriation of land by parish councils
84	The Community Right to Challenge (England)	A council's bid to run services may relate to an asset of community value