

The Community Right to Bid & Assets of Community Value **Guide for Nominators**

Introduction

The Localism Act 2011 introduced the 'Community Right to Bid'. The purpose of the Community Right to Bid is to allow communities to identify the buildings and places that are important to their wellbeing and be allowed time to bid for them, should the owner wish to sell them or otherwise transfer ownership.

The Act placed a duty upon local authorities like Babergh District Council to "maintain a list of land in its area that is land of community value". This is known as a List of Assets of Community Value. Owners of land on the List must notify the Council before selling it (in most cases) and a set period is then given for community groups to express an interest, and often then time to bid to buy the land or building.

The information here is a guide to community groups that wish to nominate buildings or land to be added to the Council's List of Assets of Community Value. It is only a summary and should be read alongside the Government's Non-Statutory Advice Note for Local Authorities, available at:



<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>



What is the Community Right to Bid?

The Localism Act 2011 and the Asset of Community Value Regulations 2012 established the **Community Right to Bid** and the rules for how it works. The main points are set out here. What they mean and how they work is explained in the later sections.

1. Community groups can nominate land or a building in their local area which promotes the 'social wellbeing' or 'social interests' of the community.
2. If the nominated land meets the definition of an Asset of Community Value in the Localism Act, the Council must place it on the List of Assets of Community Value and notify those involved.
3. The owner of the listed land or a building has a right to an internal review of this decision by the Council, and a right to appeal to an independent tribunal if they remain unhappy with the result of the internal review.
4. If any listed asset comes up for sale, the owner of the asset must notify the Council, who in turn will update the List to reflect this and notify the local community. This will enforce an 'interim moratorium period'. A moratorium (in this case) means a stop on ownership being transferred from the current owner to someone else, by sale or otherwise. This 'interim moratorium period' gives local community groups an initial six-week period to say if they are interested in bidding to buy the asset.
5. If no interest is expressed the owner may dispose of the asset and no further moratorium can be invoked for a period of 18 months (from the date the Council received the owner's notice of intention to sell).
6. If interest is expressed, the Council must notify the owner, who is then not allowed to sell the asset for the 'full moratorium' of six months (from the date the Council received the owner's notice of intention to sell). Generally, the only sale permitted during this period is to a local community group; however, some other transfers are exempt.
7. If no permitted sale occurs, after 6 months the owner is free to sell to whomever they choose at whatever price they choose for a further 12-month period without having another moratorium applied.
8. The Council is responsible for administering a compensation scheme to enable asset owners to claim for costs or loss incurred in certain circumstances as a direct result of complying with these procedures.
9. Owners have the right to an internal review of a compensation decision by the Council, and if they are unhappy with the outcome of this review they can appeal to an independent tribunal.

Taken together these rules and duties on the Council and owners make up the Community Right to Bid. The Community Right to Bid applies to land on the Council's list of Assets of Community Value.

What are Assets of Community Value?

Assets of Community Value are land or buildings that have been nominated by a community group and met the test to be considered by the Council to be land of community value and have been added to the Council's List.

What is the test of 'community value'?

The Localism Act 2011 states that "a building or other land in a local authority's area is land of community value if in the opinion of the authority'

- an actual **current use** of the building or other land that is not an ancillary use **further 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."**

OR

- "there is a time in the **recent past** when an actual use of the building or other land that was not an ancillary use **furthered the social wellbeing 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 non-ancillary use of the building or other land that would further** (whether or not in the same way as before) **the social wellbeing or social interests of the local community."**



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

Understanding terms used in the Act

'**Social interests**' include cultural, recreational and sporting interests.

'**Social wellbeing**' includes the things that people value in their life that contributes to them reaching their potential (economic, social or environmental).

The term '**recent past**' is not defined and will relate to the circumstances of each nomination. The 5-years preceding the nomination is a fair starting point.

'**Ancillary use**' means a use that is secondary or incidental to the main use. The main use will normally be more frequent and will define the purpose of the land. For instance, if a green area is used most days as parking and for a few days a year it is used for sport & recreation, the parking is the main use and the other uses are ancillary.

'**Realistic continued or future use**' is decided by how reasonable it is to believe that the property *could* continue, or be brought back into, use that benefits the community's social interests or social wellbeing. The viability of the current use is not relevant to the assessment. The Regulations are also clear that the property does not have to continue or resume in the same way as before.

Are any types of land excluded?

There are a few types of land that are specifically excluded by the Regulations and cannot be listed as an Asset of Community Value. They are

- Land and buildings which are primarily residential in purpose, including associated gardens and outbuildings.
- Licensed (and some unlicensed) residential caravan sites.
- 'Operational land' owned by 'statutory undertakers' as defined in section 263 Town and Country Planning Act 1990 – which are organisations like The Post Office, Civil Aviation Authority, transport providers, utilities, etc.

List of Assets of Community Value

The Council's 'List of Assets of Community Value' as well as the 'List of unsuccessful nominations' are available on the website.



Adding land to the list of Assets of Community Value

How do you nominate land to be added to the List of Assets of Community Value?

You can use this nomination form, which will guide you



You will need to provide information on

- The community group making the nomination
- The decision by the group to make the nomination or how else the person completing the form is empowered to do so on behalf of the group
- The land/building being nominated
- Details of the owner of the land/building
- Details of anyone living in or making main use of the land/building. In the case of a pub or shop, for instance, this may be different from the owner.
- The uses of the land/building that have in the recent past or do currently provide social or wellbeing value to the community
- How the same uses could continue or how other community uses could be created e.g. through a community bid

The Council will only accept fully completed nominations that include all required information. Incomplete applications will be returned with a request for missing information to be provided. You have the opportunity to provide supporting documents to show that the past community uses are 'actual' and that future uses are realistic. These will inform the Council's decision.

Once a nomination is made the Council has eight weeks to determine whether to place the nominated building/land on the list of Assets of Community Value.

Who can nominate?

- Town and Parish Councils
- Unincorporated groups. Nominations can be accepted from any unincorporated group with membership of a least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority. A group may be informal but it must be a real group. It is not sufficient to have 21 signatures to a petition.
- Neighbourhood forums
- 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 not profit distributing
 - d) An industrial and provident society that is not profit distributing

How does the Council handle and assess nominations?

1. The Shared Legal Services team receives the nomination form, carries out a Land Registry search and passes both to the Communities Team.
2. The Communities Team will assess the validity of the nomination and take steps to verify the information provided. (Is the nominator an eligible community group? Is the type of land permitted to be listed? Has the required information been provided?)

If it is invalid, the Team will inform the nominating community group of the reason.

3. A panel of officers from across the Council will assess whether to include the nominated building/land on the List of Assets of Community Value or not. A senior manager within the Directorate of Place with delegated authority will enact the decision.
4. Once the decision is made, the Council will inform the owner of the building/land and the nominating community group (and any other relevant parties) of the outcome.

If it is refused, the nominator will be given the reasons why.

The Council reserves the right to make other checks at its absolute discretion and to use relevant information from other sources of which it is aware when making the listing decision.

From receipt of a valid nomination the Council has eight weeks to determine whether to list the nominated land and must then notify all relevant parties.

Understanding how the decision is made

The Council will review the information provided and that it holds against the test of community value. It will take a view on the value of past uses or the current use and whether it could continue or whether another community use could begin. In most cases, many futures are possible and community use may not be the most likely. The test will be met so long as a realistic path to future community use is shown.

Factors such as current ownership and planning status will be taken into consideration. Consideration will be also given to past Reviews and Decisions made by the First Tier

Tribunal.

What if you want to withdraw a nomination?

If your community group wishes to withdraw a nomination for whatever reason, please make this request by e-mail to acv@baberghmidsuffolk.gov.uk as soon as possible. Nominations can only be withdrawn before a listing decision is made.

If a decision has been made and the land has been added to the List of Assets of Community Value, the Council can only remove it under certain circumstances (see the section 'How long will land stay on the List of Assets of Community Value?')

The decision to list can be taken at any point up to eight weeks from the date that we received your nomination form.

If land is not listed as an Asset of Community Value

The Council is required to keep a public list of unsuccessful nominations. Unsuccessful nominations stay on the list for 5years. These are also on the Council's website.

Can you nominate land again if your nomination is unsuccessful?

The Council will assess each nomination it receives on its own merit so you can make another nomination for land which was previously nominated unsuccessfully. However, unless the facts have changed or the evidence has significantly changed it is unlikely that the decision will change.

You may have additional evidence which you feel is relevant to the reasons a previous nomination was refused. In which case, you can make a fresh nomination with more information and seek to overcome those reasons.

Can you appeal if Council refuses your nomination?

In the Regulations and therefore in our process there is no right to appeal if the Council decides not to add the land you have nominated to its List of Assets of Community Value. Note that owners have a right of review and of appeal if land is added. However, if you feel that the Council has not followed its own or Government guidance correctly the Council's complaints procedure can be used.



<https://www.babergh.gov.uk/compliments-comments-and-complaints>

If land is listed as an Asset of Community Value

How long will land stay on the List of Assets of Community Value?

Land normally stays on the list for 5-years unless something happens, such as a sale or appeal, that causes the Council to remove it. The Regulations set out several times when the Council should remove land from its List. The Council is required to remove an asset from the list, as soon as practicable:

- a) After a **relevant disposal** (other than an **exempt disposal**)*
- b) When a review or an appeal against a listing has been successful
- c) When it forms the opinion that the asset is no longer of community value
- d) No later than 5 years from the date of entry on the list

* A **relevant disposal** means a transfer of ownership of the land to someone new, normally by sale. **Exempt disposal** means a transfer of ownership that is allowed. This might be to a community group or as part of a executing the will if the owner has died or as part of bankruptcy. There is link to the full list of exemptions in the section below.

What happens if an Asset of Community Value comes up for sale?

If the owner intends to sell an Asset of Community Value or otherwise pass on ownership, they should first notify the Council – this is called giving ‘intention to dispose’. This causes there to be an initial 6-week ‘interim moratorium’ period, during which a community group may express interest in bidding. A moratorium (in this case) means a stop on ownership being transferred from the current owner to someone else, by sale or otherwise.

If an eligible community group does express an interest, there will then be a 6-month moratorium to allow a community group or groups to make a bid to the owner. It begins from when the ‘intention to dispose’ is received (i.e. including, not after the 6-week interim moratorium). After the moratorium periods have ended, another cannot begin until after the ‘protected period’ ends. This gives some time for the owner to sell as they like to whoever they choose. The ‘protected period’ ends 18-months after ‘intention to dispose’ is received.

Be aware, there is no community right to buy the asset, just to bid. This means that the community bid might not be the successful one. Ultimately, the owner can sell to whomever they choose for whatever price they agree.

This is proposed to change under the [English Devolution and Community Empowerment Bill](#) but this has not yet come into effect.

Who can ‘express an interest’ to bid?

The kinds of organisations that can express an interest under the Community Right to Bid are different to the those that are allowed to nominate Assets of Community Value. Only a ‘community interest group’ as defined in the Regulations can express an interest and trigger a full moratorium. This is because a group wishing to express an interest to bid must be able to own property. Such a ‘Community Interest Group’ should meet these definitions:

- It has a local connection, meaning that its activities partly or wholly occur in the local area.
- It is a Charity, a Company Limited by Guarantee (that does not distribute profits), a Community Interest Company, a Town or Parish Council, an Industrial & Provident Society or a Community Benefit Society.

Are there any exceptions to the Community Right to Bid?

There are some disposals (by sale, transfer or lease) which will not trigger the moratorium and do not have to wait for the Community Right to Bid. They are set out in the Localism Act 2011 (S95-5) and can be found at:



Localism Act 2011, Part 5, Chapter 3 – Assets of Community Value
<http://www.legislation.gov.uk/ukpga/2011/20/section/87/enacted>

There is a full explanation of the exemptions in the Guidance for Local Authorities



Annex A - Exemptions

<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>

More common examples include

- where the asset is sold as a 'going concern'. Typically, the building and business for a pub or shop would be sold while still trading.
- Where the ownership is transferred within a family or within a company group.
- To settle an estate after the owner dies
- To settle debts if the owner is declared bankrupt.

Rights of Owners

Disagreeing with a Listing

Owners have the right to request an internal review if they disagree with decision to add their land to the List of Assets of Community Value. They have eight weeks to object to the new listing. The internal review will be conducted by a senior officer not involved in the initial decision, normally this will be Partner in our shared Legal Services Team. The review will either decide to keep or remove of the asset from the List and will provide the owner with a full reasoning for the reviewed decision.

If the owner is unsatisfied with the outcome of the internal review, there is a period of 28 days following notification of the reviewed decision in which they can lodge an appeal with the First Tier Tribunal.

Compensation

Private owners may claim compensation for loss and expense incurred through the asset being listed or having previously been listed. This could be due to a period of delay in entering into a binding agreement to sell which was wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal. The local authority must make a decision on the compensation claim, although no time limit is specified by the Act. If the owner objects to the compensation decision they have a right to an internal review and if they are still unsatisfied with the outcome they have 28 days to appeal to the First Tier Tribunal.

Further information

What roles does the Council play?

- Accepts and administers nominations from the local community.
- Makes the decision whether to list the asset
- Keeps public lists of assets of community value and of unsuccessful nominations
- Applies to the Land Registry and Land Charges to impose relevant restrictions on the assets that are included on the list.
- Informs owner of listing and conducts internal reviews where necessary
- Informs the nominator of listing and if the asset comes up for sale
- Manages a compensation scheme for owners

Other sources of information

The following links provide further information or you can contact the Communities Team at acv@baberghmidsuffolk.gov.uk

	My Community (Locality) http://mycommunity.org.uk/
	Ministry of Housing, Communities and Local Government http://www.communities.gov.uk/communities/communityrights/righttobid/
	The Assets of Community Value (England) Regulations 2012 http://www.legislation.gov.uk/uksi/2012/2421/made
	Localism Act 2011, Part 5, Chapter 3 – Assets of Community Value https://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3/enacted