

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

## 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 they come to market or otherwise have ownership transferred.

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 owners of buildings or land that have been nominated or 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:

	<a href="https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities">https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities</a>
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# 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. which will give 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 sales 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 furthers 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>

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### Understanding terms used in the Act

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'**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 to 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. This definition includes hotels and other rented accommodation.
- 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.

The Act makes clear that where the main use of land or building is eligible, secondary or partial use for an excluded type does not exclude the land. For instance, if a pub has rented rooms or includes a residence for the publican it would still be eligible to be listed.

## 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.

	<a href="https://www.babergh.gov.uk/community-rights">https://www.babergh.gov.uk/community-rights</a>
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## What happens if your land is nominated for the list of Assets of Community Value?

The Council is required to assess any nomination that it receives. Once a nomination is received the Council has eight weeks to determine whether to place the nominated building/land on the list of Assets of Community Value.

### 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 write to you and the occupier of the property (if that is different), to inform you that a nomination has been made.
3. The Communities Team will validate the nomination. The Legislation set out certain kinds of organisation that can nominate, the information they must provide and the kinds of land that cannot be listed. If the nomination is not valid, we will notify the nominating organisation, you and the occupier that it has been rejected. The nominating organisation may choose to make a new nomination.
4. A panel of officers from across the Council will assess the information provided by the nominating organisation and held by the Council against the test of community value. It will decide whether or not community value is shown and the test is passed. If it is, the Council must include the nominated building/land on the List of Assets of Community Value. A senior manager within the Directorate of Place with delegated authority will enact the decision.
5. Once the decision is made, the Council will inform you as the owner of the

building/land, the occupier 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.

When applying the test of community value the Council will review both the information provided and that it holds. It will take a view on the value of past uses or the current use and whether they 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 plausible 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.

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.

## **If your land is not listed as an Asset of Community Value**

The Council is required to keep a public list of unsuccessful nominations. We list the address of the nominated land, the name of the nominating organisation, the reason and the decision date. Unsuccessful nominations stay on the list for 5 years. These are available on the Council's website.

### **Can the refusal be appealed by the nominating group?**

No. In the Regulations and therefore in our process there is no right to appeal if the Council decides not to add the land nominated to its List of Assets of Community Value.

### **Can your land be nominated again after an unsuccessful nomination?**

Yes. The Council is required to assess each nomination it receives on its own merit. It must therefore assess another nomination for same land which was previously unsuccessfully nominated. However, unless the facts have changed or the evidence presented has significantly changed it is unlikely that the decision will change.

## **If your land is listed as an Asset of Community Value**

If your land is listed the Legislation places duties on you in relation to transferring ownership of the land and on the Council to register restrictions on the land and providing the Community Right to Bid when relevant. It is important to note that listing does not restrict how you use the land, who you can sell to or the price.

The [English Devolution and Community Empowerment Bill](#) proposes some important changes, including a Community Right to Buy, but this has not yet come into law. It is currently with the House of Lords.

The sections below will explain the current implications and your rights to contest a decision to list your land if you disagree.

## How long will your 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 instances 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 or as part of bankruptcy. There is link to the full list of exemptions in the section below.

## What happens if you want to sell land that is listed as an Asset of Community Value?

If you intend to sell land or otherwise pass on ownership of land that is listed as an Asset of Community Value (except by way of one of the exemptions) you are required to notify the Council – this is called giving ‘intention to dispose’. This can be by email to [acv@baberghmidsuffolk.gov.uk](mailto:acv@baberghmidsuffolk.gov.uk) or by letter.

Giving ‘intention to dispose’ begins an initial 6-week ‘interim moratorium’ period. A moratorium (in this case) means a stop on transfer of ownership. The Council is required to inform the community so that eligible groups are aware. This will at least mean posting a public notice near the Asset of Community Value and contacting the nominator. It will often mean contacting eligible groups registered to the local parish.

During the **6-week ‘interim moratorium’** community groups have chance to express interest in being considered a potential bidder. It does not need to be the same group that nominated your land; another eligible community group can express an interest.

If an eligible community group does express an interest, there will then be a **6-month ‘full moratorium’** to allow a community group or groups to prepare a bid to offer to you. It begins from when we received your ‘intention to dispose’ (i.e. including, not after the 6-week interim moratorium).

The ‘full moratorium’ is designed to give local community groups time to raise funds and prepare the bid to purchase the asset. During this period, you are allowed to market the property and negotiate sales, but you cannot exchange ownership or enter into a binding contract to do so later. The main exception to this is that you may sell to a community interest group during the moratorium period.

After the moratorium periods have ended, another cannot begin until after a **‘protected period’** has ended. This gives you time to sell to whoever you choose. Transfers in this protected period are not restricted in any way. The ‘protected period’ ends 18-months after the Council received your ‘intention to dispose’.

Under the current legislation, there is no community right to buy the asset, just to bid. This means that you are not required to accept the community bid and may choose to sell to whomever you choose for whatever price they agree with you.

## Who can 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.

## Do Community Right to Bid restrictions apply in all cases?

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 <a href="http://www.legislation.gov.uk/ukpga/2011/20/section/87/enacted">http://www.legislation.gov.uk/ukpga/2011/20/section/87/enacted</a>
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There is a full explanation of the exemptions in the Guidance for Local Authorities

	Annex A - Exemptions <a href="https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities">https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities</a>
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More common examples include

- where you are offering a lease of less than 25 years
- 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 land is given as a gift
- where the ownership is transferred within a family or within a company group.
- to settle debts if the case of bankruptcy.
- to settle your estate in the case of your death (disposals by personal representatives in accordance with the will of the deceased owner)

## How are the restrictions enforced?

A restrictive covenant is placed with Land Registry on the Title. It states that the conveyancer registering a transfer of ownership will need to certificate that it has complied with the Localism Act. If this is not made, the transfer could be cancelled.

If a non-compliant disposal of a listed asset occurs, the transfer will be 'void', meaning that the change of ownership will not have occurred. If the transfer has been registered on the Land Register in error, it will still be void and would have to be rectified. This penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.

# Disagreeing with a Listing

Owners have the right to request an internal review by the Council 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 you 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 Council 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 listed
- 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](mailto:acv@baberghmidsuffolk.gov.uk)

	My Community (Locality) <a href="http://mycommunity.org.uk/">http://mycommunity.org.uk/</a>
	Ministry of Housing, Communities and Local Government <a href="http://www.communities.gov.uk/communities/communityrights/righttobid/">http://www.communities.gov.uk/communities/communityrights/righttobid/</a>
	The Assets of Community Value (England) Regulations 2012 <a href="http://www.legislation.gov.uk/ukxi/2012/2421/made">http://www.legislation.gov.uk/ukxi/2012/2421/made</a>

