The Community Right to Bid
Assets of Community Value

South Hams District Council

West Devon Borough Council

Guidance for Local Communities

Introduction

The Localism Act 2011 introduced the 'Community Right to Bid', placing a duty upon local authorities to "maintain a list of land in its area that is land of community value", as nominated by the local community. If any assets (buildings or land) on this list then come up for sale, the local community has up to six months to prepare a bid to buy the asset. This Community Right gives local communities more time to assist in buying key assets that are for sale on the open market, however the Right to Bid does not require the owner to sell to a community group, it only improves the opportunity of this outcome.

This guidance is only a summary and sets out the Council's nomination and assessment process. It should be read alongside the Government's guidance notes, available 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.

What does this Right mean?

The main provisions are:

i. Local communities can nominate any asset in their local area which promotes the 'social wellbeing' or 'social interests' of the community.
ii. If the nominated asset meets the statutory definition of an asset of community value, the Council must place it on the List of Assets of Community Value and notify the relevant parties.
iii. The owner of the asset has a right to an internal review of this listing decision by the Council, and a right of appeal to an independent tribunal if they remain unhappy following the internal review result.
iv. 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, which will give the local community an initial six week period to say if they are interested in bidding to buy the asset.
v. 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.
vi. 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 sales are exempt from the moratorium.
vii. 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.

viii. 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.

ix. Owners have the right of 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.

What makes an asset 'land 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.*

The definition of 'social interests' in the Act includes cultural, recreational and sporting interests.

Realistic continued or future use of the asset will be assessed on the commercial viability of the proposal (including the ability to raise funds) and the sustainability of that use. The nomination form provides details of the information required to support a realistic continued or future use. It is for the nominating group to provide sufficient evidence to demonstrate this.

What types of assets are excluded from being listed?

- 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.

Who can nominate assets?

- Town and Parish Councils.
- Unincorporated groups. Nominations can be accepted from any unincorporated group 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. 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 non profit distributing
    d) An industrial and provident society that is non- profit distributing.

How do you nominate an asset to be considered for the List of Assets of Community Value?

The Council has a nomination form, which details the information you need to provide. The form is available at https://www.southhams.gov.uk/article/3604/Assets-of-Community-Value for assets in the South Hams and at https://www.westdevon.gov.uk/article/3896/Assets-of-Community-Value for assets in West Devon. The Council will only accept and validate fully completed applications that include all relevant and supporting documentation. Incomplete applications will be returned with a request for missing information to be provided.

Completed forms and supporting documentation can be submitted online (using the above links). Alternatively, they can be sent to The Community Team at the appropriate address below:

Community Team	or	Community Team
South Hams District Council		West Devon Borough Council
Follaton House		Kilworthy Park
Plymouth Road		Drake Road
Totnes		Tavistock
TQ9 5NE		PL19 0BZ

What if you want to withdraw a nomination?

If your community group wishes to withdraw a nomination for whatever reason, please make this request in writing to The Community Team as soon as possible. Nominations can be withdrawn until the point at which a decision on listing is made. This can be at any point up to eight weeks from the date that we receive your nomination form.

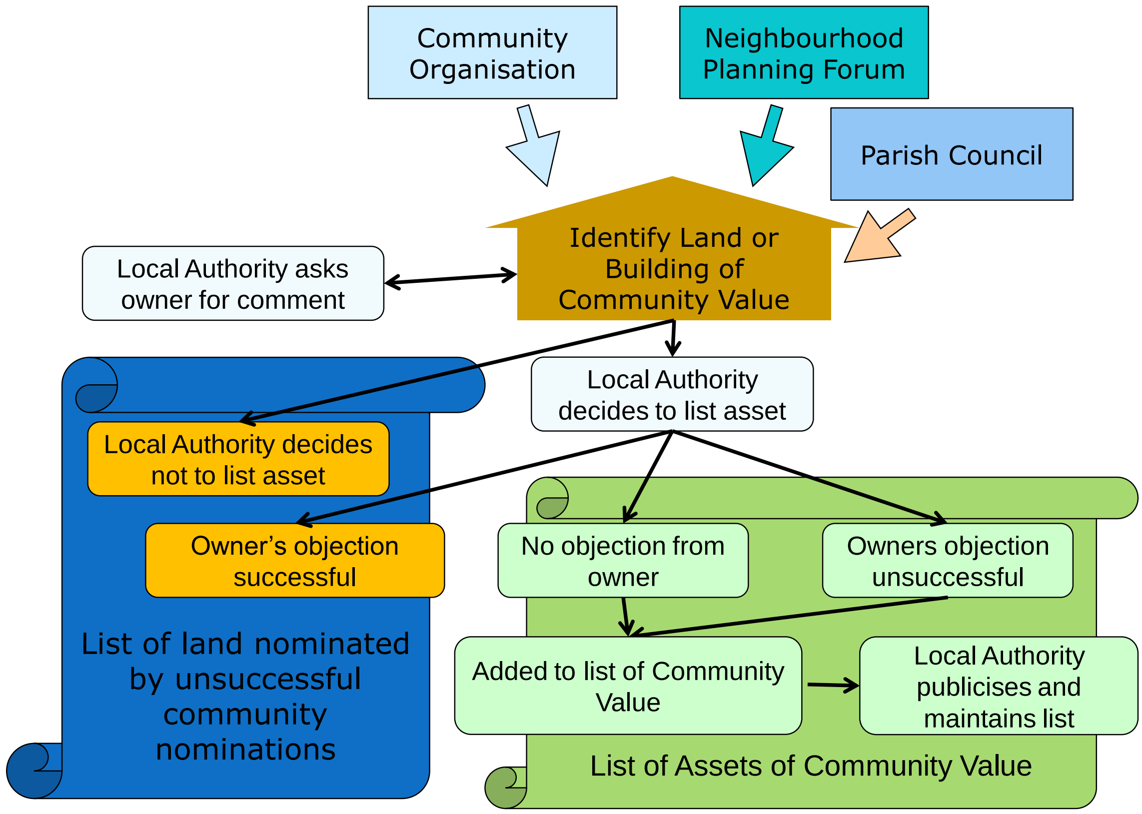
What is the process for listing an asset?

Once the Council is in receipt of a fully complete and valid nomination we will contact the owners and any occupiers of the asset and undertake a full assessment of the nomination. The assessment will be based on the information provided and any written representations from the owner or their agent. In addition, the Council reserves the right to make other checks in its absolute discretion, such as planning applications, and may use relevant information it is aware of from other sources to assist in making the decision.

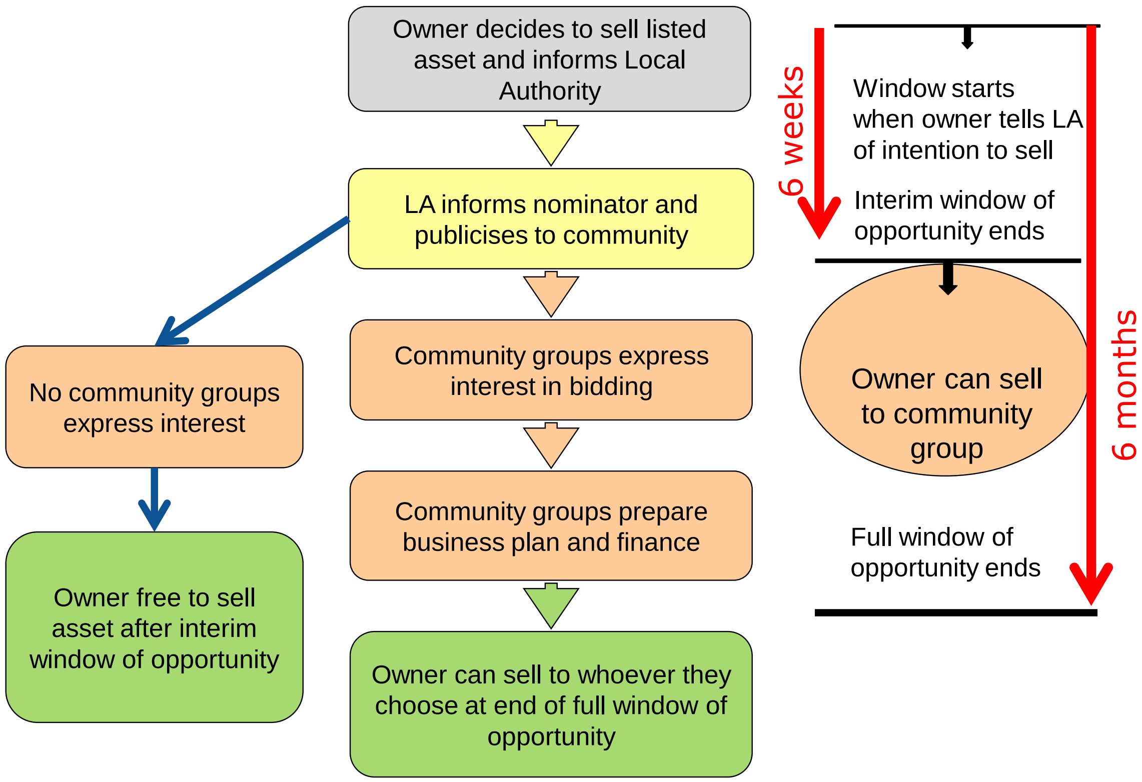
Using the statutory definition of 'land of community value' and based on the nomination form received, the Council has eight weeks from receipt of a valid application to determine whether to list the asset and to notify all relevant parties.

The Council has to publish a 'List of Assets of Community Value' as well as a 'List of unsuccessful nominations' on our websites. These can be found at http://www.southhams.gov.uk/article/3018/Community-Right-to-Bid and http://www.westdevon.gov.uk/article/3019/Community-Right-to-Bid.

The following flow chart from Department for Communities and Local Government demonstrates the process for listing an asset:



What happens if an asset of community value comes up for sale?



Can you renominate an asset on the unsuccessful list?

Whilst there is nothing to stop an asset being renominated and each nomination will be assessed on its own merit, it should be noted that unless the nominee can evidence new or additional information it is unlikely that the decision will change.

Who can express an interest in the purchase of a listed asset?

Only a 'community interest group' can trigger a full moratorium, unlike a nomination that can be made by a wider range of local community groups, including unincorporated local groups. This means a Town/Parish Council in whose area the asset lies or any incorporated community group which meets 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, a Community Interest Company or an Industrial and Provident Society or Community Benefit Society

The variation in definitions between which groups can *nominate an asset* and which groups can *trigger a moratorium* means that these two actions may be completed by different groups. A full moratorium can be triggered by any eligible local community group, not just the one who nominated the asset in the first place.

Are there any exceptions to the Moratorium?

After an asset is listed there are some disposals (by sale, transfer or lease) which will not trigger the moratorium and can proceed without delay.

These are set out at S95(5) of the Localism Act 2011. Please use the following link to see these exceptions in detail
http://www.legislation.gov.uk/ukpga/2011/20/section/95.

Is there a right of appeal for nominating groups who disagree with a listing decision?
There is no community right to appeal the Council's decision not to list an asset, however the Council's complaints procedure can be used in certain circumstances i.e. if the nominee feels that the Council has not followed its own or Government guidance correctly.

How long will an asset stay on the 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 an appeal against a listing has been successful
c) when it forms the opinion that the asset is no longer of community value
d) or no later than 5 years from the date of entry on the list.

What rights do asset owners have?

Listing
Private asset owners have the right to request an internal review of the listing of their asset. They have eight weeks to object to the listing, following notification of their asset being listed. This internal review will be conducted by a senior officer within the council, who was not involved in the original decision to list the asset. The outcome of this review could result in the removal of the asset from the list.

If, following an unsuccessful internal review, the owner still objects to the asset being listed, the owner can lodge an appeal to the First Tier Tribunal. The owner has 28 days, following the notification of the internal review decision, to lodge an appeal.

Compensation
Private owners may claim compensation for loss and expense incurred through the asset being listed or previously 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; however no time limit is specified. If the owner objects to the compensation decision, they have a right of internal review and if they are unhappy with the review outcome they then have 28 days to appeal to the First Tier Tribunal.

What role does the Council play?

- Accepts and administers nominations from the local community.
- Makes the decision on listing the asset.
- Publishes a list of assets of community value and a list of unsuccessful nominations.
- Applies to the Land Registry and Land Charges to impose relevant restrictions on the asset as a result of being listed.
- Informs landowner of listing and conducts internal reviews where necessary.
- Informs the community of listing and if the asset comes up for sale.
- Manages a compensation scheme for landowners.
- Reviews the list after 5 years.

Where can you get further information?
The following links provide further information or you can contact the Community Team at community@swdevon.gov.uk:

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

The Assets of Community Value (England) Regulations 2012
http://www.legislation.gov.uk/uksi/2012/2421/made

My Community Rights (Locality)
http://mycommunityrights.org.uk/community-right-to-bid/

Department for Communities and Local Government:
http://www.communities.gov.uk/communities/communityrights/righttobid/

Information you will need to apply

On the application form:

- Name, address and contact for your organisation;
- Your charity number if you have one;
- Evidence of your local connection;
- Name, location and description of the asset you are nominating;
- Details of the boundary of the asset
- Name, address and contact details for all the assets occupiers;
- Name, address and contact details for all the asset owners;
- If the asset is still in use
  - ❖ Details of current use of the asset and how this furthers social wellbeing/interests, including what is the primary use of the asset;
  - ❖ Any other local community facilities with a similar use
  - ❖ Clear demonstration of how the asset can continue to further social use, including community support, suggested likely uses supported by evidence of how the asset could be acquired, run and maintained
- If the asset is not in use
  - ❖ Details of former use and when it was last used (must have had a social/community use within last two years) and what was the main use of the asset;
  - ❖ How this use furthered social wellbeing/interests
  - ❖ Any other local community facilities with a similar use;
  - ❖ Clear demonstration of how the asset can be brought back into social use within the next 5 years, including community support, suggested likely uses supported by evidence of how the asset could be acquired, run and maintained.

Documents to upload:

- Land Registry Title Plan clearly marked with the asset you are nominating, you can request this via http://www.landregistry.gov.uk/public/property-ownership or on 0844 8921111, or if not available please contact us to agree what type of plan can be accepted – it must clearly delineate boundaries to enable a land registry recording if the asset is listed;
- Land Registry Title Register confirming ownership of the asset, again available via the link above;
- Supporting documentation as required in sections 3a or 3b to evidence community support and your proposals for future community use of the asset.
- A copy of your organisational constitution, if you have one;
- Details of at least 21 local electors who are members of your organisation if you are an unincorporated group;

Please note that it is for the organisation making the application to prove that the asset meets the definition of social value and can realistically remain or return to social use within the next five years; therefore you should ensure that you provide as much information as you can to support your case. The Council will contact the owners and occupiers to advise them of the listing. Any comments or evidence provided by them will also be used to make the decision.