

EAB Report

Wards affected: ALL

Report of Director of Resources

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## **Assets of Community Value: Briefing Paper**

### **Executive Summary**

One of the key policy goals of the Localism Act 2011 (LA 2011) was to give communities more power to become involved in the way local services are delivered by stimulating social, environmental and economic growth and regeneration through community asset ownership. This was intended to counter the damage that can be done to communities and community services when buildings or other amenities are closed or sold.

One of the ways this policy goal was implemented is through the introduction of a community right to bid for and buy local land that is considered to have community value (that is, an ACV). When the owner of land listed as an ACV wants to dispose of it, the community is given the opportunity to develop a bid and raise capital to buy the land. This necessarily means that an owner of land listed as an ACV is restricted from disposing of its land until a certain period of time has passed.

It is important to note the right to bid provisions do not give anyone right of first refusal of an ACV including community groups. They also do not restrict to whom an owner of an ACV can sell their land to or at what price.

This is a briefing paper on Assets of Community Value therefore there are no recommendations. Please see Appendix 3 for useful definitions.

Please note any explanation of the law within this briefing paper is correct as at 6<sup>th</sup> December 2017. This is not legal advice. If legal advice is required, kindly obtain independent legal advice.

## **1. Purpose of Report**

1.1 This briefing paper gives an overview of the law on Assets of Community Value (ACV). This briefing paper will explain:

- What an asset of community value (ACV) is;
- How land can be listed as an ACV and who by;
- The requirement to maintain lists of successful and unsuccessful ACVs;
- Making a bid for an ACV and the resulting ACV moratorium periods.

## **2. What is an asset of community value?**

- 2.1 An ACV is land in a local authority's area that the local authority considers to have community value on the basis that:
- a) the primary current use of the land furthers the social well-being or social interests of the local community; and
  - b) it is realistic to think that the land can continue to be used in a way that will further the social well-being or social interests of the local community (whether or not in the same way as previously); and
  - c) The land has previously been used for the purposes of furthering the social well-being or interests of the local community in the "recent past" and it is realistic to think that it will be used for the same purpose again within the next five years.

## **3. What will not be an asset of community value?**

- 3.1 The following land is not of community value and therefore may not be listed as an ACV:
- a) A residence and any land connected with that residence. However, if the residence is a building that is only partly used as a residence and, but for that residential use of the building, the land would be eligible to be listed as an ACV, the residence and any land connected with that residence can be listed as an ACV.
  - b) Land for which a site licence is required; (Part 1 of the Caravan Sites and Control of Development Act 1960).
  - c) Operational land as defined in section 263 of the Town and Country Planning Act 1990 (TCPA 1990).

## **4. Duty to maintain list of assets of community value**

- 4.1 Every local authority is required to maintain two lists in relation to ACV in its area:
- a) A list of land in its area that is land of community value (the ACV list).

Where land has been included on the ACV list then the entry for that land will be removed after five years (unless it has already been removed).

- b) A list of land unsuccessfully nominated for inclusion on the ACV list.

Land included on this list may be removed after five years, although the local authority is not obliged to remove it. However, while it is included, the reasons for not including the land on the local authority's ACV list should also be noted.

- 4.2 Both these lists must be available for free inspection and a local authority must provide a free copy of the lists if requested to do so. A local authority is required to maintain both these lists, adding, amending and removing entries as soon as reasonably practicable after receiving the information enabling it to make the changes.

## **5. Power to make further regulations about ACV lists**

5.1 The Secretary of State (in relation to England) has the power to make further provisions in relation to the ACV list, by way of regulations, including (in particular) provision about the following:

- a) The form in which the ACV list is to be kept;
- b) Contents of an entry in the ACV list (including matters not to be included in an entry).
- c) Modification of an entry in the ACV list;
- d) Removal of an entry from the ACV list;
- e) Cases where land is to be included in the ACV list and:
  - different parts of the land are in different ownership or occupation;
  - there are multiple estates or interests in the land or any part or parts of it.
- f) Combination of the ACV list with the local authority's list of land, nominated by unsuccessful community nominations.

## **6. Modifying a list entry**

6.1 A local authority must amend or remove an entry on its ACV list to:

- a) Note receipt of any notice by an owner of land listed as an ACV that the owner wants to enter into a relevant disposal of the land, the date of receipt of that notice, and the ends of the interim moratorium period, the full moratorium period and the protected period.
- b) Exclude any land that, after being included on the list, has been the subject of a relevant disposal.
- c) Exclude any land that, following a successful appeal against listing, is no longer to be considered as an ACV.
- d) Exclude any land that it considers to be no longer of community value.

## **7. Notifying the owner and others of the decision to include or remove land from the ACV list**

7.1 A local authority must also give the following persons written notice where land is included or removed from an ACV list:

- a) The owner of the land;

- b) The holder of the freehold estate and the holder of any leasehold estate in the land (where they are not the owner);
- c) The occupier of the land being added or removed (if they are not also the owner);
- d) The parish council if any of the land being added or removed is in the parish council's area;
- e) The voluntary or community body that made the nomination (if the land was included as a result of a community nomination); and
- f) Any other person specified in regulations made by the Secretary of State (in relation to England, no other persons are currently specified).

7.2 Where it is not reasonably practicable to give written notice to these persons, then a local authority must take reasonable, alternative steps to bring the notice to the attention of the relevant person.

7.3 A notice of inclusion of land in the ACV list must draw particular attention to the consequences of the land's inclusion in the ACV list, for the land and its owner and the right to ask for review.

7.4 To be validly served under the LA 2011, the notice must satisfy the requirements of the relevant statutory provision. The LA 2011 does not prescribe a method of service. However, a local authority may choose to use personal delivery or recorded delivery to prove that the notice was served on, and received by, the relevant person.

7.5 Where land is being removed from the list, then a local authority should also include reasons for the removal.

## **8. Procedure to list land as an asset of community value**

8.1 A local authority can include land in its ACV list only in either of the following situations:

- a) In response to a community nomination; and
- b) Where permitted to do so by regulations made by the Secretary of State (in relation to England).

## **9. Community nomination**

9.1 A community nomination is a nomination of land to be included in a local authority's ACV list.

9.2 A community nomination can be made by either:

- a) A parish council (in England) in respect of land within the council's area; or
- b) A person on behalf of a voluntary or community body with a local connection with land in the local authority's area (including a parish council in respect of land outside the council's area)

## **10. Contents of a community nomination**

10.1 A voluntary or community body that wants to nominate land to be listed as an ACV must ensure that its nomination includes the following:

- a) A description of the nominated land, including its proposed boundaries;
- b) A statement of all the information considered in reaching the decision to nominate, including the names of any current occupants and the names and addresses of all those holding a freehold or leasehold estate in the land;
- c) The reasons for thinking that the local authority should conclude that the land is of community value;
- d) Evidence that the voluntary or community body is eligible to make a community nomination

## **11. Procedure following local authority receipt of a community nomination**

11.1 Following receipt of a community nomination for land to be listed as an ACV, a local authority must:

- a) Consider the nomination and keep the owner of the land and others informed;
- b) Reach a decision whether or not to list nominated land within eight weeks of receiving the nomination;
- c) Accept the nomination if the land is in the local authority's area and qualifies as an ACV;
- d) Include the land on its ACV list if it accepts the nomination;
- e) Give written reasons to the nominator if it does not accept the nomination and explain why the land cannot be included on the ACV list. It should also update its list of land nominated by unsuccessful community nominations.

## **12. Challenging inclusion of land on ACV list: owner**

12.1 Where an owner of land listed as an ACV objects to the listing, they can request a review of the decision to list. If a request is made for a listing review, the local authority must review its decision. However, the legislation does not provide for an appeal by a community group challenging a decision not to list.

12.2 If the owner of land listed as an ACV is unhappy with the listing review decision, they have a further right to appeal.

## **13. Listing review: procedure**

13.1 Any request for a listing review must be made in accordance with section 92 of the LA 2011 and Schedule 2 to the ACV Regulations 2012, that is:

- a) A request for a review must be made in writing within eight weeks of the local authority having given written notice that the land is to be listed as an ACV (or where this was not possible, within eight weeks of the date on which the local authority completed its reasonable alternative steps);

- b) A review must be carried out and determined by an officer of the local authority of “appropriate seniority” who was not involved in the original decision;
- c) An owner of land listed as an ACV may appoint a representative to act on their behalf. Where a representative is appointed, the local authority must send to the representative any of the documents required to be provided to the owner (there is no need to provide those documents separately to the owner);
- d) A local authority must notify the owner of the review procedure as soon as is practicable after receiving the written request for a review;
- e) A local authority may choose not to include an oral hearing in the review process unless the owner has made a written request for an oral hearing, in which case an oral hearing must be held.
- f) The owner or their representative may make representations to the reviewer, both orally and in writing. Here the owner will be able to present a case for removing the asset from the list based on whatever evidence they consider appropriate.
- g) A review must be completed within eight weeks of the local authority receiving the written request for a review (unless a longer period is agreed in writing with the owner).
- h) The owner and the local authority each bear their own costs of the review.

13.2 Where a local authority has reviewed its decision, it must notify the owner of its decision and give reasons for it.

13.3 If, following a review, the local authority agrees that the land should not have been listed, then it must remove the entry from the ACV list. The local authority should also update its list of land nominated by unsuccessful community nominations.

13.4 Where the land was included in the list following a community nomination, the local authority must give a written copy of the reasons for the decision to the nominator. The community nomination itself will become unsuccessful and must be listed on the unsuccessful nominations list.

#### **14. Appealing an ACV listing review decision**

14.1 If a request for a listing review results in a decision that the land was correctly listed as an ACV, then the owner of the land who requested the listing review or any subsequent owner of part or the whole of the land can appeal to the First-tier Tribunal (General Regulatory Chamber) against the review decision.

14.2 Under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976), an appeal must be made within 28 days of the local authority sending the owner its review decision. The land remains listed during the appeal process.

14.3 In October 2013, Hackney Council became the first local authority to successfully defend an appeal against a decision to list a popular pub as an ACV.

## **15. Restrictions on disposing of land listed as an ACV**

- 15.1 A person who is an owner of land included in a local authority's ACV list must not enter into a "relevant disposal" of the land unless three conditions are met (A to C). Certain disposals are exempt, and as such do not have to satisfy conditions A to C.

Condition A: the person, who wants to enter into a relevant disposal, must have notified the local authority in writing that they want to enter into a relevant disposal of the land. Once notification has been given, the local authority must:

- a) amend the relevant entry on the ACV list, providing the date the notice was received and the end of the moratorium periods ;
- b) notify the nominator of those matters if the listing was a result of a community nomination; and
- c) publicise the information in the area where the land is situated.

Condition B: that either:

- a) the interim moratorium period has ended without the local authority having received during that period, a written request (however expressed) from any community interest group for the group to be treated as a potential bidder in relation to the land; or
- b) the full moratorium period has ended.

Condition C: the protected period has not ended

*See Appendix 2 Moratorium flowchart*

## **16. Interim moratorium period**

- 16.1 The interim moratorium period is six weeks from the date on which a local authority receives notification of the proposed disposal in satisfaction of Condition A.
- 16.2 During the interim moratorium period, an owner of land listed as an ACV can only dispose of the listed land to a community interest group.
- 16.3 During the interim moratorium period, a community interest group may give written notice to the local authority that it wants to be treated as a potential bidder in relation to the land. There is no requirement on how this request should be expressed, but it must be made in writing.
- 16.4 If no request is made by a community interest group within the six-week interim moratorium period, the owner is free to dispose of the land at the end of the six-week period, and no further moratorium will apply for the duration of the protected period.

16.5 If a community interest group makes a written request to be treated as a bidder for the listed land, the local authority must inform the owner that this request has been received and that the full six-month moratorium period will operate.

## **17. Full moratorium period**

17.1 The full moratorium period is six months from the date on which the local authority receives notification of a proposed disposal satisfying Condition A.

17.2 During the full moratorium period, an owner can continue to market their land and negotiate sales but cannot exchange contracts or enter into a binding contract to exchange contacts, except to a community interest group (that is, a group which either did, or would have been eligible to, trigger the full moratorium period).

17.3 After the full moratorium period, the owner can dispose of land to whoever they choose.

## **18. Protected period**

18.1 The protected period is 18 months from the date on which the local authority receives notification of a proposed disposal satisfying Condition A. It is intended to protect an owner from repeated attempts to block a sale by a community interest group: as there can be no further moratoriums during the protected period. A property will continue to be listed after the protected period has ended.

18.2 For example, if an owner does not sell their property within the protected period, but subsequently decides to put it up for sale for a second time, this will re-trigger the moratorium period process and a new protected period will begin to run.

## **19. Exempt disposals**

19.1 The restrictions on relevant disposals do not apply to the exempt disposals listed in either:

- a) Section 95(5) of the LA 2011
- b) Schedule 3 to the ACV Regulations 2012

19.2 Demonstrating that a disposal of an ACV is an exempt disposal will mean that an owner will not trigger the ACV moratorium provisions.

## **20. Making a bid**

20.1 Once a local authority has received notice under section 95(2) that the owner of land listed as an ACV wants to dispose of it, a community interest group may make a written request to the local authority to be treated as a potential bidder in relation to that land. The local authority must, as soon as practicable after



receiving this request update its ACV list and either pass on the request to the owner of the land or inform them of the details of the request.

- 20.2 A “community interest group” is defined in regulation 12 of the ACV Regulations 2012.
- 20.3 It is important to note that after having requested to be treated as a potential bidder:
- a) There is no obligation for the community interest group to make an offer or to buy or acquire any interest in the land;
  - b) There is no right for the community interest group to buy or acquire any interest in the land; and
  - c) There is no obligation on the land owner to dispose of the land to the community interest group on any terms.
- 20.4 If the community interest group can make an attractive enough bid for the land, the moratorium periods are intended to give the group enough time to arrange finance and to proceed with the deal.

## **21. Adding details of requests to be treated as a bidder**

- 21.1 When a local authority receives a request from a community interest group to be treated as a potential bidder for an ACV, the local authority must add the following information to the relevant entry on the ACV list:
- a) That a community interest group has requested to be treated as a potential bidder for a particular land listed on the ACV list;
  - b) The name of the community interest group submitting the request to be treated as a bidder;
  - c) That restrictions on entering into a relevant disposal of the land to which the moratorium relates continue to apply for six months during the full moratorium period, but that at the end of that period the restrictions will then not apply for a year.

## **22. Right of owner to claim compensation for loss arising from ACV listing**

- 22.1 If an owner or former owner of land listed or previously listed as an ACV incurs loss or expense that it is likely they would not have incurred had the land not been listed as an ACV, they may be able to claim compensation under regulation 14 of the ACV Regulations 2012. Regulation 15 lists certain bodies that are not entitled to claim compensation.
- 22.2 Regulation 14(3) lists the following as examples of types of compensation claim that might be made:

- a) A claim arising from any delay in entering into a binding agreement to sell the land listed as an ACV, which is wholly caused:
  - by relevant disposals being prohibited under the six-week interim moratorium period; or
  - in the case of a full moratorium period, by relevant disposals of the land being prohibited during any part of the six-month full moratorium period.
- b) A claim for reasonable legal expenses incurred in a successful appeal to the First-tier Tribunal (General Regulatory Chamber) against a local authority's decision:
  - to list the land;
  - to refuse to pay compensation; or
  - relating to the amount of compensation offered or paid to the owner.

22.3 Any claim for compensation must:

- a) Be made in writing to the local authority.
- b) Be made within 13 weeks of the loss or expense being incurred or having finished being incurred.
- c) State the amount of compensation sought for each part of the claim.
- d) Include supporting evidence for each part of the claim.

22.4 Once a local authority has reached a decision regarding compensation, it must give the landowner (or former owner) written reasons for its decision. There is no time period within which a local authority must respond to a claim. As a matter of good practice, a local authority should endeavour to reach a decision as quickly as practicable once it has all of the necessary evidence.

## **23. Who cannot apply for compensation?**

23.1 The following public and publicly-funded owners or former owners of land listed or previously listed as an ACV cannot apply for compensation for loss or expense in relation to listed land:

- a) An authority or other body in respect of loss or expense incurred at a time when it has accounts that are required to be audited under section 2 of the Audit Commission Act 1998;
- b) A government department, authority or other body in respect of loss or expense incurred at a time when section 6 of the National Audit Act 1983 applies to it; and
- c) An authority or body in respect of loss or expense incurred in any of its financial years if its use of resources in that year is examinable under section 7 of the National Audit Act 1983.

## **24. Reviewing a local authority compensation decision**

- 24.1 An owner or former owner of land listed or previously listed as an ACV who has made a claim for compensation under regulation 14 of the ACV Regulations 2012 may ask a local authority to review either or both of its decisions relating to:
- a) Whether compensation should be paid;
  - b) The amount of compensation that should be paid
- 24.2 The request for a compensation review must be made in writing within eight weeks of the date the local authority gave the owner (or former owner) written reasons for its original decision regarding compensation (unless any longer period is agreed in writing with the authority).
- 24.3 The local authority must review its decision if an owner requests a compensation review which meets these requirements.
- 24.4 Where a local authority has reviewed its original compensation decision, it must notify the person who requested the review, in writing, of its compensation review decision and the reasons for it.
- 24.5 The procedure for reviewing a compensation decision is very similar to that for reviewing a listing decision set out in Schedule 2 . However, in relation to making a further appeal to the First-tier Tribunal (General Regulatory Chamber) only the owner or former owner who requested the review may appeal against the decision (this is different to a listing appeal where a new owner who has bought the land following a request for a listing review may appeal against the review decision).

## **25. Local authorities: meeting compensation costs**

- 25.1 The DCLG has factored the costs of meeting the compensation requirements within the new burdens funding (based on 40 successful claims for compensation being made across all local authorities over a year).
- 25.2 In addition to the new burdens funding, the government will meet costs of compensation payments paid by local authorities of over £20,000 in a financial year (either for a single claim or a number of smaller claims).

## **26. Safeguarding land listed as an ACV**

- 26.1 The ACV Regulations 2012 protect land that is listed as an ACV and prevent it from being disposed of in breach of section 95 of the LA 2011. This is done by:
- a) Registering the ACV listing as a local land charge; and
  - b) Entry of a restriction on the land register

## **27. Registering the listed land as a local land charge**

- 27.1 If land is listed as an ACV, this constitutes a local land charge for the purposes of the Local Land Charges Act 1975. The local authority will be the “originating authority” and is required to register the ACV listing in the local land charges register.
- 27.2 As a local land charge, the listing is binding on successive owners of the land, whether or not they know of the listing (or whether the listing is actually registered in the local land charges register). Anyone carrying out an investigation of title of the land (for example on a prospective purchase, grant of lease or mortgage), will find out about the ACV listing when they carry out a local land charges search.

## **28. Local authorities must co-operate if land falls between them**

- 28.1 Where land that is listed as an ACV falls within two or more local authority areas, each of the local authorities must co-operate (section 102, LA 2011).

## **29. Conclusion:**

### **Community Right to challenge**

- 29.1 The Community Right to Challenge (CRC) is different from the Community Right to Bid (CRB). The CRC is sometimes confused with the CRB as both were created by the LA 2011. The CRC is part of the government's drive to decentralise public services and to give communities the opportunity to deliver them.
- 29.2 The CRC allows certain "relevant bodies" to challenge a "relevant authority" by expressing an interest in running a "relevant service". When such a challenge is made and accepted by the relevant authority, this will trigger a procurement process. This process must comply with any applicable public procurement requirements. A relevant body will then be able to bid to provide the relevant services alongside any other bidders (including, potentially, an in-house department of the relevant authority).

### **Reform of the ACV regime**

- 29.3 On 3 February 2015, the House of Commons Communities and Local Government Committee (HOC) published a report on community rights and its recommendations for what the government should cover when it undertakes its post-legislative scrutiny of community rights in 2015 (House of Commons Communities and Local Government Committee: Community Rights (Sixth Report of Session 2014-15)).
- 29.4 The HOC report observed that almost 50% of attempts to buy ACVs by community groups are unsuccessful and as such there must be scope for

enhancing their chances of success at the bidding stage. In addition there needed to be more awareness of community rights, including the right to bid and there should also be more funding support for those exercising community rights so that they are prepared to take on the public assets that they are offered. The HOC made several recommendations to the government about conducting a consultation.

- 29.5 The government has responded to the recommendations and confirmed that it will be carrying out a post-implementation review. This was expected in late 2015 but to date has not taken place.

### **30. Appendices**

Appendix 1 Listing Process flowchart

Appendix 2 Moratorium periods flowchart

Appendix 3 Definitions

### **31. Bibliography**

Thomson Reuters Practical Law