



Guidance for nominations for listing Assets of community value

Please read these guidance notes before making a nomination to list property or land as a community asset. If you have any queries, please contact

Partnerships Team
District Council Offices
Kesteven Street
Sleaford
Lincs
NG34 7EF
E-mail: partnershipsteam@n-kesteven.gov.uk
Tel: (01529) 414155

Completed forms should be submitted by e-mail to partnershipsteam@n-kesteven.gov.uk

There is further information on the Community Right to Bid process at the following link:

<http://mycommunity.org.uk/take-action/land-and-building-assets/assets-of-community-value-right-to-bid/>. The Guide outlines the stages involved in the process including: how to identify assets of community value; the nomination process; triggering a delay in the sale process (the moratorium); bidding for the property; and managing the asset.

Who may nominate an asset?

Assets may not be nominated by individuals. Nominations may be made by the following types of community group only:

- a) Amenity societies or community interest groups with a local connection that are either a charity, a community interest company, a company limited by guarantee that is non-profit distributing or an industrial or provident society that is non-profit distributing.
- b) Unincorporated groups of at least 21 local people who appear either on the electoral roll within the local authority where the asset is situated, or within a neighbouring local authority. This would include residents' associations and amenity societies not defined by Neighbourhood Forums as set out in Section 61F of the Town and Country Planning Act 1990.
- c) Neighbourhood Forums as set out in Section 61F of the Town and Country Planning Act 1990.

What types of buildings / sites may be nominated?

Nominated assets may be owned by anybody, including the local authority, the Crown, businesses and private individuals. Nominated assets must meet the following criteria:

- The current use (or use in the recent past) of the building or land furthers the social wellbeing or interests of the local community as its primary purpose
- Future use of the building could reasonably be expected to continue such use within the next five years

What information must we supply?

Please complete the form as fully as possible. We require information about the individual making the nomination on behalf of their group, details of the group itself and also detailed information about the asset being nominated (for instance, if you are nominating a public house is it just the building you are nominating, or is there also a car park which you wish to include? If you don't tell us, we won't know.) Where you are not able to supply certain information (for instance the name of the registered owner of the building or site) please say so rather than leave the section blank.

We also require that you submit a site plan with the outline of the asset you wish to nominate highlighted. You are also advised that submitting additional documents to support your application will help us to speed up our decision.

A list of the kind of evidence that would be useful:

- Supporting evidence of what groups and people use the nominated asset and what events take place there.
- How the asset contributes to the cultural, recreational or sporting interests of the community.
- Any letters of support from groups or persons using the asset.
- List of 21 names of local members (on electoral role in the relevant borough) if you represent an unincorporated community group.
- Why it is realistic to think that the asset could in the future support the social interests of the community.

How much does it cost?

There is no charge. The new service is free.

How long will it take?

Provided we have enough information to make a decision at the beginning, we will give you a decision on whether your nominated asset will be added to the List of Assets of Community Value within eight weeks of accepting your nomination as valid.

Who will you consult?

The owner of the nominated asset will be consulted together with any tenants or leaseholders. The Town or Parish Council and Ward Member(s) will also be notified of the nomination.

Where will the new Register be held, and how will people know about it?

The Register will be on the website. If the asset is eventually listed, it will also be recorded on the relevant authority's Local Land Charges Register, which is open to inspection at any time.

Owners of registered assets

Owners of registered assets have a number of rights as well as obligations under this new duty. These are set out below.

What happens if the owner wishes to dispose of a registered asset?

Owners of registered assets must inform the local authority if they wish to sell the asset, and then wait for a period of six weeks (referred to as the “interim Moratorium”) to see whether any community groups wish to register an interest to bid. If no group registers a request within six weeks the owner may dispose of the asset immediately.

If a community group does register an interest, the owner must wait for a period of six months (“full moratorium”) before selling the asset and must consider the community group’s bid. However, the owner is not obliged to sell the asset to the community group, and may dispose of it to whomsoever they please at whatever price after the moratorium period has passed.

Following the “interim” or “full moratorium” there is a “protected period” of 18 months (running from the original date the owner notified the local authority of an intention to sell) in which the owner is free to sell their property to whomever they choose without further delay.

Once the “protected period” ends, if the disposal has not been concluded the process re-starts and the notification and moratorium procedures must again be followed.

How do I register an interest to bid for the asset?

Should a community group wish to register an interest you need to complete the Assets of community value intention to bid form found in the downloads tab. This must be received during the six week “Interim Moratorium”.

A community interest group is defined as a narrower range of bodies than those who can nominate an asset for inclusion on the list in the first place. A community interest group is either: a Parish or Town council; a charity; a community interest company; or one of the following (which does not distribute any surplus it makes to its members): a company limited by guarantee; a community benefit society (new name for industrial and provident society). The community interest group must have a local connection with the land.

Exemptions

Not all relevant disposals require written notice to the Council as there are some that do not trigger the operation of the moratorium provisions. A disposal of the type set out in section 95(5) of the Localism Act 2011 or in Schedule 3 to the Regulations (2012) is classified as an exempt disposal and can proceed without triggering the moratorium. The appendix to this Guidance Note summarises the numerous potential exempt disposals i.e. the specific circumstances in which an owner will not need to notify the Council of an intention to sell under Section 95(2) of the Act. Examples of such circumstances include where a business and associated land are being sold as a going concern and a wide range of non-commercial disposals of land, for example through the will of a deceased owner; in a transfer between family members; and through the gift of the property. Please refer to the appendix for the full list of exempt disposals.

In circumstances where an owner is uncertain whether an exempt disposal will be carried out the giving notice of intention to dispose as a precaution is sensible. In that situation, if the owner were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period.

Agreement to registering an asset

If a nomination is received to register an asset the Council will, as part of the consultative process, consult the owner, tenants and leaseholders. The relevant Town or Parish Council and Ward Member(s) will also be notified. If these people wish, they may object to the registration and the Council will take their views into consideration when making its decision.

Once an asset is registered, the owner may appeal against this decision and request an internal review. If the internal review finds in favour of the owner, the asset will be removed from the register.

If the outcome of an internal review is unsuccessful, the owner of the asset may make a final appeal to an independent tribunal by emailing:

GRC.CommunityRights@hmcts.gsi.gov.uk or by writing to

The Tribunal Clerk
Community Right to Bid Appeals
HM Courts and Tribunals
First Tier Tribunal (General Regulatory Chamber)
P O Box 9300
Leicester
LE1 8DJ

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Compensation

Owners may feel that they have suffered loss or additional expense through their asset being listed. This may include a loss arising from a delay in entering into an agreement to sell due to the moratorium periods, or for legal expenses incurred in a successful appeal.

Claims for compensation must be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finishing being incurred. Claims must be made in writing to the local authority stating the amount being claimed and must provide proof of loss. The local authority will consider the claim for compensation, and must explain its decision about whether the claim is valid in writing. There is no time limit for this. An owner may ask for an internal review of the compensation claim. If still unsatisfied at the conclusion of this process, the owner can appeal to the First Tier Tribunal.

Enforcing the rules

There is a clear penalty for non-compliance with the rules by owners. All new registrations on the Register of Assets of Community Value will also be recorded on the Local Land Charges Register. Therefore, when the asset changes hands, a search of the register will reveal the asset's status.

When an asset is registered, the local authority will also inform the Land Registry. Where a sale is found to have taken place which does not comply with the Localism Act 2011, that sale will be void.

Appendix - Exempt Disposals

Not all proposed sales have to be notified to the local authority. A range of disposals are exempt. A number are set out in section 95(5) of the Act, and others are in the Regulations (Schedule 3).

The following provides a summary of the full set of exemptions set out in an extract from the DCLG publication: "Community Right to Bid: Non-statutory advice note for local authorities", Department for Communities and Local Government (October 2012) The full document is available via the link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14880/Community_Right_to_Bid_-_Non-statutory_advice_note_for_local_authorities.pdf

Extract from Annex A - Exemptions

With regard to the following exemptions (with the exception of the first), the local authority will usually not know that the disposal is taking place, because an owner who is confident that the transfer they contemplate will be exempt will not need to notify the authority of intention to sell under section 95(2) of the Act. In some cases an owner may not be sure whether they are going to succeed in making an exempt disposal or not – for instance if they wish to sell the land together with a business sold as a going concern – and may notify the authority as a precaution. In that situation, if they were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period. There is no requirement in the legislation that in such circumstances the owner has to explain to the local authority that the disposal is exempt. However it would be helpful for them to do so, and authorities might want to include advice to this effect in any explanation they send to owners about how the moratorium rules work.

The full list of exemptions is as follows. The first is in a different category to the remainder, in that the moratorium rules will have been triggered by notification from the owner, but the sale will be able to take place during the moratorium. Categories (b) to (j) are in section 95(5) of the Act, and (k) to (y) are in Schedule 3 to the Regulations. Item (f) – part-listed land – is partly defined in the Act, and partly in the Regulations.

- a. disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13(1)
- b. disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c. disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d. disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e. disposals between family members ("family member" is defined in section 95(7) of the Act as the owner's spouse or partner and descendants of grandparents – which includes the owner's own parents, but not the grandparents)
- f. part-listed land – i.e. sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)
- g. sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)

- h. disposals occasioned by somebody becoming or ceasing to be a trustee
- i. disposal by trustees in connection with the trust, as specified
- j. a disposal occasioned by a person becoming or ceasing to be a partner in a partnership Page 9 of 9
- k. transfers made in pursuance of a court order
- l. transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m. a transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with “incapacity” being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n. a disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before the land was listed (and in this context it should be noted that an option etc entered into *after* the land is listed would count as a relevant disposal under section 96(4) of the Act)
- o. disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 “Compulsory Purchase and the Crichton Down Rules”:
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- p. sale by a lender under a power of sale (i.e. where the land was security for a loan)
- q. disposal of land under bankruptcy or other insolvency proceedings – the wording is “insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986”, which gives a very wide definition of insolvency proceedings
- r. compulsory purchase disposals (see the wide definition of “statutory compulsory purchase” in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)
- s. the grant of an agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- t. transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161(5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)
- u. disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e)5. See final paragraph below for details.
- v. disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.

w. disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)

x. a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy

y. disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with