

Asset of Community Value Policy

Version 1

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Asset of Community Value Policy

This policy will:

- Provide clarity so that officers and members can effectively support the management of the process; and
- Provide transparency for those nominating an asset and asset owners so that they are easily able to navigate the Council's process.

This policy should be read in conjunction with the Department for Levelling Up Housing and Communities non-statutory guidance.

Chapter 3 of Part 5 of the Localism Act 2011, provides full details of the legislative provisions:

[Community Right to Bid: non-statutory advice note for local authorities - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362222/Community_Right_to_Bid_-_non-statutory_advice_note_for_local_authorities_-_GOV.UK.pdf)
(www.gov.uk)

Introduction

The Community Right to Bid ('the Right') also referred to as Assets of Community Value was introduced by the Localism Act 2011 ('the Act') and came into force in September 2012.

The aim of the Right is:

- to ensure that buildings and amenities can be kept in public use and remain integral to community life. This is achieved by providing town and parish councils and local voluntary and community organisations with the right to nominate local land or buildings which they believe to be of importance to their community's social well-being, for inclusion on an assets of community value list maintained by the local authority,
- When a listed asset comes up for sale, the Regulations provide for a delay in the sale process. This delay allows for interested community group(s) to prepare and make a bid for the asset on the open market.
- The Regulations do not give the community group any other rights, other than the delay so they can prepare a bid.

The Right does not apply to residential property or operational land as defined in the Town and Country Planning Act 1990 Part 2: [Town and Country Planning Act 1990 Section 215: best practice guidance – GOV.UK \(www.gov.uk\)](#)

Who Can Submit a Community Nomination

A nomination can only be made by an eligible body:

- Town or Parish Councils. This may be for an asset in its own area, or in the neighbouring parish council.
- Neighbouring Town or Parish Councils. If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.
- 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 area, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.
- Neighbourhood forums. The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community.
- Community interest groups with a local connection. These must have one or more of the following structures:
 - A charity
 - A community interest company
 - A company limited by guarantee that is non-profit distributing
 - An industrial and provident society that is non-profit distributing (these groups have been renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010)

Nominations may not be made by individuals and principle local authorities cannot list their own assets; it has to be nominated.

How to Submit an Application

You can submit an application by either:

- Completing a form and returning to: acv@westmorlandandfurness.gov.uk
- Completing the online form here: [Asset of Community Value Nomination Form](#)

Information Required for a Valid Nomination

The following information is required for a valid nomination:

- The name of nominating body.
- Relevant contact details of the nominating body.
- The category of nominating body (with reference to the “Who can submit a community nomination” section of this document).
- Evidence of the nominating body’s local connection.
- Evidence of the eligibility of the body to make a nomination. Refer to the description of categories of eligible nominating bodies in the “Who can submit a community nomination” section of this document. Evidence could include the Constitution, Terms of Reference, Standing Orders, Trust Deed, Articles of Association, Interest Statement for Community Interest Company; and accounts showing whether any surplus is made, and geographically where it is applied, on what and whether any of the surplus is given to members.
- Location of nominated property/land together with up-to-date office copies from the Land Registry, including Title Register and Title Plan, to scale showing boundaries edged red. (Alternatively a plan showing OS co-ordinates, road names, and landmarks). The boundaries do not have to be the same as ownership boundaries, nor does the land have to be in the same ownership.
- Names and addresses of owners of freehold and leasehold interests and occupiers.
- Actual current use of the property/land.
- Reasons to believe that the current use, or another community use, can be carried out on the land for the foreseeable future i.e. within the next 5 years.
- The reasons for nominating the property/land, including evidence of community value. This can be in the form of testimonials, advertisements, lists of clubs/groups using facilities and the frequency of use, photographs, copies of web pages showing history of the property/land or its use/events. Such evidence must relate to the primary use of the building or land and further the social wellbeing or social interests of the local community. Note: this list is not exhaustive.

The following examples, which are not exhaustive, give an indication of what might be considered as being of 'community value'

- a village shop
- a community centre
- a children’s centre
- a library building
- a local pub
- park

The following would not be considered as having ‘Community Value’:

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- Land and property where community use is ancillary to the main use/purpose
- Land and buildings which are primarily residential in purpose (the Regulations set out certain exceptions for a building that is only partly used as a residence, such as pubs and shops)
- licensed (and some unlicensed) Caravan Sites
- Assets being transferred between businesses
- Hotels

Nominations can be made at any time, including after a potential asset has been put onto the market. However, no restrictions on sale arise from nomination – it is only listing which brings the statutory provisions into play.

Validation

For a nomination to be valid for consideration and determination it must provide all necessary information required on the application form; the Council calls this '**application validation**'. Please ensure that your application form has been completed correctly with sufficient information.

Incomplete application (Invalid)

If an application is considered 'invalid', it means specific details were missing or there was not enough information provided. If this is the case you will receive a letter explaining what is missing so you can complete and resubmit the application form. This will be communicated to the applicant within seven working days.

Complete Application (Valid)

If the application is considered 'valid', then from that day the Council has 8 weeks to assess the application and either agree to add it to the Community Asset Register or not and inform the appropriate parties of its decision.

Consideration of Community Value and Determination of a Nomination

Once validated your application will be considered. The Council will consider the application in such a way as to establish if the property or land has been nominated correctly by considering:

- Is the land/ property in Westmorland and Furness?
- Is the organisation nominating allowed to do so?
- Does the property meet the definition?
- Is the property or land excluded?

During the assessment additional information and advice may be sought from others to ensure an appropriate recommendation is given, this may include:

- Legal advice
- The applicant to clarify aspects of the application or provide more detail
- A person with planning experience
- A person with knowledge of the relevant property or land
- A person with knowledge of the area and local community

Any discussion or consultation regarding an application will be noted.

An assigned officer will contact the nominating group to assess the evidence of usage and any supporting evidence that will support their nomination. For due diligence, the assigned officer may ask colleagues in the relevant Community Development team to help ensure that clear and concise evidence of previous community use is collected and assessed as part of the application assessment process. This may include approaching non-nominating community groups and organisations in order to build a clear picture of previous use, to support the decision making process.

Once the assessment is complete a report will be produced explaining the reasons for the recommendation. This will be presented to either the Assistant Director of Safe & Strong Communities or the Assistant Director of Community Infrastructure, who will make a decision as to whether the application is accepted or rejected.

If More Information is Required

If there is insufficient information in the original application for the Council to come to an informed recommendation you will be contacted by letter clearly stating the additional information/ evidence required.

Once such a letter has been sent the 8 week assessment period is frozen until you return all the information requested. Once everything requested is received the time will recommence.

Process

1. Application received
2. Validate nomination form. If application is considered 'invalid', contact nominating party to request further information required to be considered 'valid'
3. Once application is considered as 'valid', move on to 'Assessment Period' (8 week time frame starting from date application is considered valid)
4. Due diligence including discussions with nominating group regarding evidence supporting the application, contacting asset owner, ward member(s) and any other relevant groups for comment on nomination (include in report)
5. Fill out assessment form including any comments as part of the consultation
6. Decide on recommendation
7. Complete Officer Delegated Decision Record – including any comments received
8. Send report and appendices Legal, HR and Finance for comment
9. Amend report/appendices in line with comments/suggestions from Legal
10. Send zip file including report and appendices to David Haughian/Tracey Ingham to make decision and sign off
11. Once decision has been made, notify owner, nominating party and ward member(s) of decision
12. Update Community Asset Register accordingly (via web content update form)

Following Determinations

All parties, therefore the nominating party and the asset owner will be informed of the Council's decision in writing.

Assets of Community Value

If the Council determines that the nomination does meet the community value definition, the asset is then successfully listed as an asset of community value. The asset will be included in the list of assets of community value and it will remain on that list for five years.¹

The Council must also list the asset on the local land charges register via email and if the land is registered apply for a restriction on the Land Register, via the Land Registry e-portal.

If the Council determines that the nomination does not meet the community value definition, the asset goes on the list of assets nominated but as unsuccessful and will be removed from the register after a period of 5 years²

Relevant parties will be notified of the removal of an asset from the register.

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1. Or removed through one of the circumstances explained in the Statutory Instrument 2421 and Non-statutory advice note for local authorities.
 2. Or removed through one of the circumstances explained in the Statutory Instrument 2421 and Non-statutory advice note for local authorities.

Disposing of a Listed Asset of Community Value

Once the asset is successfully listed nothing further will happen unless and until the Owner decides to dispose of it, in which case they must notify the Council. In turn the Council will then notify the nominating interested parties and publish the intention to sell on the Community Right to Bid pages of the website. Should they be interested in buying the asset they have 6 weeks to make a written request to be treated as a potential bidder to the Council. If not done so in this 6 week period the Owner is free to sell the asset.

If a request is made, the relevant community group has 6 months to prepare a bid to buy the asset before this goes on sale on the open market. This is called the 'moratorium period'.

Protected Period –18 months after the notice of disposal, if the owner has not disposed of the asset, they must start the process again.

The Right to Bid only applies when the asset's Owner decides to dispose of it. There is no compulsion on the owner to sell the asset.

The scheme does not give first refusal rights to the interested community groups and it is not a community right to buy the asset, just to bid. This means that the local community bid may not be the successful one.

Disposal Process

The disposal process is as follows:

1. Owner informs Council of their intention to dispose of the asset in writing
 - 18 month protected period runs from date of notice of disposal
2. Six-week moratorium triggered, website updated and community group informed
 - Community groups DO express an interest to purchase, in which case:
 - Six-month moratorium triggered. Website updated and community group informed
 - Owner free to dispose of asset to buyer of choice
 - Asset register updated with new owner (If asset not disposed of before end of Protected Period Disposal Process must begin again)
 - Community groups DO NOT express an interest to purchase, in which case:
 - Owner free to dispose of asset to buyer of choice
 - Asset register updated with new owner
 - (If asset not disposed of before end of Protected Period Disposal Process must begin again)

Assets of Community Value – Explanation of Terms

The Act states that an Asset is of community value if in the opinion of the Council:

- An actual current use of the Asset that is not ancillary furthers the social wellbeing or social interests of the local community;
- It is realistic to think that there can continue to be a principle use of the Asset which will further (whether or not in the same way) the social wellbeing or social interests of the local community;
- There was a time in the recent past when an actual use of the Asset (which was not an ancillary) 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 Asset that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

Terms that require explanation

The Act left a number of terms that require explanation.

Social Wellbeing

The Act defines that social interests include the following: cultural interests, recreational interests and sporting interests. If the use does not meet the social interest criteria then the Asset can only be listed if it meets the social wellbeing criteria. However, there is no set definition for social wellbeing, either in the Act or in general circulation. Whilst attempts to define social wellbeing exist, they are ambiguous and gave little in the way of guidance. In the absence of a set definition the Council will use the following definition as a guide:

“Those aspects of life that society collectively agrees are important for a person’s happiness, quality of life and welfare”. (Source - New Zealand Ministry of Social Development’s 2008 Social Report)

Realistic

During the passage of the Act and subsequent regulations through Parliament there was debate about the use of the word realistic and principle of the continued use of an Asset.

The Councils approach will be:

- If the Asset has a current principle use that meets the criteria, it will be presumed that the same use can continue in the future; and
- If the Asset had a use in the recent past that meets the criteria, it will be presumed that the same use can continue, unless there have been events that would prevent such a use, such as dereliction or demolition.

Recent Past

The phrase recent past is also not defined in the Act. The Act does however define a time period for when the land could be brought back into community use as five years. Once listed, land remains on the list for five years.

The reason for not defining recent past is to provide local authorities flexibility in cases, such as when land has been empty, derelict or disused for less than five years. The Council's criteria for defining recent past will be five years. Exceptions may be considered by the Council in the following cases:

- If the land has been disused for more than five years and when it was last in use its principle use furthered the social wellbeing or social interests of the community;
- If the land has been in use, but has been used for a non-qualifying purpose, and the land was purchased as using a compulsory purchase order or other statutory power for use by the Council or other public sector body.

Request for Review of a Decision to List Land as an Asset of Community Value

An Owner can ask for a review of the decision within 8 weeks of being notified of their property being listed as a 'community asset'. Initially, this must be an internal review. If as an Owner you are still not satisfied you can submit an appeal for a tribunal review. An appeal must be given in writing or via email, see the contact details below.

Both the processes are explained below:

Internal review

A Senior Officer who is independent of the Assets of Community Value decision making process will conduct the review. Officers involved in the making of the original decision cannot conduct a review. The officer conducting the review will be of greater seniority than the officer that made the original decision.

The property will remain listed while the review is carried out.

The Council must complete their review within 8 weeks from the date of receiving the request to carry out the review, unless a longer period has been agreed in writing.

Nominating community group: There is no right of review.

Internal Review contact details:

By email:

- Tracey Ingham - Assistant Director - Safe and Strong Communities
tracey.ingham@westmorlandandfurness.gov.uk
- David Haughian - Assistant Director - Community Infrastructure
David.Haughian@westmorlandandfurness.gov.uk

By post: (Contacts as above)

Westmorland and Furness Council

South Lakeland House

Lowther Street

Kendal

Cumbria LA9 4DQ

Tribunal Review

If the Owner is dissatisfied with the internal review, they will have 28 days from the date on which the Council notifies them of the internal review decision to appeal to the General Regulatory Chamber of the First-Tier Tribunal. Owners must submit their appeal in writing to the First-Tier Tribunal either:

- By email: grc@justice.gov.uk
- By post:

Tribunal Clerk

Community Right to Bid Appeals

HM Courts & Tribunals

First-tier Tribunal (General Regulatory Chamber)

P.O. Box 9300

Leicester, LE1 8D

- By telephone: 0300 123 4504 (Mon – Fri, 08:30– 17:00)

NB Tribunal staff can explain how the process works but cannot provide legal advice.