



Community Right to Bid Policy

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1.0 Policy Statement

- 1.1 This policy sets out the procedure that will be followed by the Council when dealing with the Community Right to Bid which was introduced by the Localism Act 2011.

2.0 What is covered in this policy

- 2.1 The Community Right to Bid gives local groups the right to nominate a building or other land for listing by the local authority as an asset of community value. It can be listed if a principal use of the asset furthers (or has recently furthered) their community's social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. Nominated assets may be owned by anybody, including the local authority and the Crown. If an asset is properly listed when it is then put up for sale there is more time for the group to raise finance and make a bid for the asset. It is clear however that this policy cannot be used as a means to prevent future development.
- 2.2 There are some categories of assets that are excluded from listing, the principal one being residential property (which includes gardens, outbuildings and other associated land). The exception to this general exclusion is where residential property contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat, land licensed for use as a residential caravan site and operational land of statutory undertakers.
- 2.3 The local authority is required to administer the two main parts to the scheme:
- nominating and listing the assets
 - the moratorium

3.0 List of Assets of Community Value

- 3.1 The Local Authority is required to maintain both a list of assets that have been accepted as assets of community value and those that have been unsuccessful in being listed. Blaby District Council (BDC) will publish both the list of successful and unsuccessfully nominated assets on its website and make available copies on request.
- 3.2 To the list of assets of community value will be added the following, as soon as practicable:
- that a notification by the owner of intention to dispose of the land has been received by BDC and the date this was received.
 - in all cases under the above the end dates of the interim and full moratorium period and the protected period.
 - where relevant, that the full moratorium has been triggered
 - the identity of the community group that triggered a moratorium where applicable.
- 3.3 The list will be updated to remove assets as soon as practicable in the following circumstances:
- after a relevant disposal
 - when an appeal against a listing has been successful

- when the opinion is formed that the land or building is no longer of community value.
- Or no later than 5 years from the date of entry on the list.

3.4 The list of assets unsuccessfully nominated will be undated as soon as practicable in the following cases:

- when the outcome of a listing review is unsuccessful
- when the asset has been listed for a period of 5 years.

4.0 Who may nominate

4.1 Local Authorities cannot list land on their own initiative – it must be nominated. For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located).

4.2 The voluntary or community bodies which may make community nominations are set out below:

- **Parish Councils.** This may be for an asset in its own area or in a neighbouring parish.
- **Neighbouring 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 or a neighbouring local authority. This enables a local group formed to try to save an asset to nominate prior to them acquiring charitable status or a corporate structure.
- **Neighbourhood forums.** Criteria and procedure for becoming a neighbourhood forum is set out in the Town and Country Planning Act 1990 and added to by the Localism Act 2011.
- **Community Interest groups with a local connection.** These must have one 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.

5.0 Contents of a nomination

5.1 A nomination must include the following information for BDC to consider:

- A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, nor is it necessary for all parts of the nominated site to be in the same ownership.
- Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
- The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
- The nominator's eligibility to make the nomination.

- Community nominations may be made at any time, including after an asset has been put on the market. No restrictions on the sale arise from nomination – it is only on listing that the statutory provisions are brought into place.

6.0 Procedure when considering listing

6.1 The Council will make a decision in response to a nomination within 8 weeks of receiving the nomination.

6.2 The Council may ask the voluntary or community body to modify a nomination if for some reason it may otherwise be rejected. For example, if insufficient information has been provided in the nomination submission. The 8 week decision period will commence when all of the correct information has been received by BDC, subject to agreement from the body who has submitted the nomination.

6.3 The Council, will inform the following if an asset has been nominated:

- a parish council in which the land lies;
- the owner as defined in section 107 of the Localism Act;
- all others with a legal estate;
- any lawful occupant.

6.4 Nominations will be considered by, the Democratic Services, Scrutiny and Governance Manager, a member of BDC's Senior Leadership Team and a Cabinet Portfolio Holder taking into account:

- whether the principal use of the asset furthers (or has recently furthered) their community's social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so during the next five years ;
- Whether the asset is land that may or may not be listed in accordance with statutory guidance.

If any of these individuals hold a potential conflict of interest (such as a dual role as a Parish Councillor) then a suitable substitute will be sourced. If the decision is made not to agree to the nomination then BDC will place the asset on a list of assets nominated but not listed.

6.5 BDC will inform the following of their decision:

- the owner of the asset along with an explanation of the implications of the decision;
- the occupier of the land along with an explanation of the implications;
- the community nominator of the asset;
- any freeholders and leaseholders of the asset along with an explanation of the implications;
- the parish council the land lies in.

If BDC is unable to give notice to any of these people in the usual manner it will take reasonable steps to bring this to the person's attention.

6.6 BDC will, as is required, when an asset is listed or removed:

- ensure that the asset has been listed on or removed from the local land charges register.

- apply to the Land Registry for the entry or cancellation of a restriction on the Land Register (using the prescribed wording).

This is to ensure that all prospective new owners will be aware that an asset has been listed.

7.0 Procedure to be followed for listing review

- 7.1 If an asset has been included on the list, an owner has the right to request BDC to review its decision. The owner is required to request this review within 8 weeks from the date written notice of the listing was given. The property will remain listed while the review is carried out.
- 7.2 The review of the decision will be conducted by the Corporate Services Group Manager, one other member of the Senior Leadership Team and a Cabinet Portfolio Holder (none of which were involved in the original decision to list or hold a potential conflict of interest in the outcome). The owner may appoint a representative and BDC will provide all relevant documents to the representative.
- 7.3 The owner and/or representative may make representations to the review panel orally and/or in writing. The Council will complete their review within 8 weeks, unless a longer period has been agreed in writing and this will be communicated in writing.
- 7.4 The owner and BDC will bear their own costs of the review.
- 7.5 If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the local authority's review decision. The Council will inform the owner of their right to an independent appeal within the confirmation of the outcome of the review. The appeal may be made by either the former or the new owner if the asset has changed ownership in the meantime.
- 7.6 If an owner is successful in their appeal against listing then the asset will be moved to the list of unsuccessful nominations for a period of 2 years. The intention of this is to ensure transparency and to avoid multiple nominations of an asset that does not meet the definition.

8.0 Appeal against a listing review

- 8.1 An owner's appeal against a local authority listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is specified in the procedural rules of that chamber as 28 days from the date on which notice of the decision appealed against was sent to the owner. Appeals may be both on points of law and on findings of fact. The property will remain listed during the appeal process.
- 8.2 The Council will provide the following details to owners to enable an appeal to be made should they wish to do so. Owners should send the appeal in writing to the First-Tier Tribunal at:

Tribunal Clerk

Community Right to Bid Appeals
HM Courts and Tribunals
First-tier Tribunal (General Regulatory Chamber)
P.O. Box 9300
Leicester
LE1 8DJ
Or by email at:
grc@hmcts.gis.gov.uk

8.3 If an owner is successful in their appeal against listing then the asset will be moved to the list of unsuccessful nominations for a period of 2 years.

9.0 Moratoriums

9.1 The moratorium requirements apply only to relevant disposals. A 'Relevant disposal' is a transfer of the freehold or grant or assignment of a qualifying lease which gives vacant possession of the buildings and other land in question. The requirements do not however apply to those relevant disposals that are exempt – a full list of which appears in Annex A.

9.2 Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease. Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired. Once BDC has been notified of the owners intention to dispose of a listed asset the following actions will be taken:

- the list of assets of community value will be updated to show this intent
- the interim, full moratorium end dates and the end date of the protected period will be published on the list
- the nominating community group will be informed
- These matters will be published in the neighbourhood of the asset by an appropriate means.

9.3 The interim moratorium period is 6 weeks in length. This runs from the date BDC receives notification from the owner of their intention to dispose of the listed asset.

9.4 During the interim moratorium period a community interest group may request in writing to be treated as a potential bidder for the asset; this will bring a full moratorium into force. The community interest group does not have to provide any evidence of intention or financial resources to make such a bid.

A community interest group 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.

9.5 Once a community interest group makes a written request to the authority during the interim moratorium period the owner will be informed as soon as practicable and a full 6 month moratorium period will operate. The owner may continue to market and negotiate sales during the full 6 month moratorium period but may not exchange contracts (or enter into a binding contract to do so later).

- 9.6 However, an owner may sell during the interim or full moratorium period to a community interest group (i.e. one which either did or would have been eligible to trigger the full moratorium).
- 9.7 If no potential bids have been received from a community interest group in this period, the owner is free to sell their asset to whomever they choose and at whatever price, and no further moratorium will apply.

10.0 Compensation

- 10.1 Private owners may claim compensation for loss and expenses incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; for legal expenses incurred in a successful appeal to the Tribunal.
- 10.2 Claims must be received in writing, stating the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls upon the owner. The time limit for making a compensation claim is the earlier of:
- 13 weeks from the end of the interim moratorium
 - 13 weeks from the end of the full moratorium or
 - from the date when the land ceased to be listed.
- 10.3 Claims will be considered by BDC's senior officer with responsibility for finance (the Section 151 Officer),, the Democratic Services, Scrutiny and Governance Manager and a Cabinet Portfolio Holder. A written response will be provided as quickly as is practicable allowing time for evidence to be gained and giving reasons for the outcome of the decision.
- 10.4 An allowance has been made to the Authority within the new burdens funding and this will be set aside for any costs which may be incurred. In addition the Government will meet costs of compensation payments over £20,000 in a financial year either on one large claim or many small claims combined.
- 10.5 BDC will make a claim where compensation payments exceed £20,000 by providing evidence of the compensation costs incurred either in writing to:

Community Assets Team,
5/A4 Eland House,
Bressenden Place
London
SW1E 5DU
Or by email at: righttobid@communities.gsi.gov.uk

It will be the responsibility of the Section 151 Officer to make this claim.

11.0 Internal review of compensation decision

- 11.1 An owner who is not satisfied with the response to a compensation claim may request a review of BDC's decision. A request must be received by the Authority within an 8 week period beginning on the date BDC provide the owner with written notification of the decision.

- 11.2 The review of the decision will be conducted by the Corporate Services Group Manager, one other member of the Senior Leadership Team and a Cabinet Portfolio Holder (none of which were involved in the original decision to list or may hold a potential conflict of interest such as a dual role as a Parish Councillor).
- 11.3 BDC will review the decision and notify the owner within 8 weeks of receiving the request and give reasons regarding the outcome of the decision.

12.0 Independent Appeal against a review of a compensation decision

- 12.1 An owner may appeal to a Tribunal against the Authority's review decision on compensation. The deadline for receipt of the appeal is 28 days from receiving the decision from BDC. Only the owner or the former owner who requested the review may appeal against the review decision.
- 12.2 The Council will provide the following details to owners to enable an appeal to be made should they wish to do so. Owners should send the appeal in writing to the First-Tier Tribunal at:

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

Or by email at:
grc@hmcts.gis.gov.uk

Relevant disposals that are exempt

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
- 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”:
- 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 a 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). where the disposal is a part-listed disposal of a description specified in regulations made by the appropriate authority, and for this purpose “part-listed disposal” means a disposal of an estate in land (1) part of which is land included in a local authority’s list of assets of community value, and (2) part of which is land not included in any local authority’s list of assets of community value.
- 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.

Details regarding part-listed land and land with a residence

Similar rules apply for determining how much land constitutes land with a residence (for exclusion from listing in Schedule 1 to the Regulations) and how much land constitutes a single site for qualifying as a part-listed site (as an exempt disposal in Schedule 3 to the Regulations). In order to ensure that the same rules apply to registered and unregistered land, the approach taken has not been based on title. Instead, it is necessary to look at whether the site in question is one coherent parcel of land all owned by a single owner, so that it is possible to reach one part from another without crossing land owned by somebody else. However there are two qualifications to be taken into account:

- Firstly, “a single owner” has an expanded meaning covering more than simply the same person or joint owners. It includes also trustees of different trusts of land which was settled by the same settlor – see definition of “single owner” in regulation 1.
- Secondly, where it would otherwise be reasonable to regard the land as one coherent parcel, the fact that it is crossed by a road, railway, canal or river in other ownership is to be ignored.

Glossary

Appendix B

<i>Asset</i>	A building or other land
<i>The Community Right to Bid</i>	The name by which the Assets of Community Value scheme is commonly known.
<i>Land of community value</i>	Building or other land whose main (i.e. “non-ancillary”) use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future. See section 88 of the Act.
<i>List of assets of community value</i>	A list maintained by a local authority of land in its area of community value. See section 87 of the Act.
<i>Voluntary or community body</i>	A group which can nominate land, so long as it has a local connection with the land. See regulation 5.
<i>Local connection</i>	The requirement that a group’s activities and use of any profits (where relevant) must be concerned with the local authority area or a neighbouring authority area. In the case of a parish council, the requirement is that it must share a border with the relevant area in which the asset lies. See regulation 4.
<i>Relevant disposal</i>	The transfer of the freehold, or the grant or assignment of a lease originally granted for at least 25 years, giving vacant possession to the new owner. See section 96 of the Act.
<i>Exempt disposal</i>	A relevant disposal for which the land owner does not have to observe section 95(1) of the Act. There are two sorts of exempt disposal: <ul style="list-style-type: none"> ○ one where the owner does notify the local authority of intention to sell, so that the moratorium applies, but can sell during the moratorium to a community interest group; ○ fully exempt disposals where the owner can simply go ahead without notifying the local authority at all. These are set out in section 95(5) of the Act and Schedule 3 to the Regulations.
<i>Moratorium period</i>	A period of time during which the owner of listed land cannot make a non-exempt relevant disposal, other than to a voluntary or community body. There are two moratorium periods (see section 95(6) of the Act), both running from the same start date (when the owner notifies the local authority of an intention to sell): <ul style="list-style-type: none"> ○ the interim moratorium - 6 weeks; ○ the full moratorium - 6 months.

<i>Protected period</i>	A period of 18 months (running from the date the owner notified the local authority of an intention to sell). Once any moratorium period has finished, the same owner can sell during the remainder of the protected period without having to comply with the section 95 requirements again.
<i>Listing review</i>	A review by a local authority at the request of the owner of their decision to list a building or other land as an asset of community value. See section 92 of the Act, and for procedure on the review Schedule 2 to the Regulations.
<i>Compensation review</i>	A review by a local authority at the request of the owner of their decision in response to a claim for compensation for loss or expense caused by listing their building or other land as an asset of community value. See section 99 of the Act, regulation 16, and for procedure on the review Schedule 2 to the Regulations.
<i>Conveyancer</i>	The owner of listed, or formerly listed, land will in some circumstances have to provide a certificate by a conveyancer that a disposal has not contravened section 95(1) of the Act. "Conveyancer" in this context has the meaning given in rule 217A of the Land Registration Rules 2003, including a solicitor, a barrister, and a licensed conveyancer.
<i>The Act</i>	The Localism Act 2011
<i>Community interest group</i>	<p>A group which, for land with which it has a local connection, may –</p> <ul style="list-style-type: none"> ○ ask to be treated as a potential bidder for listed land which the owner wishes to sell, thus triggering the full moratorium of 6 months ○ buy listed land during the moratorium period ○ nominate land for listing (since the requirements for a voluntary or community body include the requirements for a community interest group). <p>It must be a charity or community interest company, or a non-profit distributing industrial and provident society or company limited by guarantee. See sections 89 and 95, and regulations 5 and 12.</p>
<i>Nomination</i>	A request to the relevant local authority that land be entered on its list of assets of community value, containing the information specified in regulation 6. See also section 89 of the Act.

	(Note that although the Act allows for a possible distinction between community nominations and other nominations, the regulations provide only for community nominations – therefore all nominations will be community nominations.)
<i>Local authority</i>	In England, a district council, county council for an area with no district councils, London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly. See section 106 of the Act.
<i>Restriction on the Land Register</i>	An entry on the register preventing dealing with the land until the requisite condition has been complied with – in this case set out in Form QQ to be added to Schedule 4 to the Land Registration Rules 2003: No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011.
<i>Ineffective transfer of land</i>	A purported disposal of land which in fact does not have any effect – ownership of the land remains with the original owner.
<i>Wording for Entry of a Restriction on the Land Register</i>	Specific wording to be used ‘No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95 (1) of the Localism Act. 2011.’