



# **ASSETS OF COMMUNITY VALUE AND COMMUNITY RIGHT TO BID**

## **PROCEDURE AND GUIDANCE**

# Assets of Community Value and the Community Right to Bid

## Introduction

Across the Borough Council of King's Lynn and West Norfolk's district, there are buildings, amenities, and land (assets) which are important to local people. The Localism Act 2011 introduced a procedure designed to give communities the opportunity to protect these assets by allowing relevant groups to nominate them as "assets of community value".

When a property is registered as an Asset of Community Value (ACV) the process temporarily stops certain proposed sales of property or land so that community groups can put together a bid to buy it; allowing local people to protect places which are important to their social interests and wellbeing. This is referred to as the "Community Right to Bid" (CRTB).

For land or buildings to be listed as an Asset of Community Value (ACV), their current (or very recent past) use must benefit the social wellbeing and interests of the community; and it must be reasonable to assume that it will continue to do so in the future. Social interests include sporting, cultural or recreational uses.

The social use of the building or land is not deemed 'ancillary', i.e. of secondary purpose. This means that the use of the land or building to further social wellbeing or interests of the community must be its principal use. For example, a school's primary purpose is educational. The aspects of the asset which fulfil social and community purposes are ancillary to this and therefore the asset would not be listed.

The use of the land/building will continue to further the social wellbeing or interests of the local community in the future:

- Where an asset is presently in social use there should be a presumption of continued viability, unless clear evidence suggests otherwise
- For social use which has lapsed and needs to be re-established, the council will need to take a view on the realism of re-establishing this within the next 5 years

There are some limited situations where land or buildings are exempt from being listed as an Asset of Community Value, including residential property.

What an ACV is not:

Whilst this statutory procedure is a useful tool for communities who want to protect and retain community assets, there are limitations to the legislation. It is important to note that the scheme does not:

- Force a property owner to sell their asset to a community group or give a community group the right of first refusal
- Prevent a property owner from selling their property on the open market indefinitely
- Empower the council to make any judgement on whether the property should be sold to the community group or not.

## **Nominations**

To nominate a property as an ACV, a voluntary or community group must make a request to the council for the building or piece of land to be added to the 'Community Asset Register.'

All voluntary and community bodies making nominations must be able to demonstrate a local connection by demonstrating that their activities are wholly or partly concerned with the local authority area where the asset sits.

On receipt of eligible applications, applicants and the landowner will be notified of whether the asset has been listed within 8 weeks of the application. The owner then has a further 8 weeks to appeal against any listing.

## **Assessment and Listing of an ACV**

A set process is followed and will assess the nomination against the criteria and guidance notes to determine whether the application is compliant with the prescribed requirements. This document has been developed by amalgamating the requirements set out in the Localism Act 2011, relevant regulations, and the council's own scheme of delegation.

If the nomination is accepted by the council, the property/land will be listed on the council's 'Register of Successful Bids for Assets of Community Value' for a period of five years. Nominations which are unsuccessful will be listed on the 'Register of Unsuccessful Bids for Assets of Community Value' for a period of five years.

An unsuccessful nomination can be resubmitted if new information is included within the application.

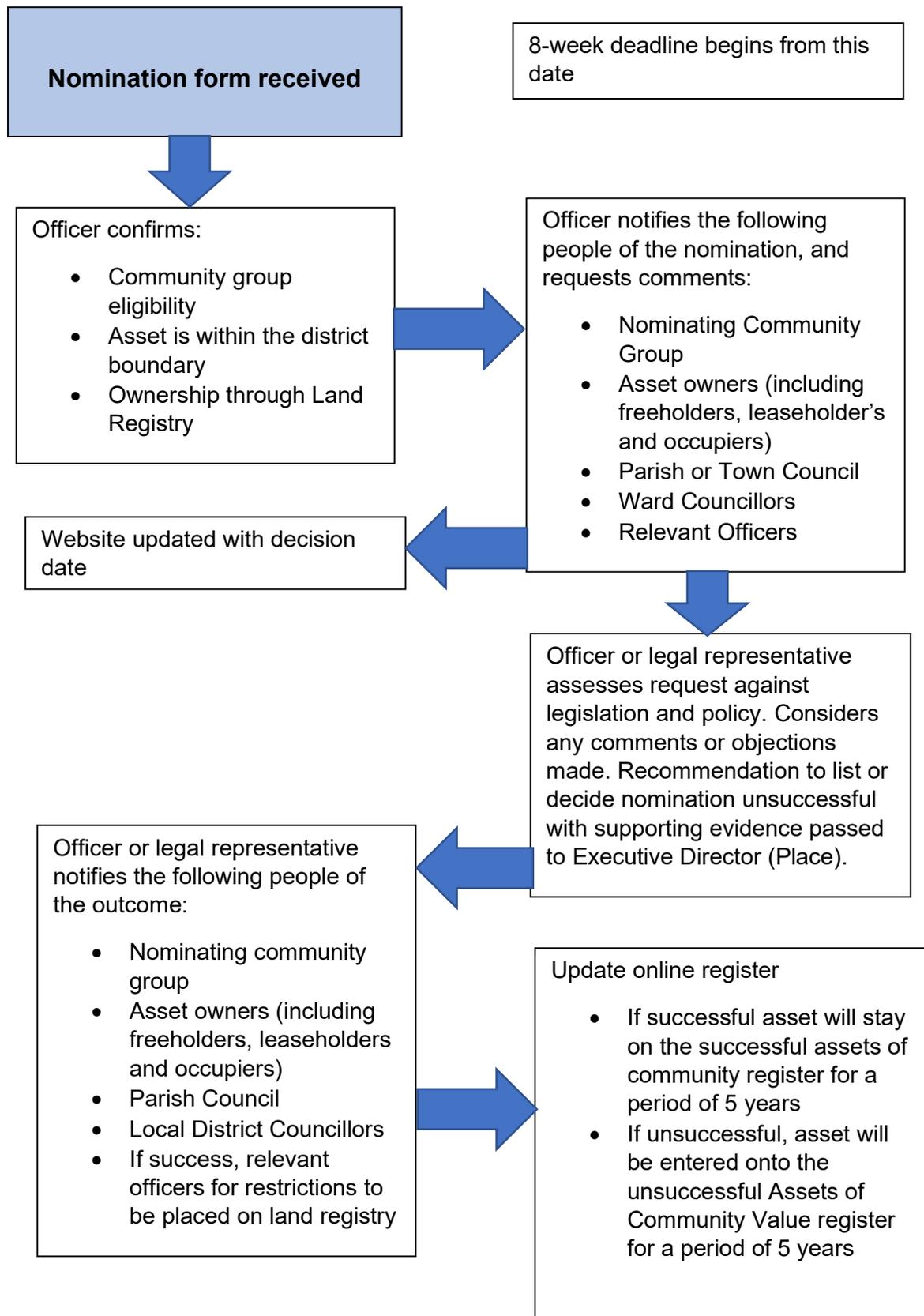
If the nomination to list as an ACV is successful, the owner of the asset can request an internal review of the Council's decision. This review will be conducted by the Monitoring Officer or, if unavailable, the Deputy Monitoring Officer.

## **Asset Owner's Responsibilities after Registration**

The owner of a registered ACV must contact the councils Legal Team if they are intending to sell the registered property. If the sale is a relevant disposal, then the Community Right to Bid process will begin.

The owner is advised to contact the Legal Department at the earliest opportunity as it is not possible to shorten the time taken to conduct the statutory procedure.

## Asset of Community Value Process



## **Explanation of Terms**

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

- I. An actual current use of the asset, which is not ancillary, furthers the social wellbeing or social interests of the local community
- II. It is realistic to think that there can continue to be principal use of the asset which will further (whether or not in the same way) the social wellbeing or social interests of the local community
- III. There was a time in the recent past when an actual use of the asset (which was not an ancillary use) furthered the social wellbeing or interests of the local community
- IV. 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.

## **Social Wellbeing**

The Act defines that social interests include the following:

- Cultural interests
- Recreational interests
- 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.

There is no set definition for social wellbeing, either in the Act or in general circulation. During the passage of the Bill through Parliament, the Government stated that 'it is the Government's intention to set out a definition of an asset of community value in regulations that will require local authorities to judge whether an asset meets that definition in particular local circumstances.

What constitutes community value will differ in separate places. For example, a small shop might satisfy the requirement in a small, remote rural community but it may not do in a more urban and densely populated area. The Borough Council of West Norfolk stretches across 550 square miles across rural and urban areas so the very type of asset might satisfy the requirement in one part of the area, but not in another.

## **Realistic**

The council's approach will be:

- If the asset has a current principal 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 bought back into community use as five years.

In determining whether there was a time in the recent past when the actual use of the asset furthered the social wellbeing or interests of the local community, the council will consider:

- If the land has been disused for more than five years and when it was last in use, its principal 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 using a compulsory purchase order or other statutory power for use by the council or another public sector body.

## **Other Considerations**

Where the owner of a listed asset, such as a pub, applies for a change of use, then the fact that the asset is listed as an asset of community value may be a material consideration in making a decision on the planning application.

## **Appeals**

Within eight weeks of being notified of their property being listed as an 'asset of community value', the owner can appeal to the council's Monitoring Officer for a 'listing review'. The asset will remain listed during the review period. The owner and the council will bear their own costs associated with the review.

An appeal to the Monitoring Officer should be emailed to [legal.services@west-norfolk.gov.uk](mailto:legal.services@west-norfolk.gov.uk)

The council will then have eight weeks from the date of receiving the request to carry out the review.

Upon completion of the internal review, the council will produce a report of its findings and notify the owner and the community group of the outcome. Where a change in the status of the property occurs out of the review, it will then be moved to the appropriate register.

If the owner of an asset has been successful in having the asset moved to the 'Register of Unsuccessful nominations', there will be no right of appeal for the nominating community group.

## **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 for a review by the General Regulatory Chamber of the First-Tier Tribunal.

The address to appeal the decision is:

General Regulatory Chamber  
HM Courts and Tribunals Services  
PO Box 9300  
Leicester  
LE1 8DJ

[grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Telephone: 0300 123 4504

### **Appeal by the Nominator**

There is not a process by which a nominator can appeal a decision made. However, the nominator is able to submit a nomination for an asset as many times as they wish.

## **Community Right to Bid**

Across King's Lynn and West Norfolk, there are buildings, amenities and land which are important to local people. The Localism Act 2011 put in place a process designed to give the community the opportunity to protect local 'Assets of Community Value' (ACV).

When a property/asset is listed as an ACV, it temporarily pauses certain proposed sales of property so that community groups can put together a bid to buy it, allowing local people to protect places which are important to their social interests and wellbeing. This is referred to as the "Community Right to Bid".

The Community Right to Bid (CRTB) aims to give community interest groups the opportunity to bid for them when those assets are placed on the market for sale by their owners. The CRTB allows community groups the opportunity to prepare a business plan and gather finances in order to buy the asset if it became available, and thereby continue its use in the interest of the community.

### **Property Owner's Responsibilities after Registration of an ACV**

The owner of a registered ACV must contact Legal Team at the Borough Council if they are intending to sell their property and enter into a 'relevant disposal'.

This document will outline the statutory process which is triggered whenever the property of an ACV intends to enter into a relevant disposal, which means they plan to:

- Sell the property with vacant possession
- Grant a lease of more than 25 years with vacant possession
- Assign the lease of the property (where the property owner is a Tenant of the property, and their lease was initially granted for a term of more than 25 years)
- Enter into a contract to do any of the above

### **What will not trigger the procedure?**

Even when a property is registered as an Asset of Community Value there are still many things that can take place without triggering the statutory CRTB procedure. Some examples are listed below (this list is not exhaustive)

- Granting a lease of the property for a term of less than 25 years
- Selling the property subject to an existing lease (i.e. with a tenant in place)
- Any assignment or underletting of the property by the tenant (where the property is subject to a lease and the property owner as defined by the legislation is the Landlord)
- Granting rights over the property such as a right of way
- Applying restrictive covenants to the property
- Giving the property away
- Selling the property to certain family members
- If the property is part of a business, selling the property as part of the business as a going concern

- Selling the property to fulfil a separation agreement between spouses or civil partners
- Selling the property to fulfil a court order
- Transferring the property to fulfil certain types of contract that were in place before the property was listed as an ACV

the list above demonstrates that there are various ways in which the registered ACV could change hands without triggering the statutory CRTB procedure. In addition to this, there are rules which apply in special cases such as the death or insolvency of the property owner; part listed properties and properties in trust.

### **When an owner of an ANC should contact the council**

Even if a transfer of a property falls within one of the listed exceptions, the owner is requested to contact the Legal Department when any of the above takes place – and if a new owner or lease is involved, to inform us of their details.

It is advised that the owner who intends to enter into a relevant disposal contacts the Legal Team at the earliest opportunity as it is not possible to shorten the time taken to carry out the statutory procedure.

Details of the property and the proposed transaction should be sent to:

[legal.services@west-norfolk.gov.uk](mailto:legal.services@west-norfolk.gov.uk)

## **The Community Right to Bid: Statutory Procedure**

Following confirmation that the owner is entering a relevant disposal, the following procedure applies:

### **Stage One: The Interim Moratorium**

The first stage of the procedure is a six-week moratorium. This means that the property owner cannot proceed with the transaction for this time period in order to give community groups an opportunity to request to be treated as a potential bidder for a property.

During the six-week interim moratorium, the legal team will:

- Update the Register of Successful ACV's to show:
  - That notice of a proposed relevant disposal has been received
  - The date on which the notice was received; and
  - The date on which the interim moratorium will end
- Notify the group that nominated the asset that notice of a proposed disposal has been received
- Publicise that a proposed disposal has been received within the area local to the property
- Inform the property owner and update register of ACV if a community group notifies that it wishes to be treated as a potential bidder for the property

During the six-week interim moratorium, the property owner can:

- Conduct negotiations to move the transaction forward (i.e. instruct solicitors, negotiate contract etc)
- Sell the property to any community group that is eligible to request to be treated as a potential bidder for the property

The property owner cannot:

- Complete the transaction that triggered the procedure

During the six-week interim moratorium, a community group can:

- Notify the legal team that it wishes to be treated as a potential bidder to buy the property. This can be any community interest group (as defined by the Localism Act) and does not have to be the group that originally nominated the property to become an Asset of Community Value.

**If no community group expresses interest in the property during this six-week interim holding period then the statutory procedure ends here and the property owner may sell the property to whoever they choose, and at their chosen price.**

## **Stage Two: The Full Moratorium**

This second stage will only be triggered if a community group has notified the Legal Team that it wishes to be treated as a potential bidder for a property. This means that the owner cannot proceed with the proposed disposal for a total period of six months, in order to give the community group an opportunity to put together a bid to buy the property.

This six-month period begins at the date the legal team originally received notice of the relevant disposal from the property owner.

During the full moratorium, the property owner can:

- Conduct negotiations to move the transaction forward (i.e. instruct solicitors, negotiate contract etc.)
- Sell the property to any community group that is eligible to request to be treated as a potential bidder for the property

The property owner CANNOT:

- Complete the transaction that triggered the procedure

During the full moratorium, a community group can:

- Put a bid directly to the property owner to purchase the property

## **Stage 3 – The Protected Period**

After the full moratorium has ended, the property owner may sell the property to whomever they choose, and at their chosen price. Even if a community group has made a bid to purchase the property during the moratorium period, the owner does not have to sell the asset to the group.

The protected period lasts for 18 months, beginning at the date that the Borough Council of King's Lynn and West Norfolk originally received notice of the relevant disposal from the property owner.

Once the 18-month protected period is over, the statutory procedure will once again apply, and the property owner must notify the Legal team of any proposed relevant disposals.

## **Enforcement**

The statutory procedure is enforced by making sure that the potential purchasers of a property are aware if it is registered as an Asset of Community Value. The council is required to notify potential purchasers of a property that it is a registered Asset of Community Value by:

- Placing it on the Community Asset Register
- Registering the property as an Asset of Community Value on the local land charges register