



Assets of community value

Standard Note: SN/PC/06366

Last updated: 9 February 2015

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Section: Parliament and Constitution Centre

Part 5 Chapter 3 of the *Localism Act 2011* provides for a scheme called ‘assets of community value’. This requires district and unitary councils to maintain a list of ‘community assets’. It has also become known as the ‘community right to bid’.

Community assets can be nominated by parish councils or by groups with a connection with the community. Individuals cannot nominate community assets. If the nomination is accepted, local groups will be given time to come up with a bid for the asset when it is sold.

The right to bid only applies when an asset’s owner decides to dispose of it. There is no compulsion on the owner to sell it. The scheme does not give first refusal to the community group, unlike the equivalent scheme in Scotland; 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.

Certain types of land, most notably residential property, are exempt from being placed on the register. Owners of property placed on the register may appeal against its listing and can claim compensation if they can demonstrate its value has been reduced. Also, certain types of transfer of land or assets do not count as disposal for the purposes of the legislation.

The community right to bid extends to England; the Welsh Government has not yet commenced it with regard to Wales. It is separate from the *community right to reclaim land* and *community asset transfer*, which are also addressed within this note.

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1 Background

Part 5 Chapter 3 of the [Localism Act 2011](#) provide for district and unitary councils to maintain a list of **assets of community value**, which can be either land or buildings, nominated by local community groups or parish councils. When listed assets come up for sale or change of ownership, the Act then gives local community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. The scheme is also known as the **community right to bid**. The Government has said that the aim of the measure is as follows:

...to give many more communities the opportunity to take control of assets and facilities in their neighbourhoods by levelling the playing field [and] by providing the time for them to prepare a proposal.¹

The provisions extend to England and Wales, but the Welsh Government has not commenced the Act with regard to Wales, hence it applies only in England at present.

2 How the community right to bid works

2.1 Nomination

Parish councils and community organisations may nominate local assets to the local authority (the district or unitary council) to be included in their list of community assets. Nominations may not be made by individuals,² or by (principal) local authorities themselves.

The authority then has eight weeks to make a judgement on whether the land should be listed. If it decides that the nomination meets the criteria, the local authority must enter it on its list of assets of community value. Properties remain on the list for five years, unless they are sold under the right to bid process.³ A list of unsuccessful nominations must also be kept; it is up to the local authority how this is published.

The asset must be a building or land, as defined in section 88 of the 2011 Act. The contents of a building, or related services or business assets, are not covered by the Act. In order to be listed, the land or building must further the social wellbeing or social interests of the local community, or have been used to do so in the recent past. Residential property is excluded from listing, except where an asset that could otherwise be listed contains integral residential quarters, such as a pub or caretaker's flat.

Once listed, the local authority must inform the owner of the property and other interested parties that it has been listed, enter the listing on the local land charges register and, in the case of registered land, apply for a restriction on the land register. Provisions exist for appeals against the local authority's decision, and for compensation to be paid if the owner applies and the local authority accepts that listing has had a detrimental effect on the value of the property.

2.2 Moratorium on sale

A moratorium will be applied when a listed asset is put up for sale. There is an initial six-week interim period, during which a community group must express interest in bidding. If one does, there is a six-month moratorium beginning from when the asset is put up for sale, i.e.

¹ DCLG, [Assets of Community Value – Policy Statement](#), 2011

² See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.10

³ [Localism Act 2011](#) section 87 (3); [Assets of Community Value \(England\) Regulations 2012](#) regulation 2 (b)

including the six-week interim period, to allow a community interest group to put a bid together.

The provisions for a community group to prepare a bid only apply when the asset is being put up for sale. There is no compulsion on the owner of the listed asset to sell it, nor any restriction on what the owner can do with the property while they own it.

There is no community right to *buy* the asset, just to *bid*. This means that the local community bid may not be the successful one. The owner can, at the end of the moratorium, sell to whomever they choose and at whatever price. The owner is also at liberty to negotiate a sale with a preferred buyer during the moratorium period: but the sale cannot be concluded during that period.

The scheme differs from the Scottish community right to buy, where the community group has first refusal on the asset.⁴

3 Detailed regulations

The Act is supplemented by the [Assets of Community Value \(England\) Regulations 2012](#), which came into force on 21 September 2012.⁵ These regulations provide that:

- Schedule 1 of the regulations defines land which is not of community value and therefore cannot be listed. This includes residential property and land (although land can be listed if an otherwise eligible building is partly used as a residence), temporarily unoccupied residences, holiday lets and caravan sites. Land and buildings used for statutory undertakings are also exempt;
- A definition of bodies that have a local connection (and which therefore may propose assets for listing). This includes a community group whose activities are wholly or partly concerned with the local authority's area or with a neighbouring authority's area; and the parish council for the area, or one bordering the parish in which the proposed asset is located;
- Regulation 6 sets out the content of a community nomination, which must include a description of the nominated land and its boundaries, as well as the names of the occupants of the land and those holding a freehold or leasehold estate in the land. The reasons why the land is considered to be of community value must also be included;
- Local authorities must decide within eight weeks whether to include a community nomination in the list (Regulation 7); if it is included, an owner of the land may appeal against the decision to the First-Tier tribunal (Regulation 11);
- Compensation may be paid, by the local authority, to the owner of land who has incurred loss or expense in relation to the land which would not have been the case if it had not been listed (regulation 14). The Government has said that it will meet the cost of compensation claims that exceed £20,000 in a financial year up to March 2015, with

⁴ For more details on the community right to buy, see Scottish Government, [Community Right to Buy in Scotland](#).

⁵ See also the [Localism Act 2011 \(Commencement No 1\) \(England\) Order 2012](#).

consideration to follow on funding from 2015 onwards.⁶ It has also announced a fund of £17.5m to assist local communities with using the regulations.⁷

- After a moratorium period has ended, another moratorium period cannot begin for a further 12 months.

More information is available in [a non-statutory advice note](#), which was issued to local authorities in England by DCLG on 4 October 2012. DCLG has launched [a community rights microsite](#) which provides information and support on a number of community empowerment initiatives. An LGA guide is also available on the use of local assets more generally.⁸

4 Communities and Local Government Committee report

The Communities and Local Government Committee published a report, *Community rights*, on 5 February 2015. It recommended a number of adjustments to the right to bid, including:

- Extending the moratorium period from six months to nine: this was a particular concern in disadvantaged areas, which are perceived to be making less use of community rights than other communities;
- Allowing the moratorium period to end if the community bidder withdrew from the process;
- A right of appeal for nominators, under certain circumstances, when the local authority refuses to list an asset, including a right of appeal to an independent tribunal;
- A greater focus on what communities wish to achieve, instead of the processes associated with the various community rights;
- Requiring local authorities to maintain a “basic level of data” on the “take-up of all community rights”.⁹

5 The right to bid in practice

5.1 Statistics on the use of the right to bid

The Department for Communities and Local Government does not collect formal statistics on either the number of listed assets or the number bought by community groups. The Communities and Local Government Committee report, in February 2015, stated that 11 assets had been bought by community groups, whilst 122 groups had triggered the moratorium period. DCLG evidence to the inquiry stated that nine assets had been bought. A total of some 1,800 have been listed, of which some 500 are pubs.¹⁰ The first asset to be bought by a local community was the [Ivy House pub](#) in Nunhead, London Borough of Southwark.

An [interactive map](#) showing the use of all of the community rights is available, though it is not dated.

⁶ Ninth Delegated Legislation Committee, *Draft Assets of Community Value (England) Regulations 2012*, 12 September 2012, c.7

⁷ Ibid., c.8

⁸ LGA, *Empowering communities: making the most of local assets*, 2011

⁹ Ibid., p. 38

¹⁰ Communities and Local Government Committee, *Community Rights*, HC-262 2014-15, 2015, p. 8-11

The Department for Communities and Local Government has stated that it will carry out a full review of community rights in 2015.¹¹

5.2 The right to bid: constituency issues

Where the sale of an asset has been announced but not yet concluded, it is still possible for a group to seek to list it. This circumstance may arise if a much-used local asset is suddenly put up for sale. If a sale is agreed before the asset appears on the list, there would be no opportunity for a group to put in a bid; but if the asset is listed before a sale is agreed, the moratorium provisions would apply. The speed at which the local authority considers the application is thus critical to the outcome.

A community bid does not have to come from the same organisation that listed the asset initially. It may come from a different group; equally, there is nothing in the legislation to prevent two or more community bids for the same asset.

Nominations do not have to take account of current patterns of land ownership. For instance, where adjoining land and buildings have the same owner, either the land or the buildings can be nominated separately if the nominators wish. By the same token, an owner may sell part of a nominated asset but not all of it, so long as they comply with the moratorium procedures.

There are certain types of land and asset disposal to which the provisions for the community right to bid do not apply. These are listed in Schedule 3 of the regulations, and explained on pages 22-24 of the guidance note.¹²

One of these provisions is that disposal of an asset as a 'going concern' does not trigger the moratorium procedures. This would cover, for instance, the sale of a pub to another pub owner. The 2015 CLG Committee report noted concerns that pubs were being sold as 'going concerns' to owners who were unlikely to want to continue to manage them, and stated:

We recommend that the Government...bring forward proposals to close the loophole in the current legislation which allows an Asset of Community Value to be sold as a going concern when the buyer has no intention of retaining it in its current use.¹³

There is no definition in statute or in guidance of the term 'recent past', in regard to when a community asset has been used by the community. It is for local authorities to decide whether an asset has been used recently enough to justify its inclusion on the list.

If an owner disposes land on the assets list in contravention to the requirements of the scheme, the Act provides that the land transaction is invalid in law.

5.3 The right to bid and planning applications

There have been instances of the listing of a property as an asset of community value being regarded as a 'material consideration' for planning purposes. This would take place at the discretion of the relevant planning committee: the matter is not mentioned in legislation. The Government's [non-statutory guidance note of late 2012](#) says:

2.20 The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact

¹¹ See [HCWS221](#), 26 January 2015

¹² See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.22-24

¹³ Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 16

that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.¹⁴

There are examples of applications for change of use being rejected with the planning authorities citing listing as a community asset as a factor: these include the Peterborough Arms, Dauntsey (near Chippenham, Wiltshire).¹⁵ The 2015 Communities and Local Government Committee report said:

We recommend that the Government, as part of its review of Community Rights later in 2015, consult on a proposal to amend its guidance so that ACV listing is a material consideration for local authorities in all planning applications other than those for minor works.¹⁶

The Government issued a written statement in January 2015,¹⁷ stating that it planned to pass regulations providing that any property listed as an asset of community value would have to apply for planning permission to change its use class, instead of being able to do so under permitted development rights. This was intended to address situations where owners of pubs which had been listed as assets of community value sought to convert them to residential property and then sell them.

This legislation has not been introduced at the time of writing. If it is passed, it will still be for a local planning committee to decide whether the status of an asset of community value is a sufficient material consideration to refuse permission for change of use.

The first tribunal case resulting from an owner's challenge to the listing of a building as an asset of community value concerned the [Chesham Arms pub](#) in Hackney. At a hearing on 17 October 2013, the judge ordered that the pub should remain on Hackney's list of assets of community value.

6 Community asset transfer

Community asset transfer is a central government policy directed at local authorities' use of their redundant assets. It is entirely separate from the community right to bid, operating on a discretionary basis rather than forming a 'community right'. The powers under which it takes place predate the *Localism Act 2011*. Nevertheless, on the *My Community Rights* website it is presented alongside the 2011 Act's provisions as one of a number of sources of greater community ownership of local assets.

6.1 Powers to dispose of land

The [Local Government Act 1972](#) section 123 (2) states:

Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

¹⁴ DCLG, *Community Right to Bid: Non-Statutory advice note for local authorities*, 2012, p. 6

¹⁵ See [the Wiltshire Council officers' report to the relevant planning committee](#)

¹⁶ Communities and Local Government Committee, *Community Rights*, HC-262 2014-15, 2015, p. 12

¹⁷ See [HCWS221](#), 26 January 2015

A **general consent** for local authorities to dispose of land to community organisations at below market value was given under this section in 2003.¹⁸ The consent specifies the following conditions:

The specified circumstances are:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
- i) the promotion or improvement of economic well-being;
- ii) the promotion or improvement of social well-being;
- iii) the promotion or improvement of environmental well-being; and
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).¹⁹

In 2006, the then Government announced the establishment of a review of existing powers and policies on community asset transfer under the chairmanship of Barry Quirk, then chief executive of the London Borough of Lewisham. The **Quirk Review** (*Making Assets Work*) reported in May 2007. Its main conclusions were summarised in the accompanying press release as follows:

...there are no substantive barriers to prevent councils transferring assets into community management or full ownership. Powers already exist for this but the report finds that many are not fully aware of them, or are not using them to full benefit. Therefore a change in culture is required so that every community has the chance for more active citizenship, a greater role in running services and owning assets, and improving wellbeing in their communities.

Underpinned by safeguards to ensure good management councils can sell off or lease assets for as little as £1 where it is clear it is for the good of the community. Other assets that could be transferred include redundant police stations, old hospital sites, empty shopping parades and closed down pubs on estates.²⁰

The community empowerment white paper, published in July 2008, repeated the Government's commitment to this policy and summarised progress made to date.²¹ The white paper announced the establishment of the Asset Transfer Unit (ATU), which provided advice and support to individual and groups (including local authorities) on asset transfer. This was later folded into the independent organisation [Locality](#). A Government response to the Quirk Review, entitled [Building on Strong Foundations](#), was published in 2009.

Local authorities are now expected to have a strategy for asset disposal. A number of means are available through which this can take place:

¹⁸ DCLG, [Circular 06/03: Local Government Act 1972 general disposal consent \(England\) 2003 disposal of land for less than the best consideration that can reasonably be obtained](#), 2006

¹⁹ Ibid., p. 11

²⁰ DCLG, ["Councils urged to reap the benefits of handing assets to communities"](#), News release 2007/0092, 15 May 2007. The main report is entitled [Making assets work: the Quirk Review](#), May 2007.

²¹ See [Communities in control: real people, real power](#), Cm 7427, July 2008, chapter 8.

A range of organisational structures are now commonly used to provide legal entities through which community organisations can own and manage local assets. These include community interest companies, companies limited by guarantee, charitable incorporated organisations, charitable trusts and industrial and provident societies. These structures can incorporate social enterprises and social firms, mutuals, development trusts and housing associations.²²

Locality's publication *To Have and To Hold* notes that the Government has encouraged greater use of asset disposal in recent years, in particular to benefit community organisations:

Since 2005 the key shift in public policy as it affects asset transfer and development is that there has been a move from a 'demand pull' for transfer of ownership and control of assets from community based organisations to a 'supply push' from public sector bodies to transfer assets to community based organisations. As reductions in public spending and the need to consider the costs of running assets increases, more and more public bodies are likely to look to community based organisations to take on publicly owned assets to enable them to stay in local control and be used for wider community benefit.²³

6.2 Community right to reclaim land

A further power exists in schedule 16 of the [Local Government Planning and Land Act 1980](#). This allows the Secretary of State to direct specific bodies to dispose of land or property. This formed the basis of what used to be known as the Public Request to Order Disposal (PROD) process, which since 2011 has been referred to as the **community right to reclaim land**.²⁴ In effect, local groups can request a disposal of land by a public body, and the Secretary of State may direct it under this section. Brief details of this procedure, together with an application form to request the Secretary of State to direct the disposal of land, can be found on the gov.uk website.²⁵

The procedure applies to the public bodies listed in schedule 16 of the 1980 Act, and requests can be made of other public bodies which have signed a memorandum of understanding with DCLG. Under this procedure, land is sold on the open market: there is no first refusal for community groups. The 2015 CLG Committee report stated that 42 requests had been received between February 2011 and June 2014, of which two were under consideration. Locality, in evidence in the 2015 CLG Committee report, proposed a 'right to demand discounted asset transfer' – i.e. for transfer rights not to depend on Government benevolence. The Committee did not endorse this suggestion, but recommended that the government issue draft guidance on what constitutes under-used land, to help proposers to know where this procedure might best be used.

6.3 Compulsory purchase order requests

Additionally, in 2011 revised Government guidance was issued covering the right of community organisations to call on local authorities to issue compulsory purchase orders on land or buildings which are unused and have been, or could be, of benefit to the community.

²² LGA/IDeA, [Improving efficiency in the culture and sport sector](#), 2010, p.3

²³ Locality, *To have and to hold*, 2010, p. 14

²⁴ See DCLG, "Communities to be given a right to reclaim land", 2 February 2011

²⁵ See DCLG, [Public request to order disposal process](#), 5 October 2011. See also Locality, [Empowering communities: making the most of local assets: an officer companion guide](#), 2011, p.18-22

This can be found on page 57 of the revised 'Crichel Down regulations'.²⁶ The guidance states:

1. From time to time, authorities may receive requests from the community (by petition or otherwise) to acquire community assets that are in danger of being lost to the detriment of that community. If the owner is unwilling to sell, the implication is that the community would ask the authority to use its compulsory purchase powers to acquire the asset.
2. Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.
3. As with any compulsory purchase, local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the Compulsory Purchase Order process either from their own resources, or with a partial or full contribution from the requesting organisation (see paragraphs 20 – 23 of Part 1 of the Memorandum to this Circular).
4. In order to assess whether there is a compelling case in the public interest for compulsory acquisition, local authorities should ask those making the request for such information that is necessary for them to do so. This could include the value of the asset to the community; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed. This list is not exhaustive, but the level of detail required should be tailored to the circumstances.

²⁶ See Appendix KA of [Compulsory Purchase and the Crichel Down rules](#), ODPM Circular 06/2004, revised in 2010, p. 57