
POLICY STATEMENT: ASSETS OF COMMUNITY VALUE

JANUARY 2014

APPROVED BY THE EXECUTIVE ON 26 NOVEMBER 2013



Pippbrook, Dorking, Surrey, RH4 1SJ

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1. INTRODUCTION

- 1.1 This document sets out the policy of Mole Valley District Council (the “Council”) in relation to the right to bid for and buy local buildings and/or land that is considered to have community value, referred to as an Asset of Community Value (“ACV”).
- 1.2 This policy statement is in force from 1 January 2014.
- 1.3 Nothing in this policy statement constitutes legal advice.
- 1.4 As this right has only been available since 21 September 2012, this policy statement will be monitored against evolving guidance and best practice and case law (if any). The policy will be reviewed at the earlier of (a) one year and (b) determination of the first nomination after implementation of the policy.

2. BACKGROUND

- 2.1 The right to bid was introduced in the Localism Act 2011¹ (the “Act”) and came into force through the Assets of Community Value (England) Regulations 2012 (the “Regulations”) on 21 September 2012. The DCLG published non-statutory guidance on the right to bid for an ACV in England on 4 October 2012.
- 2.2 The legislation was introduced as part of Government’s policy to empower communities through assisting local groups to preserve buildings or land considered to be important to their community’s social well being, such as the local pub, the local shop, the post-office, community centre or open space. According to the DCLG’s policy statement published in September 2011, on average nearly 300 pubs and 400 village shops have closed each year, and too often community organisations found themselves without the time to prepare a bid before the property was sold.
- 2.3 The aim of the legislation is to give those in the local community the ability to nominate land or buildings as an ACV. If successful, the community group would then have the right to receive notice of the owner’s intention to sell and to enable them to delay any sale/grant of a long lease by six months to enable them to plan and fund a bid to buy or lease the ACV.
- 2.4 The right to bid is sometimes confused with community asset transfer. Community asset transfer, a voluntary process, is the transfer of ownership or management of publicly owned assets to communities at less than the market value. The right to bid introduced by the Act introduces the right to an opportunity to compete to buy an ACV in the open market. It does not give anyone right of first refusal, nor does it restrict to whom the owner of an ACV can sell, or at what price.
- 2.5 The legislation provides for:
 - (a) a procedure for identifying an ACV;
 - (b) a procedure for appealing against a decision that land and/or a building is an ACV;

¹ Sections 87-108 Localism Act 2011

- (c) restrictions on the right to dispose of an ACV during a specified period (moratorium) with mechanisms to prevent the ACV owner avoiding the restrictions.

2.6 The Act requires that from 21 September 2012 local authorities maintain a list of land and/or buildings which have been nominated successfully and unsuccessfully by the local community. The 'community right to bid' applies to both public and privately owned land and/or buildings, unless it is exempt from listing, as a result of being residential land (plus land connected with that residence), caravan sites and operational land.

3. PROCESS

3.1 The right to bid process can be broken down into a number of stages, and each stage is dealt with in turn in the remainder of this policy statement. Within each stage, a recommendation as to the Council's scheme of delegation of authority is made.

4. NOMINATION

4.1 The Council can only include land and/or a building in its ACV list in response to a community nomination. A community nomination is a nomination in respect of land and/or a building within the Council's district by (i) a parish council or (ii) by persons who are a voluntary or community body with a local connection with land in the Council's district. For the remainder of this document, the term 'land' will be used to refer to nominations of land and/or a building (or part thereof).

4.2 A voluntary or community body includes:

- (a) a neighbourhood forum²;
- (b) a parish council³;
- (c) an unincorporated body⁴ with at least 21 members who are individuals that does not distribute any surplus to its members;
- (d) a charity
- (e) a company limited by guarantee with at least 21 local members, which must not distribute any surplus to its members, and must distribute any surplus

² Designated under section 61F Town and Country Planning Act 1990

³ A parish council may nominate land and/or buildings situated in its own area, or in a neighbouring parish council's area (where any part of the boundary is shared between the two parishes), or if the parish council borders in part or in full an unparished area, it may nominate an asset within a neighbouring authority's district.

⁴ There is no statutory definition of an unincorporated body. The following key criteria were established by case law (Re Kopeller's Will): two or more persons with a common non-business purpose with contractual relations between those persons, governed by rules and non-temporary in nature. Under the Regulations, the requirement is that there are 21 individuals who are members, and that it does not distribute any surplus to its members (as evidenced by the unincorporated association's rules and/or constitution).

wholly or partly for the benefit of the Council's district or for the benefit of a neighbouring authority's district;

- (f) an industrial and provident society⁵ with at least 21 local members, which must not distribute any surplus to its members and must distribute any surplus wholly or partly for the benefit of the Council's district or for the benefit of a neighbouring authority's district; or
 - (g) a community interest company with at least 21 local members, which must not distribute any surplus to its members and must distribute any surplus wholly or partly for the benefit of the Council's district or for the benefit of a neighbouring authority's district.
- 4.3 To have a local connection, the voluntary or community body's activities must be wholly or partly concerned with the Council's district or a neighbouring authority's district.
- 4.4 A nomination may be submitted to the Corporate Head with responsibility for Planning by email or by letter to Pippbrook, Dorking, Surrey, RH4 1SJ or by completing and submitting the form set out in Appendix 1 and available on the Council's website. Although it is not necessary for the nomination to be submitted on the basis of the form, it does assist both the nominator and the Council in providing the information required by the Act and/or the Regulations.
- 4.5 A nomination may be submitted at any time, but it must include the following information:
- (a) a description of the nominated land, including its proposed boundaries. The boundaries do not have to be the same as ownership boundaries, nor is it necessary for all parts of the nominated land to be in the same ownership;
 - (b) a statement of all the information considered in reaching the decision to nominate, including the name of any current occupants and the names and addresses of all freehold owners or leasehold owners of the land (the last known addresses will be acceptable where the current addresses are not known);
 - (c) the reasons for thinking that the Council should determine that the land is of community value in accordance with the definition in the Act;
 - (d) evidence that the voluntary or community body is eligible (as described in 4.2 - 4.3 above) to make a community nomination.
- 4.6 Within ten working days of receipt, the Corporate Head with responsibility for Planning shall check that the nomination complies with the statutory requirements. If the nomination is incomplete, he/she shall reject the nomination by giving notice in writing together with reasons for the rejection. If the nomination is deemed to be complete, he/she shall acknowledge receipt of the nomination in writing and state the last date by which the nomination must be determined by the Council in accordance with the eight week statutory period.

⁵ To be known as community benefit societies when the Co-Operative and Community Benefit Societies and Credit Unions Act 2010 comes into force.

4.7 A list of, and a link to, all validated nominations received should be published promptly on the Council's website, as such nominations will be material to any property due diligence carried out by or on behalf of a prospective purchaser and/or developer of land.

5. NOTIFICATION

5.1 Where the nomination complies with the statutory requirements, the Corporate Head with responsibility for Planning is required to consider and determine the nomination within the statutory eight week period, which commences from the date of receipt of the nomination.

5.2 The Corporate Head with responsibility for Planning is considered to be best placed to manage and determine the ACVs because of the similarities with managing and determining a planning application, and there are existing interfaces between Planning, the Legal Services team and the Local Land Charges team (in relation to the registration of section 106 agreements), which can be utilised in managing the process of listing and delisting ACVs. It avoids having to set up a substitute process where conflicts of interest arise between the Council as landowner and the Council as the Local Planning Authority.

5.3 The Corporate Head with responsibility for Planning is required to take all practicable steps to inform the following that the Council is considering listing the land:

- (a) the parish council (if any) in which the land lies or partly lies in the parish council's area;
- (b) residents' or village associations (although this is not a statutory requirement) where the land lies or partly lies in the area covered by the association;
- (c) the owner of the land as defined in section 107 of the Act, namely the freeholder, or the qualifying leaseholder with the lease most distant from the freehold title⁶;
- (d) where the owner is not the freeholder, the freehold owner, and any leasehold owner;
- (e) any lawful occupant of the land (which could include a licensee);
- (f) the local ward member(s) in whose constituency the land lies or partially lies and the members of the Executive (although this is not a statutory requirement).

5.4 If the Corporate Head with responsibility for Planning is unable to give notice in the usual way, due to a lack of or incomplete names or addresses, he/she should take

⁶ The term "most distant" applies where there are intervening leases of the same parcel of land granted out of the freeholder's title both/all of which, when granted, had at least 25 years to run. For example where, in respect of the same parcel of land, there is a lease, sub lease and sub underlease, and the three leasehold interests each had unexpired terms of at least 25 years from the dates of the three grants, then the owner of that parcel of land will be sub-tenant. Where there is one qualifying leasehold estate, the owner of the relevant parcel of land is the person in whom that estate is vested.

reasonable alternative steps to bring the notice to the relevant person's attention. A notice should be attached to the property or placed at the site, attached to any parish council or other community notice boards and the nomination advertised on the Council's website.

- 5.5 As part of the notification process, the Corporate Head with responsibility for Planning should invite comments/representations from the owners and occupants on the nomination. A dedicated email address should be set up for this purpose and this should be publicised on the Council's dedicated webpage and in any notices placed.
- 5.6 The Council must process any personal information received as part of the notification in accordance with the Data Protection Act 1998.

6. CONSIDERATION

- 6.1 Section 88 of the Act states that land is of community value, if, in the opinion of the Council, either of the following definitions are met:
- (a) the primary current use of the building or other land furthers the social wellbeing or social interests of the local community **AND** it is realistic to think that the building or other land can continue to be used (though not for ancillary use alone) in a way that will further the social wellbeing or social interests of the local community (whether or not in the same way as previously); or
 - (b) the building or the land has in the recent past been primarily used for the purpose of furthering the social wellbeing or social interests of the local community **AND** it is realistic to think that the building or the land could be primarily used to further (whether or not in the same way as before) the social wellbeing or social interests of the local community within the next five years.
- 6.2 The following land is not of community value:
- (a) residential property, including gardens, outbuildings and other associated land⁷, unless the asset is only partly used as a residence (for example contains integrated residential quarters, such as accommodation as part of a pub or a caretaker's flat) and but for that the residence would be eligible for listing as an ACV;
 - (b) land licensed for use as a residential caravan site (or would be required but for certain provisions⁸ in the Caravan Sites and Control of Development Act 1960);
 - (c) operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990.

⁷ Land that it is reasonable to consider as part of the land with the residence where it is separated only by a road, railway line, river or canal where they are in the same ownership as the associated residence. Ownership could be by the same individual or by different trusts of land settled by the same settlor.

⁸ Para 1, 4, 5 and 10 to 11A of Schedule 1

- 6.3 Social interests includes in particular (but not exclusively) cultural interests, recreational interests and sporting interests, but there is no definition in the Act of social wellbeing. One explanation of social wellbeing is 'involvement/participation with other people and/or with the community'; another is improving the quality of life. The Corporate Head with responsibility for Planning will evaluate this on a case by case basis, using the natural meaning of the words and on the basis of the representations made by the nominator, the owners and the occupants of the land.
- 6.4 There is no definition of 'recent past' and the Corporate Head with responsibility for Planning will have to decide this on the facts. As the Government's own policy statement makes clear, "recent" might be viewed differently in different circumstances. For example, "recent" might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter.
- 6.5 In deciding whether a nominated asset should be listed, the Corporate Head with responsibility for Planning will need to exercise the general duty to take all relevant matters into consideration when making a decision. Each nomination will be considered on its individual merits. However, relevant matters for consideration will include the matters submitted by the nominator and the representations/comments received under paragraph 5.5.
- 6.6 The Corporate Head with responsibility for Planning may also take into consideration, amongst other matters, the following factors:
- (a) evidence of the nature and extent of the use of the land and how it contributes to the social wellbeing and or social interests of the local community;
 - (b) the current use and/or state of the land;
 - (c) the strength of community feeling evidenced independently of the nomination (e.g. through petitions, local newspaper coverage, representations made by the local ward member(s));
 - (d) past and current planning history;
 - (e) whether a previously unsuccessful community nomination has been submitted and the reasons for which it was unsuccessful;
 - (f) whether it was previously listed as an ACV and the reasons for it being removed from the list of ACVs;
 - (g) the owner's proposed future use of the land and any plans to mitigate the impact of the change in use on the social wellbeing and or social interests of the local community;
 - (h) the value of the site, both current and disposal value where relevant, and may request the owner to provide independent valuations to support representations on the basis of value.
- 6.7 It is recognised that the owner may provide information which it deems commercially sensitive to the Corporate Head with responsibility for Planning. It is the responsibility of the owner to specify if the information is deemed commercially sensitive and this will be highlighted on the Council's website. The Corporate Head

with responsibility for Planning will need to put in place the appropriate safeguards to ensure he/she deals appropriately with such information.

- 6.8 If the Corporate Head with responsibility for Planning forms the opinion that the section 88 definition is met, then the Council is required to list the asset as an ACV. If the Corporate Head with responsibility for Planning forms the opinion that the section 88 definition is not met, then the Council is required to list the asset as an asset nominated unsuccessfully as an ACV.
- 6.9 The Corporate Head with responsibility for Planning will need to issue a written decision notice setting out the decision and the reasons for that decision. If the decision is to list the land as an ACV, the decision notice must set out the consequences for the land and its owner resulting from the land's inclusion in the list of ACVs, and of the owner's right to request a review of the decision under section 92 of the Act.
- 6.10 The consequences are (a) that the Council has or will register a local land charge against the land (b) the Council has or will apply to the Land Registry for a restriction in the form QQ if the land is registered, of if the land is unregistered, the owner (or mortgagee on behalf of the owner) is under a duty to apply for a restriction against their own title if the land is listed as an ACV on first registration at the Land Registry) and (c) that the statutory moratorium will apply to non-exempt disposals of the land and the obligation to notify the Council should the owner wish to make a non-exempt disposal. These are set out in more detail at sections 8 and 10 below.
- 6.11 The decision notice must be sent to:
- (a) the voluntary or community body which made the nomination;
 - (b) the parish council (if any) in which the land lies or partly lies in the parish council's area;
 - (c) residents' or village associations (although this is not a statutory requirement) where the land lies or partly lies in the area covered by the association;
 - (d) the owner of the land as defined in section 107 of the Act, namely the freeholder, or the leaseholder with the lease most distant (as explained at 5.3(b)) from the freehold which when granted had at least 25 years to run;
 - (e) and where the owner is not the freeholder, the freehold owner, and any leasehold owner;
 - (f) any lawful occupant of the land (which could include a licensee) if they are not also the owner; and
 - (g) the local ward member(s) in whose constituency the land lies or partially lies and the members of the Executive (although this is not a statutory requirement); and
 - (h) other appropriate Council officers⁹.

⁹ Including officers with responsibility for dealing with Local Authority Enquiries and maintaining the Local Land Charges Register.

- 6.12 The method of serving the decision notice is not specified in the Act. The Corporate Head with responsibility for Planning may decide that the decision notice should be sent by recorded delivery to prove that the decision notice was served. If it is not reasonably practicable to give written notice (for example, incomplete names and/or addresses, previous communications returned as 'not known at this address'), the Council is required to take reasonable alternative steps for the purpose of bringing the notice to the person's attention. The decision notice should be attached to the property or placed at the site, attached or placed on parish council or other community notice boards and the nomination advertised on the Council's website.
- 6.13 If the land is unsuccessfully nominated, there is no statutory right of appeal available to the nominator. If the nominator considers that there was a failure to apply the policy or any other procedural irregularity, the nominator could raise this through the Council's complaints procedure, or through the Local Government Ombudsman, or applying for a judicial review on public law grounds to quash the Council's decision.

7. LISTING

- 7.1 The Council is required to maintain two lists; one known as 'List of Assets of Community Value' (**ACV List**) and one known as 'List of Land Nominated by Unsuccessful Community Nominations' (**UCN List**). It can be one list split into two parts and authority for maintaining the lists is to be delegated to the Corporate Head with Responsibility for Planning.
- 7.2 On determining the nomination, the appropriate list should be updated as soon as practicable and in any event within 3 working days of the decision. Both lists must be published, both the lists are required to be available for free inspection, and the Council is required to provide one free copy of the lists on request. This requirement will be addressed by publishing and maintaining these lists on the Council's website.
- 7.3 The form and content of the lists is not specified by the Act nor by the Regulations, other than the UCN List must include the reasons for which the Council did not list the land as an ACV.
- 7.4 The Council must remove an entry on the ACV List five years from the date of its entry (unless it has previously been removed). The nominating organisation will not be contacted ahead of the expiry of the five year period. If the nomination organisation or any other nominator wishes to nominate the land as an ACV, a new nomination will need to be submitted.
- 7.5 It is up to the Council as to how long entries in the UCN List are held; the Act states that the entry may be removed after five years from the date of its entry (but need not be). The objective is to ensure transparency and to avoid multiple nominations of the same asset which does not meet the section 88 definition.
- 7.6 As entries on the ACV List are valid for no more than five years, the date of entry and the date of removal should be included in the list.
- 7.7 When considering what information should be published on the lists, the Corporate Head with responsibility for Planning must consider what personal data should be disclosed in order to comply with the Data Protection Act 1998. Nominators relying on having 21 members with a local connection should be aware that details of their names and addresses will be published in the interests of transparency and will be

requested to acknowledge and consent to this publication when submitting the nomination. This will be achieved by the nominator completing a data protection section on the nomination form.

- 7.8 Events which affect or may affect the entry on the ACV List, such as requests for an internal review or appeals to the First-Tier Tribunal are to be noted on the ACV List as soon as reasonably practicable.

8. UPDATING LAND CHARGES AND LAND REGISTRY

- 8.1 The Act introduces two mechanisms to protect land that is listed as an ACV to prevent it from being disposed of in breach of the Act. This protection is provided by (i) registering the ACV listing as a local land charge and (ii) entry of a restriction on the land register at HM Land Registry.

- 8.2 For nominations which are successful, the Council is required to register this as a local land charge. This is to ensure that all prospective new owners, tenants or lenders will be aware that an asset has been listed, as local land charges apply to both registered and unregistered land. The registration as a local land charge should be processed on the same day as the determination that the land is an ACV.

- 8.3 For nominations which are successful, and where the land is registered, the Council is required to apply to the Land Registry for entry of a restriction on the Land Register in the Form QQ:

“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”.

- 8.4 This application to the Land Registry should be made within five working days of determination that the land is an ACV.

- 8.5 The Corporate Head with responsibility for Planning will instruct the Legal Services Manager¹⁰ to enter the restriction, and will instruct the Local Land Charges team to register the local land charge.

- 8.6 It is anticipated that CON29 Standard Enquiries of Local Authorities, which is the Law Society’s approved method for conveyancers to carry out a Land Charge search as part of any property due diligence, will be updated to take effect in 2014. Depending on the content of the revised CON29, the Corporate Head with responsibility for Planning will need to notify the Land Charges team in relation to the list of nominations received, decisions reached and any reviews or appeals that may be pending, in order to provide complete accurate and timely information to conveyancers.

9. REVIEW OF DECISION TO LIST

- 9.1 The owner has the right to request a review of the decision to list land as an ACV, provided that the request to review is made in writing and received by the Council within eight weeks of the date on which the Council served written notice of its decision to list. The eight week period is not from the date the decision notice was

¹⁰ This needs to be undertaken by a solicitor or conveyancer.

issued, but the date which reflects the deemed receipt by the owner of the decision notice based on the method of giving notice. Under the Regulations, the Council may allow a longer period for requesting a listing review and a nine week period is to be applied as this allows for a longer period of deemed receipt where second-class post may have been used.

- 9.2 If the Council had to take reasonable alternative steps to bring the notice to the attention of the owner as set out in paragraph 6.12, the owner's request for a listing review must be made before the end of the nine week period ending on the date on which those steps are completed.
- 9.3 The review must be carried out by an officer of the 'appropriate seniority' who did not take any part in making the decision to be reviewed. Authority is to be delegated to the Strategic Director to undertake the review.
- 9.4 On receipt of a request, the Strategic Director must as soon as practicable notify (a) the owner of the procedure to be followed in connection with a review and (b) those notified of the nomination as set out in paragraph 5.3. This is for information purposes only as the Act and the Regulations give the right to make representations to the owner or owner's representative only.
- 9.5 The review procedure must be held at the owner's request, and where no written request for an oral hearing is made by the owner, the Strategic Director may decide whether or not to include an oral hearing in the process.
- 9.6 The owner may appoint any representative, whether legally qualified or not, to act on his or her behalf in connection with the review. The Strategic Director must provide to the representative any document which is required to be sent to the owner, but need not provide that document separately to the owner.
- 9.7 Both the owner and the owner's representative may make representations to the officer carrying out the review (i) orally or (ii) in writing or (iii) both orally and in writing. The representations may include, amongst other matters whether:
 - (a) the land was eligible for listing;
 - (b) the nominator was an eligible body or organisation;
 - (c) the statutory process was properly implemented by the Council;
 - (d) there were any matters that were not given proper weight, or were given the incorrect weight;
 - (e) the statutory definition in section 88 of the Act was incorrectly applied;
 - (f) any irrelevant considerations were taken into account by the Council, in reaching its decision; and/or
 - (g) there were any irregularities in the procedure applied by the Council.
- 9.8 The Strategic Director must determine the review within the eight week period commencing on the date the Council receives the written request for the review, or such longer period as is agreed in writing with the owner.
- 9.9 The owner and the Council will each bear its own costs of the review.

- 9.10 The land remains listed while the review is carried out. The ACV List shall be updated to flag that a request for a review has been submitted.
- 9.11 On determining the review, the Strategic Director must notify the owner of his decision and give reasons for it, as well as setting out the owner's right to an independent appeal as set out in paragraph 9.13 below.
- 9.12 If the review decision is that the land should not have been listed as an ACV, the Strategic Director must take, or procure the taking of, the following steps:
- (a) remove the entry from the ACV List;
 - (b) make the corresponding entry on the UCN List as set out in paragraph 7.3;
 - (c) give a written copy of the reasons for the decision to the nominator (if listed in response to a community nomination), to the occupier of the land if the occupier is not the owner, and to any others who were originally notified of the decision to list as an ACV in accordance with paragraph 6.11.
 - (d) apply as soon as practicable to the Land Registry to cancel the Form QQ restriction;
 - (e) cancel the local land charge.
- 9.13 If the owner of the land is not happy with the decision of the listing review, it has a further right of appeal to the First-tier Tribunal (General Regulatory Chamber). Appeals may be on points of law and on findings of fact. The appeal to the tribunal must be made within 28 days of the Council sending the owner its review decision. Details are set out in the Appendix 2. The property will remain listed during the appeal process.
- 9.14 Responsibility for the process set out in 9.12 is to be delegated to the Corporate Head with responsibility for Planning, save in respect of 9.12(d) which will be the responsibility of the Legal Services Manager¹¹. Cancellation of the local land charge registration will be instructed by the Corporate Head with responsibility for Planning and will be undertaken by the Local Land Charges team.

10. NOTICE OF RELEVANT DISPOSAL

- 10.1 If the owner of the land wishes to make a relevant disposal¹² of land which is an ACV, and the disposal is not an exempt disposal (as set out in Appendix 3), the owner must notify the Corporate Head with responsibility for Planning in writing. As set out in the DCLG non-statutory guidance, it is open to the owner of the land to notify the Council, acting through the Corporate Head with responsibility for Planning as a precautionary measure if it is proposing to make an exempt disposal.
- 10.2 The Corporate Head with Responsibility for Planning must:

¹¹ This needs to be undertaken by a solicitor or conveyancer.

¹² A relevant disposal is (i) a freehold transfer with vacant possession to the new owner or (ii) the grant or assignment of a lease originally granted for at least 25 years giving vacant possession to the new owner.

- (a) update the ACV List to show:
 - (i) that a notice has been received from the owner under section 95(2) if the Act in respect of the land, as set out in paragraph 10.1;
 - (ii) the date on which the Council received the notice;
 - (iii) the end of the initial six week moratorium period, the end of the full six month moratorium period, and the end of the protected eighteen month period that apply under section 95 of the Act as a result of the notice¹³;
 - (b) where the land was listed in response to a community nomination, give written notice to the nominator of the matters set out in paragraphs 10.2(a) above;
 - (c) publicise the matters set out in paragraphs 10.2(a) above in the Council's district. It is proposed that this is done by updating the relevant section of the Council's website, and displaying a notice on or at the ACV and on the parish council or community notice board (if any).
- 10.3 If there is no written request during the interim six week moratorium, the owner is free to dispose of the asset.
- 10.4 If during the interim six week moratorium, the Corporate Head with responsibility for Planning receives a written request (which need not be in any particular format) from a community interest group that it wishes to be treated as a potential bidder, the Corporate Head with responsibility for Planning must:
- (a) as soon as is practicable pass the request on to, or inform the owner of it, and that the full six month moratorium period will apply. As any delay could be prejudicial to the owner, the request must be recorded and passed on to the owner on the day of receipt where possible;
 - (b) update the entry on the ACV List to record:
 - (i) the receipt of a written request from a community interest group with a local connection to be treated as a potential bidder;
 - (ii) the name of that community interest group; and
 - (iii) that restrictions on the owner on entering into a relevant disposal of the land continue to apply for the remainder of the full six month moratorium period, but that at the end of the six month moratorium period, no restrictions will apply for a further twelve month period.
- 10.5 If a community interest group has notified the Corporate Head with responsibility for Planning that it wishes to be treated as a potential bidder, the owner can continue to market and negotiate sales, but may not exchange contracts or enter into a binding contract to do so during the full moratorium period, unless it is a disposal to the interested community interest group. Notifying the Corporate Head with responsibility for Planning that it wishes to be treated as a potential bidder does not create an obligation on the community interest group to make an offer, or buy or

¹³ Each of the interim moratorium, full moratorium and protected periods commences on the date on which the Council receives notice from the owner of the proposed disposal.

acquire any interest in the land; it just provides a moratorium period to give sufficient time to arrange finance and to proceed.

- 10.6 After the full six month moratorium, the owner is free to sell to whomever they choose and at whatever price and no further moratorium will apply for the remainder of the eighteen month protected period. The protected period protects the owner from repeated attempts to block a sale as there can be no further moratoriums during the protected period.
- 10.7 As a disposal of an ACV which is non-compliant will be void¹⁴, which means that there will have been no change of ownership of the ACV, there is a strong incentive for owners to comply with the Act.
- 10.8 On a relevant disposal of the land by the owner, the owner must notify the Corporate Head with responsibility for Planning in writing of the disposal and the owner's conveyancer must provide a duly signed certificate confirming that the disposal did not contravene section 95(1) of the Act. On receipt of the written notice and of the certificate, the Corporate Head with responsibility for Planning must:
- (a) remove or amend (in the case of a disposal in part) the relevant entry on the ACV List and give reasons for the removal;
 - (b) give written notice of the removal to:
 - (i) the owner of the land;
 - (ii) the holder of the freehold estate and the holder of any leasehold estate in the land (where they are not the owner);
 - (iii) the occupier of the land (if the occupier is not the owner);
 - (iv) the nominator of the ACV (where the nomination was in response to a community nomination); and
 - (v) the parish council, where the land falls within the parish council's area;
 - (vi) residents' or village associations (although this is not a statutory requirement) where the land lies or partly lies in the area covered by the association;
 - (vii) the local ward member(s) in whose constituency the land lies or partially lies and the Executive (although this is not a statutory requirement);
 - (c) publicise the removal, and where it is not reasonably practicable to give written notice of the removal to any of the applicable persons set out in paragraph 10.8 (b), the Corporate Head with responsibility for Planning must take reasonable alternative steps to bring the notice of the removal to the person(s) attention by displaying a notice on the property, on the parish council or community notice board and advertising it on the Council's website;

¹⁴ It will be void unless the person making the disposal has made [all] reasonable efforts to ascertain whether the land was an ACV, but at the time of the disposal, did not know that the land was listed.

- (d) apply as soon as is practicable to the Land Registry to cancel the Form QQ restriction in respect of the disposal (n.b. it may only be a disposal in part); and
 - (e) cancel the local land charge registration (n.b. it may only be a disposal in part).
- 10.9 Responsibility for this process is to be delegated to the Corporate Head with responsibility for Planning, save in respect of 10.8(d) which will be the responsibility of the Legal Services Manager¹⁵. Cancellation of the local land charge registration will be instructed by the Corporate Head with responsibility for Planning and will be undertaken by the Local Land Charges team

11. NOTICE OF EXEMPT DISPOSAL

- 11.1 Following an exempt disposal (as set out in Appendix 3), the new owner of listed land must as soon as practicable after becoming the owner notify the Corporate Head with responsibility for Planning that an exempt disposal has taken place, and full details of the new owner's name and address, and where the owner is a registered company or body, its place of registration/registered office and its registration number.
- 11.2 The Corporate Head with responsibility for Planning must update the ACV List to record the change in owner, if details of the owner form part of the entry. An exempt disposal does not automatically result in an ACV from being removed from the ACV List.

12. NOTICE OF FIRST REGISTRATION

- 12.1 Where an application for first registration is made to the Land Registrar by the owner or mortgagee on behalf of the owner in relation to an ACV, which was at the time of listing unregistered land, the applicant must inform the Corporate Head with responsibility for Planning of that application for first registration.
- 12.2 The Legal Services Manager¹⁶ shall apply for a restriction in Form QQ to be entered against the land at the Land Registry. The Legal Services Manager may, at his/her discretion, accept an acceptably worded undertaking from the conveyancer to enter a restriction.

13. REVIEW OF THE LIST OF ASSETS OF COMMUNITY VALUE

- 13.1 The Council must, as soon as practicable after receiving information that enables it to do so, remove an entry on the ACV List, where the Council for any reason no longer considers the land to be land of community value.
- 13.2 This information may be as a result of the owner's successful appeal to the First Tier Tribunal (General Regulatory Chamber) or other independent tribunal against the Council's decision to list the land as an ACV. In this case, the Corporate Head with responsibility for Planning will apply the process set out in paragraph 9.11 above.

¹⁵ This needs to be undertaken by a solicitor, legal executive or conveyancer.

¹⁶ This needs to be undertaken by a solicitor, legal executive or conveyancer.

13.3 Alternatively, the information may come to the Council's attention as a result of a planning application or other planning policy matter (for example development or change of use of the land), change of owner, or from the owner through representations. Although the Act does not specify any obligation to consult, a process needs to be applied under which the Council reconsiders whether the land still meets the statutory test in section 88 of the Act. The Council, acting through the Corporate Head with responsibility for Planning, will approach the matter proportionately but as though it were an application for a review.

14. REQUEST FOR COMPENSATION

14.1 A qualifying private owner or a former private owner of land listed or previously listed as an ACV who incurs loss or expense that it is likely would not have been incurred had the land not been listed as an ACV, has the right to request compensation from the Council.

14.2 The right to request compensation is not available to public or publicly funded bodies.

14.3 The types of claim that may be made include, but are not limited to:

(a) a claim arising from delay in entering into a legally binding agreement to sell the land listed as an ACV which is wholly caused by:

(i) relevant disposals being prohibited under the interim six week moratorium period; or

(ii) in the case of a full six month moratorium period, relevant disposals being prohibited during any part of that full six month moratorium period¹⁷;

(b) a claim for reasonable legal expenses incurred in a successful appeal to the First-tier Tribunal (General Regulatory Chamber) against the Council's decision to:

(i) list the land; or

(ii) refuse to pay compensation; or

(iii) relating to the amount of compensation offered or paid to the owner.

14.4 Any claim for compensation must:

(a) be made in writing to the Council;

(b) be submitted within 13 weeks of the loss or expense being incurred or having finished being incurred;

(c) state the amount of compensation sought for each part of the claim;

¹⁷ Note that the six week or six month period may be adjusted if the owner did not submit the notice of intention to make a relevant disposal to the Council at the earliest date on which it would have been reasonable for the notice to have been submitted (Regulation 14(4)(b)).

- (d) include supporting evidence for each part of the claim.
- 14.5 The Council must consider the claim for compensation, and on reaching a decision, it must give the owner or former owner written reasons for its decision. Although there is no time period within which the claim must be determined, the DCLG non-statutory guidance states that as a matter of good practice, the Council should endeavour to reach a decision as quickly as practicable once it has all the necessary evidence. Authority for this decision is to be delegated to the Deputy s.151 Officer to be determined in conjunction with the Legal Services Manager as soon as practicable and within an eight week period.
- 14.6 On reaching a decision, the Deputy s.151 Officer should issue a decision notice, setting out the decision and the reasons for that decision, and state that the owner has the right to request a review of the Council's decisions as set out in paragraph 15.1 below and to whom such a request should be addressed.
- 15. REQUEST FOR REVIEW OF COMPENSATION DECISION**
- 15.1 The owner or former owner who has submitted a compensation claim may request the Council to review either or both its decisions relating to (a) whether compensation should be paid or (b) the amount of compensation that should be paid. A request for review must be submitted within eight weeks of the notification of the decision, unless the Council agrees to extend the period.
- 15.2 The Corporate Head with Responsibility for Planning will log receipt of the request for the purposes of tracking the statutory time periods.
- 15.3 The Regulations specify that the review must be carried out by an officer of the 'appropriate seniority' who did not take any part in making the decision to be reviewed. Authority to review the compensation decision is to be delegated to the Strategic Director. The Strategic Director must complete the review within the eight week period (unless an extension is agreed) starting from the date of receipt of the review request.
- 15.4 The procedure for reviewing a compensation decision is the same as that for a review of a listing decision in that:
- (a) the Council must as soon as practicable notify the owner of the procedure to be followed in connection with a review. The review procedure must be held at the owner's request, and where no written request for an oral hearing is made by the owner, the Council may decide whether or not to include an oral hearing in the process;
 - (b) the owner may appoint any representative, whether legally qualified or not, to act on his or her behalf in connection with the review. The Council must provide to the representative any document which is required to be sent to the owner, but need not provide that document separately to the owner; and
 - (c) both the owner and the owner's representative may make representations to the officer carrying out the review (i) orally or (ii) in writing or (iii) both orally and in writing.
- 15.5 On reaching a decision, the Strategic Director is required to issue a written decision notice, setting out the decision(s) and the reasons for the decision(s), together with the owner's right of appeal to the First-tier Tribunal (General Regulatory Chamber).

Appeals may be on points of law and on findings of fact but may only be brought by the person who requested the review. The appeal to the tribunal must be made within 28 days of the Council sending the owner its review decision. Details are set out in Appendix 2.

16. FUNDING COMPENSATION PAYMENTS

- 16.1 The DCLG non-statutory guidance states that it has reflected the estimated costs of compensation within the new burdens funding on the assumption that there will be 40 successful compensation claims across all administering local authorities a year. The Government will meet the costs of compensation payments (either as one large claim or as a combined total of a number of smaller claims) of over £20,000 in a financial year. Contact details for the Council to submit a claim are in Appendix 2. Responsibility for submitting a claim for reimbursement of any compensation payments shall be delegated to the Deputy s.151 Officer.

17. IMPLICATION OF LISTING LAND AS AN ACV ON PLANNING DETERMINATIONS

- 17.1 The Council as the Local Planning Authority views listing as an asset of community value as a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

18. INTER-AUTHORITY CO-OPERATION

- 18.1 Where land that is listed as an ACV falls between two or more local authority areas, the Act requires each of the local authorities to co-operate. A process, to be led by the Corporate Head with responsibility for Planning, is to be agreed, and the mechanism for co-operation set out in a memorandum of understanding, together with a copy of this policy statement, for circulation and agreement between the Council and each of its neighbouring local authorities. The proposed approach is that that Council in whose district the land predominantly is situate, be designated as the lead Council for the purposes of administering and co-ordinating the ACV process.

APPENDIX 1

Nomination Form – see separate document

APPENDIX 2

Contact Information:

First-Tier Tribunal (General Regulatory Chamber)

The address for an appeal to the First-Tier Tribunal (General Regulatory Chamber) is:

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 to GRC.CommunityRights@hmcts.gsi.gov.uk.

Compensation Claims by the Council

Department of Communities and Local Government
Albert Joyce
Community Assets Team,
5/A4 Eland House
Bressenden Place
London
SW12E 5DU

or by email to righttobid@communities.gsi.gov.uk.

APPENDIX 3

Exempt Disposals

Other than exemption (a) below, the Council would not usually know that the disposal is taking place, as an owner who is confident that the transfer they contemplate will be exempt will not need to notify the authority of his intention to sell under section 95(2) of the Act.

If the owner is unsure as to whether the exempt disposal is going to be successful, it may notify the Council as a precaution. An exempt disposal would not be prohibited from going ahead during any moratorium period, as the disposal is not a 'relevant' disposal. The owner is not required under the Act to set out that the proposed disposal is exempt, but it would be helpful to the Council if the owner did make this clear.

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”:
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- (p) sale by a lender under a power of sale (i.e. where the land was security for a loan)
- (q) disposal of land under bankruptcy or other insolvency proceedings – the wording is “insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986”, which gives a very wide definition of insolvency proceedings
- (r) compulsory purchase disposals (see the wide definition of “statutory compulsory purchase” in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)
- (s) the grant of an agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- (t) transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161(5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)
- (u) disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e). See final paragraph below for details.
- (v) disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches

Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.

- (w) disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)
- (x) a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy
- (y) disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.

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.

Reproduced from DCLG Community Right to Bid: Non-statutory advice note for Local Authorities: Part 5 Chapter 3 of the Localism Act 2011 and the Assets of Community Regulations 2012 (October 2012).

APPENDIX 4

Flow chart - see separate document

APPENDIX 5

Additional sources of information

Support for organisations who wish to find out more may find useful information at the Government's website <http://mycommunityrights.org.uk/> and through Locality <http://locality.org.uk>