

Community Right to Bid and Assets of Community Value Policy

1. Introduction

- 1.1 The Localism Act, which was passed in November 2011, supports the Government's commitment to decentralising the control of public services.
- 1.2 Within the Localism Act 2011 there are a number of community rights including the Community Right to Bid. This enables local groups to have the opportunity to nominate a building, part of a building, or piece of land, for listing by the local authority as an "Asset of Community Value". This includes assets that have a value of social interest or supports the social wellbeing of a local community. Currently only eligible community groups, local parish councils or local neighbourhood planning forums and charities can nominate assets. Registration as an Asset of Community Value enables groups to have the opportunity to bid for the asset on the open market if the property owner decides to sell.
- 1.3 This documents sets out the process for registering an Asset of Community Value in Fenland. Where appropriate reference will be made to the "Assets of Community Value (England) Regulations 2012" (the Regulations) as set out in the Localism Act 2011 (the Act) and "Community Right to Bid: Non-statutory advice note for local authorities" on which this policy is based.

2. What is defined as an asset of community value?

- 2.1 s88 Localism Act 2011 confirms that a building or other land in a local authority's area is land of community value if in the opinion of the authority:
 - s88(i) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and;
 - s88(ii) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community (Section 88(1) Localism Act 2011). Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.
- 2.2 There are some categories of assets that are excluded from listing and as such cannot be listed as Assets of Community Value.. The principal one is residential property. This includes gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal where they are in the same ownership as the associated residence. Details of this are set out in paragraphs 1 and 2 of Schedule 1 to the

Regulations. "The same ownership" is not limited to the same individual owner, and includes ownership by different trusts of land settled by the same settlor..

2.3 There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat. In these circumstances the asset may still be listed as an asset of community value despite being partly residential property.

2.4 There are two further categories of assets excluded from listing:

a) Land licensed for use as a residential caravan site (and some types of residential caravan site which do not need a licence), in paragraph 3 of Schedule 1 to the Regulations.

b) Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990, in paragraph 4 of Schedule 1 to the Regulations.

3. Which organisations can nominate an asset?

3.1 For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located).

3.2 The following voluntary and community groups which may make nominations are as follows;

a) Parish and Town Councils. This may be for an asset in its own area, or in the neighbouring parish council

b) Neighbouring Parish Councils. If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.

c) Unincorporated community group. Nominations can be accepted from any unincorporated group with membership of at least 21 people. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure. Fenland District Council will only accept nominations from Unincorporated Community groups where their membership include at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority.

d) Neighbourhood Forums. The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country

Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community. As at October 2016 we are not aware of any qualifying forums as yet in Fenland District

e) Community interest groups with a local connection. The Community Interest group must be at least one of the following:

- a) A charity
- b) A community interest company
- c) A company limited by guarantee that is non profit distributing
- d) An industrial and provident society that is non-profit distributing (these groups will be renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 when it comes into force)

In this context, non-profit distributing means that any surplus is not distributed to its members but is wholly or partly applied to the local authority area where the asset is based or to a neighbouring authority area.

These organisations must also have a local connection. It is down to the individual group to provide evidence to establish their local connection.

3.3 Fenland District Council cannot list land on its own initiative.

4. Contents of a nomination

4.1 A nomination form can be obtained from Fenland District Council (see appendix one), which must include as a minimum the following information:

- a) Details of the organisation nominating the asset and how they have a local connection
- b) A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.
- c) Any information the nominator has about the freeholders, leaseholders and current occupants of the site.

d) The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act. It is the responsibility of the nominator to provide the evidence that the Asset has Community Value. For example if the proposed Asset is used for a particular activity, how many times a day, week, month or year does the activity take place and how many people attend etc. Wherever possible corroborating evidence such as letters of support should be provided. Evidence should also be provided to meet all aspects of the statutory definition set out in s88 (i) and (ii) of the Act

4.2 Nominations must be sent only to communityrighttobid@fenland.gov.uk or Community Right to Bid nomination, Community Support, Fenland District Council, Fenland Hall, County Road, March, PE15 8NQ

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

5. After receipt of a nomination

5.1 If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in section 88 of the Act. Initially the nomination is reviewed to establish whether it meets the required eligibility requirements before being processed.

5.2 If the nomination is eligible then Fenland District Council will then have 8 weeks (see appendix two), from the date of initial receipt, to make a judgement about whether the asset meets the definition set out in section 88 of the Act or whether it falls into one of the excluded categories, including residential property, set out in Schedule 1 to the Regulations. This process concludes with the relevant portfolio holder determining the nomination (appendix three).

5.3 Following receipt of an eligible nomination Fenland District Council will take all practicable steps to inform the following if an asset has been nominated:

a) a parish council (if any) in which the land lies (or partly lies),

b) the owner as defined in section 107 of the Localism Act. This definition ensures that only one level of legal proprietary rights will qualify as ownership for the Act. In summary this is the freeholder or, if the asset is leased, the leaseholder with the lease most distant from the freehold which when granted had at least 25 years to run. So if there are a number of leases the leaseholder with a qualifying lease or sub-lease most distant from the freeholder is the owner for the purposes of these provisions.

c) all others with a legal estate, i.e. if the owner is not the freeholder then the holder of the freehold estate, and any other leaseholder apart from the owner.

d) any lawful occupant (which could include a licensee).

5.4 A local authority which is not able to give notice to any of these people in the usual way – for instance due to lack of names or addresses – can take reasonable alternative steps to bring the notice to a person’s attention. This could include, for instance, a notice attached to the property. (See section 91(2) of the Act.

5.5 During this 8 week period Officers may contact the nominator and ask for more detail to be provided to help inform the decision by the Portfolio Holder.

6 Determining an Application

6.1 The main parties will be notified when the Portfolio Holder determining the application will be considering the information and representations received. The nominator and the owner of the nominated asset will be invited to attend and will be strongly urged to do so. Each party being given the opportunity to speak for five minutes, as this will enable the Portfolio Holder to give fully informed consideration to the nomination if further questions are raised.

6.2 Once a nomination has been received and is validated as a legal application the application cannot be withdrawn and must be heard and determined. All nominators are advised to carefully consider the wider impacts of any nomination prior to submitting the application.

6.3 The Portfolio Holder when determining the application will consider whether the nominated asset is properly nominated, is in Fenland District Council’s area, meets the definition, and is not excluded. The Portfolio Holder will make his decision based on the information and evidence provided, and it is the nominator’s responsibility to ensure that the Portfolio Holder has enough evidence to establish that the definition has been met. Without adequate evidence the Portfolio Holder will not be able to conclude that an asset is of community value

7 Effect of a decision that a property is an Asset of Community Value

7.1 If the Portfolio Holder concludes it is an Asset of Community Value Fenland District Council must list it and inform all specified parties (including the parish council). They must also place the asset on the local land charges register and, if the land is registered, apply for a restriction on the Land Register in

Form QQ i.e. “No transfer or lease 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”.

- 7.2 Once an asset is agreed for listing, then nothing will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least 25 years). However, Fenland District Council will review each nomination every 5 years to ensure that it still meets with the criteria of the listing. If an asset is removed from the list then Fenland District Council will inform both the nominator and the owner of the asset.
- 7.3 If the Portfolio Holder does not agree that Fenland District Council should list the Asset as an Asset of Community Value in that he does not agree that the asset nominated meets the section 88 definition, or it is in one of the excluded categories, the Council must place it on a list of assets nominated but not listed.
- 7.4 Fenland District Council will keep the unlisted nomination on the list for three years. The intention of this is to ensure transparency and to avoid multiple nomination of an asset that does not meet the definition.
- 7.5 When an asset is added to or removed from the list, Fenland District Council must inform the owner, the occupier of the land if not the owner, and the successful community nominator of the asset. This is set out in section 91(2) of the Localism Act.4
- 7.6 Fenland District Council must also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in), that an asset has been added to, or removed from, the list. (See regulation 9 of the Regulations).

8. Procedure for review

- 8.1 If the owner objects to their property being placed on the list, they will have a right to an internal review by the council of the decision to list.
- 8.2 The deadline for the owner to request this review is 8 weeks from the date written notice of listing was given (or from the date that alternative steps were completed to bring listing to the owner’s attention). The property will remain listed while the review is carried out.
- 8.3 Requests for a review must be sent only to communityrighttobid@fenland.gov.uk or Community Right to Bid nomination, Community Support, Fenland District Council, Fenland Hall, County Road, March, PE15 8NQ

Basic procedural rules for the review are set out in Schedule 2 to the Regulations. The owner may appoint a representative and Fenland District Council will be required to provide all relevant documents to the representative. The review of the decision made by the Portfolio Holder will be made by Cabinet.

- 8.4 The owner and/or their representative may make representations to Cabinet orally and/or in writing. The Council strongly encourages the owner to submit both written evidence setting out the reasons for the review request and attend the meeting in person to set out their case at the Cabinet meeting. The council must complete their review within 8 weeks, unless a longer period has been agreed in writing.
- 8.5 The owner and council will bear their own costs of the review.
- 8.6 If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the council's review decision. The written response following the internal review will inform the owner of their right to an independent appeal and who to contact. The owner making the appeal can be either the same owner who requested the review, or - if the property has been sold in the meantime - the new owner.
- 8.7 The deadline for appealing is specified in the procedural rules as 28 days from the date on which notice of the decision appealed against was sent to the owner. Appeals may be both on points of law and on findings of fact. The property will remain listed during the appeal process.
- 8.8 If an owner is successful in their appeal against listing at either an internal review or Tribunal stage then the asset will be moved to the list of unsuccessful nominations.

9. Moratorium

- 9.1 The main effect of listing property as an asset of community value is to prevent a disposal of the property during the moratorium period. The Act sets out an interim moratorium period of 6 weeks from notification by the owner of their intention to sell and a full moratorium period of 6 months from the notification by the owner of their intention to sell.
- 9.2 The moratorium requirements, as set out in section 95 of the Localism Act, apply only to relevant disposals. "Relevant disposal" is defined in section 96. It means a transfer of the freehold or grant or assignment of a qualifying lease which gives vacant possession of the buildings and other land in question. However they will not apply to all relevant disposals, as some types of relevant disposal are

exempt. These exemptions are partly in the Act and partly in the Regulations, and are also set out in the Guidance at Annex A

- 9.3 The moratorium provisions apply only to disposals, so for example if a building listed as an asset of community value is to be demolished without being sold, the moratorium rules do not apply.
- 9.4 An owner of a listed site may not make a relevant disposal of their asset during the 6 week interim moratorium period (unless it falls within one of the exemptions or the disposal is to a community interest group). This interim moratorium runs from the date Fenland District Council receives notification from the owner of their intention to dispose of their listed asset (see appendix four)
- 9.5 Once Fenland District Council has been notified of the intent to dispose, they are required to update the list to show the owner's intention to dispose and to give the interim (6 weeks from notification by owner of their intention to sell) and full moratorium (6 months from notification by owner of their intention to sell) end dates, and the end date of the protected period. The original nominating community group must be informed. Fenland District Council must also publicise all of these matters in the neighbourhood of the asset in question. For this purpose notices are issued for display in the local community and an advertisement is placed in the local newspaper.
- 9.6 During the interim moratorium period a community interest group may request in writing to be treated as a potential bidder for the asset; this will bring the full moratorium period into force. The community interest group does not have to provide any evidence of intention or financial resources to make such a bid. A community interest group must have one or more of the following structures:
 - (a) A charity
 - (b) A community interest company
 - (c) A company limited by guarantee that is non profit distributing
 - (d) An industrial and provident society that is non profit distributing (these groups will be renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 when the relevant provisions come into force)
- 9.7 Once a local community interest group makes a written request to the local authority during the interim moratorium period to be treated as a potential bidder, the owner may not dispose of their asset during the full 6 month moratorium (see appendix five), except as permitted. The local authority must as soon as practicable let the owner know that this request has been received (section 98 of the Act).

- 9.8 There is one type of disposal that may be made during a moratorium. An owner may sell during the interim or full moratorium period to a local community interest group – i.e. one which either did, or would have been eligible to, trigger the full moratorium.
- 9.9 There are a number of types of disposals which are exempt from the moratorium requirements, as set out in section 95(5) of the Act and in Schedule 3 to the Regulations.

10. Exemptions from the moratorium period

- 10.1 The list of some of the exemptions are as follows (a full list can be found in the Localism Act in section 95(5));
- a) Disposal to a local community interest group, which can be made during the moratorium period
 - b) Disposals which are gifts
 - c) Disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
 - d) Disposals 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
 - f) Sale of land and a business as a going concern
 - g) Disposals made in pursuance of a legally enforceable requirement entered into before the asset was listed

11 Enforcement

- 11.1 The Regulations introduce a clear penalty for non compliance, and measures to minimise the chance of a disposal not being compliant with the scheme.
- 11.2 Local authorities are required to add that an asset has been listed to the local land charges register. This will ensure that all prospective new owners will be aware that an asset has been listed, since local land charges apply to both registered and unregistered land.
- 11.3 Local authorities are required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform local authorities that the land has been entered on the Land Register as a result of an application for first registration, and also to inform the local authority if they have become the new owner of listed land (together with giving their name and address details) .
- 11.4 Local authorities are also required to apply to the Land Registry for entry of a restriction on the Land Register when they list a building or other land as an Asset of Community Value, or, if necessary, where the owner of the listed asset has changed. This restriction will be in a form of wording newly added to Schedule 4 to the Rules, as Form QQ. This is “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". An owner of previously unregistered listed land, who applies to the Land Registry for first registration (or a mortgagee who applies for first registration on behalf of the owner), is required at the same time to apply for a restriction against their own title. The local authority is also required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.

- 11.5 When a listed asset is disposed of, and a new owner applies to the Land Registry to register a change of ownership of a listed asset, they will therefore need to provide the Land Registry with a certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act (the moratorium requirements). The restriction will remain on the title until removed by the local authority following removal from the list of Assets of Community Value. The disposal of the property will not therefore remove the restriction.

12 Compensation

- 12.1 Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.
- 12.2 The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.
- 12.3 Claims must be made in writing to Fenland District Council, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.
- 12.4 Fenland District Council will consider the claim and will give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.
- 12.5 The compensation scheme does not extend to public authorities and bodies.

These are defined as:

a) Government departments, authorities and other bodies to which section 6 of the National Audit Act 1983 applies;

b) bodies which receive the majority of their funding from public sources which may be examined by the Comptroller and Auditor General under section 7 of the National Audit Act 1983

c) local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998

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