

12-53 The Assets of Community Value (England) Regulations 2012

Key issues;

- The Assets of Community Value Regulations introduce a new right for voluntary or community body to request that a local asset (land or building) should be listed as an 'Asset of Community Value'
- The new right covers both public and private assets and is designed to facilitate a 'community right to bid' for assets deemed to be assets of community value.
- The regulations also set out new duties and responsibilities on the local authority including keeping a list of assets of community value, scheme operation and regulation and payment of compensation.

1. Policy context and background

The Localism Act received Royal Assent in November 2011 and contained a number of provisions relating to new 'community rights'. The most notable of these provisions are the new Community Right to Challenge ([see APSE briefings 12-26 and 12-36](#)) and the 'Community Right to Bid' which relates to assets of community value.

Government thinking behind this new 'Community Right to Bid' is that the new right will help stem the decline in assets, which could be viewed as benefitting local communities, being disposed of without the local community being given the opportunity to keep such assets in use within communities. Examples cited include village shops, local pubs and libraries. The right is not simply to accommodate 'public assets' but also private assets and therefore the new Community Right to Bid applies to private as well as public assets; the test is whether such assets are viewed as 'assets of community value'.

2. What is the legal framework?

The Community Right to Bid was introduced under part 5 chapter 3 of the Localism Act 2011 and is subject to regulations (***The Assets of Community Value (England) Regulations 2012***) which came into force on the 20 September 2012. The Regulations apply to England only with powers conferred on Welsh Ministers to make regulation under the provisions of the Localism Act. A non-statutory advice note to local authorities on the Community Right to Bid was issued on the 4th October 2012.

The Assets of Community Value legislation places requirements on the following English local authorities:

- A District Council
- A County Council for an area for which there are no districts councils

- A London Borough Council
- The common council of the City of London
- The council of the Isles of Scilly

3. How will the Community Right to Bid operate?

The provisions give local groups a right to nominate a building or other land for listing by the local authority as an asset of 'community value'. The 'community value' element is if the asset furthers or has recently furthered the social well-being or social interests (which include cultural, sporting or recreational interests) of the local community and are likely to do so in the future. Where an asset is listed as being of 'community value' Government believes that the process of a 'Community Right to Bid' will enable the community to have a fairer chance of buying that asset on the open market. The new right does not confer a 'right to buy' or a 'right of first refusal' but introduces, in certain circumstances, a moratorium on disposal of the asset.

4. Who can nominate an asset?

Parishes and community organisations **with a local connection** are able to nominate local assets to their local authority for inclusion on the list of assets of community value.

The regulations define 'local connection' as:-

'For the purposes of these regulations and section 89(2) (b) (iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if—

(a) The body's activities are wholly or partly concerned—

(i) with the local authority's area, or

(ii) with a neighbouring authority's area;

(b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partly applied—

(i) for the benefit of the local authority's area, or

(ii) for the benefit of a neighbouring authority's area; and

(c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.

(2) For the purposes of these regulations and section 89(2)(b)(iii) of the Act—

(a) a parish council has a local connection with land in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area; and

(b) a parish council has a local connection with land that is in a local authority's area but is not in any parish council's area if—

(i) the council's area is within the local authority's area, or

(ii) any part of the boundary of the council's area is also part of the boundary of the local authority's area.

(3) In paragraph (1)(c), "local member" means a member who is registered, at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts(1).

The regulations also define a 'voluntary or community body' as

a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990(1);

(b) a parish council;

(c) an unincorporated body—

(i) whose members include at least 21 individuals, and

(ii) which does not distribute any surplus it makes to its members;

(d) a charity;

(e) a company limited by guarantee which does not distribute any surplus it makes to its members;

(f) an industrial and provident society which does not distribute any surplus it makes to its members; or

(g) a community interest company(2).

(2) A public or local authority may not be a voluntary or community body, but this does not apply to a parish council.

(3) In this regulation "industrial and provident society" means a body registered or deemed to be registered under the Industrial and Provident Societies Act 1965(3) which meets one of the conditions in section 1 of that Act

5. What happens when an asset is nominated?

The nomination of an asset must be made in a way set out in the regulations and therefore the nomination of an asset to be treated as land of community value must contain:

(a) a description of the nominated land including its proposed boundaries;

(b) a statement of all the information which the nominator has with regard to—

(i) the names of current occupants of the land, and

(ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;

(c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and

(d) evidence that the nominator is eligible to make a community nomination.

If an asset is properly nominated the local authority has 8 weeks to make a judgment about whether the asset meets the definition of an asset of community value or whether it is otherwise excluded. Exclusions are set out in schedule 1 but generally

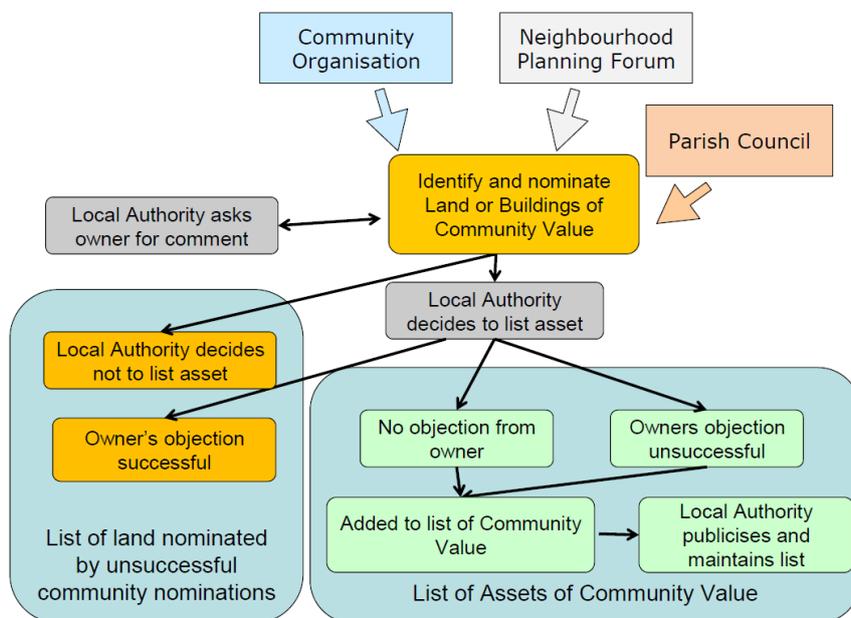
provide for the exclusion of assets that are used as residences, land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960 and 'operational land' as defined in section 263 of the Town and Country Planning Act 1990(3). This does not mean assets that happen to contain a residency, such as a public house or post office with living accommodation, are excluded.

If therefore the asset is properly nominated, is in the local authority's area, and meets the definition of an asset of community value then the authority must notify the owner and ask for comment and place the asset on the list and on the local land charges register, and, in the case of registered land, apply for a restriction on the Land Register.

Where an owner objects to the inclusion of their property being placed on the list they will have a right of internal review by the council. If the owner remains in disagreement with the listing after the internal review they have a right of appeal to an independent Tribunal.

Where an authority itself disagrees with the asset nominated for inclusion on the list, or the asset is an excluded category, they must place the asset on a **list of assets nominated but not listed** – this also applies to any assets whereby an owner has successfully appealed against inclusion of an asset on the list. In other words the asset would be delisted from the list of assets of community value and placed onto a list of assets unsuccessfully nominated. It is envisaged that this process would prevent multiple applications about the same assets being dealt with over again.

The following flow chart from the non-statutory guidance is helpful:-



6. Next steps – Moratorium

Once an asset has been listed as land of community value nothing further happens unless or until the owner of the asset decides to dispose of it. Unless an exemption

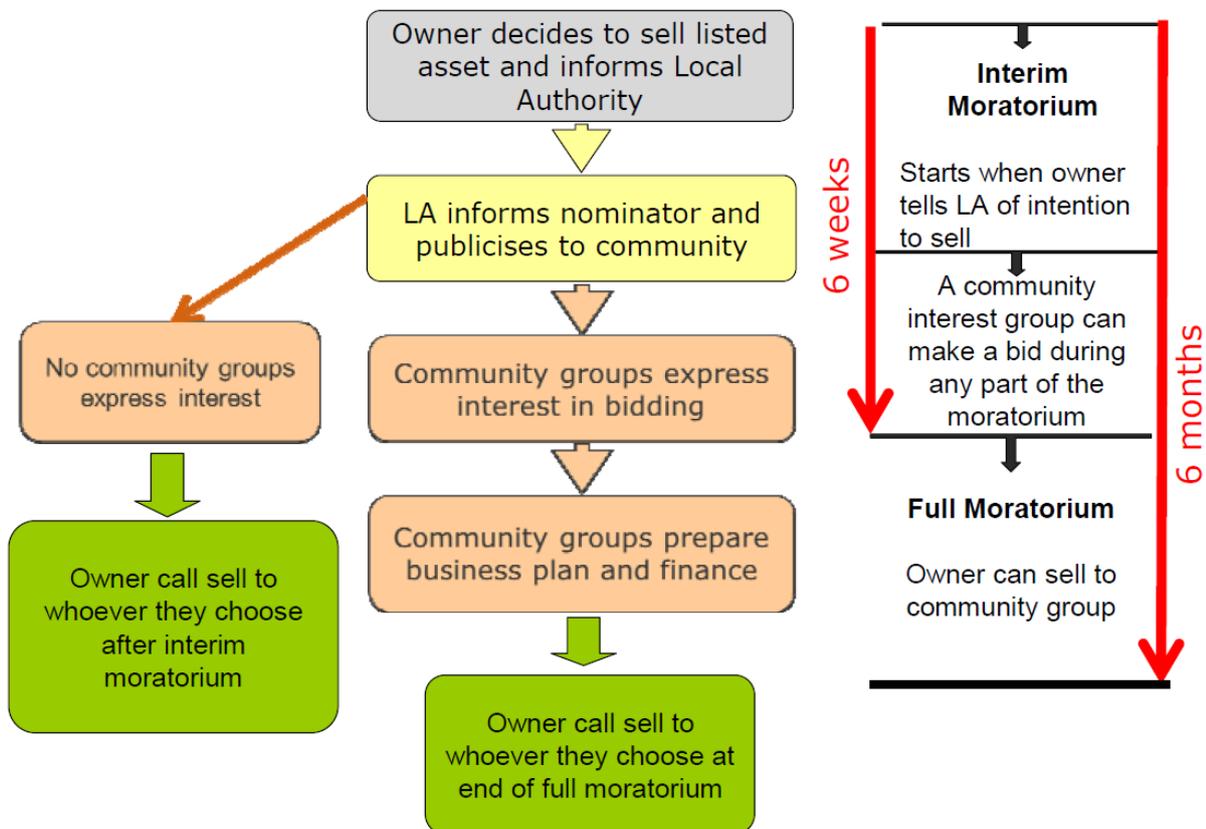
applies the owner will only be able to dispose of the asset after specified windows have expired.

The first window is six weeks – an interim window - during which time community interest groups can make a written request to be treated as potential bidders. If none do so during this period the owner is free to sell their asset at the end of the six weeks.

If a community interest group does make a request during this interim period then a full **6 month moratorium** will apply. During this moratorium period the owner must notify the local authority, and, whilst the owner may continue to market the property and negotiate sales they may not exchange contracts or enter into a binding contract, however the owner may sell to a community interest group during the moratorium period.

After the moratorium period, either the first six weeks or second six months has passed, 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 protected period of 18 months (starting from the date at which the owner notified the local authority of their wish to sell).

The following flow chart again extracted from the non-statutory guidance is helpful:-



7. Compensation and enforcement

The scheme provides for compensation which will be administered to local authorities and is subject to appeal processes by private property owners who may feel compensation is inadequate. The scheme will be enforced by:-

- Informing owners that an asset is listed
- By entry onto the local land charges register and
- A restriction on the Land register

Non-compliant sales will be void meaning that the change of ownership has not taken place (even in the case of an erroneous Land Register entry) unless the owner was unaware, through no fault of their own, that the land was listed when it was sold. The provisions do not otherwise restrict who an owner can sell their land to and at what price, nor restrict what an owner can do with their property in terms of use, since that is a matter for the local planning authority to decide.

Local authorities are also obligated to pay compensation if claimed by a private owner. This would generally apply where the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed. The local authority as the owner of listed land is not entitled to any compensation for losses incurred.

8. Impact on APSE member authorities

The new suite of community rights introduced under the Localism Act 2011 is subject to numerous elements of regulation and guidance. In terms of the community right to bid there are clear implications for local authorities.

Firstly, there is a new burden on local authorities in administering the scheme; as well as training staff to deal with the new scheme authorities need to decide where, within the authority, the nominations for 'land of community value' will go to be processed and who will be responsible for the notification to the different interested parties. There are also implications for legal and conveyance teams and land charges units in terms of both private land and land owned by the local authority which may be on the list of assets of community value.

As the new scheme applies to local authority land there is of course the possibility that the nomination of land could be used to thwart otherwise agreed arrangements for disposal of land or assets; for example, a service redesign that seeks to reduce a local authority asset base – for example closure of libraries or leisure centres to realise a sale of the asset to support the service continuing elsewhere or on a reduced basis. The new right could be used in conjunction with the Community Right to Challenge whereby an expression of interest in running a service runs in tandem to a request to list an asset as being of community value, from which a service could be delivered. The new right could of course be triggered by community consultation processes on future service

provision, under Best Value duties or considerations, where community's views are sought, for example, on the closure of a certain asset such as a community, civic or cultural venue.

Perhaps the most controversial issue is that of compensation. Information from DCLG suggest that of the 326 authorities affected by the new Community Right to Bid the new burdens funding equates to just £4,873 per local authority. In addition DCLG have relied upon calculations of compensation based on the Scottish version of the scheme which suggest that the likely compensation claims will come from those asset owners who are subject to the full moratorium and on that basis the local authority will itself need to pay any compensation payments below £20,000. The Government has committed to meet costs of compensation payments over £20k in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims. However a number of small claims below the £20,000 threshold will fall directly onto local councils and could create a significant new financial burden just as budgets are being squeezed.

There is also the prospect of councils becoming embroiled in disputes between community groups and landowners whilst following a new procedural approach that rigidly defines what a local authority must do. It is also an obvious concern that the procedure may be open to abuse in order to gain compensation payments. Local authorities will need to be mindful of having effective processes in place to safeguard against such actions, which may, in any event, be difficult to prove.

This process driven approach may also hinder democratic decision making whereby elected members, acting in the interest of a much wider electorate, have their decisions on local services fettered by a much smaller representation of local interests. It is also unlikely to be popular with landowners who may see that having their property placed on a list, and possibly subject to a moratorium on sale, is de facto, 'a blight' on their property.

APSE will be discussing the new Community Right to Bid at forthcoming APSE advisory groups and working towards the development of a professional practice forum with legal partners to consider both the legal issues and the practical issues for local authorities and frontline services. For further details please contact Mo Baines on mbaines@apse.org.uk

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