



Assets of Community Value Protocol

Introduction

The Localism Act 2011 introduces 'Assets of Community Value' (also known as Community Right to Bid). The legislation enables local groups to nominate a building or piece of land that is important for the social well-being of the area for inclusion on the local authority's 'List of Assets of Community Value' and bid for it if it comes up for sale. This protocol outlines the process that will be followed in East Cambridgeshire for qualifying voluntary and community bodies to exercise the 'Community Right to Bid' and the process that the owner must go through if they choose to sell the asset, which is listed on ECDC's list of Assets of Community Value.

Key Terms:

- LA 2011 means Localism Act 2011
- DCLG Advice Note means 'Community Right to Bid: Non-statutory advice note for local authorities', October 2012, Department for Communities and Local Government.
- Regulations means 'The Assets of Community Value (England) Regulations 2012'.

PART 1 – LISTING AN ASSET

1. What qualifies as an asset of community value

The LA 2011¹ describes an asset of community value as 'a building or other land in a local authority's area is land of community value if in the opinion of the authority –

- a) 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
- b) 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.

The LA 2011² also states that buildings or other land can be considered as an asset of community value if in the recent past they have furthered the social wellbeing or interests of the local community and the use of the building or land that was not an ancillary use and it is realistic to think that within the next five years it would further the social wellbeing or interests of the local community. The LA 2011 and associated regulations do not define 'social wellbeing' or 'recent past', although "social interests³" is described in the LA 2011 as including cultural, recreational and sporting interests. Therefore ECDC will consider each nomination on a case-by-case basis, using widely accepted definitions as guidance.

Schedule 1 of the Regulations lists land which is not of community value and therefore may not be listed. This list includes residential properties and land

¹ s88 (1) (a) and (b) LA 2011

² s88(2) (a) and (b) LA 2011

³ s88 (6) LA 2011

connected to a residential property, caravan sites or operational land as defined in section 263 of the Town and Country Planning Act 1990. ECDC will apply the definitions set out in the Regulations when considering whether a building or other land is eligible to be nominated as an asset of community value.

2. Who may nominate an Asset

For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with East Cambridgeshire or with a neighbouring authority (an authority which shares a boundary with East Cambridgeshire). The Regulations define what a 'local connection'⁴ is and ECDC will apply this definition when assessing whether the nominating body qualifies.

The voluntary or community bodies that may make community nominations are set out below⁵:

Parish Councils: Any Parish Council within the borders of East Cambridgeshire can nominate an asset in their parish to East Cambridgeshire District Council (ECDC). A parish council can also nominate an asset in a neighbouring parish (where the boundaries are shared) or a neighbouring local authority if the Parish Council borders an un-parished area.

Unincorporated groups: Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority area, or a neighbouring local authority. The body's activities must be wholly or partly concerned with the local authority's area or with a neighbouring authority's area and must not distribute any surplus it makes to its members.

Neighbourhood Forums: as described in section 61F of the Town and Country Planning Act 1990.

Community interest groups with a local connection: The body's activities must be wholly or partly concerned with the local authority's area or with a neighbouring authority's area. These 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 distributing⁶

3. How to Nominate an Asset

A nomination⁷ must include:

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

⁴ Regulation 4

⁵ DCLG Advice Note p10 and Regulation 5

⁶ Defined in the DCLG Advice Note p11 as meaning 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.

⁷ Regulation 6

- b) A statement of all of 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 ECDC should conclude that the land is of community value; and
- d) Evidence that the nominator is eligible to make a community nomination.

ECDC has produced an 'Assets of Community Value Nomination Form' attached at Appendix A to help organisations who wish to make a nomination ensure they include all of the information set out within the Regulations. The form must be completed by a voluntary or community body as detailed at section 2 above. The form can be submitted at any time and should contain as much detail as possible to enable ECDC to make an informed decision as to whether the nomination is valid and if the building or other land should be nominated as an Asset of Community Value. The form can be completed on line or downloaded from ECDC's website and submitted to acv@eastcambs.gov.uk. The form can also be sent to the Partnerships Officer, ECDC, The Grange, Nutholt Lane, Ely, Cambs, CB7 4EE.

4. Procedure when a nomination is being considered

The process that ECDC will follow when it receives a nomination is detailed in the flow chart at Appendix B. ECDC will decide whether land nominated by a community nomination should be included on the list of Assets of Community Value within eight weeks of receiving the nomination⁸. It will inform the relevant parish council, the owner of the land, any freeholders or leaseholders, any lawful occupant of the land⁹ and the Ward Councillor of the receipt of a nomination and notify them of the outcome once all of the information it has received on the nomination form has been considered.

If ECDC are not able to give notice to any of the people listed above by letter – for instance due to lack of information as to the names or addresses of owners/occupiers – reasonable alternative steps will be taken to bring the notice to a person's attention. This could for example include a notice attached to the property.

The LA 2011¹⁰ requires ECDC to maintain a list of land or buildings in the District that is land of community value. This list will be called the 'List of Assets of Community Value'. ECDC must also maintain a list of unsuccessful nominations, This list is called 'List of land nominated by unsuccessful community nominations'. ECDC will make both lists available on its website and a paper copy of both lists will be available for inspection at ECDC's reception at The Grange, ECDC, Nutholt Lane, Ely, Cambs, CB7 4EE, during normal opening hours. One free copy per person of each list will be also be supplied upon request.

The list of 'Assets of Community Value' will include information in respect of the land to which the entry applies, the name of the community group that has submitted the nomination, the date that the nomination was received and why it was successful.

⁸ Regulation 7

⁹ Regulation 8

¹⁰ s90 (4) LA 2011

ECDC will amend the list as required to exclude any of the land that has since it was included in the list been the subject of a relevant disposal other than one referred to in section 95 (5) of the LA 2011 and remove the entry if an appeal against the listing is successful or if ECDC no longer considers the land to be an asset of community value.

The list of 'land nominated by unsuccessful community nominations' will also contain information in respect of the land to which the entry applies, the name of the community group that has submitted the nomination and the date that the nomination was received. The reasons why the nomination was not successful will also be listed. Once a decision has been made as to whether the building or other land is an Asset of Community Value it will be added to the relevant list and published accordingly¹¹.

If the nomination is successful, ECDC will register the asset as an Asset of Community Value on the Local Land Charges Register and if the land is registered at HM Land Registry, ECDC will apply to register a restriction against the Land Registry title. These are statutory requirements and should ensure that if an asset is offered for sale, individuals / organisations are made aware that the asset is registered as an Asset of Community Value. The asset owner will also be informed of their right to request a listing review under section 92 of the LA 2011 Act and ECDC will explain the consequences for the land and the owner of the land's inclusion in the list¹².

ECDC will remove the nominated building or other land from the 'Asset of Community Value' and 'land nominated by unsuccessful community nominations' lists after 5 years from the point of inclusion on the list. ECDC will also cancel the local land charge registration and remove the restriction from the Land Registry title at this time. The asset can be re-nominated following the procedures set out at section 3 above.

5. Procedure for a listing review

The LA 2011 does not provide for an appeal mechanism against ECDC's decision if a nomination is unsuccessful. However there is an appeal mechanism for an owner if they disagree with ECDC's decision to list an asset as an Asset of Community Value this is known as a listing review.¹³ The owner and ECDC must bear their own costs of such a review.

In accordance with Schedule 2 of the Regulations, the owner must request the listing review in writing before the end of the period of eight weeks beginning with the day on which written notice of inclusion of the land in the list was given by ECDC.

Upon a written request for a review, ECDC will notify the owner of the procedure for the review. This will confirm that the review will be carried out in accordance with Schedule 2 of the Regulations and will be undertaken by a senior officer that had no involvement in the original decision to accept the building or other land on the list of 'Assets of Community Value'. The owner may appoint any representative to act on his or her behalf representations can be made in writing, orally or both. The owner should inform ECDC if a representative is appointed whereupon ECDC will

¹¹ s94 LA 2011

¹² s91(3) LA 2011 For example, if a building or other land is added to the list of assets of community value, the fact of listing may be a material consideration if the owner applies for planning permission affecting the asset.

¹³ S92(1) LA 2011

correspond with the representative and is not obliged to supply copies of documents to the owner.

ECDC will complete the review by the end of the period of eight weeks beginning with the date that it receives the written request for the review, or such longer period as is agreed with the owner in writing. If requested in writing by the owner, an oral hearing will be held. The owner will be notified in writing of the decision of the review, the reasons for the decision and the owners right of appeal. During this time the Asset of Community Value will remain listed.

If the listing review¹⁴ finds that the land concerned should not have been listed on 'the List of Assets of Community Value', the entry will be removed from the list and a letter sent detailing the reasons for the removal to the person who made the original nomination.

6. Appealing Against a Listing Review Decision

An owner of a listed Asset of Community Value may appeal¹⁵ to the First-Tier Tribunal against ECDC's decision on a listing review in respect of the land. The owner may be the owner who requested the listing review or a subsequent owner of part or all of the land.

The deadline for appealing is specified in the procedural rules of that Chamber 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.

PART 2 – SELLING AN ASSET

7. Conditions for selling an Asset of Community Value

The owner of a building or other land that is on the list of 'Assets of Community Value' must notify ECDC in writing of their wish to enter into a relevant disposal¹⁶ of the land. The other conditions¹⁷ listed below that are triggered as a result of notifying ECDC of their intentions must also be met:

- a) The interim moratorium period has ended without ECDC having received during that period a written request for the group to be treated as a potential bidder in relation to the land,
- b) The full moratorium has ended, or
- c) The protected period has not ended.

If these conditions are not complied with a relevant disposal of listed land contravenes Section 95(1) of the LA 2011 and is therefore ineffective unless the owner has made all reasonable efforts to find out if the land is listed, and was unaware of it at the time of disposal.

¹⁴ s92(4)(a) LA 2011

¹⁵ Regulation 11

¹⁶ 'Relevant disposal' is defined in Section 96 of the LA 2011. It means a transfer of the freehold or grant or assignment of a qualifying leasehold estate which gives vacant possession of the buildings and other land in question. Qualifying leasehold estate means when the lease was granted it had at least 25 years to run

¹⁷ Regulation 13

8. The interim moratorium period

The process that ECDC will follow when it receives notification from an owner of their intention to enter into a relevant disposal is attached at Appendix C. Upon written notification from an owner of their intention to enter into a relevant disposal of the land, ECDC will update the list of 'Assets of Community Value' detailing that notice under Section 95 (2) of the LA 2011 has been received, the date on which ECDC received the notice and the end dates for the interim moratorium period, the full moratorium period and protection period. ECDC will also notify in writing the person who made the nomination and publicise all of these details in the area where the land is situated¹⁸.

The date of receipt of notification from an owner triggers an interim moratorium period of 6 weeks. In this time the owner cannot sell the asset (unless it falls within one of the exemptions or the sale is to a community interest group).

During the interim moratorium period a community interest group (CIG) may request in writing to be treated as a potential bidder for the asset¹⁹. If this occurs the full moratorium period comes into force. The CIG does not have to provide any evidence of intention or financial resources to make such a bid. A CIG must have one or more of the following structures:

- a) A Parish Council
- b) A charity
- c) A community interest company
- d) A company limited by guarantee that is non-profit distributing
- e) An industrial and provident society/community benefit society that is non-profit distributing.

ECDC will pass on the details of any written request received from a CIG to the asset owner²⁰. ECDC will also list the name of the Community Interest group who has requested to be treated as a potential bidder.

If no request from a CIG is received, ECDC will notify the owner to that effect, whereupon the owner is free to dispose of the asset on the open market. No further moratorium will apply for the remainder of a protected period lasting 18 months running from the same start date of when the owner notified the local authority of wishing to sell.

9. The full moratorium period

Upon receipt of written request from a CIG to be treated as a potential bidder, the full moratorium period of six months applies, starting from the date ECDC receives notification from the land owner of their intention to enter into a relevant disposal. The owner may not dispose of their asset during the full moratorium period (except as permitted in the LA 2011 and Regulations).

¹⁸ s97(3) and (4) LA 2011

¹⁹ s98(1) LA 2011

²⁰ s98(2) LA 2011

The owner may only sell the asset during the full moratorium period to a CIG that either did or would have been eligible to trigger the full moratorium²¹.

If no bids are received from a CIG within the 6 month moratorium the owner may sell the asset on the open market. No further moratorium period can be triggered until 18 months after receipt from owner notice of the intention to dispose of the asset.

Upon sale of the asset the new owner must provide ECDC with their details. ECDC will then update the list of 'Assets of Community Value' accordingly.

10. Exemptions from the moratorium requirements

Some types of relevant disposal are exempt from the requirements set out at 8 and 9 above. The exemptions are set out partly in the LA 2011²² and partly in the Regulations. A full combined list of exemptions is attached at Appendix D²³ and includes:

- a gift of the asset;
- transmission of the asset under the terms of a will or intestacy; or to raise money to satisfy other entitlement under the will or intestacy, or to pay the deceased person's debts, taxes, or costs of administering the estate;
- transfer between family members²⁴, defined for these purposes as spouses or civil partners, or persons descended from the same grandparents (including relationships by marriage);
- a disposal with other land;
- a person joining or leaving a partnership;
- under the terms of a trust.

Even if a transfer falls within one of the exceptions, the new owner is requested to notify ECDC that the transfer has taken place, giving their name and address. An owner must also notify the Council if he or she applies for first registration of unregistered land that is on the Council's list.

11. Compensation

The process that ECDC will follow when it receives a written request for compensation from an owner is attached at Appendix E. Private owners may claim compensation²⁵ for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this includes a claim arising from a period of delay in entering into a binding agreement to sell that is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First Tier Tribunal.

A claim must be made in writing to ECDC by the end of thirteen weeks after the loss or expense was incurred, or finished being incurred. The owner should state the

²¹ Para 9.6 p17 of DCLG Advice Note

²² s95(5) LA 2011 and Schedule 3 of Regulations

²³ As listed in the DCLG Advice Note

²⁴ s95(7) LA 2011

²⁵ Regulation 14

amount of compensation sought, and include supporting evidence. The burden of proving the claim falls on the owner.

Claims should be sent:-

- by email to: avc@eastcambs.gov.uk; or
- by post to: Community & Leisure Services, ECDC, The Grange, Nutholt Lane, Ely, Cambs, CB7 4EE.

The Council will consider the claim and give written reasons²⁶ for its decision.

12. Review of compensation decision

The owner may ask ECDC to review²⁷ either or both of its decisions made in response to that claim as to –

- a) Whether compensation should be paid to that person
- b) If compensation is to be paid, the amount of that compensation.

In accordance with Paragraph 2 of Schedule 2 of the Regulations, the owner must request the compensation review in writing before the end of the period of eight weeks beginning with the day on which written notice of the decision made on compensation was given by ECDC, giving appropriate evidence to support the submission.

Upon a written request for a review, ECDC will notify the owner of the procedure for the review. This will confirm that the review will be carried out in accordance with Schedule 2²⁸ of the Regulations and will be undertaken by a senior officer that had no involvement in the original compensation decision. The owner may appoint any representative to act on his or her behalf both in writing or orally or both. The owner should inform the Council if a representative is appointed whereupon the Council will correspond with the representative and is not obliged to supply copies of documents to the owner.

ECDC will complete the review by the end of the period of eight weeks²⁹ beginning with the date that it receives the written request for the review, or such longer period as is agreed with the owner in writing. If requested in writing by the owner, an oral hearing will be held. The owner will be notified in writing of the decision of the review, the reasons for the decision and the owners right of appeal³⁰.

13. Appeal against Compensation Review Decision³¹

Where ECDC has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal against any decision of the authority on the review. The deadline for appealing is specified in the procedural rules of that Chamber as 28 days from the date on which notice of the decision appealed against was sent to the owner.

²⁶ Regulation 14(6)

²⁷ Regulation 16

²⁸ Schedule 2 of the Regulations paragraph 5(1) and (2)

²⁹ Schedule 2 of the Regulations paragraph 9

³⁰ Regulation 16(3)

³¹ Regulation 17