

Community Right to Bid – Assets of Community Value Frequently Asked Questions

Introduction

Using new community rights local community and voluntary organisations, neighbourhood forums and parish councils are able to identify land and buildings, public or privately owned, providing an important service in their local community and nominate these for inclusion on a list of assets of community value maintained by North East Derbyshire District Council.

If an asset on the list comes up for sale, community interest groups will have up to six months in which to raise capital and bid to buy the asset, before it can be disposed of on the open market.

These provisions do not restrict in any way who the owner of a listed asset can sell their property to, or at what price. Neither do they confer the right of first refusal to community organisations.

Who is able to nominate an asset?

The right to make a nomination and subsequently to bid can be used by:

- A local voluntary or community group that is not incorporated but has at least 21 members who are locally registered to vote in North East Derbyshire or a neighbouring authority.
- A parish or town council
- A charity
- A neighbourhood forum designated as such for planning purposes under the Town and Country Planning Act 1990
- A company limited by guarantee or an industrial or provident society which does not distribute any surplus it makes to its members
- A community interest company.

For a local community group to be able to nominate an asset it must be able to demonstrate that its activities are wholly or partly concerned with the North East Derbyshire District area or with a neighbouring authority area. The local voluntary or community body must not be primarily run for profit and any profit that the local voluntary or community body makes must be wholly or partly used for the benefit of the North East Derbyshire District area.

Public authorities such as a county council or district council, or a police authority or health authority will not be able to make nominations to the list of assets.

What is an asset of community value?

A building or land can be considered an asset of community value if:

- it is currently used to improve the social well-being and interests of the local community, or a use in the recent past has done so; and
- that use is a main one and not ancillary; and
 - a) for land or buildings in community use it is realistic to think that there will continue to be a viable use that will improve the social well-being and interests of the local community; or
 - b) for land or buildings in community use in the recent past it is realistic to think that there will be a viable community use in the next 5 years (in either case the community use does not have to be exactly the same as in the present or past): and
- It does not fall within one of a list of exemptions. (See '*What types of asset cannot be listed?*' below)

What is meant by social well-being and interests?

This is defined as being land and buildings that are currently, have been or will be used (in particular) for cultural, recreational or sporting interests.

In addition there should be:

- a) Broad and inclusive use of the asset across the community, or
- b) Use by a section of the community that would not otherwise be provided for or is underprovided for in the locality e.g. elderly people, children

Proposed usage, if different from current usage, must comply with planning regulations in force at the time.

What types of asset cannot be listed?

Some categories of land are excluded from listing:

Residential premises, including sites for mobile homes and boats.

For a building which is or includes residential premises this will include land held with the residence owned by a single owner. This could go beyond immediate gardens, outbuildings, yards etc. and extend to all land held by that owner. Every part of the land must be able to be reached from the residence without having to cross land which is not held by the single owner unless the intervening land is a railway, road, canal or river.

The exception to the exclusion of residential premises are premises which include living quarters which are an integral part of a pub or shop and which are otherwise eligible for listing.

A 'residence' is defined as a building that:

- a) Is normally or partly used as a residence but which may be wholly or partly temporarily unoccupied
- b) Is let, or partly let, for use as a holiday dwelling
- c) Is, or partly is, a hotel or its principal use is to provide accommodation for paying occupants Is a house in multiple occupation.

A building is not a residence if:

- a) Planning permission or development consent has been given but no residences have yet been built
- b) Construction of a building intended to be a residence is underway but construction is not yet complete
- c) It was previously used as a residence but planning permission or development consent has been given for a change of use, for example, a decommissioned old people's home that developers intend to convert into offices.

Caravan sites - Land for which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960.

Operational land - as defined in Part 11 of the Town and Country Planning Act 1990. This is land used for transport infrastructure and some other related purposes by specified bodies with statutory powers. For example land held by railways or highway authorities.

How is a nomination made?

Nominations for all assets within the boundary of North East Derbyshire District should be made on a designated nomination form to North East Derbyshire District Council. A copy of the form is available on our website. The completed form should be returned to:

Governance Manager
North East Derbyshire District Council
District Council Offices
2013 Mill Lane
Wingerworth
Chesterfield
S42 6NG

Or e-mailed to: donna.cairns@ne-derbyshire.gov.uk

The nomination should include the following information:

- a) The name and address of the asset
- b) The current function of the asset e.g. community centre, local post office and convenience store
- c) The name and contact details of the current occupier/owner/landlord (if known)

- d) The names and current last known addresses of all those holding a freehold or a leasehold in the asset (if known)
- e) A description of the land area/site covered by the nomination e.g. including outbuildings, parking, gardens or green areas where relevant
- f) An up-to-date plan showing the land area/site covered by the nomination e.g. including outbuildings, parking, gardens or green areas where relevant.
- g) A description of how the asset currently, has in the past and will in the future boost the social well-being and interests of the community. The nomination must explain how it is proposed that the asset will remain viable in the future. This section should also include details of those sections of the community who may benefit if it is intended that the community use is targeted in particular at one or more sectors of the community e.g. children or elderly people, cultural groups, sporting groups.
- h) The name and address of the voluntary or community group, neighbourhood forum or parish or town council making the nomination
- i) Name and contact details of the person progressing the nomination on behalf of the group e.g. the secretary or chairperson
- j) Written evidence of the status of the nominating group e.g. charity registration number
- k) If the voluntary or community group is unincorporated, names and addresses of 21 members who are locally registered to vote in the North East Derbyshire District or a neighbouring authority.

Information included in the nomination form may be made available to the owner of the asset should they appeal the listing decision.

Can a local community group make more than one nomination?

Yes. There is no limit to the number of assets that a single group can nominate but each asset must have its own completed nomination form (see below for more details).

Can different community groups nominate the same asset?

Yes, but groups are encouraged to submit joint nominations and bids wherever possible.

What happens to a nomination then?

The Council's Assistant Director – Property and Estates, following consultation with the relevant Cabinet Portfolio Holder, will assess whether the asset should be included in the List of Assets of Community Value with reference to the criteria set out in the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 and as set out above in the section 'What is a asset of community value?'

A decision will be made within eight weeks of receipt of the nomination.

If the nomination is successful the Council will give written notice to:

- the landowner,
- the occupier,
- the relevant parish or town council,
- the group who made the nomination and,
- where the owner is not the freeholder, - the holder of the freehold estate
- the holder of any leasehold estate other than the owner,

and will include the asset in the List of Assets of Community Value.

Assets will be listed for five years initially and will be placed on the local land charges register. If the land is registered it will be notified to the Land Registry as a registered restriction on the property.

The list of 'successful' and 'unsuccessful' assets will be published on the Council's website. Unsuccessfully nominated assets will be kept on the list for six months. A hard copy of both lists can be obtained from:

Governance Manager
North East Derbyshire District Council
District Council Offices
2013 Mill Lane
Wingerworth
Chesterfield
S42 6NG

What happens if the owner or local group does not agree with the council's decision?

The local group has no right of appeal against the Council's decision.

The owner of the asset may seek a review of the decision to include the asset in the list. The request for a review must be received by the Council within 8 weeks of the date of the notification of the decision. The review will be carried out by a senior officer of the authority not involved in the original decision, within 8 weeks of the date of the receipt of the request or longer if agreed with the owner.

The owner has a right to an oral hearing and the right to be represented at it by whomever they choose. They can challenge the original decision based on:

- the eligibility of the asset
- the eligibility of the nominator
- new factors that have come to light
- any irrelevant or improper matter the Council has taken into account when making the original decision.

The Council will notify the owner, occupier, the nominating group and other relevant persons of the review decision in writing within 7 working days of the review date.

If the Council chooses to uphold the original decision to declare the asset a listed asset, the owner has the option of an appeal to the General Regulatory Chamber of the First-Tier Tribunal which is part of the court system and hears appeals against administrative decisions. The owner, occupier, the nominating group and other relevant parties, will be notified of the result of the appeal in writing.

If the Council does not uphold the original decision, the owner, occupier, the nominating group and other relevant parties will be notified in writing and the asset details transferred to the unsuccessful nominations list.

Do community assets remain on the list permanently?

Assets must be removed from the list as soon as practicable:

- a) after a relevant disposal (other than an exempt disposal)
- b) when an appeal against a listing has been successful
- c) when the Council forms the opinion that the land or building are no longer of community value; or
- d) no later than 5 years from the date of entry on the list.

If any assets are removed from the list the Council will notify the owner, occupier, nominating group, parish or town council (where applicable) and any other required parties.

Who can bid for an asset?

If the owner of a listed asset wishes to sell it, a six week moratorium period takes effect during which a community interest group may request in writing to the Council that they wish to be treated as a potential bidder for the asset. This will bring the full six month moratorium into force. The community interest group does not have to provide any evidence of intention or financial resources to make such a bid at this stage.

In order to register intent to 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 named as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2012 when relevant provisions come into force).

This means that:

- a) Parish or town councils may make a bid but only for assets in their local area and not in a neighbouring district

- b) Un-incorporated bodies may request that an asset be listed but cannot register an intent to bid or make a bid.

What are the arrangements for bidding for an asset?

Section 95(1) of the Localism Act (the moratorium on disposal) may not apply to all disposals at the time of disposal even if they are registered as assets of community value. For more information see the section below, 'What are the criteria for disposals to be exempt from the moratorium arrangements?'

A disposal that is subject to the moratorium on disposal is termed a "relevant disposal" and only these disposals need to be notified to the Council. In some instances an owner may not know if they will make an exempt disposal or not - for instance if they wish to sell land together with a business as a going concern but are not sure if they will do so. In such cases owners are advised to inform the Council of their intent to sell the asset as a precaution. When an owner notifies the Council that they intend to make a "relevant disposal" of a listed asset then an 18 month moratorium period may come into force. The moratorium period prevents the owner from disposal of the asset on the open market for a period of six months if a community interest group has expressed an interest in bidding and has raised the capital and made a bid.

During the six month moratorium period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception to this. The owner may sell to a local community interest group during the moratorium period. The moratorium arrangements also prevent community interest groups bidding again for the asset for a protected period of 12 months following the end of the six month bidding period if their original bid or bids were unsuccessful. If, however, a sale is not made within 18 months of the date of notification of intent to sell, local community interest groups may re-enter the bidding process.

The community interest group has six weeks from the date of the Council's receipt of the owners' notification within which to register their intention to bid with the Council, and six months from the same date in which to raise the capital and make a bid.

Notification of the intention to bid should be made to the Council to:

Governance Manager
North East Derbyshire District Council
District Council Offices
2013 Mill Lane
Wingerworth
Chesterfield
S42 6NG

Bids should be made directly to the owner of the asset not to the Council.

If the bidding is unsuccessful another bid cannot be made by the community group(s) for a further period of 12 months from the end of the six month bidding period. If the owner has not made a relevant disposal in that time (18 months in total) community groups may rebid.

What are the criteria for disposals to be exempt from the moratorium arrangements?

Not all disposals will be “relevant disposals” for the purposes of this legislation. The disposal may not be “relevant” if the asset is successfully listed but at the time of intended disposal:

- a) The asset is to be disposed of under an order made by a court or a tribunal
- b) The disposal is resulting from a separation agreement between spouses or civil partners
- c) The disposal is being made under statutory provisions relating to physical impairment or mental impairment
- d) The disposal is being made within families
- e) The disposal is connected with the administration of the estate of a deceased person
- f) The disposal is the result of a power of sale of the asset as security for a debt, insolvency proceedings or the result of a statutory compulsory purchase
- g) There is a grant of tenancy of the land under part 4 of the Agricultural Holdings Act 1986(c)
- h) The disposal is within company groups
- i) A disposal where only part of the land to be disposed is listed but all of the land to be disposed of is owned by a single owner and all the land can be reached from every other part without having to cross land not owned by that owner. If any intervening land not owned by the owner is a road, railway, river or canal unbroken ownership applies
- j) A disposal of a redundant Church of England church
- k) A disposal for the purpose of enabling continuing health service provision on the land A disposal for the purpose of enabling;
- l) a school (excluding independent schools other than those designated as academies under the Academies Act 2010),
- m) a 16-19 Academy to continue to be provided or
- n) a further education establishment
- o) A disposal where there is a statutory requirement regarding the making of the disposal that could not be met if the moratorium arrangements (section 95(1) of the Localism Act 2011) were in place.

The moratorium period will also not apply if the disposal meets any of the following criteria, however the land/property will remain listed as an asset of community value following the disposal:

- a) if the disposal is by way of gift (including a gift to trustees of any trusts by way of settlement upon the trusts),
- b) if the disposal is by personal representatives of a deceased person in satisfaction of an entitlement under the will, or on the intestacy, of the deceased person,)

- c) if the disposal is by personal representatives of a deceased person in order to raise money to—
 - i. pay debts of the deceased person,
 - ii. pay taxes,
 - iii. pay costs of administering the deceased person’s estate, or
 - iv. pay pecuniary legacies or satisfy some other entitlement under the will, or on the intestacy, of the deceased person,
- d) if the person, or one of the persons, making the disposal is a member of the family of the person, or one of the persons, to whom the disposal is made,
- e) if the disposal is a part-listed disposal of a description specified in regulations made by the appropriate authority, and for this purpose “part-listed disposal” means a disposal of an estate in land—
 - i. part of which is land included in a local authority’s list of assets of community value, and
 - ii. part of which is land not included in any local authority’s list of assets of community value,
- f) if the disposal is of an estate in land on which a business is carried on and is at the same time, and to the same person, as a disposal of that business as a going concern,
- g) if the disposal is occasioned by a person ceasing to be, or becoming, a trustee,
- h) if the disposal is by trustees of any trusts—
 - i. in satisfaction of an entitlement under the trusts, or
 - ii. in exercise of a power conferred by the trusts to re-settle trust property on other trusts,
- i) if the disposal is occasioned by a person ceasing to be, or becoming, a partner in a partnership,

Please refer to ‘The Assets of Community Value (England) Regulations 2012’ and the Localism Act 2011 or detailed legal definitions.

What does the owner of a listed asset need to do?

The owner of a listed asset must notify the Council if they intend to make a “relevant disposal” of the asset.

If the disposal is a “relevant disposal”, disposal of the asset must be in accordance with the requirements of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012. 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 need to provide the Land Registry with a certificate from a conveyancer that the disposal did not contravene section 95(1) of the Localism Act (the moratorium arrangements). If the disposal contravenes section 95(1) it will be ineffective, that is, new ownership will not be granted. This does not apply if, despite having made reasonable efforts to find out, the owner did not know the asset was listed as an asset of community value.

Owners of assets of community value must inform the Council, as soon as practicable:

- a) that the land has been entered on the Land Registry as a result of an application for first registration
- b) that disposal has taken place
- c) details of the name and address of the person who has become the owner, including where this is a corporate body subject to registration, its place of registration and registered number.