

NORTH DEVON COUNCIL COMMUNITY RIGHT TO BID POLICY

AMENDED OCTOBER 2016

1. Introduction

1.1 The purpose of this document is to set out the Council's policy position with regards to the Community Right to Bid (CRTB) / Assets of Community Value. In particular:

- To provide transparency for community nominators and asset owners so that they are easily able to navigate the Council's process. Flowcharts outlining the process are shown in Appendix 1.
- To provide clarity so that officers and Members are able to effectively support the management of the process.

2. Background

2.1 The Community Right to Bid ('the Right'), which is also known as Assets of Community Value is one of the community rights derived from the Localism Act, 2011¹, all of which have a stated aim of devolving power to local communities.

2.2 The aim of the Right is to empower communities wishing to protect valuable local assets (including land and buildings) so that upon sale the community will have a chance to delay a sale in order to prepare a bid to buy it.

2.3 The Right does not restrict in any way who the owner of the asset can sell the property to, or at what price, and it does not confer a right of first refusal to community interest groups.

2.4 In order to nominate a building or piece of land within the council's area as an 'asset of community value', a voluntary or community group (as defined in paragraph 6.1) must submit a completed application form to North Devon Council (NDC). The council will assess the nomination against the requirements set out in the Localism Act 2011, relevant Regulations, and this policy, determining if the application is compliant with the requirements.

2.5 Not every property is capable of being listed as a 'community asset'. For example, residential properties or those that are 'ancillary' uses such as a cafe within a workplace are exempt from listing.

2.6 If the nomination is accepted by the council, the property will be listed on the council's 'Register of Assets of Community Value' for a period of 5 years. Nominations which have been declined will instead be added to the council's

¹ The Assets of Community Value (England) Regulations 2012

'Register of Unsuccessful Nominations', where the listing will be removed after 5 years. There will be an opportunity for the owner to request an internal review of the decision by the council. In certain circumstances, the owner can also appeal for compensation during the period in which the asset appears on the register.

- 2.7 With very specific exemptions, once an asset is listed, the owner must notify the council if they are planning to sell the asset. The council will update the register to reflect this and will notify the nominator and other interested parties of the owner's intention to sell.
- 2.8 A community group (which is specifically defined in paragraph 13.2) will then have a six week window in which they can express interest in bidding for the asset to the council. During this period, the asset cannot be sold on the wider market. An expression of interest from an appropriate community group within the six week window will trigger a six month moratorium period within which the owner can only accept a bid from a community interest group. This will give the community an opportunity to prepare a full bid.
- 2.9 After the moratorium period has finished, and before the eighteen month 'protected period' has expired, the owner can sell the asset to whomever they wish and at whatever price they wish.

3. Contact

- 3.1 For enquires on the process, please contact Corporate & Community Team on:

Email: communityengagement@northdevon.gov.uk

Telephone: 01271 388254

Post: Community Right to Bid, Corporate & Community Team, NDC, PO Box 379, Barnstaple, North Devon, EX32 2GR

Nominating an asset

4. How to nominate

4.1 The council strongly encourages any group who is interested in nominating an asset to engage in pre-nomination discussion with the council by contacting:

Email: communityengagement@northdevon.gov.uk

Telephone: 01271 388254

4.2 For a property to be nominated as an 'asset of community value', a nomination form needs to be completed and submitted to North Devon Council. The form is available:

Online: www.northdevon.gov.uk

By post: Community Right to Bid, Corporate & Community Team, NDC, PO BOX 379, Barnstaple, North Devon, EX32 2GR

Or collect in person from Lynton House, Barnstaple, The Ilfracombe Centre or The Amory Centre, South Molton.

4.3 If submitting an application form, please make sure you include all the required information, which is:

- A copy of your organisations constitution (if it has one) or Articles of Association;
- Copy of minutes / notes that evidence the group's agreement to submit the nomination;
- A description of the nominated land including its proposed boundaries;
- A statement of the information which the nominator has had regard to:
 - i) the names of the current occupants of the land;
 - ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;
- A statement of the nominator's reasons for thinking that North Devon Council should conclude that the land is of community value:
 - i) that the actual current use, or use in the recent past, furthers the 'social wellbeing and social interests' of the local community (see paragraph 7.2);
 - ii) that in the case of the current use, there is a 'realistic prospect' that this use could continue or in the case of use in the recent past, that there is a 'realistic prospect' that within the next five years the use could resume (see paragraph 7.3).

4.4 Once all the required nomination content has been attached, the completed nomination form needs to be submitted to:

Email: communityengagement@northdevon.gov.uk

Address: Community Right to Bid, Corporate & Community Team, NDC, PO BOX 379, Barnstaple, North Devon, EX32 2GR

Assessment of a Nomination

5. What can be nominated

5.1 For a property to be successfully nominated for listing as an 'asset of community value', the nominator must demonstrate that it both 'enhances the social interests and social wellbeing of the local community', as described in paragraph 7.2, and there is a 'realistic prospect' of the continued or future use of the asset as defined in paragraph 7.3.

5.2 Properties which cannot be listed include:

- residential properties and land which it is reasonable to consider to be part of a residence, such as a garden and outbuildings;
- an 'ancillary' use, such as a café within a workplace;
- land licensed for use as a residential caravan property (and some types of residential caravan property which do not need a licence);
- operational land of statutory undertakers (such as a utility company) as defined in section 263 of the Town and Country Planning Act 1990

5.3 Nominations for properties which are already on the 'Register of Unsuccessful Nominations' will be assessed on their own merits, however reference may be made by the council of previously unsuccessful nominations, and the reason for their being declined.

6. Who can nominate

6.1 The Right is only open to community and voluntary bodies with a 'local connection'. This means that the group must be a:

- a) Town or Parish Council;
- b) Charity;
- c) Company limited by guarantee (not distributing any surplus it makes to its members);
- d) Industrial and Provident Society (not distributing surpluses to its members);
- e) Community Interest Company.
- f) Unincorporated body with at least 21 members who appear on the District Council's electoral roll*;

* Note: although an unincorporated group can nominate an asset they are not eligible to submit an intention to bid should the asset come on the market. Groups that are eligible are defined in paragraph 13.2

6.2 The requirements for the body to have a 'local connection' are that:

- The relevant body's activities are wholly or partly concerned with the council's area, or with a neighbouring council's area;
- Where the relevant body's constitution allows for it to generate an operating surplus, that this is applied wholly or partly for the benefit of the council's area, or for the benefit of a neighbouring authority's area;
- That, where it is an unincorporated body, it has at least 21 individuals associated with it.
- "Neighbouring council" above means Torridge, West Somerset or Mid Devon District Councils.

6.3 Upon receiving a nomination, the council will have **eight** weeks to reach a decision on whether to accept or decline the nomination.

6.4 The council will undertake an initial assessment of the nomination to verify that it is valid and has all the necessary information in order to be considered. They will also contact the owners, lawful occupiers, and any leaseholders of the nominated asset for comment on the nomination.

6.5 If the nomination requires amendments or additional information, the council will notify the community group of the amendments required, and if received, will incorporate them into the nomination, however the eight week period referred to in 6.1 above will only commence once the additional information is provided.

7. Assessment criteria

7.1 Once the initial assessment has been completed, the council will assess the application against the council's policies as shown in paragraph 7.2 and 7.3, and determine whether the nominated property 'enhances the social interest and social wellbeing of the local community' and if there is a 'realistic prospect' of the continued use or resumption of use.

7.2 A property that 'enhances the social interests and social wellbeing of the local community', is one that:

- In its absence would deprive the local community of a building or property which is essential to the special character of the local area, and provides a:
 - i) place to meet and socialise;
 - ii) place to shop;
 - iii) recreational, sporting or cultural facility;
 - iv) place used to provide a community service.
- The definition of the extent of the 'local community' will depend on the nature of the use and each case will be considered by the council on its merits, with

particular reference to the character and heritage of the local area, its community cohesion and its sense of belonging.

- A 'realistic prospect' of the continued or future use of the asset, includes in particular, the commercial viability of the proposal (including the ability to raise funds) and the sustainability of that use.

7.3 To demonstrate a 'realistic prospect' of continued or future use of the asset, the council recommends the nomination includes:

- an outline of how the community body would raise funds to purchase the asset (loan, grant, fund-raising etc).
- evidence of the community body's ability to fill volunteer positions if the asset is to be volunteer-led.

7.4 Once a decision has been made, a decision notice with an accompanying report will be published on the council website, and the community group, the owner and any leaseholders of the asset will be notified. The nominated asset will then be placed on the required register.

7.5 In either outcome, the owner will have the right to appeal against the decision within 8 weeks of the council notifying them of the decision. Where the nominator is unhappy with our decision in connection with their nomination, they may request that we review our decision. This will be taken as a corporate complaint and dealt with in the line with our complaints procedure.

Listing of a property

8 Register of Assets of Community Value

- 8.1 Nominated properties which have been approved by the council as an 'asset of community value' will be added to the council's 'Register of Assets of Community Value'. The register can be viewed via the council's website: www.northdevon.gov.uk
- 8.2 The council will also add the asset to the local land charges register and if the land is registered, apply for a restriction on the Land Register in Form QQ. There are also requirements on owners or mortgagees applying for first registration of listed land to apply for a restriction on the land register. They require a person who has become an owner of the land following a disposal to inform the local authority and provide ownership details.
- 8.3 The 'relevant disposal' of any listed asset is restricted by the moratorium requirements (for more information see section 12).
- 8.4 Listed nominations will be removed from the register after a period of five years, or through one of the circumstances shown in paragraph 18.1.

9 Register of Unsuccessful Nominations

- 9.1 Nominations which have been declined by the council will be added to the 'Register of Unsuccessful Nominations' for future reference.
- 9.2 Unsuccessful nominations will be removed from the register after a period of five years, or through one of the circumstances shown in paragraph 18.2.

Listing review

10 Internal review

- 10.1 Within eight weeks of being notified of their property being listed as a 'community asset', the owner can appeal to the council's Chief Executive for a 'listing review'. The asset will remain listed during the review period. The owner and the council will bear their own costs associated with the review. An appeal to the Chief Executive must be done in writing to:

Email: communityengagement@northdevon.gov.uk

Post: Chief Executive, NDC, PO BOX 379, Barnstaple, North Devon, EX32 2GR

- 10.2 The council will then have eight weeks from the date of receiving the request to carry out the review.
- 10.3 Upon completion of the internal review, the council will publish a report of its findings and notify the owner and the community group of the outcome. Where a change in the status of the property occurs out of the review, it will then be moved to the appropriate register.
- 10.4 If the owner of an asset has been successful in having the asset moved to the Register of Unsuccessful Nominations, there will be no right of appeal for the nominating community group.

11 Tribunal review

- 11.1 If the owner is dissatisfied with the internal review, they will have 28 days from the date on which the council notifies them of the internal review decision to appeal for a review by the General Regulatory Chamber of the First-Tier Tribunal.
- 11.2 Owners must submit their appeal in writing to the First-Tier Tribunal by:
Email: grc@justice.gov.uk or

Post: Tribunal Clerk,
Community Right to Bid Appeals,
HM Courts & Tribunals Service,
First-tier Tribunal (General Regulatory Chamber),
P.O. Box 9300, Leicester, LE1 8DJ.

Sale of an Asset

12 Relevant disposal

12.1 The moratorium provisions only apply to a 'relevant disposal' of a listed asset. A 'relevant disposal' is one where the sale of the asset transfers:

- a freehold interest if it is a disposal with vacant possession;
- a qualifying leasehold interest (that is, the granting of a lease for a period of 25 years or more (or the transfer of a lease which was of 25 years or more originally) if it is a grant or assignment with 'vacant possession'.

These transfers imply that there may be a change of use after the sale of the asset. For example, an owner selling a shop as a going concern is not a 'relevant disposal'.

12.2 If an owner is looking to demolish a listed asset without sale, or apply for a change of use, this also does not count as a relevant disposal.

12.3 There are exemptions for some types of relevant disposals, for example through the carrying out of a will or the paying of debts. For a full list of exemptions, please see the Appendix II.

12.4 If an owner of a listed asset is unsure where the sale of their property will be a relevant disposal or not, they should notify the council as a precaution – non-compliant disposals may be set aside by the Land Registry.

13 Moratorium

13.1 Once the owner of a listed asset has notified the council of their intention to instigate a relevant disposal of the asset, a **six week 'interim moratorium'** period begins. The council will update the register to show the interim and full moratorium dates. The council will then notify the nominator and any community bodies who have registered interest, of the owner's intention to dispose.

13.2 During this six week period, suitably constituted community groups and organisations may submit an intention to bid – unincorporated bodies and neighbourhood forums are excluded from bidding. This means only the following groups can submit an intention to bid:

- a) Parish Council in whose area the asset lies;
- b) Charity with a local connection;
- c) Company limited by guarantee (not distributing any surplus it makes to its members) with a local connection;
- d) Industrial and Provident Society with a local connection (not distributing surpluses to its members);
- e) Community Interest Company with a local connection.

- 13.3 Within this interim period, the owner can continue to market and negotiate the sale of the property, however, unless an exempt disposal applies, they can only sell the asset to a 'community interest group' as defined in paragraph 13.2, as such, during this period the council recommends that the owner markets the asset to all eligible community interest groups.
- 13.4 If an eligible community interest group expresses interest to the council in bidding for the asset during this period, the 'full moratorium' period will be activated. The 'expression of interest' does not need to include any financing details, nor does it bind the community interest group into making a bid.
- 13.4 The full moratorium period runs for six months from the date the owner notified the council of their intention to dispose of the asset. During this period, the owner can continue to market and negotiate the sale of the property, however, unless an exempt disposal applies, the owner can only dispose of the asset to a community interest group as defined in paragraph 13.2. The community interest group which bids for the asset does not have to be the same community group which nominated the asset and/or activated the full moratorium.
- 13.5 After the interim or full moratorium period has expired (as applicable), the owner will have an 18 month protected period from the date when they notified the council of their intent to dispose, where no further moratorium periods can be triggered. During the protected period, the owner can dispose of the asset to whoever they wish and at whatever price they wish.
- 13.6 Once the protected period has expired, if the asset has not been disposed of, the owner cannot enter into a relevant disposal. If the owner wishes to enter into a relevant disposal they will need to notify the council and the process begins again, with a six week interim moratorium period starting from the date the council was notified.

14 Enforcement

- 14.1 To prevent enforcement action (that is, the cancellation of a transfer), when the 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 barrister, solicitor or a licensed conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene the moratorium requirements.
- 14.2 If a non-compliant disposal of a listed asset occurs, the transfer will be 'void', meaning that the change of ownership has not taken place. If the transfer has been erroneously registered on the Land Register it will still be void, and would have to be rectified. This penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.
- 14.3 Owners are encouraged to seek independent legal advice on these points.

Compensation

15 Compensation

- 15.1 Private owners may claim compensation from the council for losses and expenses incurred which would not have occurred if the land had not been included on the list. This includes, for example:
- a delay in entering into a binding agreement to sell which is wholly caused by the moratorium period;
 - legal expenses incurred in a successful appeal to the Tribunal.
- 15.2 The compensation scheme does not extend to public bodies defined as:
- government departments, authorities and other bodies to which section 6 of the National Audit Act 1983 applies;
 - 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; and,
 - local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998.
- 15.3 A compensation claim must be made by the owner within the earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate), or from the date when the land ceased to be listed.
- 15.4 Claims must be made in writing to the council, stating the amount of compensation sought and providing the necessary supporting evidence.
- 15.4 The council will consider the validity of the claim as soon as practical. There is no specific time frame for this due to the potential complexities of the case, for which the council may need some time to consider and assemble all the necessary evidence.

16 Internal compensation review

- 16.1 An owner who is dissatisfied with the council's response to their compensation claim can appeal for an internal review of the claim within 8 weeks of being notified of the council's decision.
- 16.2 The internal compensation review will follow the same procedures as the listing review with the owner appealing to the council's Head of Resources, however the process will not include the nominating community group.

17 Tribunal compensation review

- 17.1 An owner who is dissatisfied with the outcome of the council's internal review of their compensation claim can appeal for a Tribunal review within 28 days of being notified of the internal review decision. The Tribunal review will follow the same process as shown in 'Tribunal review', except that only the owner or former owner who originally appealed for compensation will be eligible to apply.

Delisting of a property

18 Overview

- 18.1 A property will be removed from the Register of Assets of Community Value if;
- it has been on the register for five years;
 - the owner has been successful in a listing review;
 - the owner has demolished the listed asset;
 - the council deems the listed asset to no longer be of community value.
- 18.2 A property will be removed from the Register of Unsuccessful Nominations if;
- it has been on the register for five years;
 - the community group has been successful in a listing review.
- 18.3 When a property is removed from either register the council will release a statement setting out the reasons for the removal. The council will notify the owner, any leaseholders and the nominator of the statement. In the case of an asset being delisted, the council will also notify the Land Registry.

Appendix 1: Community Right to Bid process

Stage 1: Listing of an asset (period of up to 8 weeks)

- **Nomination** - Nominations can be provided in any format (letter, email, eform)
- **Consideration** - Council considers bids received based on criteria set out in the policy
- **Decision**
- **Listing** - Internal and public listing of successful and unsuccessful bids (unsuccessful bids must be placed on a list of assets nominated but not listed). If successful asset is entered on local land charges register.

Stage 2: Review and Appeals (period of 8 weeks)

- **Internal Listings Review** Request from owner to appeal. This must be placed within 8 weeks of the written notification of listing. Appeal listings to be carried out by Chief Executive.
- **If review successful** – Asset removed from list.
- **If review unsuccessful** - Owner has option to take their appeal to First Tier Tribunal

Stage 3: Sale

- **Interim Moratorium Period (period of 6 weeks):**
Owner decides to sell listed asset and informs North Devon Council. Council informs nominator who has 6 weeks to decide whether they will place an offer.
- **Full Moratorium Period (period of 6 months):**
If bidder wants to place an offer, full moratorium period is launched to enable the group to develop business plan and finance. Owner can sell to whoever they choose at end of full moratorium.
- **Protected Period (period of 12 months):**
Once moratorium period has finished, the same owner can sell during the remainder of the protected period without having to comply with the regulations again.

Stage 4: Compensation

- **Internal Review** - Owner can place an application for compensation for losses arising from being involved in a lengthier sale period. Must be written, including amounts and supporting evidence.
- **First Tier Tribunal**
If owner is unhappy with the Council's decision they can opt to take it to a First Tier Tribunal and request compensation and reasonable legal costs.

Appendix II: Exemptions

The full list of disposals exempt from the moratorium rules are shown below:

- a) disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts);
- b) disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules;
- c) disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate;
- d) 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);
- e) part-listed land – i.e. sale of a property only part of which has been listed;
- f) 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);
- g) disposals occasioned by somebody becoming or ceasing to be a trustee;
- h) disposal by trustees in connection with the trust, as specified;
- i) a disposal occasioned by a person becoming or ceasing to be a partner in a partnership;
- j) transfers made in pursuance of a court order;
- k) 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;
- l) 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;
- m) 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);
- n) 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”⁶;

- o) sale by a lender under a power of sale (i.e. where the land was security for a loan);
- p) 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;
- q) 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);
- r) 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;
- s) 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);
- t) 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;
- u) 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);
- v) a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy;
- w) 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.