

## ASSET OF COMMUNITY VALUE PROCEDURE

### 1.0 Introduction

- 1.1 This document sets out the procedure of Woking Borough Council (the "Council") in relation to the right to bid for and buy local buildings and/or land that is considered to have community value, referred to as an Asset of Community Value ("ACV").

### 2.0 BACKGROUND

- 2.1 The right to bid was introduced in the Localism Act 2011 (the "Act") and came into force through the Assets of Community Value (England) Regulations 2012 (the "Regulations") on 21 September 2012.
- 2.2 The legislation was introduced as part of Government's policy to empower communities through assisting local groups to preserve buildings or land considered to be important to their community's social well being.
- 2.3 The aim of the legislation is to give those in the local community the ability to nominate land or buildings as an ACV. If successful, the community group would then have the right to receive notice of the owner's intention to sell and to enable them to delay any sale/grant of a long lease by six months to enable them to plan and fund a bid to buy or lease the ACV.
- 2.4 The provisions of the Community Right to Bid does not give anyone right of first refusal, nor does it restrict to whom the owner of an ACV can sell, or at what price. Planning policy determines permitted uses for sites, but listing as an ACV is a material consideration if an application for change of use is submitted.
- 2.6 The Act requires that local authorities maintain a list of land and/or buildings which have been nominated successfully and unsuccessfully by the local community. The 'community right to bid' applies to both public and privately owned land and/or buildings, unless it is exempt from listing, as a result of being residential land (plus land connected with that residence), caravan sites and operational land.

### 3. NOMINATION

- 3.1 Only the local community can nominate an asset for inclusion on the list. Nomination must come from one of the following:-
- (a) a neighbourhood forum (Under Section 61F of the Town and Country Planning Act 1990);
  - (b) a Parish or Town council;
  - (c) an unincorporated body with at least 21 members who are individuals that does not distribute any surplus to its members;
  - (d) a charity
  - (e) a company limited by guarantee which must not distribute any surplus to its members

(f) a community interest company

- 3.2 The voluntary or community body's must have a local connection with the land in the Council's area. Their activities must be wholly or partly concerned with the Council's district or a neighbouring authority's district.
- 3.3 Unincorporated bodies must also have at least 21 local members who are registered at an address in the local authority's area, or a neighbouring authority's area as a local government elector.
- 3.4 A nomination may be submitted to Strategic Asset Manager by email or by letter to Woking Borough Council, Civic Offices, Gloucester Square, Woking, Surrey GU21 6YL or by completing and submitting the form set out in Appendix 1 and available on the Council's website. Although it is not necessary for the nomination to be submitted on the basis of the form, it does assist both the nominator and the Council in providing the information required by the Act and/or the Regulations.
- 3.5 A nomination may be submitted at any time, but it must include the following information:
- (a) a description of the nominated land, including its proposed boundaries.
  - (b) a statement of all the information considered in reaching the decision to nominate, including the name of any current occupants and the names and addresses of all freehold owners or leasehold owners of the land (the last known addresses will be acceptable where the current addresses are not known);
  - (c) the reasons for thinking that the Council should determine that the land is of community value in accordance with the definition in the Act;
  - (d) evidence that the voluntary or community body is eligible to make a community nomination.
- 3.6 Within ten working days of receipt, the Strategic Asset Manager shall check that the nomination complies with the statutory requirements. If the nomination is incomplete, he/she shall reject the nomination by giving notice in writing together with reasons for the rejection. If the nomination is deemed to be complete, he/she shall acknowledge receipt of the nomination in writing and state the last date by which the nomination must be determined by the Council in accordance with the eight week statutory period.

#### **4. NOTIFICATION**

- 4.1 Where the nomination complies with the statutory requirements, the Strategic Asset Manager is required to consider and determine the nomination within the statutory eight week period, which commences from the date of receipt of the nomination.
- 4.2 All practicable steps must be taken to inform the following that the Council is considering listing the land:
- (a) the parish council (if any) in which the land lies or partly lies in the parish council's area;
  - (b) residents' or village associations (although this is not a statutory requirement) where the land lies or partly lies in the area covered by the association;
  - (c) the owner of the land as defined in section 107 of the Act, namely the freeholder, or the qualifying leaseholder with the lease most distant from the freehold title<sup>6</sup>;
  - (d) where the owner is not the freeholder, the freehold owner, and any leasehold owner;
  - (e) any lawful occupant of the land (which could include a licensee);

(f) the local ward member(s) in whose constituency the land lies or partially lies and the members of the Executive (although this is not a statutory requirement).

4.3 As part of the notification process, comments/representations should be invited from the owners and occupants on the nomination.

## **5. CONSIDERATION - IS THE LAND OF COMMUNITY VALUE?**

5.1 Section 88 of the Act states that land is of community value, if, in the opinion of the Council, either of the following definitions are met:

(a) the primary current use of the building or other land furthers the social wellbeing or social interests of the local community **AND** it is realistic to think that the building or other land can continue to be used (though not for ancillary use alone) in a way that will further the social wellbeing or social interests of the local community (whether or not in the same way as previously); or

(b) the building or the land has in the recent past been primarily used for the purpose of furthering the social wellbeing or social interests of the local community **AND** it is realistic to think that the building or the land could be primarily used to further (whether or not in the same way as before) the social wellbeing or social interests of the local community within the next five years.

5.2 The following land is not of community value:

(a) residential property, including gardens, outbuildings and other associated land, unless the asset is only partly used as a residence (for example contains integrated residential quarters, such as accommodation as part of a pub or a caretaker's flat) and but for that the residence would be eligible for listing as an ACV;

(b) land licensed for use as a residential caravan site (and residential caravan sites that do not require a licence);

(c) operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990.

5.3 In deciding whether a nominated asset should be listed, The Strategic Asset Manager will need to exercise the general duty to take all relevant matters into consideration when making a decision. This may include:-

(a) evidence of the nature and extent of the use of the land and how it contributes to the social wellbeing and or social interests of the local community;

(b) the current use and/or state of the land;

(c) the strength of community feeling evidenced independently of the nomination (e.g. through petitions, local newspaper coverage, representations made by the local ward member(s));

(d) past and current planning history;

(e) whether a previously unsuccessful community nomination has been submitted and the reasons for which it was unsuccessful;

(f) whether it was previously listed as an ACV and the reasons for it being removed from the list of ACVs;

(g) the owner's proposed future use of the land and any plans to mitigate the impact of the change in use on the social wellbeing and or social interests of the local community;

(h) the value of the site, both current and disposal value where relevant, and may request the owner to provide independent valuations to support representations on the basis of value.

- 5.4 If the Strategic Asset Manager forms the opinion that the land is an ACV, then the Council is required to list the asset as an ACV. If the land is not an ACV, then the Council is required to list the asset as an asset nominated unsuccessfully as an ACV.
- 5.5 The Strategic Asset Manager will need to issue a written decision notice setting out the decision and the reasons for that decision. If the decision is to list the land as an ACV, the decision notice must set out the consequences for the land and its owner resulting from the land's inclusion in the list of ACVs, and of the owner's right to request a review of the decision under section 92 of the Act.
- 5.6 If the land is included in the Council's list of ACV then the Council will register inclusion on the list as a local land charge against the land.
- 5.7 The decision notice must be sent to:
- (a) the voluntary or community body which made the nomination;
  - (b) the parish council (if any) in which the land lies or partly lies in the parish council's area;
  - (c) residents' or village associations (although this is not a statutory requirement) where the land lies or partly lies in the area covered by the association;
  - (d) the owner of the land as defined in section 107 of the Act, namely the freeholder, or the leaseholder with the lease most distant (as explained at 5.3(b)) from the freehold which when granted had at least 25 years to run;
  - (e) and where the owner is not the freeholder, the freehold owner, and any leasehold owner;
  - (f) any lawful occupant of the land (which could include a licensee) if they are not also the owner; and
  - (g) the local ward member(s) in whose constituency the land lies or partially lies and the members of the Executive (although this is not a statutory requirement); and
  - (h) other appropriate Council officers.
- 5.8 If the land is unsuccessfully nominated, there is no statutory right of appeal available to the nominator. If the nominator considers that there was a failure to apply the policy or any other procedural irregularity, the nominator could raise this through the Council's complaints procedure, or through the Local Government Ombudsman, or applying for a judicial review on public law grounds to quash the Council's decision.

## 6. THE LIST

- 6.1 The Council is required to maintain two lists; one known as 'List of Assets of Community Value' (**ACV List**) and one known as 'List of Land Nominated by Unsuccessful Community Nominations' (**UCN List**).
- 6.2 The Council must remove an entry on the ACV List five years from the date of its entry (unless it has previously been removed). The nominating organisation will not be contacted ahead of the expiry of the five year period. If the nomination organisation or any other nominator wishes to nominate the land as an ACV, a new nomination will need to be submitted.
- 6.3 Events which affect or may affect the entry on the ACV List, such as requests for an internal review or appeals to the First-Tier Tribunal are to be noted on the ACV List as soon as reasonably practicable.

## 7. REVIEW OF DECISION TO LIST

- 7.1 The owner has the right to request a review of the decision to list land as an ACV, provided that the request to review is made in writing and received by the Council within eight weeks of the date on which the Council served written notice of its decision to list.
- 7.2 The review will be carried out by an officer of the Legal Services Department who did not take any part in making the decision to be reviewed. Authority is to be delegated to the Head of Democratic and Legal Services to undertake the review.
- 7.3 On receipt of a request, the Head of Democratic and Legal Services must as soon as practicable notify (a) the owner of the procedure to be followed in connection with a review and (b) those notified of the nomination. This is for information purposes only as the Act and the Regulations give the right to make representations to the owner or owner's representative only.
- 7.4 The review procedure must be held at the owner's request, and where no written request for an oral hearing is made by the owner, the Head of Democratic and Legal Services may decide whether or not to include an oral hearing in the process.
- 7.5 The owner may appoint any representative, whether legally qualified or not, to act on his or her behalf in connection with the review. The Head of Democratic and Legal Services must provide to the representative any document which is required to be sent to the owner, but need not provide that document separately to the owner.
- 7.6 Both the owner and the owner's representative may make representations to the officer carrying out the review (i) orally or (ii) in writing or (iii) both orally and in writing. The representations may include, amongst other matters whether:
- (a) the land was eligible for listing;
  - (b) the nominator was an eligible body or organisation;
  - (c) the statutory process was properly implemented by the Council;
  - (d) there were any matters that were not given proper weight, or were given the incorrect weight;
  - (e) the statutory definition in section 88 of the Act was incorrectly applied;
  - (f) any irrelevant considerations were taken into account by the Council, in reaching its decision; and/or
  - (g) there were any irregularities in the procedure applied by the Council.
- 7.7 The Head of Democratic and Legal Services must determine the review within the eight week period commencing on the date the Council receives the written request for the review, or such longer period as is agreed in writing with the owner.
- 7.8 The owner and the Council will each bear its own costs of the review.
- 7.9 The land remains listed while the review is carried out. The ACV List shall be updated to flag that a request for a review has been submitted.
- 7.10 On determining the review, the Strategic Asset Manager must notify the owner of his decision and give reasons for it, as well as setting out the owner's right to an independent appeal.
- 7.11 If the review decision is that the land should not have been listed as an ACV, the Head of Democratic and Legal Services must take, or procure the taking of, the following steps:
- (a) remove the entry from the ACV List;

- (b) make the corresponding entry on the UCN List as set out in paragraph 7.3;
- (c) give a written copy of the reasons for the decision to the nominator (if listed in response to a community nomination), to the occupier of the land if the occupier is not the owner, and to any others who were originally notified of the decision to list as an ACV in accordance with paragraph 6.11.
- (d) apply as soon as practicable to the Land Registry to cancel the Form QQ restriction;
- (e) cancel the local land charge.

7.12 If the owner of the land is not happy with the decision of the listing review, it has a further right of appeal to the First-tier Tribunal (General Regulatory Chamber). Appeals may be on points of law and on findings of fact. The appeal to the tribunal must be made within 28 days of the Council sending the owner its review decision. Details are set out in the Appendix 2. The property will remain listed during the appeal process.

## **8. NOTICE OF RELEVANT DISPOSAL**

8.1 If the owner of the land wishes to make a relevant disposal of land which is an ACV, and the disposal is not an exempt disposal the owner must notify the Strategic Asset Manager in writing.

8.2 The Strategic Asset Manager must:

(a) update the ACV List to show:

- (i) that a notice has been received from the owner under section 95(2) of the Act in respect of the land, as set out in paragraph 10.1;
- (ii) the date on which the Council received the notice;
- (iii) the end of the initial six week moratorium period, the end of the full six month moratorium period, and the end of the protected eighteen month period that apply under section 95 of the Act as a result of the notice;

(b) where the land was listed in response to a community nomination, give written notice to the nominator of the matters set out in paragraphs 10.2(a) above;

(c) publicise the matters set out in paragraphs 10.2(a) above in the Council's district. It is proposed that this is done by updating the relevant section of the Council's website, and displaying a notice on or at the ACV and on the parish council or community notice board (if any).

8.3 If there is no written request during the interim six week moratorium, the owner is free to dispose of the asset.

8.4 If during the interim six week moratorium, the Strategic Asset Manager receives a written request (which need not be in any particular format) from a community interest group that it wishes to be treated as a potential bidder, he must:

(a) as soon as is practicable pass the request on to, or inform the owner of it, and that the full six month moratorium period will apply. As any delay could be prejudicial to the owner, the request must be recorded and passed on to the owner on the day of receipt where possible;

(b) update the entry on the ACV List to record:

- (i) the receipt of a written request from a community interest group with a local connection to be treated as a potential bidder;
- (ii) the name of that community interest group; and

(iii) that restrictions on the owner on entering into a relevant disposal of the land continue to apply for the remainder of the full six month moratorium period, but that at the end of the six month moratorium period, no restrictions will apply for a further twelve month period.

8.5 If a community interest group has notified the Strategic Asset Manager that it wishes to be treated as a potential bidder, the owner can continue to market and negotiate sales, but may not exchange contracts or enter into a binding contract to do so during the full moratorium period, unless it is a disposal to the interested community interest group. Notifying the Strategic Asset Manager that it wishes to be treated as a potential bidder does not create an obligation on the community interest group to make an offer, or buy or acquire any interest in the land; it just provides a moratorium period to give sufficient time to arrange finance and to proceed.

8.6 After the full six month moratorium, 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 eighteen month protected period. The protected period protects the owner from repeated attempts to block a sale as there can be no further moratoriums during the protected period.

8.7 As a disposal of an ACV which is non-compliant will be void, which means that there will have been no change of ownership of the ACV, there is a strong incentive for owners to comply with the Act.

8.8 On a relevant disposal of the land by the owner, the owner must notify the Strategic Asset Manager in writing of the disposal and the owner's conveyancer must provide a duly signed certificate confirming that the disposal did not contravene section 95(1) of the Act. On receipt of the written notice and of the certificate, the Strategic Asset Manager must:

(a) remove or amend (in the case of a disposal in part) the relevant entry on the ACV List and give reasons for the removal;

(b) give written notice of the removal to:

(i) the owner of the land;

(ii) the holder of the freehold estate and the holder of any leasehold estate in the land (where they are not the owner);

(iii) the occupier of the land (if the occupier is not the owner);

(iv) the nominator of the ACV (where the nomination was in response to a community nomination); and

(v) the parish council, where the land falls within the parish council's area;

(vi) residents' or village associations (although this is not a statutory requirement) where the land lies or partly lies in the area covered by the association;

(vii) the local ward member(s) in whose constituency the land lies or partially lies and the Executive (although this is not a statutory requirement);

(c) publicise the removal, and where it is not reasonably practicable to give written notice of the removal to any of the applicable persons set out in paragraph

(d) cancel the local land charge registration (n.b. it may only be a disposal in part).

8.9 Responsibility for this process is to be delegated to the Strategic Asset Manager.

## **9. NOTICE OF EXEMPT DISPOSAL**

- 9.1 Following an exempt disposal the new owner of listed land must as soon as practicable after becoming the owner notify the Strategic Asset Manager that an exempt disposal has taken place, and full details of the new owner's name and address, and where the owner is a registered company or body, its place of registration/registered office and its registration number.
- 9.2 The ACV List is to be updated to record the change in owner, if details of the owner form part of the entry. An exempt disposal does not automatically result in an ACV from being removed from the ACV List.

## **10. REVIEW OF THE LIST OF ASSETS OF COMMUNITY VALUE**

- 10.1 The Council must, as soon as practicable after receiving information that enables it to do so, remove an entry on the ACV List, where the Council for any reason no longer considers the land to be land of community value.

## **11. REQUEST FOR COMPENSATION**

- 11.1 A qualifying private owner or a former private owner of land listed or previously listed as an ACV who incurs loss or expense that it is likely would not have been incurred had the land not been listed as an ACV, has the right to request compensation from the Council. The regulations state that this may include claims arising from any period of delay in entering into a binding agreement to sell the asset which is wholly caused by the six week or six month moratorium periods. It may also include claims for reasonable legal expenses incurred in an appeal to the First-Tier Tribunal.
- 11.2 The owner or former owner who has submitted a compensation claim may request the Council to review either or both its decisions relating to (a) whether compensation should be paid or (b) the amount of compensation that should be paid. A request for review must be submitted within eight weeks of the notification of the decision, unless the Council agrees to extend the period.
- 11.3 The Regulations specify that the review must be carried out by an officer of the 'appropriate seniority' who did not take any part in making the decision to be reviewed.
- 11.4 The procedure for reviewing a compensation decision is the same as that for a review of a listing decision.



