

# **Community Right to Bid**

## **Procedure / Process**

### Introduction

Below is set out the Council's procedure with regards to the Community Right to Bid. The aim of this Act is to give local groups/people a right to nominate a building or other land for listing by the Local Authority as an asset of community value.

An asset is of community value if:

- It is at least partly within the local authority area
- Its main use (not ancillary) has recently been or is currently still being used to further the social wellbeing or social interests of the local community and could reasonably do so in the future.

The Council must maintain and publish two lists:

- A list of Assets of Community Value
- A list of Assets not of a Community Value (unsuccessful nominations)

These two lists will be published on the Council's website.

The designated officer for the purposes of listing and compensation is the Service Manager responsible for the estates function.

The designated officer for the purposes of reviews in relation to listing and compensation decisions is the Corporate Director

### Who can Nominate

The Borough and the County Council are not able to list land of their own accord, it must be nominated by either a Parish Council or a voluntary or community group (the Nominating Body). The Nominating Body has to demonstrate that its activities are wholly or partly concerned with the local authority in which the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located).

Only voluntary and community organisations with a local connection based in the Borough of Gedling or a neighbouring authority can nominate an asset for inclusion in the list. The bodies who are able to nominate are:-

- Neighbourhood Forums
- Parish Councils
- Unincorporated bodies of at least 21 named members
- A Charity
- Company Limited by Guarantee
- Industrial or Provident Society
- Community Interest Company

### Listing:

Nominations to list an asset must be made in writing to the Council's designated officer.

- Nominations must describe the nominated asset and its proposed boundaries
- Names of current occupants of the asset and the names and current or last known address of those holding freehold or leasehold estate in the asset
- Reasons why it qualifies as an asset of community value
- Evidence that the nominator is eligible

The Council takes the view that any Nominating Body is able to undertake a search at the Land Registry in order to identify the legal owners of the asset. The Council would expect the results of such a search to be included with any nomination in order to fulfil the requirement to identify the freehold or leasehold owner.

If the nomination does not provide the information set out above, it will be treated as invalid and returned to the nominating body with an explanation as to what information is missing.

### Consideration:

Once the nomination has been received the designated officer will check the contents of the nomination as to whether firstly it is a valid nomination made by the nominating body. If it fits the criteria then the nomination will be acknowledged and notifications will be sent to all interested parties:

- The relevant parish council
- The owner of the asset
- Where the owner is not the owner of the freehold, the owner of the leasehold or
- any lawful occupant of the asset.

To confirm that all relevant ownership details are available to enable the Council to make an informed decision the Council will serve a Section 16 Local Government (Miscellaneous Provisions) Act Notice on the owner of the asset unless the nominating body is also the owner.

### Decision:

The Council has eight weeks to decide whether or not the nominated land is going to be included in the list. If the nominated asset is properly nominated, is in the borough, meets the definition of an asset of community value and is not excluded, it must be listed on the list of community assets. The designated officer will write to the nominating organisation and property owner outlining the decision.

### Listing:

The Council will list all successful and successful bids, including a short explanation of why a bid was unsuccessful, in the register.

The Council will maintain the list and add the following where necessary:

- That a notification has been received by the owner of intention to dispose of the asset and the date this was received
- Where relevant the full moratorium has been triggered
- Where the above applies the identity of the community interest group that triggered the full moratorium

The Council will remove an asset from the list as soon as practicable

- After a relevant disposal
- When an appeal against a listing has been successful
- If and when the Council form an opinion that the asset is no longer of community value
- Or no later than five years from the date of entry in the list.

#### Enforcement:

Where an asset had been listed the Council will ensure the asset has been listed on the Local Land Charges Register. A memo will be sent to the Land Charges Officer with the relevant details and the entry will be listed in the register.

Where the Council has successfully listed an asset on the list and the asset/land is registered the Council will apply to the Land Registry to place the following restriction on the title 'No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95 (1) of the Localism Act 2011'

Where an asset is removed from the list the Council will apply to cancel the restriction by completing form RX3 and submit it to Land Registry.

#### Sale / Moratorium:

Once an asset has been listed nothing further will happen unless and until the asset owner decides to dispose of it.

When the owner decides he wants to sell the asset he must notify the designated officer of the Council in writing.

Once the Council are in receipt of notification of a relevant disposal this will trigger a six week interim moratorium period. The Council will write to the nominating body and publish on its website the owner's intention to sell the asset. In this time the community interest group should decide whether they wish to prepare a bid to purchase the asset. The Council will also make an entry in the list detailing:

- That a notice has been received from an asset owner of a relevant disposal
- The date when the Council received the notice
- The end of the interim moratorium, full moratorium period and the protected period apply.

The Council will also publicise this information in the neighbourhood of the asset in question.

The community interest group must in writing request the Council to be treated as a potential bidder. When the six weeks have passed and the relevant community interest group want to place an offer the full moratorium period is triggered. This gives the group six months (from date of notification) to develop and put an offer in. During this time any sale of the asset is barred and the interested community group are able to prepare a bid for the asset. The Council will, as soon as practicable, inform the owner that a request has been received. The owner is under no obligation to accept the bid and is free to dispose of their asset as they wish. If a bid is not received during the six months moratorium period then the owner is free to dispose of their asset as they wish and no further moratorium period can be triggered for a protected period of eighteen months from the date that the Council receives notification of a relevant disposal. This provides the asset owner with twelve months in which to dispose of the asset as they wish without any restriction. This is called the protected period.

#### Review and Appeals:

Where an asset has been included in the list, the owner has the right to request the Council to review its decision by writing to the designated officer of the Council. The owner of the asset may appoint any representative to act on his behalf.

#### Procedure for review:

Once the Council is in receipt of a request for review it shall, within two weeks (or as soon as practicable) notify the owner of the procedure to be followed in connection with the review. The owner may make representations orally and/or in writing. In the review the designated Council Officer (the reviewer) will look at the decision made by the first officer and consider the relevant representations made by the asset owner and/or their representatives. The main points the reviewer will look at are:

- Whether or not the asset is eligible to be listed
- Whether or not the asset was nominated by a eligible group
- Any new factors which may have come to light since the original nomination was made
- If the decision was made improperly

If the Reviewer finds in favour of the owner then the asset will be removed from the list. If the Reviewer finds in favour of the original listing decision then the owner has the option to take their appeal to the First Tier Tribunal. The appeal must be made to the General Regulatory Chamber of the First Tier Tribunal. The deadline for appealing as specified in the procedural rules of the chamber is twenty eight days from the date in which the notice of the decision appealed against was sent to the owner. The asset will remain listed during the appeals process.

The Council must complete the review within eight weeks from receiving the written request for the review or such longer period to be agreed with the owner/representative in writing. The Reviewer will write to the owner with his decision.

If the asset owner is successful in their appeal to the First Tier Tribunal then they may apply to the Council for reasonable costs. (Please see Compensation procedure).

### Compensation:

The following types of claim may be made:

- For any loss arising from any period of delay in the owner entering into a binding agreement to sell the asset which was caused by either the interim or full moratorium periods
- A claim for reasonable legal expenses incurred in a successful appeal to the First Tier Tribunal against the Council's decision
  - To list the land
  - To refuse to pay compensation or
  - With regard to the amount if compensation offered or paid

A claim for compensation must

- Be made in writing to the designated Officer of the Council
- Be made before the thirteenth week (90 days) after the loss of expenses was incurred
- State the amount of compensation sought for each part of the claim
- Must be accompanied by supporting evidence for each part of the claim

The burden of proving the claim falls on the owner; the Council will look at the evidence and base its decision on the facts of the case. It will then give the asset owner written reasons for its decisions with respect to a request for compensation. There is no time limit for this but it will be done as soon as practicable.

### Review by Council of compensation decision:

Where an asset owner has made a claim for compensation and is not satisfied with the outcome they can request the Council to review either or both of its decisions in relation to:

- Whether compensation should be paid to that person
- If compensation is to be paid, the amount of that compensation

The asset owner has eight weeks from the date they received the decision to request a review. The Council has 8 weeks from the request for review to make the decision.