

# South Lakeland District Council Assets of Community Value and Community Right to Bid Policy

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## 1.0 Introduction

This policy details South Lakeland District Council's ("Council") approach to managing the Community Right to Bid provision within the Localism Act 2011. The Community Right is sometimes also referred to as Assets of Community Value.

## 2.0 Statement

This policy will:

- Provide clarity so that officers and members are able to effectively support the management of the process; and
- Provide transparency for community nominators and asset owners so that they are easily able to navigate the Council's process.

This policy should be read in conjunction with the Department for Communities and Local Government non-statutory guidance, which read together with *Chapter 3 of Part 5 of the Localism Act 2011*, provide full details of the legislative provisions.

## 3.0 Background

The Community Right to Bid ('the Right') also referred to as Assets of Community Value was introduced by the Localism Act 2011 ('the Act') and came into force in September 2012.

The aim of the Right is to ensure that buildings and amenities can be kept in public use and remain integral to community life by providing town and parish councils and local voluntary and community organisations with the right to nominate local land or buildings which they believe to be of importance to their community's social well-being, for inclusion on an assets of community value list maintained by the local authority, in this case South Lakeland District Council.

If a nominated asset subsequently comes up for sale, then the interested community group(s) will be given a fair chance to make a bid to buy it on the open market by delaying sale while the community prepare a bid to buy it. The Right does not restrict in anyway 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.

The Right does not apply to residential property or operational land as defined in the Town and Country Planning Act 1990 Part 2.

The Community Right to Bid should not be confused with Community Asset Transfer or the Community Right to Challenge.

## 4.0 The Community Right to Bid

The Community Right to Bid came into effect in September 2012, and it gives communities and community groups a fairer chance to prepare and bid for a community asset (building/facility or land) that is considered to be of community value.

The right covers private as well as public assets.

There are some asset exemptions from the Community Right to Bid policy, for example, residential property.

The Council is required to keep a list of all of “assets of community value” for South Lakeland. Assets can be nominated by a relevant community group to be added to the list which the Council must consider.

The Council then has 8 weeks to make a judgement about whether or not it meets the definition set out in Section 88 of the Act.

If the Council determines that the nomination does meet the community value definition, the asset then gets successfully listed as an asset of community value and all parties are notified. It must also be listed on the local land charges register and if the land is registered apply for a restriction on the Land Register. The asset will be included in the list of assets of community value and it will remain on that list for five years. The Owner of assets placed on the list may appeal against its listing.

If the Council determines that the nomination does not meet the community value definition, the asset goes on the list of assets nominated but as unsuccessful.

Once the asset is successfully listed nothing further will happen unless and until the Owner decides to dispose of it, in which case they must notify the Council. In turn the Council will then notify the nominating interested parties and publish the intention to sell on the Community Right to Bid pages of the website. Should they be interested in buying the asset they have 6 weeks to make a written request to be treated as a potential bidder to the Council. If not done so in this 6 week period the Owner is free to sell the asset. If a request is made, the relevant community group has 6 months to prepare a bid to buy the asset before this goes on sale on the open market. This is called the ‘moratorium period’.

The Right to Bid only applies when the asset’s Owner decides to dispose of it. There is no compulsion on the owner to sell the asset.

The scheme does not give first refusal rights to the interested community groups and it is not a community right to buy the asset, just to bid. This means that in some instances the local community bid may not be the successful one.

## 5.0 The Right to Bid

Under the Community Right to Bid the following voluntary or community bodies may make a community nomination:

- **Town or Parish Councils.** This may be for an asset in its own area, or in the neighbouring parish council.
- **Neighbouring Town or Parish Councils.** If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.
- **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. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.
- **Neighbourhood forums.** The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community.
- Community interest groups with a local connection. 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 distributing (these groups have been renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010)

Nominations may not be made by individuals and principle local authorities cannot list their own assets, it has to be nominated.

## 6.0 Assets of Community Value – Explanation of Terms

The Act states that an Asset is of community value if in the opinion of the Council:

- An actual current use of the Asset that is not ancillary furthers the social wellbeing or social interests of the local community;
- It is realistic to think that there can continue to be a principle use of the Asset which will further (whether or not in the same way) the social wellbeing or social interests of the local community;
- There was a time in the recent past when an actual use of the Asset (which was not an ancillary) furthered the social wellbeing or interests of the local community; and
- It is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Asset that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

The Act left a number of terms that require explanation.

### 6.1 Social Wellbeing

The Act defines that social interests include the following: cultural interests, recreational interests and sporting interests. If the use does not meet the social interest criteria then the Asset can only be listed if it meets the social wellbeing criteria. However, there is no set definition for social wellbeing, either in the Act or in general circulation. Whilst attempts to define social wellbeing exist they are ambiguous and gave little in the way of guidance. In the absence of a set definition the Council will use the following definition as a guide:

“Those aspects of life that society collectively agrees are important for a person’s happiness, quality of life and welfare”. (Source - New Zealand Ministry of Social Development’s 2008 Social Report)

### 6.2 Realistic

During the passage of the Act and subsequent regulations through Parliament there was debate about the use of the word realistic and principle of the continued use of an Asset. The Councils approach will be:

- If the Asset has a current principle use that meets the criteria, it will be presumed that the same use can continue in the future; and
- If the Asset had a use in the recent past that meets the criteria, it will be presumed that the same use can continue, unless there have been events that would prevent such a use, such as dereliction or demolition.

## 6.3 Recent Past

The phrase recent past is also not defined in the Act. The Act does however define a time period for when the land could be brought back into community use as five years. Once listed, land remains on the list for five years. The reason for not defining recent past is to provide local authorities flexibility in cases, such as when land has been empty, derelict or disused for less than five years.

The Council's criteria for defining recent past will be five years. Exceptions may be considered by the Council in the following cases:

- If the land has been disused for more than five years and when it was last in use its principle use furthered the social wellbeing or social interests of the community;
- If the land has been in use, but has been used for a non-qualifying purpose, and the land was purchased as using a compulsory purchase order or other statutory power for use by the Council or other public sector body.

# Appendix 1 – Nominating Group Guidance

## 1.0 Introduction

This guidance will help nominating groups decide if an application will be successful in having an asset added to the South Lakeland District Council Register of Community Assets.

It will provide some advice and guidance to ensure your application is accepted as complete (at which time the 8 weeks assessment window begins) and can be passed to the relevant Case Management Officer.

Once with the Case Manager, your application will be considered in line with this guidance which is based on the Non-statutory advice note for Local Authorities and Statutory Instrument 2421 provided by the Department for Communities and Local Government (DCLG) and the local guidance.

Use this guidance and the above identified documents to ensure you provide all the required information. If at any time the Case Management Officer requests more information the 8 weeks assessment window will be frozen. The assessment will not restart until you have provided all the necessary information.

If you have any questions please contact the Council and ask to speak to the Community Right to Bid – Case Management Officer.

## 2.0 Getting an application accepted as complete

On receipt of your application (see the form for details of where to send your completed application) the Council will check you have provided all necessary information required on the application form; the Council calls this '**application validation**'. Please ensure that your application form has been completed correctly with sufficient information so the Case Management Officer is able to make a recommendation.

- **Incomplete Application – Invalid.** If an application is considered 'invalid', it means specific details were missing or there was not enough information provided. If this is the case you will receive a letter explaining what is missing so you can complete and resubmit the application form.
- **Complete Application – Valid.** If the application is considered 'valid', then from that day the Council has 8 weeks to assess the application and either agree to add it to the Community Asset Register or not and inform the appropriate parties of its decision.

## 3.0 Getting your nominated asset added to the register

Once validated your application will be passed to the Community Right to Bid Case Management Officer; the Case Management Officer's responsibility is to consider if the application meets the criteria as set out in the legislation. The Case Management Officer will draft a report recommending if your nominated property or land should be listed as a community asset or not. The final decision will be made by the Council's Director of Strategy, Innovation and Resources (the designated officer).

To ensure due process the Case Management Officer will use the Council's Community Right to Bid Assessment Framework to guide them through assessing your application. The Case Management Officer will consider the application in such a way as to establish if the property or land has been nominated correctly by considering:

- Is the land/ property in South Lakeland?
- Is the organisation nominating allowed to do so?
- Does the property meet the definition?
- Is the property or land excluded?

The Case Management Officer will have used the Non-statutory advice note for local authorities and Statutory Instrument 2421.

During the assessment additional information and advice may be sought from appropriate people to help the Case Management Officer make the correct recommendation; this may include:

- Legal advice
- The applicant to clarify aspects of the application or provide more detail
- A person with planning experience
- A person with knowledge of the relevant property or land
- A person with knowledge of the area and local community

Any discussion/ consultation regarding an application will be noted.

Once the assessment is complete a report will be produced explaining the reasons for the recommendation. This will be presented to the designated officer.

### 3.1 If the Case Management Officer requires you to provide more information

If there is insufficient information in the original application for the Case Management Officer to come to an informed recommendation you will be contacted



by letter clearly stating the additional information/ evidence the Case Management Officer requires.

Once such a letter has been sent the 8 week assessment period is frozen until you return all the information requested. Once everything requested is received the time will recommence from when it was stopped.

## 4.0 Following the designated officer's decision

You will be informed of the designated officer's decision in writing.

## 5.0 Register of Assets of Community Value

Nominated property or land which have been approved by the designated officer as an 'asset of community value' will be added to the Council's 'Register of Assets of Community Value' that can be viewed on the Council's website.

The asset will also be added to the local land charges register. If the land is registered a restriction will be applied on the Land Register.

The 'relevant disposal' of any listed asset is restricted by the moratorium requirements (for more information see the Statutory Instrument 2421 and Non-statutory advice note for local authorities).

Nominations will be removed from the register after a period of 5 years, or through one of the circumstances explained in the Statutory Instrument 2421 and Non-statutory advice note for local authorities.

## 6.0 Register of unsuccessful Nominations

Nominations which have been declined by the designated officer will be added to the 'Register of Unsuccessful Nominations' for future reference.

Unsuccessful nominations will be removed from the register after a period of 5 years, or through one of the circumstances explained in the Statutory Instrument 2421 and Non-statutory advice note for local authorities.

## 7.0 Asking for a review of the decision

An Owner can ask for a review of the decision. Initially, this must be an internal review. If an Owner you are still not satisfied you can submit an appeal for a tribunal review. Both the processes are explained below:

## 7.1 Internal review

A Senior Officer who is independent of the Assets of Community Value decision making process will conduct the review. In most cases this will be the Director of Customer and Commercial Services. The Director will have 8 weeks from the date of receiving the request to carry out the review.

- **Owners:** Within 8 weeks of being notified of their property being listed as a 'community asset', the Owner can appeal to the Council for a 'listing review'. The asset will remain listed during the review period. An appeal must be given in writing or via email, see the contact details below.
- **Nominating community group:** There is no right of review.

Internal Review contact details:

- By email: [policy@southlakeland.gov.uk](mailto:policy@southlakeland.gov.uk)
- By post: Director of Customer and Commercial Services, South Lakeland District Council, South Lakeland House, Lowther Street, Kendal, Cumbria LA9 4DQ

## 7.2 Tribunal review

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 to the General Regulatory Chamber of the First-Tier Tribunal.

Owners must submit their appeal in writing to the First-Tier Tribunal either:

- By email: [grc.communityrights@hmcts.gsi.gov.uk](mailto:grc.communityrights@hmcts.gsi.gov.uk)
- By post: Tribunal Clerk, Community Right to Bid Appeals, HM Courts & Tribunals, First-tier Tribunal (General Regulatory Chamber), P.O. Box 9300, Leicester, LE1 8DJ