

Community Right to Bid - Frequently Asked Questions

Community Right to Bid information for Community Organisations and Asset Owners

Disclaimer: The following information is not and must not be taken as a statement of the law. Owners and Group should take legal advice when considering their options under the Community Right to Bid scheme.

All correspondence and enquiries should be sent to the address given at the end of this document.

INTRODUCTION

From September 2012, local community and voluntary organisations, neighbourhood forums and parish councils can identify land and buildings, public or privately owned, providing an important service in their local community and nominate these to be placed on a list of assets of community value kept by Durham County Council.

If an asset on the list comes up for sale, an interested group or groups will have up to six months to raise money and bid to buy the asset, before it can be put up for sale on the open market.

These provisions do not restrict who the owner of a listed asset can sell their property to, or at what price. They do not give the right of first refusal to community organisations.

Who can nominate an asset to be put on the list?

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

- a local voluntary or community group not incorporated but with at least 21 members who are locally registered to vote in County Durham
- a parish council
- a neighbouring parish council whose boundaries share a border with another parish or an un-parished local authority area
- 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 Group to nominate an asset it must be able to show that its activities are all or partly concerned with the County Durham area.

The local group is not run mainly for profit and all or some of its profit must be used for the benefit of County Durham area.

Public authorities such as the County Council, Police and Health Authority cannot 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 being used to improve the social well-being and interests of the local community, or has done in the recent past and this was its main use; and
- for land in community use it is reasonable to think it could carry on being of use in improving the social well-being and interests of the local community; or
- for land which was in community use in the recent past it should be realistic to think it could have a viable community use in the next 5 years

In each case the community use does not have to be exactly the same as in the present or past and it should not fall within one of a list of exemptions. (Exemptions listed later in this document)

Examples of the types of land or buildings that might be nominated include a:

- local shop
- pub
- community centre
- library
- playground
- park
- swimming pool
- market

What is meant by social well-being and interests?

This means land and buildings that are or have been or will be used (in particular) for cultural, recreational or sporting interests.

Also there should be:

- broad and inclusive use of the asset across the community, or
- use by a part of the community that would not be provided otherwise or is not provided in the locality e.g. elderly people, children
- proposed usage, if different, must comply with current planning regulations.

What is meant by 'recent past'?

'Recent past' is defined by the County Council as being 'the last five years'. For example, a library that has been closed and derelict for three years could still be nominated for the list if it is reasonable to think that if sold within five years could be of viable community use.

What types of assets cannot be listed?

Residential premises including sites for mobile homes and boats cannot be listed.

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.

(One exception to the residential premises exclusion is 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:

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

A building is not a residence if:

- planning permission or development consent has been given but no residences have yet been built
- construction of a building intended to be a residence is underway but construction is not yet complete
- 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.
- 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 to be placed on the list in County Durham should be made on a designated nomination form to Durham County Council. A copy of the form is available on this website www.durham.gov.uk/right-to-bid.

The completed form should be returned to Durham County Council or by email to: right-to-bid@durham.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) 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, religious or cultural group, sporting group.
- h) The name and address of the voluntary or 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
- j) Written evidence of the status of the nominating group e.g. charity registration number
- k) If the group is unincorporated, names and addresses of 21 members who are locally registered to vote in Durham County Council area.

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 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.

Can different local Group nominate the same asset(s)?

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

When can a nomination be made?

Nominations started from 16th October 2012, once submitted you will receive an acknowledgement confirming the date of receipt by the County Council.

What happens to the nomination then?

A panel of council officers will assess if the asset should be included in the list using criteria set out in Government Guidance.

A decision will be made within eight weeks of receiving a nomination.

If a nomination is successful or unsuccessful, the council will give written notice to:

- the landowner,
- the occupier,
- the relevant parish 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 either on list of assets of community value or the list of unsuccessful nominations.

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 web pages at:

www.durham.gov.uk/right-to-bid

A free hard copy of the list can be obtained from Durham County Council

The list will be updated on a monthly basis. The register is unlikely to have any entries until the first application received is assessed by the council.

What happens if the owner or local group do 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 can ask the council for a review within 8 weeks of being notified 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 the review request was received or longer if agreed with the owner.

The owner has a right to an oral hearing and to be represented at it by whoever 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 all relevant people of the review decision in writing, within 7 working days of the review date.

If the council chooses to uphold the original decision, the owner can appeal to the General Regulatory Chamber of the First-Tier Tribunal which is part of the court system and hears appeals against administrative decisions. Relevant people will be notified of the result of the appeal in writing.

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

Do assets of community value remain on the list permanently?

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

- after a relevant disposal (other than an exempt disposal)
- when an appeal against a listing has been successful
- if the Council decides the land or building is no longer of community value;
- no later than 5 years from the date listed.

If any assets are removed from the list the council will notify all relevant parties.

Does the nominating group need to take any further action?

The nominating group should notify the council of any changes to:

- the name, title and address of the group
- the name, title and address of the person leading the nomination
- any change to the make-up of the nominating group which may affect its legitimacy to continue to claim the right to nominate and to bid for assets.

No further action is needed by the group until the Council inform them that that the owner intends to sell the listed asset.

Who can bid for an asset?

Once the owner informs the Council they intend to sell the asset, the Council will introduce a six week interim moratorium period. During the six weeks a group can ask the Council in writing to be considered as potential bidders for the asset. Once this written request is received the full six month moratorium will start. The Group do not have to provide any evidence of intention or financial resources at this stage.

In order to register intent to bid a Group must have one or more of the following structures:

- A charity or having charitable objectives
- A community interest company
- A company limited by guarantee that is non-profit distributing.
- An industrial and provident society that is non-profit distributing (these group 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:

- Parish Councils may make a bid but only for assets in their local area and not in a neighbouring district
- 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 County Council of their intent to sell the asset as a precaution.

When an owner notifies the County 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 group 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 group may re-enter the bidding process.

The community interest group has six weeks from the date of County Council's receipt of the owners' notification within which to register their intention to bid with the County 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 County Council.

Details of assets available for disposal will be published on the Council's Community Right to Bid website with the date from which the six week 'intent to bid period' runs.

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

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 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 group
- 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
- l) A disposal for the purpose of enabling;
 - i) a school (excluding independent schools other than those designated as academies under the Academies Act 2010)

- ii) a 16-19 Academy to continue to be provided or
- iii) a further education establishment
- m) 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.

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

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

The owner of a listed asset must notify the County 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 County 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.

All correspondence regarding Community Right to Bid should be sent to:

Community Right to Bid
Durham County Council
Asset Management
County Hall
Durham County Council
DH1 5UL