

SOUTHEND ON SEA BOROUGH COUNCIL

COMMUNITY RIGHT TO BID AND ASSETS OF COMMUNITY VALUE - PROCEDURE AND LISTS

Background Context

This list is published under Section 87 of the Localism Act 2011. The list is **attached** at the end of this explanatory note.

The Assets of Community Value (ACV) provisions are set out in sections 87 - 108 of the Localism Act 2011. They are part of the Government's *Open Services* agenda, as the Community Right to Bid. They give voluntary or community bodies with a local connection the right to nominate important local amenities (land or buildings) to the local authority for listing as assets of community value, and if they are then put up for sale, local community groups will have the opportunity to delay the sale to enable them to prepare a bid to buy the asset and take it over.

The ACV Regulations (SI 2012 / 2421) were published on 20 September 2012, and came into force on 21 September 2012.

Community Nomination

An asset may only appear on the list if it has been the subject of a community nomination. The following bodies can make community nominations:

- The local or neighbouring parish council
- A voluntary or community body with a local connection

The ACV Regulations define both voluntary or community bodies and a local connection. The following may be voluntary or community bodies:

- Neighbourhood forum
- Unincorporated body with at least 21 local members which does not distribute any surplus to its members
- Charity
- Company limited by guarantee which does not distribute any surplus
- Industrial and provident society which does not distribute any surplus

- Community interest company

A voluntary or community group will have a local connection with land in a local authority's area if:

- Its activities are wholly or partly concerned with the local authority's area, or the area of a neighbouring local authority
- It applies any surplus it makes for the benefit of the local authorities' areas

A public or local authority cannot be a voluntary or community body. However, a parish council may have a local connection with assets in a neighbouring parish or in the local authority generally.

The nomination must be in writing, by letter or e-mail. It should be submitted by e-mail to [alanrichards@southend.gov.uk](mailto:alanrichards@southend.gov.uk), or by letter to the Southend on Sea Borough Council Asset Management Team, Support Services, Civic Centre, Southend on Sea, Essex SS2 6ER.

The written nomination must include:

- A description of the nominated land, including its boundaries
- A statement of all the information held by the nominator on:
  - The names of current occupants
  - The names and last-known addresses of everybody holding a freehold or leasehold estate in the land
- The nominator's reasons for thinking that the land is of community value
- Evidence that the nominator is eligible to make a nomination

The Council will not accept nominations that do not include this information.

### **Land of Community Value**

Section 88 of the Localism Act 2011 defines land of community value. This is land where its principal current use must further the social wellbeing or social interests of the local community, and the same or another such use will continue; or where there was such a use in the recent past which could realistically exist within the next five years.

The ACV Regulations specify land which cannot be registered, in Schedule 1. The following land will not be of community value:

- Residences and contiguous land connected with the residence
- Residences that are temporarily unoccupied
- Holiday dwellings

- Hotels and residential lettings
- HMOs
- Licensed caravan sites
- Operational land for transport networks and statutory undertakers (under S263 of the Town & Country Planning Act 1990)

The following are not residences and therefore may be registered:

- Buildings only in part-use as a residence
- Non-residential land with planning consent for residences
- Uncompleted residential buildings
- Former residences with an agreed change of use

The ownership of the land or buildings is immaterial. Therefore the land / asset could be owned by a public body or local authority, or a private person, or commercial business. It may be of any size. It may lie in more than one local authority area. It may have a number of owners. It need not be registered (i.e. entered on the land register).

The registration, if agreed by the local authority, will be for up to five years. The authority may remove an asset from its list during the five year period if it forms the opinion that the land is no longer of community value.

#### Actions by the Borough Council

When the Council receives a community nomination, it must decide within 8 weeks whether the land should be included in its List of Assets of Community Value. In doing this, it must take all practical steps to notify the following that it has received and is considering a community nomination:

- The local parish council (if one exists)
- The owner of the land
- Where the owner is not the freeholder, the holder of the freehold
- Any leaseholder
- Any lawful occupants of the land

The Council will accept the nomination if the asset nominated is in its area, and of community value. If so, it will then include the land on the list.

If the nomination is not accepted, the Council must give the person making the nomination its reasons in writing for its decision, but there is no right of appeal or review.

If the nomination is accepted, the Council must give written notice of inclusion in its list of assets of community value, under Section 91, to:

- The nominee
- The parish council
- The owner and occupier.

The owner of the land may ask the Council, in writing, to review its decision, within 8 weeks of the date of the notice. This timescale may be extended at the authority's discretion.

The Council must maintain a separate list of unsuccessful community nominations, which must also give the reasons why individual nominations were not successful. This is also **attached**.

The Council must publish both lists, and make them available for free public inspection.

#### Right of Appeal

Under Section 92(6)(d) of the Localism Act, and Regulation 11, the owner may appeal the Council's decision on a listing review to the First-Tier Tribunal. This right extends to any subsequent owner of the land.

#### Moratorium on Disposing of Listed Land

Section 95 of the Localism Act introduces a delay mechanism for the sale of any land included on the local authority's ACV list. Under Section 95(2), the owner must notify the Council in writing of his/her intention to dispose of the land. A disposal will include (section 96):

- Transferring the freehold to give vacant possession
- Granting or assigning a qualifying lease to give vacant possession

On receipt of this notice, the Council must:

- amend the entry on the list of assets of community value to record the fact that the notice has been received
- notify the community nominee, in writing
- publicise the matter in the local area

The receipt of the owner's notice of intention to dispose triggers a 6 week moratorium on the disposal. This is called the interim moratorium.

During the six week interim moratorium, a community interest group may trigger a full moratorium of 6 months. It does this by making a written request to the local authority to be treated as a potential bidder for the land.

The Council must then:

- inform the owner of the request from a community interest group to be treated as a bidder (Section 98)
- tell the group which nominated the land for listing (Regulation 2)
- add this new information to its published ACV list

Under Regulation 13(1), the owner may enter into a relevant disposal of the land to a community interest group at any time within 18 months of giving notice of intention to dispose of the land to the local authority under Section 95(2).

Section 95, and Schedule 3 of the Regulations, exclude a number of types of disposals from the moratorium provisions. These exemptions include disposals relating to or arising from:

- gifts or family transfers
- the estate of a deceased person
- business transfers, or relating to partnerships or trusts
- separation agreements
- incapacity
- planning obligations (S106 agreements)
- legally enforceable property rights
- compulsory purchase - including restoration of property rights
- security for a debt, or insolvency
- agricultural holdings
- transfers between related companies

- closed Church of England churches
- continuing NHS provision
- educational use - including Academies and independent schools

If the owner fails to make the proposed sale, the land will continue to be listed until either:

- The end of the 5 year listing period
- The local authority decides to remove the land from its list of assets of community value

#### Community Interest Groups

The community interest groups who can make a written request to be treated as a potential bidder are defined in Regulation 12. They are:

The local parish council

A voluntary or community body with a local connection as set out above.

May 2013

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**LIST OF ASSETS OF COMMUNITY VALUE**

<b>Land or Asset Nominated</b>	<b>Date of Expression of Interest</b>	<b>Community Nominee</b>	<b>Reason(s) for Listing</b>	<b>Date of Council Decision</b>	<b>Notice received from Owner to dispose (s.95(2) Date)</b>	<b>Interim Moratorium End Date (6 Weeks)</b>	<b>Full Moratorium Triggered Yes / No End Date (6 Months)</b>	<b>Date of Expiry of Listing</b>

Notes to Table:

- Interim Moratorium End Date is 6 weeks from the date of receipt of s.95(2) notice.
- Full Moratorium End Date is 6 months from receipt of notification by a community group of its intention to bid.
- Date of Expiry of Listing is 5 years from the date of Council Decision to List

