

## ACV information for owners of a listed asset:

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Part 5 Chapter 3 of the Localism Act and the Assets of Community Value (England) Regulations, together deliver the Community Right to Bid. This gives communities the opportunity to identify assets of community value and have them listed and when they are put up for sale, gives them more time to raise finance and prepare to bid for them.

Local authorities have a pivotal and impartial role in implementing the Community Right to Bid, working with local communities to decide on asset listing, ensuring asset owners understand the consequences of listing, enforcing the Moratorium period and in taking decisions as part of any appeals process.

This document highlights important information for asset owners regarding the Community Right to Bid process and procedures to follow for when they choose to appeal against any decisions made by the Council.

### Contents:

#### **Section 1: Listing review**

#### **Section 2: Appeal against listing review**

#### **Section 3: Moratorium and protected period**

#### **Section 4: Compensation**

#### **Section 5: Enforcement**

#### **Section 6: Exemptions**

#### **Section 7: References**

#### **Glossary of key terms**

- The Council means South Oxfordshire District Council and Vale of White Horse District Council
- The Act means The Localism Act 2011
- The Regulations means The Assets of Community Value (England) Regulations 2012
- ACV means Asset/s of Community Value

## Section 1: Listing review

1.1 If an asset has been included on the ACV list, an owner has the right to request the council to review its decision. The deadline for the owner to request this review is 8 weeks from the date written notice of listing was given (or from the date that alternative steps were completed to bring listing to the owner's attention), or a longer period allowed by the council in writing. The asset will remain listed while the review is carried out.

1.2 The review will be conducted by an officer of appropriate seniority, who did not take part in the decision to list. The owner may appoint a representative and the council will be required to provide all relevant documents to the representative.

1.3 The owner and/or their representative may make representations to the reviewer orally and/or in writing. The council will complete their review within 8 weeks, unless a longer period has been agreed in writing.

1.4 The owner and council will bear their own costs of the review.

1.5 If the owner is not satisfied with the outcome of the internal review, they have the right to appeal to the First-Tier Tribunal against the council's review decision. The written response following the internal review should inform the owner of their right to an independent appeal.

The owner making the appeal can be either the same owner who requested the review, or - if the property has been sold in the meantime - the new owner.

## Section 2: Appeal against listing review

2.1 An owner's appeal against the councils listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is 28 days from the date on which notice of the decision appealed against was sent to the owner. Appeals may be both on points of law and on findings of fact. The property will remain listed during the appeal process.

2.2 Owners should send the appeal in writing to the First-Tier Tribunal at:

Tribunal Clerk, Community Right to Bid Appeals HM Courts & Tribunals First-tier Tribunal (General Regulatory Chamber) P.O. Box 9300 Leicester, LE1 8DJ

2.3 Owners may also send an appeal to the First-Tier Tribunal by email at:  
[GRC.CommunityRights@hmcts.gsi.gov.uk](mailto:GRC.CommunityRights@hmcts.gsi.gov.uk)

## Section 3: Moratorium and protected period

3.1 Once an asset has been listed, nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least twenty -five years).

3.2 The owner must inform the council in writing of their intention to sell, (see section 6).

3.3 If no exemption applies, the owner will only be able to dispose of the asset after a **specified window** has expired – this is referred to as the **moratorium period**.

### 3.4 Interim moratorium – six weeks

- The first part of this window is a six week period, referred to as the interim moratorium period, starting from the date the owner notifies the council of their intention to sell.
- The council will inform all interested parties and record this on the ACV list.

This interim moratorium allows community interest groups to make a written request to be treated as a potential bidder.

- If no community interest group express interest during the interim moratorium period, **the owner is free to sell their asset at the end of the 6 weeks**.

### 3.5 Full moratorium – six months

- If a community interest group expresses interest in bidding for the ACV within the interim moratorium period, the second part of this window starts, referred to as the full moratorium.
- The full moratorium lasts for six months from the date the owner notified the council of their intention to sell.

The full moratorium allows the community interest group to prepare business plans and finance to be considered as a bidder for the ACV.

- During this 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. The owner may sell to a community interest group during the moratorium period.

### 3.6 Protected period – 18 months

After the moratorium period – either the 6 weeks if there has been no community interest or the full 6 months – the owner is free to sell to **whomever they choose and at whatever price**, and no further moratorium will apply for the remainder of a protected period.

- The protected period lasts 18 months from the date the owner notified the council of their intention to sell.

### 3.7 What happens after the protected period?

If no sale took place within the 18 month protected period and the owner decides to keep the asset on the open market for sale, the process will start again with the owner giving the council a written notification of their continued intention to sell.

- The moratorium period only applies while the asset remains listed as an ACV. If an asset reaches the end of its five year listing during the moratorium period, the owner will be free to sell to whomever they choose after the listing expiry date.
- ACV expiry dates are published on the council website.

## Section 4: Compensation

4.1 Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.

4.2 The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however, the wording allows for claims for loss or expense arising simply as a result of the land being listed.

4.3 Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.

4.4 The council must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the council some time to assemble all the necessary evidence; however, once it has all the facts the authority should reach a decision as quickly as is practicable.

4.5 The owner may request a review of the council's decision regarding their claim. This must be made in writing within eight weeks of the date of the decision.

Community Enablement Team  
South Oxfordshire District Council  
135 Eastern Avenue  
Milton Park  
Milton, Abingdon  
OX14 4SB

Email: [communityenablement@southandvale.gov.uk](mailto:communityenablement@southandvale.gov.uk)

4.6 The council will acknowledge receipt of the request and advise of the procedure to be followed in connection with the review. The review will be undertaken by an officer independent of the original decision making process. The owner may request a hearing and may appoint a representative to act on his/her behalf in connection with the review. Where no request for a hearing is made by the owner, we will decide whether a hearing would be beneficial to the review process. The owner, or their representative, may make written and oral representations at the hearing.

4.7 The owner will bear his/her own costs of the review.

4.8 The council will complete the review process within eight weeks of receipt of the written request for the review, or a longer period, where this has been agreed with the owner. We will notify the owner in writing of the outcome of the review, supported by reasons.

4.9 Where the owner remains dissatisfied with the outcome of the review, they may appeal to the general regulatory chamber of the First-tier Tribunal (General Regulatory Chamber) against the council's decision on the compensation review. Appeals should be sent to:

Tribunal Clerk,  
Community Right to Bid Appeals,  
HM Courts and Tribunals,  
First-tier Tribunal (General Regulatory Chamber),  
PO Box 9300,  
Leicester LE1 8DJ

## Section 5: Enforcement

6.1 The Regulations introduce a clear penalty for non-compliance, and measures to minimise the chance of a disposal not being compliant with the scheme. These will be achieved partly by amendment to the Land Registration Rules 2003.

6.2 The council is required to add that an asset has been listed to the local land charges register. This will ensure that all prospective new owners will be aware that an asset has been listed, since local land charges apply to both registered and unregistered land.

6.3 The council is required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform the council that the land has been entered on the Land Register as a result of an application for first registration, and also to inform the council if they have become the new owner of listed land (together with giving their name and address details).

6.4 Amendments to the Land Registration Rules 2003 have been made to add further safeguards against non-compliance. Local authorities are required to apply to the Land Registry for entry of a restriction on the Land Register when they list a building or other land as an Asset of Community Value, or, if necessary, where the owner of the listed asset has changed. This restriction will be in a form of wording newly added to Schedule 4 to the Rules, as Form QQ. This is "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". An owner of previously unregistered listed land, who applies to the Land Registry for first registration (or a mortgagee who applies for first registration on behalf of the owner), is required at the same time to apply for a restriction against their own title. The local authority is also required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.

6.5 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 therefore need to provide the Land Registry with a

certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act (the moratorium requirements).

## Section 6: Exemptions

With regard to the following exemptions (with the exception of the first), the council will usually not know that the disposal is taking place, because an owner who is confident that the transfer they contemplate will be exempt and will not need to notify the council of their intention to sell.

In some cases, an owner may not be sure whether they are going to succeed in making an exempt disposal or not – for instance if they wish to sell the land together with a business sold as a going concern – and may notify the authority as a precaution. In that situation, if they were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period. There is no requirement in the legislation that in such circumstances the owner must explain to the local authority that the disposal is exempt. However it would be helpful for them to do so.

The full list of exemptions is as follows. The first (a.) is in a different category to the remainder, in that the moratorium rules will have been triggered by notification from the owner, but the sale will be able to take place during the moratorium.

- a. disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13(1)
- b. disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c. disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d. disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e. disposals between family members (“family member” is defined in section 95(7) of the Act as the owner’s spouse or partner and descendants of grandparents – which includes the owner’s own parents, but not the grandparents)
- f. part-listed land – i.e. sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)
- g. sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)
- h. disposals occasioned by somebody becoming or ceasing to be a trustee
- i. disposal by trustees in connection with the trust, as specified

- j. a disposal occasioned by a person becoming or ceasing to be a partner in a partnership
- k. transfers made in pursuance of a court order
- l. transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m. a transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with “incapacity” being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n. a disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before the land was listed (and in this context it should be noted that an option etc entered into after the land is listed would count as a relevant disposal under section 96(4) of the Act)
- o. disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 “Compulsory Purchase and the Crichton Down Rules”:  
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/19188>
- p. sale by a lender under a power of sale (i.e. where the land was security for a loan)
- q. disposal of land under bankruptcy or other insolvency proceedings – the wording is “insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986”, which gives a very wide definition of insolvency proceedings
- r. compulsory purchase disposals (see the wide definition of “statutory compulsory purchase” in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)
- s. the grant of an agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- t. transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161(5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)
- u. disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e)5. See final paragraph below for details.
- v. disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or

transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.

w. disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)

x. a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy

y. disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.

## Section 7: References

7.1 Community Right to Bid: Non-statutory advice note for local authorities:

[www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities](http://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities)

7.2 Part 5 Chapter 3 of the Localism Act 2011:

[www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3](http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3)

7.3 Assets of Community Regulations 2012:

[www.legislation.gov.uk/uksi/2012/2421/contents/made](http://www.legislation.gov.uk/uksi/2012/2421/contents/made)