



ARUN DISTRICT COUNCIL

ASSETS OF COMMUNITY VALUE

**POLICY AND GUIDANCE NOTES
FOR NOMINATING BODIES & OWNERS**

Date Adopted:
Adopted by:

TBC
Full Council



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1.0 Introduction

The “Assets of Community Value” concept was introduced under the Localism Act 2011 (Part 5, Chapter 3) and detailed in the Assets of Community Value (England) Regulations 2012 (the Regulations).

This introduced the Community Right to Bid, which gives eligible organisations such as Town and Parish Councils, and defined local community groups the opportunity to nominate (an) asset(s) (building or land) they believe to be important to their community social well-being, or social interests, and is likely to do so in the future, to be listed by the Local Authority as an Asset of Community Value.

When a listed asset comes up for sale, the Regulations provide for a delay in the sale process (moratorium). The moratorium allows local community groups to prepare and make a bid for the asset on the open market.

This aims to ensure that there is an opportunity for assets of community value to be kept in public use and remain an integral part of community life where possible, and thus reduce the trend in recent years of communities losing local amenities and buildings of importance to them.

The Regulations do not give the community group any other rights, other than to delay the sale so they can prepare a bid.

The purpose of this document is to set out the Council’s policy position with regards to the Assets of Community Value processes. In particular: To provide clarity so that officers and Members are able to effectively support the management of the process; and to provide transparency for community nominators and asset owners so that they are easily able to navigate the Council’s process.

2.0 Who can submit a Community Nomination

A nomination can only be made by an eligible body:

- a) A Town or Parish Council (provided the land is within its area), or
- b) A voluntary or community body with a local connection*. This can include:
 - An unincorporated body of at least 21 local individuals[#] which applies at least part of any surplus it makes for the benefit of the Districts of Arun, Chichester, Horsham or the Borough of Worthing, and does not distribute any surplus it makes to its members,
 - A charity
 - A company limited by guarantee which applies at least part of any surplus it makes for the benefit of the Districts of Arun, Chichester, Horsham or the Borough of Worthing, and does not distribute any surplus it makes to its members

- An industrial or provident society which applies at least part of any surplus it makes for the benefit of the Districts of Arun, Chichester, Horsham or the Borough of Worthing, and does not distribute any surplus it makes to its members
 - A community interest company
 - A body designated as a neighbourhood forum pursuant to the Town and Country Planning Act 1990 Section 61F
- * A local connection is where the body's activities are at least partly concerned with any of the Districts of Arun, Chichester, Horsham or the Borough of Worthing
- # A local individual means a person who is registered at an address in the Districts of Arun, Horsham, Chichester or the Borough of Worthing on the register of local government electors.

Arun District Council cannot list land on its own initiative.

3.0 How to Submit an Application

By completing an online form www.arun.gov.uk/assets-of-community-value or by email to landcharges@arun.gov.uk or in writing to Local Land Charges Service, Civic Centre, Littlehampton, West Sussex BN17 5LF.

4.0 Information Required for a Valid Nomination

- i. The name of nominating body.
- ii. Relevant contact details of the nominating body.
- iii. The category of nominating body (with reference to the **"Who can submit a community nomination"** section of this document).
- iv. Evidence of the nominating body's local connection.
- v. Evidence of the eligibility of the body to make a nomination. Refer to the description of categories of eligible nominating bodies in the **"Who can submit a community nomination"** section of this document. Evidence could include the Constitution, Terms of Reference, Standing Orders, Trust Deed, Articles of Association, Interest Statement for Community Interest Company; and accounts showing whether any surplus is made, and geographically where it is applied, on what and whether any of the surplus is given to members.
- vi. Location of nominated property/land together with a plan to scale showing boundaries edged red, such as by providing Land Registry Title Register and Title Plan (up-to-date office copies) or plan showing OS co-ordinates, road names, and land marks. The boundaries do not have to be the same as ownership boundaries, nor does the land have to be in the same ownership.

- vii. Names and addresses of owners of freehold and leasehold interests and occupiers.
- viii. Actual current use of the property/land.
- ix. Reasons to believe that the current use, or another community use, can be carried out on the land for the foreseeable future i.e. within the next 5 years.
- x. The reasons for nominating the property/land, including evidence of community value. This can be in the form of testimonials, advertisements, lists of clubs/groups using facilities and the frequency of use, photographs, copies of web pages showing history of the property/land or its use/events. Such evidence must relate to the primary use of the building or land and further the social wellbeing or social interests of the local community. Note: this list is not exhaustive.

The following examples, which are not exhaustive, give an indication of what might be considered as being of 'community value'

- Sport and leisure facilities
- Parks and open spaces
- Libraries
- Museums
- Theatres
- Village Halls/Community Centres
- Public Toilets
- Village shops
- Pubs

The following **would not** be considered as having 'Community Value'

- Land and property where community use is ancillary to the main use/purpose
- Land and buildings which are primarily residential in purpose (the Regulations set out certain exceptions for a building that is only partly used as a residence, such as pubs and shops)
- licensed (and some unlicensed) Caravan Sites
- Land owned by statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990. This would include organisations such as the Post Office, transport providers and utility companies.
- Hotels

Nominations can be made at any time, including after a potential asset has been put onto the market. However, no restrictions on sale arise from nomination – it is only listing which brings the statutory provisions into play.

5.0 Validation

For a nomination to be valid (for consideration and determination) it must provide sufficient evidence to demonstrate that it has been made by an eligible nominating body, and is for defined land within Arun. I.e. include information to the satisfaction of the Council as set out in criteria (i)-(vii) and provide information addressing the use, reasons for considering the use can continue, and reasons for considering the use is of community value criteria (viii)-(x).

If the nominating body has not demonstrated to the Council's satisfaction that it is an eligible nominating body, the nominating body will be written to providing reasons and the Council will not consider it to have been a valid community nomination until and unless it is provided with evidence to its satisfaction.

6.0 Consideration of Community Value and Determination of a Nomination

A decision will be made on a valid nomination within a period of **8 weeks from receipt of a valid nomination.**

On being satisfied that a nomination is valid, the Council will write to the freeholders, leaseholders and occupiers, Ward Members and the relevant Town or Parish Council (unless they are the nominating body) to advise that the nomination has been received and affording the opportunity to make representations.

After having established the validity of the nomination, the consideration is about whether the land use is (viii) current, or has been carried out in the recent past, (ix) whether it is reasonable to think it could continue to be used for this purpose within the next five years, and (x) whether the non-ancillary land use has community value.

Officers will examine the evidence submitted with the nomination together with any comments that have been received from the freeholders, leaseholders and occupiers, Ward Members and the relevant Town or Parish Council in order to make a decision as to whether the land should be listed as an Asset of Community Value.

The Council will notify the nominating body, owners/occupiers, Ward Members and relevant Town/Parish Council of the decision in respect of the nomination. It will include in the notification of land which is to be added to the list of Assets of Community Value, the consequences for the land and the owner's right to request a

review of the decision. The decision will also be recorded on the List of Successful/Unsuccessful nominations recorded. Un/Successful nominations will remain on the list for a period of 5 years. <https://www.arun.gov.uk/assets-of-community-value>. On occasions when a valid nomination is unsuccessful, the nominating body will be provided with reasons for the decision, and this will be recorded on the list of unsuccessful community nominations.

The Council will register a charge in respect of a successful listing against the property with the Land Registry and will also register an entry in Part 4 of the Local Land Charges Register – such charges will remain in force for a period of 5 years. Should a property not be registered with the Land Registry within the period of Listing, the owner must ensure that at the time of first registration the restriction is registered.

7.0 Disposing of a Listed Asset of Community Value

If an owner proposes to dispose of the asset, and that disposal is a relevant disposal caught by the provisions of Section 96 Localism Act 2011 (and is not exempt under the Localism Act 2011) such as selling a listed asset, then they need to notify the Council in writing landcharges@arun.gov.uk who will update the List to show the owner's intention to dispose and give the interim and full moratorium end dates, and the end date of the protected period.

This notification triggers an **Interim Moratorium Period of 6 weeks** during which time the Council must publish the owner's intention to dispose of the asset. This will be done by posting a notice on the land, on the Council's website, and by advising the nominating group (if contactable), relevant Town/Parish Council and Ward Members. Any relevant community interest group can then consider whether they want to submit an offer to the owner of the asset.

If any relevant Community Interest Group notifies the Council in writing during the interim moratorium period that it wishes to place an offer, the **Full Moratorium Period of 6 months** from the notification by the owner of proposed sale is activated. This provides the community interest group, known within the Regulations as the potential bidders, time to develop their offer. The Council must let the owner know as soon as practicable.

Following the end of the Interim Moratorium Period, or if it is activated, only after the Full Moratorium Period, the owner is free to dispose of the property without further delay for the remaining part of eighteen months after the initial notification by the owner to the Council of proposed disposal. The disposal does not have to be to a community interest group. This is referred to as the 'Protected Period'.

The owner of the land may enter into a relevant disposal of any of that land at any time within eighteen months of having notified the Council of its proposal to dispose of the asset (only) if it is sold to a community interest group.

8.0 Request for Review of Decision to List Land as an Asset of Community Value

Once the owner has been notified of the decision to list an asset he/she has a period of **eight weeks** from the day on which written notice of the decision to list was given, or such longer period as agreed, in writing by the Council, in which to request a review.

If an appeal is requested, the Director of Place or Group Head of Technical Services will nominate an officer to undertake the review and make the review decision.

Officers that have been involved in the making of the original decision cannot conduct the review. The officer who will conduct the review will be of greater seniority to the officer that made the original decision. The owner will be advised of the name of the Officer who will undertake the review.

The property will remain listed while the review is carried out.

Schedule 2 to the Regulations set out the basic procedural rules for the review.

The owner may appoint a representative and the local authority will be required to provide all relevant documents to the owner or their representative.

The owner and/or their representative may make representations to the reviewer orally and/or in writing. The authority must complete their review within **eight weeks**, unless a longer period has been agreed in writing.

The authority decides and communicates with the owner as to the procedure for the review, however if the owner requests an oral hearing, then an oral hearing must be held. If the owner does not request in writing an oral hearing, the reviewing officer will decide whether to or not to hold one. The nominees will be invited to attend any oral hearing that takes place. Any personal information contained within copy documents should be redacted. Procedural fairness principles should apply, i.e. where information is freely available in the public domain there is no need for redaction. However, where applicable, personal data should be redacted to comply with data protection principles. A general postal area or post code may be permissible in respect of the people signing up to an unincorporated body.

The approach for an oral hearing will be broadly as follows, although the Reviewing Officer may change the running order if appropriate.

- a. Introduction
- b. Local Land Charges to set out what the application was for and the decision
- c. Invite owner/representative to set out why they disagree with the decision and call any witnesses agreed in advance with the Reviewing Officer
- d. Local Land Charges officer may ask questions of the owner/representative
- e. Nominator invited to ask questions of the owner/representative
- f. Questions from Reviewing Officer to owner/representative

- g. Nominator representations
- h. Local Land Charge Officer questions of nominator
- i. Owner/representative questions of nominator
- j. Reviewing Officer questions of nominator
- k. Summing up by Local Land Charges Officer
- l. Summing up by nominator
- m. Summing up by owner/representative
- n. Reviewing Officer will then confirm if the decision will be issued the same day and reconvene the hearing, or if further time is required to review all materials, then decision will follow in writing.

A written decision will be issued within 10 working days of the conclusion of the hearing (or earlier if the 8 weeks to complete the review applies, unless that period has been extended by agreement in writing).

The parties will bear their own costs of the review.

If the owner is not satisfied with the outcome of the officer review they have the right to appeal to the First Tier Tribunal against the local authority's review decision. The written response following the 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.

9.0 Appeal of a Listing Review Decision

The property will continue to remain listed during the appeal process.

An owner's appeal against a local authority listing review decision must be made to the General Regulatory Chamber of the First Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 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.

First-Tier Tribunal address:

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

or

e.mail: GRC.CommunityRights@hmcts.gsi.gov.uk

10.0 Compensation

Private owners (claimants) may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically state 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 (see section headed 'Disposing of a listed asset' for time periods); or for legal expenses incurred in a successful appeal to the First-Tier Tribunal to list the land, to refuse to pay compensation or with regard to the amount of compensation offered or paid.

The time limit for making a compensation claim is specified in Regulation 14 as within 13 weeks after the loss or expense was incurred or finished being incurred.

There is no statutory timescale in which the local authority should make a decision on the compensation claim, however DCLG Community Right to Bid: Non-statutory advice note for local authorities provides that the decision should be made as soon as reasonably practicable when all the facts are available. The decision maker shall strive to comply with this guidance, and in any event, shall make a decision no later than 8 weeks from receipt of all of the relevant information from the claimant.

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

The Group Head of Technical Services or their nominated representative may consult with Legal Services, Financial Services and any other expert as may be required in order to consider the claim. Written reasons for the decision will be provided.

The Group Head of Technical Services or their nominated representative will assess whether the claim has been submitted in accordance with the relevant time limits, whether the claimant is a valid claimant, whether the costs are reasonable requiring information as to what they are for, and what hourly rates apply if applicable. They will also assess whether the costs are relevant e.g. are they for costs incurred following a successful First Tier Tribunal.

The Compensation scheme does not extend to public authorities and bodies.

11.0 Request for Review of Compensation Decision

If the owner is not satisfied with the local authority's response to the compensation claim they may, as permitted by the Regulations, request a review by the local authority of its decision. Schedule 2 of the Regulations states that this must be made in writing to the Council within a period of 8 weeks, (unless previously agreed

in writing), beginning on the date that the local authority advised the owner with written notification of the decision.

A review of the decision must be undertaken by a senior officer, this may be the Director of Place or other nominated Director or Group Head not involved in the original compensation decision. The owner should be notified of the result of such review within 8 weeks of receiving the requests, giving reasons for the review decision. Schedule 2 to the Regulations indicate that the procedure for review is the same as for a listing review.

12.0 Appeal of a Compensation Review Decision

The owner can appeal the compensation review decision to the General Regulatory Chamber of the First-tier Tribunal. As with listing appeals, the deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review. Only the owner or former owner – who requested the review may appeal against the review decision – a new owner who brought the land following a request for a review may not appeal against the compensation review decision.