

HERTSMERE BOROUGH COUNCIL

ASSETS OF COMMUNITY VALUE – COMMUNITY RIGHT TO BID



FREQUENTLY ASKED QUESTIONS

What's the legal basis for the Community Right to Bid?

The Community Right to Bid was introduced under the Localism Act 2011. The Assets of Community Value (England) Regulations 2012 provide further details of the legislative requirements.

What does the Community Right to Bid aim to achieve?

The legislation aims to help communities faced with losing local amenities and buildings which are of importance to them. The Community Right to Bid gives communities the opportunity to identify those assets which are of importance and to have time to prepare a proposal in the event that the asset comes up for sale.

Does the Community Right to Bid give community groups a right to buy assets within their community?

No, the legislation only stalls the selling process to give suitably constituted community groups a period of time to prepare a proposal and raise the funds required to put in an offer. The sale takes place under normal market conditions and the owner is under no obligation to sell to the group.

Where can I get advice and help about getting an asset listed or making a bid to purchase an asset that's listed?

For advice about the Community Right to Bid please contact:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

Independent support is available from Locality, a national network of over 700 community-led organisations appointed by the Government to provide advice and help relating to the community rights agenda – see <http://www.locality.org.uk/> They can be contacted on 0345 458 8336 or by email: info@locality.org.uk

Other sources of information and support are available from:

<http://www.gov.uk/government/publications/youve-got-the-power-a-quick-and-simple-guide-to-community-rights/youve-got-the-power-a-quick-and-simple-guide-to-community-rights>

<http://mycommunity.org.uk/community-assets-and-ownership>

The full legislative arrangements are available at:

Localism Act Chapter 3 <http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3>

Assets of Community Value (England) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/2421/contents/made>

Who is eligible to nominate an asset for inclusion in the list of assets of community value?

Nominations may be submitted by the following:

- Town and Parish councils
- Unincorporated bodies with at least 21 individual members and which does not distribute any surplus it makes to its members
- Charities
- Company limited by guarantee which does not distribute any surplus it makes to its members
- Industrial and provident society which does not distribute any surplus it makes to its members
- Community interest companies
- A body designated as a neighbourhood forum under the Town and Country Planning Act

The above groups will need to demonstrate a local connection. The following are considered to indicate this:

- Activities wholly or partly concerned with local authority's area or neighbouring local authority area
- Any surplus made wholly or partly applied for benefit of local authority's area or neighbouring local authority area
- Unincorporated bodies must have at least 21 local members included on register of electors.

What types of asset are eligible for listing?

Land or buildings which can be demonstrated to have 'community value'. They can be in either public or private ownership.

How is 'community value' defined?

Community Value is defined as follows:

- The principle use of the asset currently, or in the recent past, furthers the social wellbeing or cultural, recreational or sporting interests of the local community and
- This use will continue to further the social wellbeing or interests of the local community.

Where the asset does not currently demonstrate 'community value' it may still be nominated where it is possible to demonstrate that the asset's main use did further the social wellbeing or cultural, recreational or sporting interests of the local community in the recent past and where it is realistic to think that it will do so again in the next five years.

What kinds of assets could be considered as having 'community value'?

The following examples give an indication of the types of assets which may be defined as having 'community value:'

Education, health and wellbeing or community safety

- Nurseries and schools
- Children's centres
- Health centres, surgeries and hospitals
- Day care centres, residential care homes

Sport, recreation and culture

- Parks and open green spaces
- Sports and leisure centres
- Libraries
- Theatres
- Museums or heritage sites
- Cinemas
- Swimming pools

Community services

- Community centres
- Youth centres
- Public toilets

Local democracy

- Town, civic and guild halls

Any economic use (e.g. a business such as a shop) which also provides an important local social benefit which would no longer be easily available if that service should cease

- Village shops
- Pubs
- Markets

What kinds of assets would not normally be considered as having 'community value'?

- Administrative offices
- Land or property where community use is ancillary to its main purpose
- Land attached to residential property (although the regulations set out certain exceptions for shops and pubs)
- Land covered by Caravan Sites and Control of development Act 1960
- Land used by public utilities, defined as operational land in section 263 of the Town and Country planning Act 1990

The Regulations should be consulted for the full list of exemptions and related definitions.

How do I go about nominating an asset for inclusion in the list of assets of community value?

Nominations must be in writing. An application form is available on the Council's website www.hertsmere.gov.uk/communityrighttobid or by contacting:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

What information will I need to provide?

Nominations will need to include

- A description of the nominated asset including its proposed boundaries clearly edged in red
- A statement of all information which the nominator has with regard to the names of current occupiers and the names and current, or last known addresses of all those holding a freehold or leasehold estate in the land
- Reasons for thinking that the Council should conclude that the land is of community value and
- Evidence that the nominator is eligible to make a nomination (in line with requirements set out above)

What kinds of documents should support the nomination?

Generally, the more evidence you can send us to support the information in the nomination, the quicker we will be able to reach a decision on whether the asset is eligible for inclusion in the list of assets of community value. As a minimum, the following should be provided:

- a) Evidence to support that the nominator is eligible to make a nomination (as appropriate to the organisation):

- Memorandum of Association
- Articles of Association
- Companies House return
- Trust Deed
- Constitution / Terms of reference
- Standing Orders
- Interest Statement for Community Interest Company

b) Information showing the boundaries of the asset being nominated – for example through one or more of the following:

- Where the land is registered, the Land Registry Title Information document and map with boundaries clearly marked in red (less than one month old). Provision of Land Registry information is not essential but it may help us to reach a decision on the nomination more quickly.
- a written description with ordinance survey location, and explaining where the boundaries lie, the approximate size and location of any building/s on the land and details of any roads bordering the site.
- a drawing or sketch map with boundaries clearly marked red.

Where should the nomination be sent?

Nominations should be sent to:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

How will the nomination be processed?

We will usually acknowledge receipt of the nomination within 5 working days. Nominations will then be considered in line with the requirements set out in the regulations including taking all practical steps to notify the following that the asset is being considered for listing:

- The relevant town or parish council
- The relevant Councillor/s for the ward involved
- The owner of the asset
- Where they are not the owner, the holder of the freehold estate and the holder of any leasehold estate
- Any lawful occupant

We will decide whether the nominated asset should be included in the list within eight weeks of receiving the nomination and will notify the following of our decision and the reasons behind this:

- The owner of the land
- The occupier of the land (if not the owner)
- The nominator
- Where they are not the owner, the holder of the freehold estate and the holder of any leasehold estate
- The relevant town or parish council
- The relevant Councillor/s for the area

The nominator's contact details as provided on the nomination form will be used for future correspondence, including, in the event that the asset is listed, notice that the owner has advised of an intention to dispose of the asset. It is therefore essential that the nominator ensures that any changes in contact details during the period of the listing are notified to the Council via the address above.

Information provided in the nomination form will be processed in accordance with the Data Protection Act for the purposes of administering the Community Right to Bid procedure. Name and contact details provided will be shared with the owner of the asset in the event that the nominating organisation subsequently submits an intention to bid. The information provided will be subject to the Freedom of Information Act, but personal information (names and contact details) will not be released in responses to Freedom of Information requests.

How can I find out which assets have been nominated for inclusion in the list of assets of community value?

We publish on the Council website <http://www.hertsmere.gov.uk/communityrighttobid>

- The list of assets of community value
- A list of assets nominated by unsuccessful community nominations

Copies of these lists are also available for inspection at the Civic Offices, Elstree Way, Borehamwood, WD6 1WA.

How long will the asset remain on the list?

Assets will be listed for a period of five years and be notified to the Land Registry as a registered restriction in the land register for the land (and a Local Land Charge).

What happens if the owner isn't happy that their asset has been listed?

The owner of an asset included in the list of community assets may ask us to review our decision. This request must be made in writing within eight weeks of the date upon which we provided the owner with written notification of our decision.

The request should be sent to:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

How will a request by an owner to review a listing be dealt with?

We will usually acknowledge receipt of the request within 5 working days and advise of the procedure to be followed in connection with the review.

We will complete the review process within eight weeks of receipt of the written request for the review.

We will notify the owner in writing of the outcome of the review and where the review concludes that a change to the listing is required, we will also notify:

- The occupier of the land (if not the owner)
- The nominator
- Where they are not the owner, the holder of the freehold estate and the holder of any leasehold estate
- The relevant town or parish council
- The Councillor/s for the area

Where the review concludes that a change to the listing is required, we will adjust the list of assets of community value and advise the Land Registry accordingly.

What happens if the owner of the asset is dissatisfied with the outcome of this review?

Where an owner remains dissatisfied with the outcome of the review, they may appeal to the general regulatory chamber of the First Tier Tribunal against our decision on the listing review. Appeals should be sent to: Tribunal Clerk, Community Right to Bid Appeals, HM Courts and Tribunals, General Regulatory Chamber, PO Box 9300, Leicester, LE1 8DJ or via email to: grc@justice.gov.uk

Can the group nominating an asset appeal against the decision reached by the Council about whether the asset should be included on the list of assets of community value?

Where the nominator is unhappy with our decision in connection with their nomination, they may request that we review our decision. This will be dealt with in the same way as an appeal for an asset owner would be.

What effect does the listing have?

Where an asset is included in the List of Assets of Community Value, the owner is required to notify the Council in writing of their intention to dispose of the asset.

The Regulations detail circumstances where a disposal is exempt – for example where the disposal is as a result of a court order, a separation agreement made between spouses or civil partners, upon inheritance and as a result of insolvency proceedings. The Regulations should be consulted for the full list of exemptions and detailed definitions.

This notification will trigger a moratorium period (a period of delay) during which the asset owner may not dispose of the asset (other than where the disposal is exempt under the Regulations). This interim moratorium is for a period of six weeks from the date upon which we receive written notification of the owner's intention to dispose of the asset.

During this six week period, suitably constituted community groups and organisations which can demonstrate a local connection may submit an intention to bid. Where this is received, the full six month moratorium period (starting from the date upon which we receive written notification of the owner's intention to dispose of the asset) is triggered during which no disposal may take place except to a qualifying community group by negotiation.

This six month period is intended to enable the community group or organisation to prepare to be able to submit a bid to the owner to purchase the asset. Any subsequent sale takes place under normal market conditions. There is no obligation for the group to make a bid and the group has no rights of purchase over other potential buyers. The owner is under no obligation to sell the asset to the community group or any other person. If the owner decides to sell to the community group, they may do so within the six month moratorium period.

If after the six month moratorium period the community group has not successfully bought the property, a further 12 month protection period is triggered (the total eighteen month period commencing on the day upon we received written notification of the owner's intention to dispose of the asset). During this protection period the asset may be sold by the owner on the open market without the risk of any further moratorium period being triggered.

If any land included in the Assets of Community Value List which is unregistered becomes registered for the first time (because of a disposal, mortgaging or voluntary registration), the owner or new owner must notify the Council as soon as is practicable and complete the Land Registry's Form QQ to enter a restriction on their land register.

What does the owner need to do if they wish to dispose of an asset included in the list of assets of community value?

The Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 exempt certain types of disposal.

Where an owner wishes to dispose of an asset which is included in the list of assets of community value and it is not an exempt disposal, they must notify us in writing of their intention to do so.

The notification should be sent to:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

What happens once an owner has notified an intention to dispose of an asset included in the list of community assets?

We will acknowledge receipt of the notification within 5 working days, confirming the date that the interim moratorium took effect and when the period will end.

The list of assets of community value will be updated to show that we have received notice of an intention to dispose of the asset, together with the date of that notification and the resulting interim and full moratorium periods and the protected period.

We will notify the nominator in writing that we have received notice of an intention to dispose of the asset and will publish details in the area where the asset is situated.

What does the community group need to do if it wishes to make a bid to purchase the asset?

An intention to bid may only be submitted by suitably constituted 'community interest group' which can demonstrate a local connection. Unincorporated organisations and neighbourhood forums are excluded. The Regulations provide a full definition of 'community interest group' for the purpose of the Community Right to Bid legislation.

The intention to bid should be submitted in writing together with evidence to support that the bid is being made by a suitably constituted 'community interest group'.

The intention to bid should be sent to:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

We must receive the intention to bid within six weeks of the notice to dispose of the asset (normally ending at midnight on the last working day of that period). Nominators are advised to obtain proof of delivery either through using appropriate recorded receipt postage or by obtaining

a receipt for hand delivered post.

We will pass the intention to bid to the owner of the land, or inform them of the details, as soon as practically possible after receipt.

This will then trigger the full six month moratorium period during which the asset cannot be sold.

Can the owner market the asset during the moratorium period?

Yes, there is nothing to prevent the owner actively marketing the asset during the moratorium period; the restriction refers only to exchange of contracts on the sale of the asset.

If the owner of the asset is happy to sell to a community interest company, can they go ahead with the sale without waiting for the moratorium period to end?

Yes, where the owner and a community interest company are able to agree terms within the six month period, they may proceed with the sale without waiting for the moratorium period to end.

What recourse does the owner have if they feel that they have suffered costs or expense as a result of their asset being included in the list of assets of community value?

The owner or former owner of an asset included in the list of assets of community value is entitled to make a claim for compensation from Hertsmere Borough Council in respect of incurred loss or expense in relation to the asset which would be likely not to have been incurred if the land had not been listed.

Claims should be made in writing and be made within thirteen weeks after the loss or expense was incurred or finished being incurred. Claims must state the amount of compensation being claimed for each part of the claim and be accompanied by supporting evidence.

Claims should be sent to:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

What happens if the owner is not satisfied with the way a compensation claim has been treated?

The person making the compensation claim may ask for a review of the decision we reach in relation to their claim. This must be made in writing within eight weeks of the date upon which we have advised you of our reasons for the decision in relation to the claim.

The request should be clearly marked Community Right to Bid and sent to:

Community Right to Bid
Hertsmere Borough Council
Civic Offices
Elstree Way
Borehamwood
WD6 1WA

Email: communityrighttobid@hertsmere.gov.uk

We will acknowledge receipt of the request and advise of the procedure to be followed in connection with the review.

We 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.

What happens if the owner is not satisfied with the outcome of a compensation review?

Where the owner remains dissatisfied with the outcome of the review, they may appeal to the General Regulatory Chamber of the First Tier Tribunal 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, General Regulatory Chamber, PO Box 9300, Leicester, LE1 8DJ or via email to: grc@justice.gov.uk