



## Assets of Community Value – Policy Statement



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# Assets of Community Value – Policy Statement

To inform debate during Lords Committee, we produced a discussion document setting out the aims of these provisions and what they seek to achieve. Since then we have developed further the details of how the policy will work. In doing so, we have taken into account the 256 responses we received during the consultation earlier this year, as well as the debate in Committee and particular concerns expressed by members of the House of Lords.

We have come to the view that it is right to provide greater certainty on key aspects of the chapter by putting further detail on the face of the Bill. We have therefore tabled amendments with this in mind. This statement explains our intentions, both for amending the Bill, and for the further detail that will be in regulations. We intend to lay regulations as soon as possible after the Bill achieves Royal Assent, based on what is set out in this statement.

Welsh ministers are considering the changes proposed to the Bill provisions, which apply to England and Wales. Wherever details are left for delegated powers, the Welsh Assembly Government will produce regulations specific to Wales in due course.

## Why we are introducing these provisions

Over the past decade communities have been losing local amenities and buildings of great importance to them – the village or housing estate shop or pub or community centre or village hall. On average nearly 300 pubs<sup>1</sup> and 400 village shops<sup>2</sup> have closed each year.

Over the same period community asset ownership has been growing, delivering real benefits for many communities. Over two hundred communities have bought their village shop, and a growing number are looking to take over their pub to prevent it closing. All too often community organisations find themselves without the time to prepare a bid before an asset is sold. We know that many communities, both urban and rural, have lost the use of buildings or land that were important to them because they were sold privately or without an interested community group having time to raise the necessary funds. For example, Hebden Bridge Adult Education Centre, a much loved local facility, was sold soon after the site was marketed, meaning the local community did not get the chance to put a proposal together. The site fell into disuse before being redeveloped as apartments. Similarly the community of Sway in the New Forest missed the opportunity to put together a proposal to buy the pub because of lack of time.

<sup>1</sup> The Valuation Office Agency Rating data (Oct 2010)

<sup>2</sup> Plunkett Foundation

We want to give many more communities the opportunity to take control of assets and facilities in their neighbourhoods by levelling the playing field by providing the time for them to prepare a proposal.

## What the provisions do

These provisions give communities a right to identify a building or other land that they believe to be of importance to their community's social well-being. The aim is that, if the asset comes up for sale, then they will be given a fair chance to make a bid to buy it on the open market. If the nominated asset meets the definition of an asset of community value, the local authority will list it. The owner will have a right to an internal review by the council, and a right of appeal to an independent tribunal against the result of the internal review.

Nothing further will happen unless and until the owner decides to dispose of the asset, either through a freehold sale, or the grant or assignment of a lease, granted for at least twenty-five years. A range of important types of disposal will be exempted from the provisions (see below). Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired. The first part of this window is an interim period, which will allow community interest groups to express a written intention to bid. If none do so in this period, the owner is free to sell their asset. If a community interest group does express an intention to bid during this interim period, then the full window will operate. After that, the owner is again free to sell to whomever they choose, and no further window can be triggered for a protected period.

We realise that, in order to achieve a significant community benefit, these provisions have an impact on the rights of private property owners. We will therefore provide a compensation scheme enabling private property owners to claim for costs or loss incurred as a direct result of complying with the procedures required by the provisions. Claims will be made to the local authority. There will also be a right of internal review of a compensation decision and of appeal to an independent tribunal on a point of law against the review decision.

## What the provisions do *not* do

These provisions do **not** restrict in any way who the owner of a listed asset can sell his property to, or at what price. They do **not** confer a right of first refusal to community interest groups (unlike the Scottish scheme).

The provisions do not place any restriction on what an owner can do with their property, once listed, if it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide that listing as

an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

## 1. Definition of Assets of Community Value

We intend to table an amendment to place the definition of an asset of community value on the face of the Bill. This is the definition to which each local authority operating the scheme will refer when deciding whether a building or other land should be listed as an asset of community value. We intend that it will state that a building or other land should be considered an asset of community value if:

- its actual current use furthers the social wellbeing and interests of the local community, or a use in the recent past has done so; and
- that use is not an ancillary one; and
- for land in current community use it is realistic to think that there will continue to be a use which furthers social wellbeing and interests, or for land in community use in the recent past it is realistic to think that there will be community use within the next 5 years (in either case, whether or not that use is exactly the same as the present or past); and
- it does not fall within one of the exemptions which we will be putting in regulations, e.g. residential premises and land held with them.

“Social interests” will be defined to include cultural, recreational and sporting interests.

With regard to “recent past”, our current view is that we will leave it to the local authority to decide, since “recent” might be viewed differently in different circumstances. For example, “recent” might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter.

In deciding whether a nominated asset should be listed, the local authority will need to exercise its general duty to take all relevant matters into consideration when making its decision.

## 2. Exclusions from listing

We recognise that there are some categories of land that should be excluded from being listed. These will be set out in regulations but we intend to exclude the following:

- a) Residential premises, including sites for mobile homes and boats. For a building which is or includes residential premises this will include land held with the residence under a single legal title, which would go beyond immediate gardens, outbuildings, yards etc and extend to all land held under that title (we are exploring how this might be worded to apply in the case of unregistered land). The exception to the exclusion

of residential premises will be premises which include living quarters which are an integral part of a pub or shop and which are otherwise eligible for listing – these could still be listed as assets of community value.

- b) Operational land as defined in Part 11 of the Town and Country Planning Act 1990 – that is land used for transport infrastructure and some other related purposes by specified bodies with statutory powers.

### **3. Nomination**

We plan to amend the Bill so that only voluntary and community organisations with a local connection, in addition to parish councils in England (and community councils in Wales) will have the right to make community nominations of assets to be included on the list.

We envisage that “local voluntary and community body” will be defined as a body, other than a public or local authority, which may be incorporated or unincorporated, must not be run primarily for profit, and must have a primary purpose concerned with the local authority’s area, or the neighbourhood in which the asset is situated where this is in more than one authority’s area. We will set out the full definition in regulations.

### **4. Review of a listing decision and right of appeal**

The Bill provides for an owner to have a right to an internal review of a listing decision by the local authority. We intend to specify in regulations that the owner will also have a right of appeal to an independent tribunal, against the outcome of the review. We expect that these regulations will include the following:

- The owner of an asset that has been listed will have 28 days from the date of notification within which to write to the local authority to request an internal review.
- The owner will be able to present a case for removing the asset from the list based on whatever evidence they consider appropriate. We expect evidence will mainly consist of the following, but we do not intend to specify this in regulations:
  - the eligibility of the asset;
  - the eligibility of the nominator;
  - any new factors which have come to light since the original decision was made;
  - any irrelevant or improper matter which the local authority might have taken into account in reaching its original decision.
- The local authority must complete the internal review within 6 weeks from receipt of the request, or over a longer period if it has been agreed between the local authority and the owner in writing;

- The internal review must be undertaken by an officer of appropriate seniority not involved in the original decision;
- An owner will have the right to request an oral hearing and to be represented at it by whomever they wish;
- There will be a right of external appeal by an owner who is dissatisfied with the outcome of the local authority's internal review. We are proposing that the right of appeal process against listing is dealt with by the same appeals process as that for compensation. This is likely to be heard at the First-tier Tribunal.

## 5. Procedure for Listing

The provisions require a local authority to maintain a list of assets of community value and to notify the owner(s), occupier, and nominator(s) (and any other interested parties specified in regulations). It also requires a local authority to maintain a list of unsuccessful community nominations, the aim of which is to provide transparency, and also to deter repeat nominations, where the circumstances have not changed. We believe it is appropriate to leave local authorities to decide on the content of these lists (and whether to combine them into one list). We therefore do not intend to prescribe further for this in regulations, other than key requirements about inclusion of content in and removal of entries from the list of assets.

## 6. Triggering the moratorium

A relevant disposal of a listed asset is the sale of the freehold, or the grant or assignment of a lease originally granted for 25 years or more, but only where the disposal will give the new owner 100% vacant possession.

The owner's written notification to the local authority of his intention to make a 'relevant disposal' of the asset will usually trigger the moratorium rules.

## 7. Exempt relevant disposals

A number of disposals will be exempt, and can take place unimpeded without the local authority being informed or the moratorium periods being triggered. We intend to provide in regulations that where a disposal is exempt from the moratorium requirements, the land would remain listed so that if the new owner of the listed land then put it up for sale while it is on the list, it would be subject to the moratorium rules. We intend to table an amendment to exempt the following transfers on the face of the Bill and to set out further details of some of these in regulations:

- All transfers made other than for value (i.e. made as a gift)
- Transfers of land between members of the same family<sup>3</sup> (i.e. made as a sale as well as a gift)

<sup>3</sup> We intend the definition of family to include the seller's spouse/civil partner; linear ancestors and descendants; and linear descendents of the seller's parents and grandparents (including relationships by marriage and by blood).

- Transfer due to the inheritance of the land
- Sales by personal representatives in order to pay estate debts or cash legacies
- Transfers occasioned by resignation or death of partners in a firm or trustees of a trust
- Transfers between trustees, between a trust and a settler, and between a trust and a beneficiary
- Business to business transactions of a going concern, where the intention is to continue the existing use of the asset
- Transfers where the listed asset forms part of a larger estate

We also intend to set out further exemptions in regulations. We envisage that these will include:

- a) Disposals made as a result of binding or pre-existing arrangements. This would include:
- All transfers of land made in pursuance of a court order
  - Transfers not in pursuance of a court order as part of a separation agreement between spouses or civil partners (or ex ditto) or between parents for care of dependent children
  - A transfer for the purposes of any enactment relating to incapacity (if not made in pursuance of a court order)
  - Exercise of a pre-existing option to buy, nomination right, pre-emption right or right of first refusal
  - Sale by a lender, either through the lender being in possession of the land or through exercise of a power of sale
  - Disposal of land under bankruptcy proceedings (or other insolvency procedure)
  - Disposals of land made under a Compulsory Purchase Order
  - Agreed sale of land which would otherwise be compulsorily purchased
  - Return to a previous owner under the Crichel Down Rules<sup>4</sup>
- b) Transfers between connected companies.

<sup>4</sup> The Crichel Down rules are non-statutory arrangements under which surplus Government land acquired by, or under threat of, compulsion should be offered back to former owners, their successors or sitting tenants. They are also recommended to local authorities and other public bodies. The Rules are published in ODPM Circular 06/2004 "Compulsory Purchase and the Crichel Down Rules".

- c) Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules.

We do not intend to automatically exclude land that is governed by existing legislation from being listed as an asset of community value. However, where the Assets of Community Value provisions are inconsistent with the rules for disposal of land under other legislation (e.g. if the legislation determines that land must be disposed of in a specified timescale or to whom the land must be sold) then we will provide that the Assets of Community Value provisions do not take precedence, so that the owner of the land would not be subject to the moratorium rules.

- d) Provision of ongoing public service delivery

We do not wish to disrupt the delivery of public services. There may be circumstances where public bodies transfer or shift assets and resources for the purpose of ongoing delivery of a particular service or statutory function. We therefore intend in regulations to exempt transfers where assets and resources that are tied to ongoing service delivery are shifted – we envisage that this will apply in the case of publicly owned bodies transferring assets for the purpose of ongoing service delivery.

## 8. Permitted sales

We intend that where there is a community interest group wishing to purchase a particular asset, and able to pay the price determined by the owner, the owner should have the option of disposing of the asset to that group without waiting till the end of the window to do so. This would allow local authorities to continue to make asset transfers to community interest groups without being restricted by the moratorium, and thus provides an opportunity for community interest groups to have a ‘right of first offer’. The definition of community interest group for this purpose will also be defined in regulations but we expect it to be defined for England as one of the following:

1. A parish council, or
2. A body with a local connection (see below) which is constituted in one of the following ways:
  - a company limited by guarantee, or
  - an Industrial and Provident Society (of either sort – a co-operative or a community benefit society)
  - a Community Interest Company, or
  - any other body which is registered as a charity, including a Charitable Incorporated Organisation.

A community interest group will be considered to have a local connection if its primary purpose is concerned with the local authority's area, or the neighbourhood in which the asset is situated where this is in more than one authority's area.

## **9. Moratorium**

In responses to the consultation, there was a broad consensus in favour of an interim window of 6 weeks, a full moratorium of 6 months (in total) and a protected period of 18 months (in total). We intend to lay an amendment to set out the moratorium time periods on the face of the Bill.

## **10. Compensation**

We propose that all owners, other than public authorities, will be entitled to claim compensation for loss or expense incurred as a result of listing and complying with any of the procedures required by the scheme.

The arrangements for compensation will be set out in regulations. We envisage, however, that the claim should be made to the local authority in writing within 90 days of the end of the interim or full moratorium period, whichever period is relevant to the claim. The burden of proof for any claim will rest with the owner.

The compensation scheme will be administered by the local authority.

The Bill provides for a power to give an owner a right to an internal review of a compensation decision by the local authority. The regulations will also provide for a right of appeal against a decision on compensation to the first-tier tribunal. We envisage that an appeal would have to be lodged within 21 days of receiving notification of the decision on compensation. This will be subject to the views of the appellate body who may suggest a standard approach of a different length.

## **11. Enforcement**

To ensure compliance with these provisions we recognise the need to ensure that all affected by these provisions are aware of the requirements placed upon them, and we will be working with relevant parties in the local government, business and voluntary and community sectors to achieve this. In order to limit any unintentional non-compliance, the Bill provides for listing to be a local land charge.

We also recognise the need for a clear enforcement regime to further encourage compliance with these provisions which will be set out in regulations and debated in due course.

## **12. Burden on local authorities**

We recognise that these provisions place an administrative burden on those local authorities which are required to maintain a list of assets of community value. The authorities concerned are London Boroughs, all other unitary councils, and district councils in two-tier areas. The department is committed to meet these costs, as assessed within the Impact Assessment.

The initial Impact Assessment on these provisions was published as the Localism Bill was introduced into the Commons, in December 2010. This will be updated to take account of the alterations to the provisions, and the details contained in regulations, including the wider provision for compensation. We anticipate that will be published soon after the Bill achieves Royal Assent.