



Assets of Community Value Scheme

**THE BOROUGH COUNCIL OF NEWCASTLE-UNDER-
LYME**

01 July 2020

THE BOROUGH COUNCIL OF NEWCASTLE-UNDER-LYME ASSETS OF COMMUNITY VALUE SCHEME

Outline of the Scheme

The government has introduced legislation that enables community groups to bid to buy and run assets listed as having community value. This is through the provisions of Part 5 Chapter 3 of the Localism Act 2011, together with the associated assets of Community Value (England) Regulations 2012 which came into force on 21 September 2012. The Council must introduce and administer a scheme which makes provision for local community groups to nominate buildings or land within the district to be included in a List of Assets of Community Value. If listed as an asset, local community groups have a chance to bid to buy the asset if it is sold on the open market.

This document sets out the Council's Scheme and provides details as to how it will be administered within the borough.

There are four broad stages to the process. The stages are:

- 1) Making a nomination;
- 2) Determination of applications to nominate and listing of Assets of Community Value;
- 3) Procedure for the disposal of assets; and
- 4) Procedure for making an application for compensation.

1. Making a nomination

1.1 Nomination procedure

Guidance notes and a digital nomination form is available for completion on the Council's website.

The nominating organisation must provide evidence and reasons to support the nomination.

The Council will acknowledge nominations within five working days of receipt.

A decision will be made within eight weeks of receipt of a completed nomination form. The eight week period will begin upon receipt of a complete application form. The Council may need to ask the nominator for further information to supplement the details already provided to complete the application submission. The decision will be

notified to the nominator and the land owner within seven days of the decision being taken.

If all the criteria are met the Council will add the asset to the List of Assets of Community Value. If the nomination does not meet the criteria the asset will be added to the List of Unsuccessful Nominations.

1.2 Who can nominate an Asset of Community Value (ACV)?

The types of organisation eligible for making a nomination are currently defined in paragraph 5 of the Assets of Community Value Regulations 2012. The groups which can make nominations are as follows:

- A parish council in respect of land in the parish council's area;
- A neighbouring parish council (if a parish council borders an unparished area, then they may nominate an asset within that neighbouring area);
- An unincorporated body with a membership of at least 21 local people who appear on the electoral roll, within the local or neighbouring local authority which does not distribute any surplus it makes to its members;
- A body designated as a neighbourhood forum. (Neighbourhood forums must meet the requirements of section 61 F of the Town and Country Planning Act 1990 added by the Localism Act 2011. Existing community groups can put themselves forward to be a neighbourhood forum, but must meet the conditions for designation set out in the legislation. The legislation can be downloaded from www.legislation.gov.uk); or
- A community interest group with one of the following structures:
 - A charity;
 - A community interest company;
 - A company limited by guarantee that does not distribute its profits to members; or
 - An industrial or provident society that is non-profit distributing.

1.2.1 What is 'Local Connection'?

The organisation must also have a local connection to the nominated asset which broadly means that the nominator must be able to demonstrate that the organisation's activities are wholly or partly concerned with Newcastle-under-Lyme Borough area or with a neighbouring authority (which shares a boundary).

A "Local Connection" is defined in Paragraph 4 of the Assets of Community Value Regulations 2012.

Supporting evidence to indicate that the nominator is a relevant organisation eligible to make the nomination with the necessary local connection must be provided with the

nomination form e.g. articles of association, constitution documentation, terms of reference or other governance documents.

The Council also requires contact details for the representative of the organisation making the nomination to be provided.

1.3 What needs to be contained in the Community Asset nomination?

There are strict legal criteria to be adhered to when nominating assets of community value and the Council will not consider a nomination until full information is provided by the nominator. The Council may ask the nominator for further information to supplement the details already provided.

The evidence which must be submitted is set out in paragraph 6 of the Assets of Community Value Regulations 2012.

1.3.1 A description of the nominated land including its proposed boundaries

The Council needs to know exactly where the asset is so a community nomination must include the full address of the asset, including a postcode; the name and a description of the asset; its location and boundaries. Nominators are requested to provide the Council with a map clearly showing the location and boundaries of the asset. A website for plotting boundaries is <http://maps.google.co.uk>.

Other documents or photographs may also be of assistance to us in identifying the asset and supporting the nomination.

Note: The boundary areas of an asset submitted with a nomination is not always the same as the boundary as in the title of the land

1.3.2 A statement of all the information which the nominator has with regard to (i) the names of current occupants of the land and/or building, and (ii) the names and current or last known addresses of all those holding a freehold or leasehold estate in the land.

The Council needs to know who owns the land so the names and addresses of the owner of the site, together with any leaseholders and occupants is required. If Land Registry details regarding the nomination are held, copies of this information should be provided. The Council will confirm ownership with the Land Registry and must notify the owner of the land, and any freeholders, leaseholders and the current occupants of the land that an application to nominate a community asset has been received.

The Council is also required to notify them as to whether or not the nomination has been successful.

1.3.3 The nominator's reasons for thinking that the responsible authority should conclude that the land is of community value.

A building or land will only be considered for inclusion on the list of assets 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 (usually up to three years) has done so. The identified use must not be an ancillary one. It must also be realistic to think that there can continue to be non-ancillary use of the building or land in a way which will further the social wellbeing and interests of the local community or if the use is not currently subsisting that there is a time in the next five years when there may be such a use.

Land of community value is defined in section 88 of the Localism Act 2011 as follows:

“(1) ... a building or other land in a local authority's area is land of community value if in the opinion of the authority –

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests* of the local community, and;

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests* of the local community.

(2)... a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social interests* of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests* of the local community.”

** The definition of social interests includes (a) cultural interests (b) recreational interests and (c) sporting interests.*

The nominator must therefore provide evidence as to the current or recent non-ancillary use of the land or building. Examples of relevant evidence would be e.g. numbers of people making use of the facility, calendar/session rotas for local groups or history of use.

The nominator must state why they believe the asset is of community value. Relevant evidence may include numbers of users/members/customers, number of volunteer hours drawn in by the facility or testimonials of service provided/outcomes, accessibility of asset, policies of the organisation using the asset, equalities impact

(identifying the impact it will have on different groups in the local community), involvement by the local community in running/managing it, positive impacts on – health and wellbeing, local nature environment and wildlife, cultural, sporting or recreational activities, evidence supplied by local stakeholders to support the nomination – surveys, petitions, reference to the Parish Plan/Community Plan or other documents evidencing the importance of the asset locally, evidence of the soundness of the process for gathering community feedback and views. (See also annex 'A')

The nominator must also provide evidence as to the realism of future use of the asset. Examples of relevant evidence may be outline business plans, survey reports, status and progress of proposals for taking over/managing the asset in the future.

1.4 Are certain categories of land excluded from listing?

Certain categories of land and buildings cannot be listed as a community asset. These excluded categories are set out in Schedule 1 of the Assets of Community Value Regulations 2012. The nominator must ensure that the nominated asset is not in one of these categories.

The following are excluded

- Residential properties or land. This includes gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal, where they are in the same ownership as the associated residence. However, an asset which could otherwise be listed which contains integral residential quarters such as accommodation as part of a pub or caretakers flat would be capable of listing;
- Land licensed for use as a residential caravan site and some types of residential caravan site which do not need a licence; or
- Operational land of statutory undertakers as defined in the Town and Country Planning Act 1990 s263 – Meaning of “Operational Land”

1.5 Who is notified when a nomination is received?

The Council will when it is considering whether land nominated by a community nomination should be included in the list take all practicable steps to give the information that it is considering listing the land to:

- the owner of the land;
- where the owner is not the freeholder the holder of the freehold estate in the land and the holder of any leasehold estate in the land other than the owner;
- any lawful occupant of the land;
- the parish or neighbourhood council where the land is situated within a parish or neighbourhood boundary.

Notification that a nomination has been received will also be sent to:

- the Executive Management Team Officer responsible for reviewing officer recommendations;
- the relevant local/ward Member(s);
- the Council's Admin and Performance Officer Regeneration and Development Directorate;
- the Council's Land Charges and Information Team Leader

1.6 What role does the owner of the land or building have in the initial listing?

The notification obligations placed upon the Council are set out in the Assets of Community Value (England) Regulations 2012.

The Council will inform the owner of the land that the Council is considering an application for nomination for inclusion onto the List of Assets of Community Value together with all other parties who are entitled to receive notification of such an application. Any written responses received will be considered when making the determination as to whether or not the application is successful or unsuccessful. No oral presentations are permitted.

1.7 When and how can nominations be submitted?

Requests to nominate can be made at any time, including after the land has been placed on the market.

Submissions should be made by completion of the electronic application form using the following link: <https://account.newcastle-staffs.gov.uk/xfp/form/232>

The Council will acknowledge receipt of a completed nomination form within 5 working days.

Nominations can only be made by a parish council or a voluntary or community body as set out in paragraph 1.2 above.

All relevant information and evidence must be provided as part of the application as set out in paragraphs 1.3 above. The Council reserves the right to refuse to register an application if relevant evidence is not provided by the relevant body.

2. Determination of applications to nominate and listing of Assets of Community Value

2.1 Who makes the decision and how long does it take?

The decision to include an asset on the register of Assets of Community Value rests with the nominated Executive Management Team (EMT) Officer, who will be provided with an officer recommendation report containing the findings of an officer group who are responsible for reviewing and assessing each nomination received by the Borough Council. This group consists of officers from the Council's Assets, Legal and Business Improvement functions. The EMT Officer has the authority to reject the officer group's decision within its recommendation report; the EMT Officer's decision is final.

The Officer group will consider all written information provided as part of the community nomination and all written responses received as a result of the notification procedure. Oral representations will not be permitted. It will then assess the nomination against the statutory criteria set out in the Localism Act 2011 and the Assets of community Value (England) Regulations 2012.

The Officer group will receive legal advice as necessary when making a decision from legal officer representation as part of the group.

A recommendation report will be produced containing the relevant facts and issues considered by the officer group and once finalised will be forwarded to the on to the nominated EMT Officer responsible for making the final decision.

The Council will give written notice of its decision to

- the owner of the land;
- the occupier of the land if the occupier is not also the owner
- the person who made the nomination;
- a parish or neighbourhood council (if any of the land is within a parish or neighbourhood boundary);
- where the owner is not the freeholder the holder of the freehold estate in the land and the holder of any leasehold estate in the land other than the owner;

A decision will be made within eight weeks of receipt of a completed nomination form. The eight week period will begin upon receipt of a complete application form. The decision will be notified to the nominator and the land owner within seven days of the decision being taken.

2.2 How does the Council decide which nominations to accept and which to reject?

There is a list of criteria that the nominated asset must meet in order to be accepted for inclusion onto the List of Assets of Community Value. These criteria are laid out in the Localism Act 2011 and Assets of Community Value (England) Regulations 2012 and every local authority in England must use these criteria when assessing nominations. The criteria state that the nominated asset must:

- be located in the authority's area;
- come from a community organisation that is eligible to make a nomination;
- not be excluded from listing; and

- meet the statutory definition of “land of community value” set out in the Localism Act 2011.

The Officer Group will ask the following questions:

1. Is the nominated asset within the local authority’s area?
2. Is the nomination from a community organisation that is eligible to make a nomination?
3. Is the nominated asset within the categories excluded from the listing?
4. In their opinion does the nominated asset meet the definition of “land of community value” set out in section 88 (1) and (2) of the Localism Act 2011?

In considering the statutory definition set out in section 88 of the Localism Act 2011 the group will consider whether in their opinion:

EITHER:

- (1) There is an actual use of the building or other land that is not an ancillary use which furthers the social wellbeing or social interests* of the local community?

AND

- (2) It is realistic to think that there can continue to be non-ancillary* use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests** of the local community?

OR

- (1) There is a time in the recent past*** when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social interests* of the local community?

AND

- (2) it is realistic to think that there is a time in the next five years when there could be non-ancillary* use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests* of the local community?

* A working definition of “non-ancillary” is that the use is not providing necessary support (e.g. cleaning) to the primary activities carried out on the land but is itself a primary, additional or complementary use.

** The definition of social interests includes (a) cultural interests (b) recreational interests and (c) sporting interests.

*** A period of 3 years will be used as a guide to assess ‘in the recent past’. Other periods may be appropriate depending upon the circumstances.

In considering whether the use furthers the social wellbeing or social interests of the local community the officer group may consider such matters as:

- Who benefits from the use?
- Is any aspect of the use actively discouraged by Council Policy?
- Why is the usage seen as having a social value in the context of the community on whose behalf the application is being made?
- How strongly does the local community feel about the usage as furthering their social interests?

In considering realism of future use the Officer Group may consider such matters as:

- Has the building/land/legal requirement for this use changed significantly since its initial use such that the land or building is not fit for purpose?
- Could the asset be made fit for purpose practically within reasonable resource requirements and within timescales?

2.3 What happens when a decision is made?

After a decision has been made as to whether the land or building is considered to be an asset of community value or not, the decision will be recorded in the statutory Register of Assets of Community Value. If the nomination is successful it will be recorded as 'accepted'; if the nomination does not meet the criteria the asset will be listed as 'not accepted'. The final decision will be recorded and the website will be updated with the decision.

The List of Assets of Community Value will be made available for free inspection and a free copy can be provided on request. Successful nominations will be retained on the register for five years from the date of the decision to list the asset unless the assets are disposed of prior to this date.

Both the nominating group and current owner of the land or buildings will be notified of the decision. The owner will also be advised of the next steps and how to appeal if he/she disagrees with the decision. The relevant parish or neighbourhood council will also be notified.

2.4 Can the owner appeal against the decision to list?

If an asset is included on the list/register, an owner has the right to request the Council to review its decision. This request must be submitted before the period of eight weeks beginning with the date on which the council provided the owner with written notice of its decision. The asset will remain listed while the review is carried out. The internal review will be conducted by an officer of the Council who did not take part in making the decision to include the asset on the List. The Council will aim to

complete the review within eight weeks, if a longer period is necessary this will be agreed in writing.

If the review decides that the listing of the property as an ACV was correct, then the asset owner may appeal to the First Tier Tribunal (General Regulatory Chamber). This appeal must be made within 28 days of the local authority conveying the review decision to the property owner and should be sent to the tribunal clerk in writing, by post or email.

The owner may appoint any representative (whether legally qualified or not) to act on his or her behalf in connection with the review. The Council will provide any representative with any document which it is required to send to the owner and need not provide the document separately to the owner. Both the owner and the owner's representative may make representations to the reviewer orally or in writing or both orally and in writing. The owner is entitled to request an oral hearing. Where no written request is received from the owner or the owner's representative for an oral hearing the review will be considered on paper. Each side will be responsible for their own costs.

2.5 What happens next?

Once an asset has been listed nothing further will happen unless the owner decides to dispose of it through a freehold sale, or grant or assignment of a qualifying lease, unless an exemption applies. There are several exemptions which are set out in full in Schedule 3 of the Asset of community Value (England) Regulations 2012, and include gifts, and various disposals related to the administration of an estate on the death of the owner of the site / land.

3. Procedure for the Disposal of Assets

3.1 What happens when the owner of a registered asset wishes to sell?

If the owner wishes to dispose of an asset by way of a relevant disposal she/he must notify the Council if he/she wishes to sell. Once this notice is received a 'moratorium' period on the sale of the land commences.

The Council is required to add to the list/register of assets an entry which reveals (a) that a notification by the owner of an intention to dispose of the land has been received (b) the date when the authority received the notice, and (c) the ends of the initial moratorium period, the full moratorium period and the protected period that apply as a result of the notice. The Council will inform the community group who originally nominated the asset of these matters. Notification will also be sent to the local parish or neighbourhood council, if different.

These matters will also be publicised in the area where the land is situated.

3.2 What happens next?

There are three stages to the moratorium.

3.2.1 Interim moratorium

There is a six week period during which local community groups with local connection have the opportunity to make a written request to the Council to be treated as a bidder. The community interest group does not have to provide any evidence of intention or financial resources to make such a bid at this stage.

A community interest group must have one of the following structures:

- A parish council;
- A charity;
- A community interest company;
- A company limited by guarantee that is non profit distributing; or
- An industrial and provident society that is non-profit distributing.

3.2.2 Full moratorium

If a community interest group does make a request to be treated as a bidder during this interim period then the full six month moratorium (again from the point the owner notifies the local authority) will operate. 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.

3.2.3 Protected period

After the moratorium period – either the six weeks if there has been no community interest or the full six months if a community interest has been registered– the owner is free to sell to whomever they chose and at whatever price and no further moratorium will apply for the remainder of a protected period lasting eighteen months (running from the same start date of when the owner notified the Council of an intention to sell).

3.3 What happens if a community interest group expresses an interest in bidding for the land?

If the Council receives a written request from a community interest group before the end of the interim moratorium period to be treated as a potential bidder in relation to the land it will pass on the request to the owner of the land.

3.4 Does the owner of the registered asset have to sell to the community group?

After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months if a community interest has been registered– 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 lasting 18 months (running from the same start date of when the owner notified the local authority of wishing to sell).

If the asset is removed from the list the Council will apply to the Land Registry for removal of the Restriction and request removal of the local land charge registered against the property.

3.5 What happens if a community interest group does not express an interest in bidding for the land?

If no such request is received by the Council the owner is free to sell the asset at the end of the six week period

4. Procedure for making an application for compensation

4.1 What is the procedure and timescale for making a claim for compensation?

Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Assets of Community Value (England) Regulations 2012 provide that this can include claims 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 First-Tier Tribunal.

Claims for compensation must be made in writing, stating the amount of compensation sought and provide supporting evidence. Applications should be sent direct to: Head of Finance, The Borough Council of Newcastle-under-Lyme, Castle House, Newcastle-under-Lyme, Staffordshire, ST5 1BL.

The burden of proving the claim falls upon the owner. The Council will consider any claim and will give reasons for its decision. Decisions will be made by the Head of Finance who will provide written reasons for the decision.

In the event that an owner is not satisfied with the Council's response to the compensation claim they may request a review by the Council of the compensation decision. A review will be undertaken by an officer of the Council who was not involved in the original decision. Such a request must be made in writing before the end of a period of eight weeks beginning with the date on which the Council provided the owner with written notification of its reasons for its compensation decision.

Annex 'A'

The nominator must state why they believe the asset is of community value. Relevant evidence may include numbers of users/members/customers, number of volunteer hours drawn in by the facility or testimonials of service provided/outcomes, accessibility of asset, policies of the organisation using the asset, equalities impact (identifying the impact it will have on different groups in the local community), involvement by the local community in running/managing it, positive impacts on – health and wellbeing, local nature environment and wildlife, cultural, sporting or recreational activities, evidence supplied by local stakeholders to support the nomination – surveys, petitions, reference to the Parish Plan/Community Plan or other documents evidencing the importance of the asset locally, evidence of the soundness of the process for gathering community feedback and views.

Examples
<i>The following examples should be evidenced with the numbers of users/members/customers, frequency, number of volunteer hours drawn in by the facility or testimonials of service provided/outcomes</i>
It provides opportunities for networking and connections (it brings members of the local community together).
It provides opportunities for physical activity or leisure or health activities.
It provides opportunities for continuous learning and self-improvement (e.g. through education, training courses, access to information etc.).
It provides opportunities for local volunteering, sharing and donating.
It serves to improve and/or protect the wellbeing of children, young people, peoples with disabilities, or older persons in the community.
It provides an opportunity for members of the community to keep in touch and communicate with relatives, friends and neighbours.
It promotes the health and wellbeing of local residents.
It is the last remaining asset of its type in the borough and it is important for the local community to keep it in use as its sale to a non-community use would represent a significant loss to the community.
It provides access to books, music, film, art, or theatrical performances for the local community.
It allows residents with a certain faith or cultural background to put that faith or culture into practise.
It makes leisure and entertainment activities accessible to the local community (e.g. dancing, theatre, art, cooking courses, crafting, gardening, and other sources of entertainment).

It is frequently used for community social and recreational events.
It is a place that the local community frequently uses for entertainment and recreation purposes.
It provides an area for outdoor leisure activities, not necessarily sports-related (e.g. picnics, walking trails, playgrounds and splash parks for children, etc.).
It provides sports facilities for the local community to use.
It serves as a hub for different sporting clubs and sports teams in the community.