

## **OPERATIONAL POLICY**

### **Darlington Borough Council Policy on The Community Right to Bid for Assets of Community Value**

#### **Purpose**

This document explains Darlington Borough Council's policy for implementing the community right to bid for assets of community value as set out in the Localism Act 2011.

#### **Introduction**

The Localism Act introduced the community right to bid. This provides certain community groups with an opportunity to protect and preserve local assets of community value, be they land or buildings.

The Council is required to maintain two lists - one listing nominations of assets of community value that have been approved, and a second listing failed nominations, with reasons.

Owners of assets on the list of successful nominations must inform the Council of an intention to sell or dispose of the asset. Eligible community groups may then delay the sale or disposal in order to bid to buy it. This right does not give the community group a right to buy, only a right to bid.

Buildings and land in both public and private ownership can be the subject of the community right to bid. This right does not apply to certain buildings or land, namely residential property and operational land as defined in the Town and Country Planning Act 1990 (Part 2).

There are three distinct processes that the Council must address. These are:

1. Processing nominations and listing assets
2. Managing contested nominations, reviews and appeals
3. Managing assets that are to be sold.

#### **The Process**

##### **Nominations and Listing**

The first stage of the process is triggered by receipt of a nomination (nomination forms will be made available to potential nominators both on-line and in hard copy).

Nominations will be assessed against the following three criteria:

1. Is the nomination form properly complete?

The nomination must be in writing (hard copy or electronic). It must identify the nominating organisation and provide adequate proof of that organisation's eligibility (see below for list of eligible organisations). It

must identify the asset (i.e. a description of the land including its proposed boundaries. This is best done with a site location plan with the area nominated outlined in red), any occupiers and details of those holding the freehold or leasehold estate in the asset. It must provide reasons as to why the asset is of community value including an explanation why the nominator believes the asset meets the definition in the Act. A nomination template form has been developed to assist potential nominators.

## 2. Is the nominated asset of community value?

The asset is of community value if the Council judges that:

- Current use of the building or land furthers the social well-being or social interests of the local community, or such use has existed within the recent past (within five years);
- That community use has been the main use rather than an ancillary use;
- It is realistic to think that the building or land could continue to be used in a way which will further the social well-being and social interests of the community within the next five years, and:
- It is not an exempted building or piece of land.

(The Localism Act defines “social interest” as including cultural, recreational and sporting interests).

## 3. Is the nominating organisation eligible to make the nomination?

Only certain organisations are eligible (as defined in the Localism Act and associated regulations) to make nominations. These are:

- Neighbourhood Forums
- Parish Councils
- Unincorporated bodies (with at least 21 individual members who are on the local electoral register)
- A charity
- A company limited by guarantee where profits are not distributed to members
- An Industrial or Provident Society
- A Community Interest Company

Completed nominations will be acknowledged and then processed within a target maximum of 8 weeks. Upon receipt of a nomination the Council will inform the owner of the land, any lawful occupant of the land and the relevant parish council (where applicable) of the nomination. The Council will determine whether the nomination is successful or not by having regard to the criteria above and will advise the nominating organisation. There is no right of appeal for the nominator to the Council's decision. However written reasons will be given if the Council does not accept the nomination.

The Head of Planning, Development Management and Environmental Health has delegated powers to deal with nominations.

Decisions will be made in consultation with other officers as appropriate depending on the nature and role of the asset under consideration.

The Council will maintain, and publish on its web site, two lists - one of assets of community value (resulting from successful nominations) and one listing unsuccessful nominations. This latter list will give reasons why the nomination was unsuccessful. Hard copies of the lists will be made available on request.

If a nomination is successful, the Council will register the Asset as an Asset of Community Value on the local land charges register and if the land is registered it will apply to register a restriction against the Land Registry title. (These are statutory requirements and should ensure that if an asset is offered for sale, individuals/ organisations are made aware that the asset is registered as an Asset of Community Value.)

The Council will remove the nominated asset from the 'Asset of Community Value' and 'land nominated by unsuccessful community nominations' lists after 5 years from the point of inclusion on the list. The Council will also cancel the local land charge registration and remove the restriction from the land registry title at this time.

### **Managing Reviews and Appeals**

The Assistant Director – Law and Governance will either personally deal with reviews or appoint an appropriate senior officer to deal with them, ensuring that the officer appointed was not involved in the original decision that is being reviewed.

### **Reviews**

The owner of an asset that has been listed as an asset of community value has the right to ask the Council to review its decision. In such cases the owner (of the listed land or building) must write to the Council within 8 weeks of receipt of notification from the Council that the asset is to be listed. (The owner and the Council must bear their own costs of such a review.)

Upon a written request for a review the Council will notify the owner of the procedure for the review. This will confirm that the review will be carried out in accordance with Schedule 2 of the Regulations.

As soon as practicable following the written request for the review, the local authority shall notify the owner of the procedure to be followed in connection with the review.

The owner may appoint any representative to act on his or her behalf and representations can be made in writing, orally or both.

A review hearing will take place at which the owner will present a case for removing the asset from the list. The officer hearing the review will determine the outcome having regard to:

- Whether the nomination was properly submitted and whether this was by an eligible group;
- Whether the asset is eligible to be listed;
- Any new information that has come to light since the nomination was determined;
- Any improper actions or failure to follow procedure on the part of the Council that has affected the original decision.

The owner will be entitled to be present at the review meeting but must submit a written case including all evidence prior to a review meeting being arranged.

The Council will complete the review by the end of the period of eight weeks beginning with the date that it receives the written request for the review, or such longer period where agreed with the owner in writing. If requested in writing by the owner, an oral hearing will be held. The owner will be notified in writing of the decision of the review, the reasons for the decision and the owners right of appeal.

The Assistant Director – Law and Governance Services will be empowered to remove the asset from the list of assets of community value if the hearing officer finds in favour of the owner. A letter will be sent to the nominator detailing the reasons for the removal.

## **Appeals**

If the owner of a listed asset is dissatisfied with the Council's decision reached at its review hearing he/she is entitled to appeal to the First-Tier tribunal. If a tribunal appeal is successful the owner may apply to the Council for reasonable costs.

The time-scale for an appeal 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. The property will remain listed during the appeal process.

## **Managing Assets That Are To Be Sold**

The owner of a listed asset is required to notify the Council of an intention to dispose of the property subject to forms of disposal exempted in the Regulations, which are:

- Transfers made other than for value (a gift)
- Transfers between members of the same family (whether it be a sale or a gift)
- Transfers due to the inheritance of the asset

- Sales by personal representatives in order to pay estate debts or cash legacies
- Transfers occasioned by resignation or death of partners in a firm of trustees or a trust
- Transfers between trustees , between a trust and settler, and between a trust and 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
- Disposals made as a result of pre-existing arrangements
- Transfers between connected companies
- Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules
- Provision of on-going public service delivery

### **Moratorium Period**

At such time as the Council receives notification of the intention to make a (non-exempt) disposal of a listed asset a 6 week interim moratorium period will commence. During this period eligible community groups have the opportunity to decide whether they wish to prepare a bid to purchase the asset.

The Council will without delay publish the owner's intention to dispose of the asset on its web site by updating the list of 'Assets of Community value' detailing that notice under section 95 (2) of the LA 2011 has been received, the date on which the Council received the notice and the end dates for the interim moratorium period, the full moratorium period and protection period. The Council will also, notify in writing the organisation that originally nominated the asset, and publicise the information in the area where the land is situated.

Community groups eligible to bid to purchase the asset are:

- A Parish Council in whose area the asset lies;
- A body with a local connection which is constituted in one of the following ways:
  - A company limited by guarantee
  - An Industrial or Provident Society
  - A Community Interest Company
  - Any other body which is registered as a charity including a Charitable Incorporated Organisation.

If within this 6 week period an eligible community group expresses an interest to bid, a full moratorium period of 6 months will commence (from the date of the notification of disposal). The Council will pass on the details of any written bid received to the asset owner. During this period a sale is prohibited and the community group has the opportunity to prepare and submit a full bid to the owner for the asset. The owner is under no obligation to accept the bid.

If at the end of the 6 month moratorium a bid has not been received the owner is free to dispose of the asset as they wish. No further moratorium can then commence for 18 months from the date that the Council received notification of disposal. This provides the owner with 12 months in which to dispose of the asset freely.

## **Compensation**

The owner of a listed asset may make a claim for compensation for any loss or expenses he/she has incurred through the asset being listed or previously listed, which would not have been incurred had the asset not been listed. A claim may therefore be made for:

- Any loss resulting from a delay in the owner entering into a binding agreement to sell the asset, that has been caused by either the initial or full moratorium period
- Any reasonable legal expenses incurred in a successful appeal to the first tier tribunal against the Council's decision to list the asset, refuse to pay compensation, or the amount of compensation offered or paid.

Compensation claims will be progressed in three stages:

Stage 1 - The initial claim to the Council must be made within 13 weeks of the loss or expense being incurred or having finished being incurred. The claim must be in writing, and include the amounts sought for each part of the claim and supporting evidence. The Council will endeavour to reach a decision on compensation as quickly as practicable once it has all of the necessary evidence.

Stage 2 - Within 8 weeks of being notified of the Council's decision at stage 1 above, a request to review that decision may be submitted, in writing and including the amounts sought and supporting evidence. The owner may ask the Council to review either or both of its decision relating to whether compensation should be paid and the amount of the compensation that should be paid. The Council will review its decision within eight weeks of receiving the request for a review (unless a longer period is agreed in writing). The Council will notify the person who requested the review, in writing, of its compensation review decision and the reasons for it.

Stage 3 - The owner may refer a claim to the First-Tier tribunal where he/she is not satisfied with the outcome of a stage 2 claim.

## **Policy Review**

Darlington Borough Council will review and may amend this policy in light of developing good practice and guidance.

Date of last review: March 2019