

Assets of Community Value Protocol

Introduction

The Localism Act 2011 introduces 'Assets of Community Value' (also known as Community Right to Bid). The legislation enables local groups to nominate a building or piece of land that is important for the social well-being of the area for inclusion on the local authority's 'List of Assets of Community Value' and bid for it if it comes up for sale. This protocol outlines the process that will be followed in Rugby for qualifying voluntary and community bodies to exercise the 'Community Right to Bid' and the process that the owner must go through if they choose to sell the asset, which was listed on Rugby Borough Council's list of Assets of Community Value.

Key Terms:

- LA 2011 means Localism Act 2011
- DCLG Advice Note means 'Community Right to Bid: Non-statutory advice note for local authorities', October 2012, Department for Communities and Local Government
- Regulations means 'The Assets of Community Value (England) Regulations 2012'

PART 1 – LISTING AN ASSET

1. What qualifies as an asset of community value

The LA 2011¹ describes an asset of community value as '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.

The LA 2011² also states that buildings or other land can be considered as an asset of community value if in the recent past they have furthered the social wellbeing or interest of the local community and the use of the building or land that was not an ancillary use and it is realistic to think that within the next five years it would further the social wellbeing or interests of the local community. The LA 2011 and associated regulations do not define 'social wellbeing' or 'recent past', although "social interests"³ is described in the LA 2011 as including cultural, recreational and sporting interest. Therefore RBC will consider each nomination on a case-by-case basis, using widely accepted definitions as guidance.

Schedule 1 of the Regulations lists land, which is not of community value, and therefore may not be listed. This list includes residential properties and land

¹ s88 (1) (a) and (b) LA 2011

² s88 (2) (a) and (b) LA 2011

³ s88 (6) LA 2011

connected to a residential property, caravan sites or operational land as defined in section 263 of the Town and Country Planning Act 1990. RBC will apply the definitions set out in the Regulations when considering whether a building or other land is eligible to be nominated as an asset of community value.

2. Who may nominate an Asset

For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with Rugby Borough or with a neighbouring authority (an authority which shares a boundary with Rugby Borough). The Regulations define what a 'local connection'⁴ is and RBC will apply this definition when assessing whether the nominating body qualifies.

The voluntary or community bodies that may make community nominations are set out below⁵.

Parish Councils: Any Parish Council within the borders of Rugby Borough can nominate an asset in their parish to Rugby Borough Council (RBC). A parish council can also nominate an asset in a neighbouring parish (where the boundaries are shared) or a neighbouring local authority if the Parish Council borders an un-parished area.

Unincorporated groups: Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority area, or a neighbouring local authority. The body's activities must be wholly or partly concerned with the local authority's area or with a neighbouring authority's area and must not distribute any surplus it makes to its members.

Neighbourhood Forums: as described in section 61F of the Town and Country Planning Act 1990.

Community interest groups with a local connection: The body's activities must be wholly or partly concerned with the local authority's area or with a neighbouring authority's area. These must have one or more of the following structures:

- a) A charity
- b) A community interest company
- c) A company limited by guarantee that is non-profit distributing
- d) An industrial and provident society that is non-profit distributing⁶

3. How to Nominate an Asset

A nomination⁷ must include:

- a) A description of the nominated land including its proposed boundaries;

⁴ Regulation 4

⁵ DCLG Advice Note p10 and Regulation 5

⁶ Defined in the DCLG Advice Note p11 as meaning that any surplus is not distributed to its members but is wholly or partly applied to the local authority area where the asset is based or to a neighbouring authority area.

⁷ Regulation 6

- b) A statement of all of the information which the nominator has with regard to:-
 - i) The names of current occupants of the land, and
 - ii) The names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;
- c) The nominator's reasons for thinking that RBC should conclude that the land is of community value; and
- d) Evidence that the nominator is eligible to make a community nomination.

RBC has produced an 'Assets of Community Value Nomination Form' attached at Appendix A to help organisations who wish to make a nomination ensure they include all of the information set out within the Regulations. The form must be completed by a voluntary or community body as detailed at section 2 above. The form can be submitted at any time and should contain as much detail as possible to enable RBC to make an informed decision as to whether the nomination is valid and if the building or other land should be nominated as an Asset of Community Value. The form can be completed on line or downloaded from RBC's website and submitted to: julia.garrigan@rugby.gov.uk. The form can also be sent to: The Monitoring Officer, Rugby Borough Council, Town Hall, Evreux Way, Rugby, CV21 2RR

4. Procedure when a nomination is being considered

The process that RBC will follow when it receives a nomination is detailed in the flow chart at Appendix B. RBC will decide whether land nominated by a community nomination should be included on the list of Assets of Community Value within eight weeks of receiving the nomination⁸. It will inform the relevant parish council, the owner of the land, any freeholders or leaseholders, and any lawful occupant of the land⁹ of the receipt of a nomination and notify them of the outcome once all of the information it has received on the nomination form has been considered.

If RBC are not able to give notice to any of the people listed above by letter – for instance due to lack of information as to the names or addresses of owners/occupiers – reasonable alternative steps will be taken to bring the notice to a person's attention. This could for example include a notice attached to the property.

The LA 2011¹⁰ requires RBC to maintain a list of land or buildings in the Borough that is land of community value. This list will be called the 'List of Assets of Community Value'. RBC must also maintain a list of unsuccessful nominations. This list is called 'List of land nominated by unsuccessful community nominations'. RBC will make both lists available on its website and a paper copy of both lists will be available for inspection at RBC's reception at The Town Hall, during normal opening hours. One free copy per person of each list will also be supplied upon request.

The list of 'Assets of Community Value' will include information in respect of the land to which the entry applies, the name of the community group that has submitted the nomination, the date that the nomination was received and why it was successful. RBC will amend the list as required to exclude any of the land that has since it was included in the list been the subject of a relevant disposal other than one referred to

⁸ Regulation 7

⁹ Regulation 8

¹⁰ s90 (4) LA 2011

in section 95 (5) of the LA 2011 and remove the entry if an appeal against the listing is successful or if RBC no longer considers the land to be an asset of community value.

The list of 'land nominated by unsuccessful community nominations' will also contain information in respect of the land to which the entry applies, the name of the community group that has submitted the nomination and the date that the nomination was received. The reasons why the nomination was not successful will also be listed. Once a decision has been made as to whether the building or other land is an Asset of Community Value it will be added to the relevant list and published accordingly¹¹.

If the nomination is successful, RBC will register the asset as an Asset of Community Value on the Local Land Charges Register and if the land is registered RBC 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 asset owner will also be informed of their right to request a listing review under section 92 of the LA 2011 Act and RBC will explain the consequences for the land and the owner of the land's inclusion in the list¹².

RBC will remove the nominated building or other land 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. RBC will also cancel the local land charge registration and remove the restriction from the Land Registry title at this time. The asset can be re-nominated following the procedures set out at section 3 above.

5. Procedure for a listing review

The LA 2011 does not provide for an appeal mechanism against RBC's decision if a nomination is unsuccessful. However there is an appeal mechanism for an owner if they disagree with RBC's decision to list an asset as an Asset of Community Value this is known as a listing review¹³. The owner and RBC must bear their own costs of such a review.

In accordance with Schedule 2 of the Regulations, the owner must request the listing review in writing before the end of the period of eight weeks beginning with the day on which written notice of inclusion of the land in the list was given by RBC.

Upon a written request for a review, RBC 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 and will be undertaken by a senior officer that had no involvement in the original decision to accept the building or other land on the list of 'Assets of Community Value'. The owner may appoint any representative to act on his or her behalf representations can be made in writing, orally or both. The owner

¹¹ s94 LA 2011

¹² s91 (3) LA 2011 For example, if a building or other land is added to the list of assets of community value, the fact of listing may be a material consideration if the owner applies for planning permission affecting the asset.

¹³ s92 (1) LA 2011

should inform RBC if a representative is appointed whereupon RBC will correspond with the representative and is not obliged to supply copies of documents to the owner.

RBC 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 as is 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 owner's right of appeal. During this time the Asset of Community Value will remain listed.

If the listing review¹⁴ finds that the land concerned should not have been listed on 'the List of Assets of Community Value', the entry will be removed from the list and a letter sent detailing the reasons for the removal to the person who made the original nomination.

6. Appealing Against a Listing Review Decision

An owner of a listed Asset of Community Value may appeal¹⁵ to the First-Tier Tribunal against RBC's decision on a listing review in respect of the land. The owner may be the owner who requested the listing review or a subsequent owner of part or all of the land.

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. The property will remain listed during the appeal process.

PART 2 – SELLING AN ASSET

7. Conditions for selling an Asset of Community Value

The owner of a building or other land that is on the list of 'Assets of Community Value' must notify RBC in writing of their wish to enter into a relevant disposal¹⁶ of the land. The other conditions¹⁷ listed below that are triggered as a result of notifying RBC of their intentions must also be met:

- a) The interim moratorium period has ended without RBC having received during that period a written request for the group to be treated as a potential bidder in relation to the land,
- b) The full moratorium has ended, or
- c) The protected period has not ended.

If these conditions are not complied with a relevant disposal of listed land contravenes section 95(1) of the LA 2011 and is therefore ineffective unless the

¹⁴ s92 (4)(a) LA 2011

¹⁵ Regulation 11

¹⁶ 'Relevant disposal' is defined in section 96 of the LA 2011. It means a transfer of the freehold or grant or assignment of a qualifying leasehold estate which gives vacant possession of the buildings and other land in question. Qualifying leasehold estate means when the lease was granted it had at least 25 years to run.

¹⁷ Regulation 13

owner has made all reasonable efforts to find out if the land is listed, and was unaware of it at the time of disposal.

8. The interim moratorium period

The process that RBC will follow when it receives notification from an owner of their intention to enter into a relevant disposal is attached at Appendix C. Upon written notification from an owner of their intention to enter into a relevant disposal of the land, RBC will update the list of 'Assets of Community Value' detailing that notice under section 95 (c) of the LA 2011 has been received, the date on which RBC received the notice and the end dates for the interim moratorium period, the full moratorium period and protection period. RBC will also notify in writing the person who made the nomination and publicise all of these details in the area where the land is situated¹⁸.

The date of receipt of notification from an owner triggers an interim moratorium period of 6 weeks. In this time the owner cannot sell the asset (unless it falls within one of the exemptions or the sale is to a community interest group).

During the interim moratorium period a Community Interest Group (CIG) may request in writing to be treated as a potential bidder for the asset¹⁹. If this occurs the full moratorium period comes into force. The CIG does not have to provide any evidence of intention or financial resources to make such a bid. A CIG must have one or more of the following structures:

- a) A parish council
- b) A charity
- c) A community interest company
- d) A company limited by guarantee that is non-profit distributing
- e) An industrial and provident society/community benefit society that is non-profit distributing.

RBC will pass on the details of any written request received from a CIG to the asset owner²⁰.

If no request from a CIG is received, RBC will notify the owner to that effect, whereupon the owner is free to dispose of the asset on the open market. 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.

9. The full moratorium period

Upon receipt of written request from a CIG to be treated as a potential bidder, the full moratorium period of six months applies, starting from the date RBC receives notification from the land owner of their intention to enter into a relevant disposal. The owner may not dispose of their asset during the full moratorium period (except as permitted in the LA 2011 and Regulations).

¹⁸ s97 (3) and (4) LA 2011

¹⁹ s98 (1) LA 2011

²⁰ s98 (2) LA 2011

The owner may only sell the asset during the full moratorium period to a CIG that either did or would have been eligible to trigger the full moratorium²¹.

If no bids are received from a CIG within the 6 month moratorium the owner may sell the asset on the open market. No further moratorium period can be triggered until 18 months after receipt from owner notice of the intention to dispose of the asset.

Upon sale of the asset the new owner must provide RBC with their details. RBC will then update the list of 'Assets of Community Value' accordingly.

10. Exemptions from the moratorium requirements

Some types of relevant disposal are exempt from the requirements set out at 8 and 9 above. The exemptions are set out partly in the LA 2011²² and partly in the Regulations. A full combined list of exemptions is attached at Appendix D²³ and includes:

- a gift of the asset;
- transmission of the asset under the terms of a will or intestacy; or to raise money to satisfy other entitlement under the will or intestacy, or to pay the deceased person's debts, taxes, or costs of administering the estate;
- transfer between family members²⁴, defined for these purposes as spouses or civil partners, or persons descended from the same grandparents (including relationships by marriage);
- a disposal with other land;
- a person joining or leaving a partnership;
- under the terms of a trust.

Even if a transfer falls within one of the exceptions, the new owner is requested to notify RBC that the transfer has taken place, giving their name and address. An owner must also notify the Council if he or she applies for first registration of unregistered land that is on the Council's list.

11. Compensation

The process that RBC will follow when it receives a written request for compensation from an owner is attached at Appendix E. Private owners may claim compensation²⁵ for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this includes a claim arising from a period of delay in entering into a binding agreement to sell that is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First Tier Tribunal.

A claim must be made in writing to RBC by the end of thirteen weeks after the loss or expense was incurred, or finished being incurred. The owner should state the amount of compensation sought, and include supporting evidence. The burden of proving the claim falls on the owner.

²¹ Para 9.6 p17 of DCLG Advice Note

²² s95 (5) LA 2011 and Schedule 3 of Regulations

²³ As listed in the DCLG Advice Note

²⁴ s95 (7) LA 2011

²⁵ Regulation 14

Claims should be sent:-

- by email to: steve.garrison@rugby.gov.uk
- by post to: The Monitoring Officer, Rugby Borough Council, The Town Hall, Evreux Way, Rugby, CV21 2RR

The Council will consider the claim and give written reasons²⁶ for its decision.

12. Review of compensation decision

The owner may ask RBC to review²⁷ either or both of its decisions made in response to that claim as to:-

- a) Whether compensation should be paid to that person
- b) If compensation is to be paid, the amount of that compensation

In accordance with Paragraph 2 of Schedule 2 of the Regulations, the owner must request the compensation review in writing before the end of the period of eight weeks beginning with the day on which written notice of the decision made on compensation was given by RBC, giving appropriate evidence to support the submission.

Upon a written request for a review, RBC will notify the owner of the procedure for the review. This will confirm that the review will be carried out in accordance with Schedule 2²⁸ of the Regulations and will be undertaken by a senior officer that had no involvement in the original compensation decision. The owner may appoint any representative to act on his or her behalf both in writing or orally or both. The owner should inform the Council if a representative is appointed whereupon the Council will correspond with the representative and is not obliged to supply copies of documents to the owner.

RBC will complete the review by the end of the period of eight weeks²⁹ beginning with the date that it receives the written request for the review, or such longer period as is 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 appeal³⁰.

13. Appeal against Compensation Review Decision³¹

When RBC has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal against any decision of the authority on the review. 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.

Disclaimer

The above information is not and must not be taken as a statement of the law. Owners and community groups may wish to take the own legal advice when considering their options under the Community Right to Bid scheme.

²⁶ Regulation 14 (6)

²⁷ Regulation 16

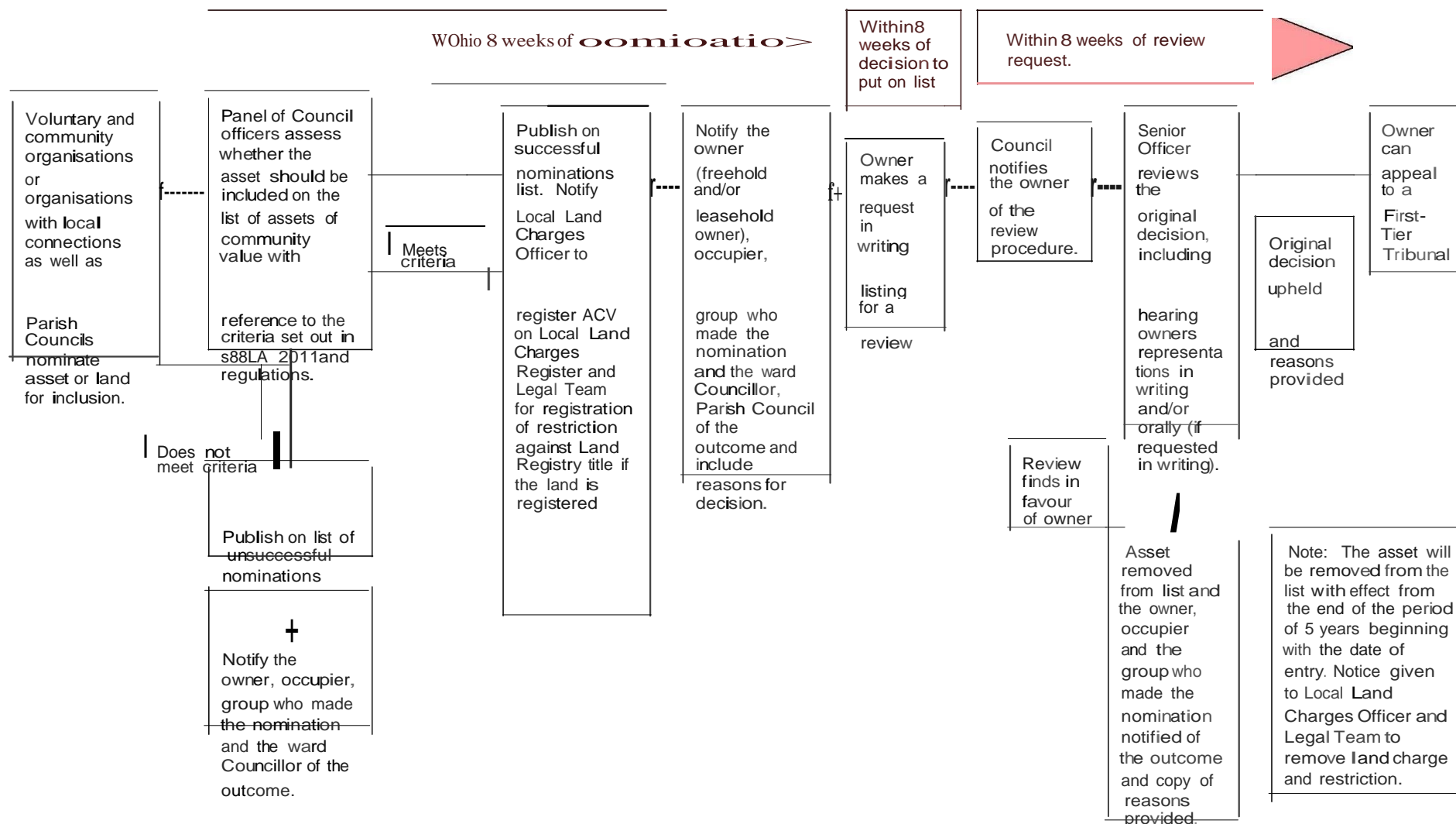
²⁸ Schedule 2 of the Regulations paragraph 5 (1) and (2)

²⁹ Schedule 2 of the Regulations paragraph 9

³⁰ Regulation 16 (3)

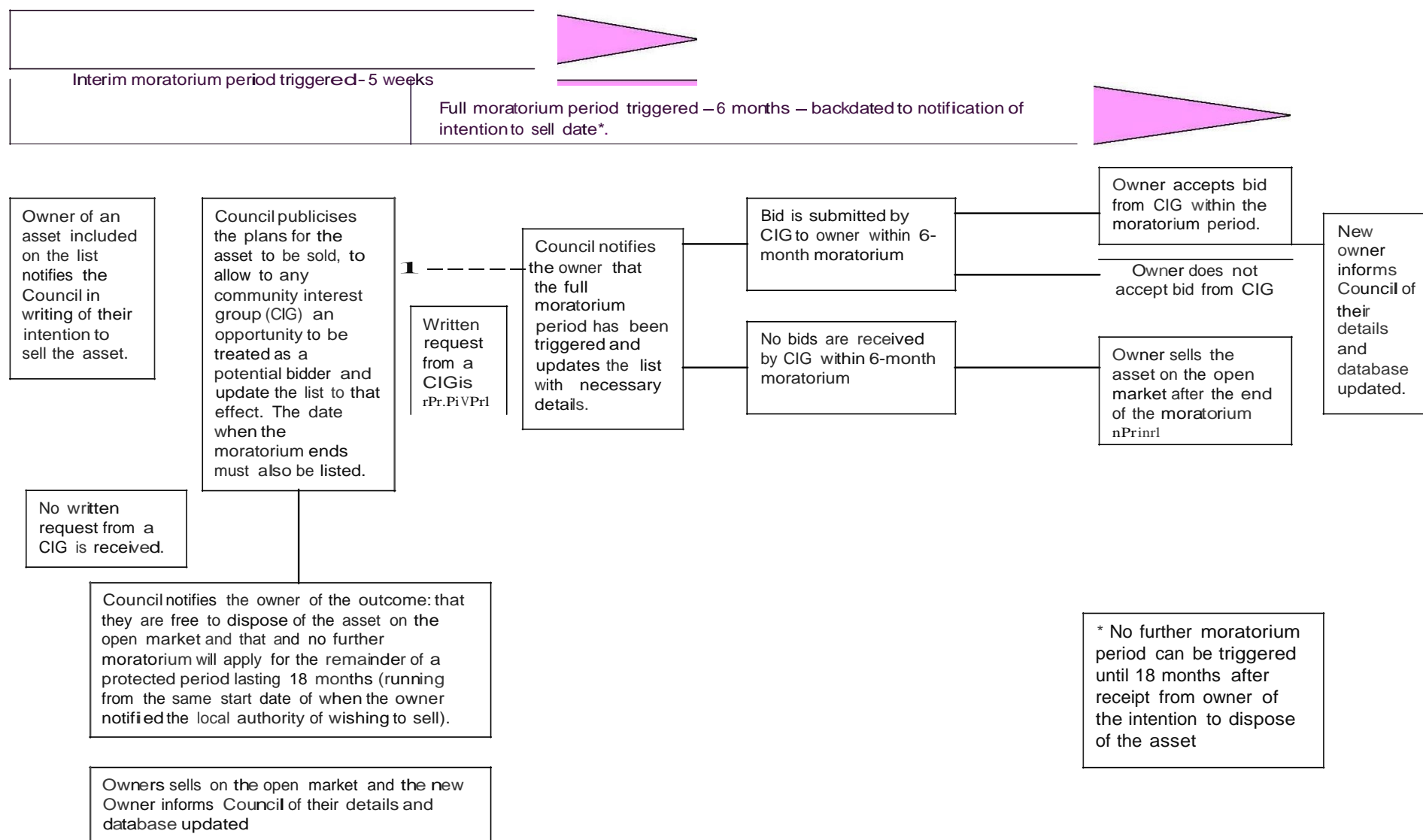
³¹ Regulation 17

Assets of Community Value: Nominations Process Chart



Appendix C

Assets of Community Value: Selling an Asset Process Chart



Exemptions from the Moratorium Requirements

The full list of exemptions is as follows. The first is in a different category to the remainder, in that the moratorium rules will have been triggered by notification from the owner, but the sale will be able to take place during the moratorium. Categories (b) to (j) are in section 95 (5) of the Act, and (k) to (y) are in Schedule 3 to the Regulations. Item (f) – part-listed land – is partly defined in the Act, and partly in the Regulations.

- a) Disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13 (1)
- b) Disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c) Disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d) Disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e) Disposals between family members (“family member” is defined in section 95 (7) of the Act as the owner’s spouse or partner and descendants of grandparents – which includes the owner’s own parents, but not the grandparents)
- f) Part-listed land – ie sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)
- g) Sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern eg the value of equipment, stock and goodwill)
- h) Disposals occasioned by somebody becoming or ceasing to be a trustee
- i) Disposal by trustees in connection with the trust, as specified
- j) A disposal occasioned by a person becoming or ceasing to be a partner in a partnership
- k) Transfers made in pursuance of a court order
- l) Transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m) A transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with “incapacity” being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n) A disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before

the land was listed (and in this context it should be noted that an option etc entered into *after* the land is listed would count as a relevant disposal under section 96 (4) of the Act)

- o) Disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 “Compulsory Purchase and the Crichton Down Rules”: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- p) Sale by a lender under a power of sale (ie where the land was security for a loan)
- q) Disposal of land under bankruptcy or other insolvency proceedings – the wording is “insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986”, which gives a very wide definition of insolvency proceedings
- r) Compulsory purchase disposals (see the wide definition of “statutory compulsory purchase” in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)
- s) The grant of an agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- t) Transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161 (5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)
- u) Disposals of part-listed land¹
- v) Disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate
- w) Disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1 (1) of the National Health Service Act 2006)
- x) A disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 academy
- y) Disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.

¹ the disposal is a part-listed disposal of a description specified in regulations made by the appropriate authority, and for this purpose “part-listed disposal” means a disposal of an estate in land:-

- (1) Part of which is land included in a local authority’s list of assets of community value, and
- (2) Part of which is land not included in any local authority’s list of assets of community value

Assets of Community Value: Compensation Flowchart

