

HEWITSONS

ASSETS OF COMMUNITY VALUE



Under a new scheme which came into effect in September 2012 local communities can apply to the local authority to have certain land and buildings added to a list of Assets of Community Value (ACVs). When land has been listed this creates restrictions on how the owner can dispose of the land. These are intended to give communities the chance to develop a bid and raise capital to buy the asset, creating a so-called Community Right to Bid.

What type of land could be an ACV?

In summary, land or buildings will have community value if, in the local authority's opinion, their current or recent principal use "furthers the social wellbeing or social interests of the local community" and it is realistic to think that this kind of use can continue or be resumed.

This is a fluid definition. The legislation provides that social interests include cultural, recreational and sporting interests but otherwise gives little guidance. Examples of ACVs could include playing fields and village halls, pubs or shops.

However certain types of land and buildings cannot be ACVs. These include houses and connected land, licensed caravan sites and land held by statutory undertakers.

How does land become an ACV?

Parish councils and voluntary or community bodies with a local connection can apply to the local authority for land to be listed as an ACV by submitting a nomination which must contain specified information, including the reasons for listing the land. Only certain groups, such as neighbourhood forums, with a certain degree of formality or a reasonable number of members will be considered voluntary or community bodies for these purposes.

On receiving a nomination, the authority is required to notify the owner of the land, the parish council and other specified people, and has 8 weeks to consider the application. If the asset has been properly nominated, is in the local authority's area, meets the definition and is not a type of land or building excluded from listing, the authority must accept the nomination.

On accepting a nomination, the authority must enter the land on the list and again notify certain people. If it decides the land is not an ACV, it must enter it on another list, of assets nominated but not listed, and give reasons for its decision.

When land is listed, the owner has 8 weeks in which it can ask the authority to review its decision. If the authority again decides the land is an ACV, the owner can appeal to Court against the decision. If the owner is successful at either the internal review or at Court, the asset will be moved to the list of unsuccessful nominations.

What is the effect of land being listed as an ACV?

Entry on the list creates a "moratorium" on certain types of transaction. Very broadly, these are sales of the property with vacant possession and leases of over 25 years but there are several exceptions. The moratorium prohibits these transactions unless the owner complies with certain conditions.

First, the owner must notify the authority that it wants to dispose of the property. The authority will then publicise the owner's notice. Then the owner must wait until a certain period, the moratorium period, has elapsed before disposing of the property. This is to create an opportunity for a bid by a community interest group ("CIG"), which can be the parish council or one of quite a narrow group of corporate bodies with local connections.

The length of the moratorium period depends on whether a CIG notifies the authority that it wishes to be treated as a potential bidder within 6 weeks of the owner's notice.

- If the authority does not receive a notification from a CIG within these 6 weeks, the owner is free to sell the asset at the end of this period.
- However, if the authority does receive a notification from a CIG within this period, the moratorium period is 6 months from the owner's notice. The owner may dispose of the property to a CIG during the remainder of the 6 month period; otherwise it may not dispose of the property until the 6 months have passed.

In any case the owner must dispose of the property within 18 months of notifying the authority that it wants to do so.

If the owner disposes of the property without complying with these conditions, the disposal is void, unless the owner did not and could not

reasonably have known it was listed. As the local authority must record the listing on the local land charges register and, if the land is registered, at the Land Registry, meaning the owner may have deemed knowledge of the registration, it will be difficult to fall within this exception.

Compensation

A private owner or former owner of an ACV can apply for compensation for loss suffered due to the land being listed. This includes any loss caused by a delay in disposal due to the moratorium and also the legal costs of a successful appeal to Court against a listing decision. The compensation claim must be made in writing within 13 weeks of incurring the loss and will be assessed by the local authority. As for a listing decision, the owner can apply for an internal review of the authority's compensation decision and could then appeal to Court.

The moratorium only creates a right to bid, not any right to buy. Whether land of community value can be acquired by the community really depends on the community's ability to raise funds to buy the land.

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