

Hinckley & Bosworth Borough Council



Hinckley & Bosworth
Borough Council

A Borough to be proud of

COMMUNITY RIGHT TO BID POLICY (ASSETS OF COMMUNITY VALUE)

Edition [March 2015]

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Introduction and Background

The Community Right to Bid allows communities and parish councils to nominate buildings or land for listing by Hinckley & Bosworth Borough Council as an asset of community value. Land can be listed if it meets the criteria in the Localism Act 2011, so that its principal use furthers (or has recently furthered) their community's social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future.

When an owner of a listed asset wishes to sell building or land, a moratorium on the sale (of up to six months) may be invoked, providing local community groups with a chance to raise finance, develop a business plan and make a bid to buy the asset on the open market.

Only eligible community groups, local parish councils or local neighbourhood planning forums and charities can nominate. And only certain bodies may bid to buy the asset during the moratorium period.

This policy sets out the council's application proceed and procedure for dealing with applications.

The list of assets of community value can be viewed on the Council's website, along with a list of applications where the application to list has been unsuccessful.

It should be noted however that where land is listed it does not:

- i. restrict who the owner of land can sell their property or at what price.
- ii. give a right of first refusal to community interest groups.
- iii. place any restriction on what an owner can do with their property – i.e. prevent development of the land.

THE NOMINATION PROCESS

1. What is an asset of community value?

A building or land is deemed to be of community value if, in the opinion of the HBBC:

- i. A current principal use ('non ancillary') of the building or land furthers the social interests or social wellbeing of the local community, and it is realistic to think that there can continue to be a principal use of the building or land which will further the social interests or social wellbeing of the local community, although this does not necessarily have to be in the same way, or;
- ii. A principal use of the building or land in the recent past (two years in Melton District) furthered the social interests or social wellbeing of the local community and it is realistic to think that within five years the building or land can be brought back into use that furthers the social interest or wellbeing of the local community, whether or not in the same way as before.

The legislation also contains land which cannot be listed as an asset of community value. These categories can be found in paragraphs 1 and 2 of Schedule 1 to the Assets of Community Value (England) Regulations 2012.

2. Who can make a nomination?

A number of community organisations can nominate land and buildings for inclusion on the list provided they can demonstrate a local connection to the property they are looking to nominate:

- i. Parish Councils
- ii. Neighbourhood Forums (as defined in Neighbourhood Planning regulations)
- iii. Not-for-private-profit organisations (eg charities)
- iv. Community organisations (must have a local connection, so their activities are wholly or partly concerned with the area or with a neighbouring authority area)
- v. Un-constituted community groups. To fall within this category you must be an unincorporated community group with at least 21 members who are registered to vote in the Borough of Hinckley & Bosworth.

The council will require evidence to support the applicant's status and eligibility to make a nomination.

3. How is a nomination made?

The council has produced an application form to assist eligible bodies in making nominations (APPENDIX 1). For an application to be valid it must include or cover the following information, providing evidence and supporting information where necessary:

- i. A description of the nominated land including details identifying its proposed boundaries. These boundaries do not have to match the ownership boundaries,

- for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.
- ii. Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
 - iii. The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act (see section 1 above).
 - iv. The nominator's eligibility to make the nomination

Community nomination applications may be made at any time, including after land has been put onto the market. However no restrictions on sale arise from an application - it is only once the land is listed by the Council that the protective provisions into play.

All applications should be submitted by email to legal@hinckley-bosworth.gov.uk

or alternatively in hard copy by sending to:

Legal Services
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
LE10 0FR

4. What happens once an application is received

Once the completed form has been received by the council the eligibility of the nomination will be checked.

If the application is valid it will be confirmed to you in writing and the application considered.

If the application is not valid we will inform you what information is required in order for it to be valid.

5. How we will deal with applications to list land

All applications will be determined within 8 weeks of receiving the valid nomination.

Once valid, the council will take all practicable steps to inform the following if an asset has been nominated:

- i. a parish council (if any) in which the land lies (or partly lies)
- ii. the owner as defined in section 107 of the Localism Act.
- iii. all others with a legal estate e.g. a leaseholder of the land
- iv. any lawful occupant (which could include a licensee).
- v. the Ward Councillor

All applications for nominations will be assessed against the following criteria:

- i. That the current principal use of the asset has been for furthering the social wellbeing or cultural, recreational or sporting interests of the local community
- ii. The principal use of the asset within the last two years has been for furthering the social wellbeing or cultural, recreational or sporting interests of the local community
- iii. It is realistic to assume that in the next five years the asset will continue to be used for furthering the social wellbeing or cultural, recreational or sporting interests of the local community
- iv. The nomination has been made by a relevant community interest group in line with the regulations who is locally based.

6. If the council decide land should be listed

Where the local authority feels an application meets the criteria and is otherwise valid the land will be listed in the land of community value as published by the council.

The council will also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in), that an asset has been added to the list.

The land will then benefit from the provisions of the Act as detailed in section 10 below ('Moratorium Period').

The owner does however have the right to request a review of the decision to list – please see section 8 below ('Reviews against a Decision to List Land').

Where properties are listed the council is required to:

- i. register the listing as a local land charges. This will ensure that all prospective new owners will be aware that an asset has been listed, since local land charges apply to both registered and unregistered land; and
- ii. apply to the Land Registry for entry of a restriction on the Land Register when they list a building or other land as an Asset of Community Value.

Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it.

7. If the council decides the land should not be listed

Where the local authority feels an application does not meet the criteria and the application is refused, the council will list the land in the register of unsuccessful nominations.

The council will also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in), that an asset has not been listed.

There is no right for the applicant to request a review of this decision.

REVIEWS AND APPEALS AGAINST LISTINGS

8. Reviews against a decision to list land

If an asset has been included on the list, an owner has the right to request a review of the council's decision.

A review must be requested within 8 weeks from the date written notice of listing was given (or from the date that alternative steps were completed to bring listing to the owner's attention). The council may, in individual circumstances, allow a longer or a longer period for review as confirmed in writing to the owner.

The property will remain listed while the review is carried out.

A request for a review must be submitted to the Chief Officer (Corporate Governance & Housing Repairs) who will determine the review in conjunction with legal services. Requests for a review should be marked for the attention of the Chief Officer (Corporate Governance & Housing Repairs) and be submitted by email to legal@hinckley-bosworth.gov.uk

or alternatively in hard copy by sending to:

Legal Services
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
LE10 0FR

The owner may appoint a representative and the local authority will be required to provide all relevant documents to the representative.

The owner and/or their representative may request an oral hearing or ask for the review to be conducted in writing. The authority must complete their review within 8 weeks, unless a longer period has been agreed in writing. However where no request for an oral hearing is made by the owner, the council may decide an oral hearing would be beneficial to the review process and notify the owner.

The owner and authority will bear their own costs of the review.

We will notify the owner in writing of the outcome of the review and where the review concludes that a change to the listing is required, we will also notify:

- i. The occupier of the land (if not the owner)
- ii. The nominator
- iii. Where they are not the owner, the holder of the freehold estate and the holder of any leasehold estate
- iv. The relevant town or parish council
- v. The Ward Councillor

Where the review concludes that a change to the listing is required, we will adjust the list of assets of community value and advise the Land Registry and Land Charges Department accordingly.

9. What happens if the owner is not satisfied with the review outcome?

An owner's appeal against a local authority listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. 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.

Owners should send the appeal in writing to the First-Tier Tribunal at:

Tribunal Clerk,
Community Right to Bid Appeals
HM Courts & Tribunals
First-tier Tribunal (General Regulatory Chamber)
P.O. Box 9300
Leicester, LE1 8DJ

Owners may also send an appeal to the First-Tier Tribunal by email at:

GRC.CommunityRights@hmcts.gsi.gov.uk

SALE OF A LISTED PROPERTY – THE COMMUNITY RIGHT TO BID

10. Moratorium periods

When land is listed it allowed Community Groups to put together the funding necessary to bid to buy the asset on the open market once the property is put up for sale by the owner.

It does not give the right of first refusal to community organisations to buy an asset.

If an owner wants to sell property or land that is on the list, they must tell the council. (see section 11 'Making a Bid')

If the nominating body wishes to develop a bid, they can then call for the council to trigger a moratorium period, during which time the owner cannot proceed to sell the asset but may still market the asset.

There are two moratorium periods. Both start from the date the owner of the asset tells the Council of their intention to sell:

- i. **'interim moratorium'** period- this is **6 weeks**, during which time a community organisation can decide if they want to be considered as a potential bidder.
- ii. **'full moratorium'** period, this is **six months**, during which a community organisation can develop a proposal and raise the money required to bid to buy the asset.

If a sale is not completed then there is an **18 month 'protected period'**(running from the date the owner notified the local authority of an intention to sell) during which the owner is free to dispose of the property without further moratoria.

11. Making a Bid

The property owner must advise us when they intend to sell the property and this intention will be publicised on our web site as well as informing the nominator.

Only certain groups have the right to bid, as detailed in regulations 5 and 12 of the Asset of Community Value (England) Regulations 2012.

If a group wants to make a bid it must inform the council that it wants to do so within six weeks of being told by the council that the property is available to purchase. The group will then have six months to put together the bid (this is not from when you inform us but six months from the owner advising us of their intention to sell and is known as the moratorium period).

If there is more than one community group interested in purchasing the property we would encourage the groups to work together.

At any point before the end of the six months you may enter into negotiations with the property owner providing the owner is willing to do this. You should keep the council informed of developments throughout the negotiation period.

At the end of the moratorium period if you have successfully put a bid together the owner will have the option to either accept your bid or sell the property freely on the open market.

12. Sales outside of the Act

There are some circumstances where the property owner does not need to comply with the Act, which are set out in 95(5) of the Localism Act 2011 and Schedule 3 to the Asset of Community Value (England) Regulations 2012.

13. What if the owner does not comply and sells the land?

In the event an owners does not comply with the scheme, any sales will be void (ineffective), meaning that the sale has not taken place. This penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.

It should be noted however that where land is listed it does not:

- i. restrict who the owner of land can sell their property or at what price.
- ii. give a right of first refusal to community interest groups.
- iii. place any restriction on what an owner can do with their property – i.e. prevent development of the land. Planning policy 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 whether 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.

COMPENSATION PAYMENT

The legislation recognises that these provisions may have some financial impact on owners and provides a compensation scheme for private property owners. Compensation is not available to public bodies.

The local authority is responsible for administering the compensation scheme, including assessing and determining compensation awards.

14. Compensation requests

Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim 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 Tribunal.

The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.

All claims must:

- i. Be in writing
- ii. State the amount of compensation sought
- iii. Provide supporting evidence for the claim and amount sought

The obligation to prove loss lies with the owner.

The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.

All compensation claims must be sent to:

Finance Department
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
LE10 0FR

or by email to: insurance@hinckley-bosworth.gov.uk

15. Internal review of compensation decision

An owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions. The owner must make the request within a period of 8 weeks, beginning on the date on which the local authority provides the owner with written notification of the decision. The council may allow longer for a review request to be made in exceptional circumstances.

Upon application for a review the council a review of the decision will be undertaken by the Chief Officer (Finance, Customer Services and Compliance) who will notify the owner of their decisions within 8 weeks of the request, providing reasons.

All requests for a review must be sent to:

Finance Department
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
LE10 0FR

or by email to: insurance@hinckley-bosworth.gov.uk

16. Independent appeals of compensation decisions

An owner may appeal to a Tribunal against the local authority's review decisions on compensation. The deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review.

Only the owner – or former owner – who requested the review may appeal against the review decision.

The appeal should be send in writing to the First-Tier Tribunal at:

Tribunal Clerk,
Community Right to Bid Appeals
HM Courts & Tribunals
First-tier Tribunal (General Regulatory Chamber)
P.O. Box 9300
Leicester, LE1 8DJ

or by email to: GRC.CommunityRights@hmcts.gsi.gov.uk