

Community Right to Bid

Blackpool Council



Community Right to Bid

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ABOUT THIS GUIDANCE

The purpose of this document is to set out the Council's policy position with regards to the Community Right to Bid process. In particular:

- To provide transparency for community nominators and asset owners so that they are easily able to navigate the Council's process; and
- To provide clarity so that Elected Members and officers are able to effectively support the management of the process.

This policy has been developed in response to a new Right derived from the Localism Act, which means that understanding of how the Right operates will evolve over time.

BACKGROUND

The Community Right to Bid ('the Right'), which is also known as 'Assets of Community Value' is one of the new community rights derived from the Localism Act 2011, all of which have a stated aim of devolving power to local communities. The aim of the Right is to empower communities wishing to protect valuable local assets (land and buildings) by requiring the Council to maintain a list of assets in its area which are of community value, so that upon sale, the community will have a chance to delay a sale in order to prepare a bid to buy it.

The Right does not restrict in any way who the owner of the asset can sell their property to, or at what price and it does not confer a right of first refusal to community or voluntary groups. The Right does not apply to residential property or operational land as defined in the Town and Country Planning Act 1990 Part 2.

THE PROCESS

The Government has published an Assets of Community Value Policy Statement and Statutory Regulations, which set out statutory elements of how the Right should operate. However, they do not specify how the Right should be administered by individual local authorities. This section explains our local process for operation of the Right.

The process falls into four sections:

1. Listing
2. Review and Appeals
3. Sale / Disposal
4. Compensation

The Council must maintain and publish two lists:

- List of Assets of Community Value
- List of Nominated Assets not of Community Value

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In order to ensure that the most up to date version of our lists are available for public inspection, the Council will publish these lists on its website: <https://www.blackpool.gov.uk/Your-Council/Community-rights/Community-right-to-bid/Community-right-to-bid.aspx>. Hard copies can be provided on request.

The listing process is community led and will be triggered by the receipt of a nomination. The Statutory Regulations specify what an asset of community value is, who can make a nomination and the information required in a nomination, which must be in written form. Nomination forms are available via the Council's website.

In summary, an asset is of community value if:

- It is at least partly within the local authority's area;
 - Its main use (i.e. not ancillary) has recently been or is presently being used to further the social wellbeing or social interests of the local community and could reasonably do so in the future i.e. within the next 5 years; and
 - It does not fall within one of the exemptions specified in **Appendix B**.
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STAGE 1 – LISTING PROCESS

Only voluntary and community organisations with a local connection (based in Blackpool or a neighbouring Authority) can nominate an asset for inclusion on the list. This includes:

- Formal Neighbourhood Forums
- Parish Councils
- Unincorporated bodies of 21 named members
- A Charity
- Company Limited by Guarantee
- Industrial or Provident Society
- Community Interest Company

For the purposes of the Assets of Community Value (England) Regulations 2012 and section 89(2)(b)(iii) of the Localism Act 2011 (which allows a voluntary or community body with a local connection to make a community nomination), a body other than a parish council is defined as having a local connection with land in a Local Authority's area if:

- The body's activities are wholly or partly concerned with the local authority's area or a neighbouring authority's area.
- In the cases of an unincorporated body with at least 21 individuals as members, a company limited by guarantee or an industrial and provident society which does not distribute any surplus they make to members, any surplus they make is wholly or partly applied for the benefit of the local authority's area or a neighbouring authority's area.

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- In the case of an unincorporated body with at least 21 individuals as members which does not distribute any surplus it makes to members, it has at least 21 local members. A local member means a member who is registered as a local government elector at an address in the Local Authority's area or a neighbouring authority's area.
- A parish council has a local connection with land in a local authority's area, if any part of the boundary of the first council's area is also part of the boundary of the other council's area.

Nominations must be in writing and include the following information:

- Clear identification of the asset and its boundaries;
- A site map with the location of the asset and its boundaries highlighted;
- Names of the current occupants of the asset and the names and current or last known address of all those holding a freehold or leasehold estate in the asset;
- Reasons why it qualifies as an asset of community value; and
- Identification of the nominating organisation and some proof of eligibility to make a community nomination. For unincorporated bodies the names and full addresses of the members must be provided in order to verify that at least 21 members are registered as electors in the Local Authority area or a neighbouring authority's area.

The Council will assess all nominations and provide written notification of the decision to:

- The person nominating the asset
- The owner
- Any lawful occupier

Where the Council has decided not to list an asset there will be an explanation as to the reasons why. There is no right of review or appeal for community groups.

Land which may not be listed

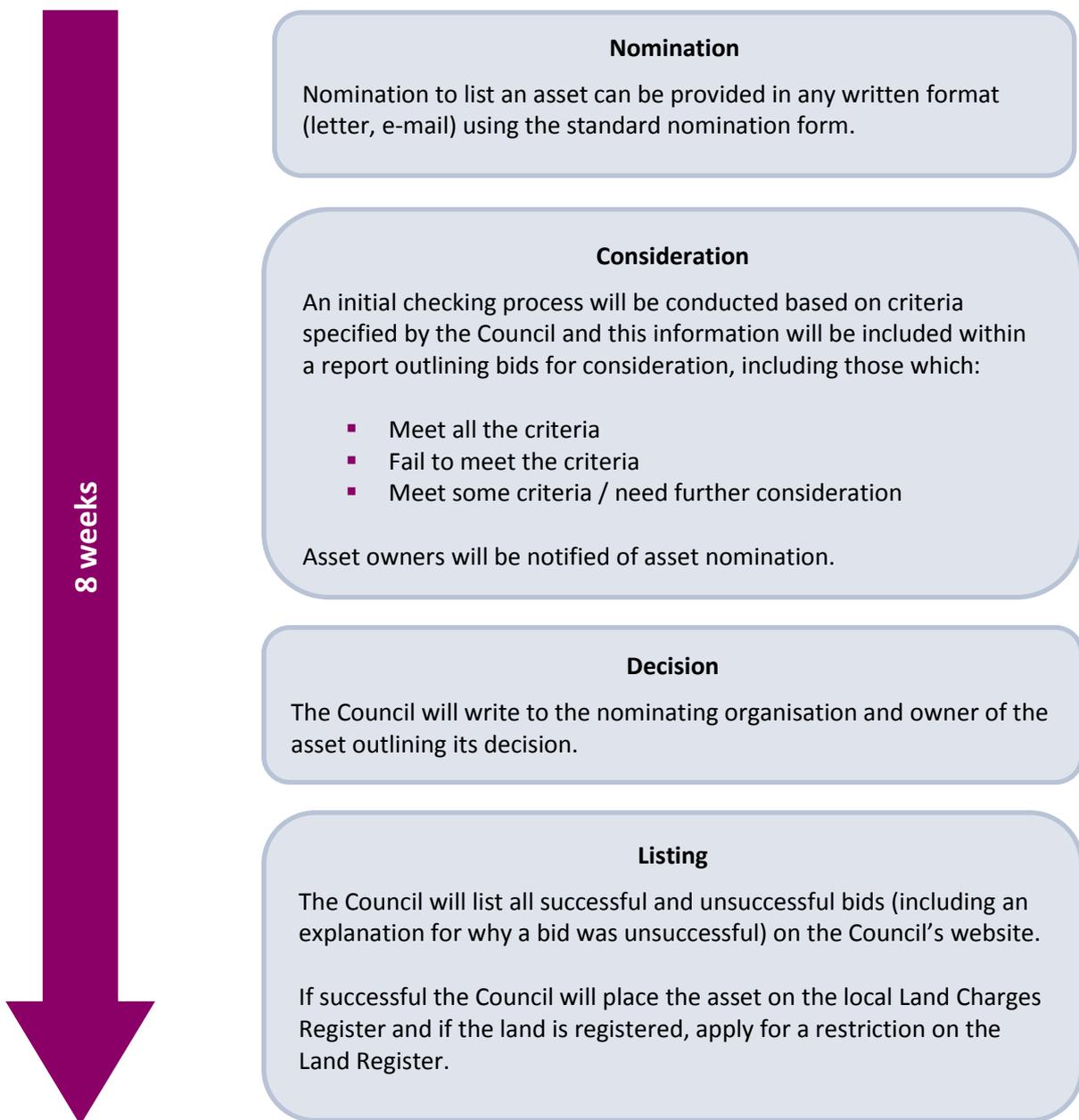
The regulations contain a schedule which sets out details of land which is not land of community value and therefore may not be included on a local authority's list of assets of community value. These are:

- A residence together with land connected with that residence. Land is connected with a residence if the land and the residence are owned by a single owner and every part of the land can be reached from the residence without having to cross land which is not owned by that owner. The requirement to reach every part of the land in this way will be satisfied if part of the land cannot be reached from the residence only because of intervening land in other ownership on which there is a road, railway, river or canal and it is reasonable to think that the requirement would be satisfied if the intervening land were to be removed leaving no gap. However, a residence may be listed if the residence is a building that is only partly used as a residence.

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- Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960 or would be if paragraphs 1, 4, 5 and 10 to 11A of Schedule 1A to that Act were omitted.
- Operational land as defined in section 263 of the Town and Country Planning Act 1990.

Stage 1 – Listing Flowchart



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STAGE 2 – REVIEW AND APPEALS PROCESS

Internal Review Process

In some cases, a landowner whose asset has been included on the list of assets of community value may wish to ask the Council to review its decision. In such cases, the landowner must write to the Council within 8 weeks of receipt of the Council's notification that the asset is to be listed. This request should be sent to thirdsector@blackpool.gov.uk.

The landowner must present a case for removing the asset from the list based on whatever evidence they consider appropriate, but it should be relevant to the following issues:

- Whether or not the asset is eligible to be listed;
- Whether or not the asset was nominated by an eligible group;
- Any new factors which have come to light since the original nomination was made; and
- Anything irrelevant or improper which the Council might have taken into account when reaching its original decision.

The landowner should present this in writing in the first instance, but may also request an oral hearing and be represented at this hearing by whomever they wish. The Council will complete this review within 6 weeks of receipt of the review request, or a longer period by agreement of both parties. This review would be heard by a Director who had not been involved in the earlier decision. If the review finds in favour of the asset owner then the asset will be removed from the Council's register.

Appeal Process

If a landowner is dissatisfied with the decision reached through the internal review process then they are entitled to appeal to an independent First Tier tribunal. If successful in their appeal then the landowner may apply to the Council for reasonable costs.

STAGE 3 – SALE / DISPOSAL PROCESS

It is the responsibility of the asset owner to contact the Council's Asset Management Service to notify them of an intention to make a 'relevant disposal'. This terminology is used because not all sales are covered by the Right; there are a number of exclusions specified in the Regulations (listed in **Appendix B**).

Receipt of notification of a relevant disposal will trigger a 6 week interim moratorium period in which community or voluntary sector groups should decide whether they wish to prepare a bid to purchase an asset.

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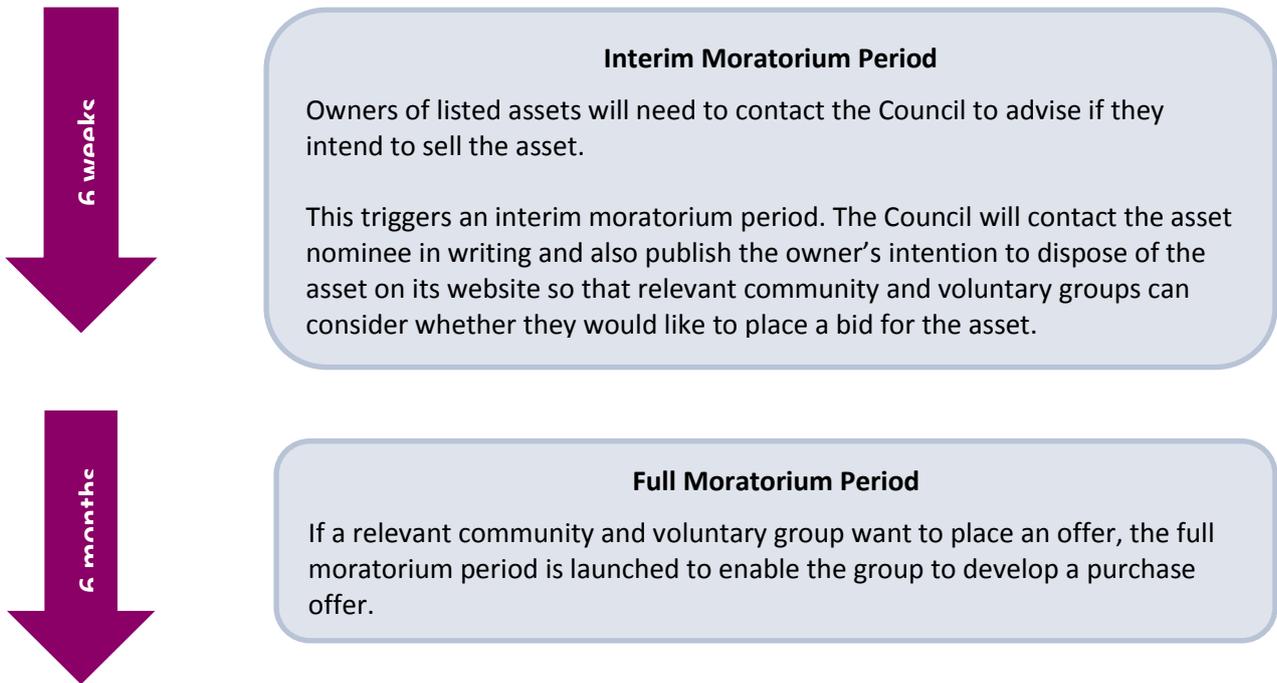
A community or voluntary sector group is:

- A Parish Council in whose area the asset lies, or
- 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.

At this stage groups only need to express an interest in bidding, they do not need to provide any details of their bid. This will trigger a full moratorium period of 6 months in total from notification of the relevant disposal during which time a sale is barred and they are able to prepare a bid for the asset. The owner is under no obligation to accept this bid and is free to dispose of their asset as they wish.

If a bid is not received during the moratorium period then the landowner is free to dispose of their asset as they wish and no further moratorium period can be triggered for a protected period of 18 months from the date that the Council receives notification of a relevant disposal. This provides the owner with 12 months in which to dispose of the asset freely.

Stage 3 – Sale / Disposal Flowchart



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Protected Period

Following the end of the full Moratorium period, the owner is free to dispose of their asset without further delay within 12 months. This is called the 'Protected Period'.

STAGE 4 – COMPENSATION PROCESS

Types of claim

The owner of the listed asset may make a claim for compensation for any loss or expenses he / she may have incurred at a time when the land was listed, which he / she would not have incurred had the land not been listed.

The following claims may therefore be made:

- For any loss arising from any period of delay in the owner entering into a binding agreement to sell the land, which has been caused by either the interim or full moratorium periods.
- A claim for reasonable legal expenses incurred in a successful appeal to the First Tier Tribunal against the Council's decision to:
 - List the asset
 - To refuse to pay compensation, or
 - With regard to the amount of compensation offered or paid.

Initial Claim to the Council

A claim must be made before the end of the 13th week (90 days) after the loss of expense was incurred or finished being incurred. The owner must make an application for compensation in writing, including the amounts sought and supporting evidence.

Review of the Council's Decision

If the asset owner is dissatisfied with the outcome of the initial claim, they can request a review of the Council's decision. A review must be made before the end of the 8 week period from when the Council provides the owner with a written response to the outcome of their initial claim. This must be in writing and include the amounts sought and supporting evidence.

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First Tier Tribunal

If the owner is unhappy with the Council's decision they can opt to take it to a First Tier Tribunal to request compensation and reasonable legal costs. An appeal to Tribunal must be made by the owner or former owner within 28 days of receiving the Council's decision.

SUPPORT FOR COMMUNITIES

This policy does not supersede existing arrangements in place within the Council and other organisations to transfer assets to communities. The Council recognises the added value that can be brought to communities through the transfer of assets and is committed to continuing to work with groups who are interested in pursuing these options.

If groups are interested in finding out whether a Council owned asset in their local area would be available for transfer, please email thirdsector@blackpool.gov.uk.

Support for communities interested in using the Right to Bid is also available on the Government's Community Rights webpage www.mycommunityrights.org.uk

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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 Localism 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 – i.e. 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, e.g. 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 entered into *after* the land is listed would count as a relevant disposal under section 96(4) of the Act).

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- o)** Disposals of a description which brings them within the Crichel 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 Crichel Down Rules”: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- p)** Sale by a lender under a power of sale (i.e. 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 land – this is the second part of the definition, the other part being in the Act – section 95(5)(e)¹. See final paragraph overleaf for details.
- 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 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.

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Details regarding part-listed land and land with a residence

Similar rules apply for determining how much land constitutes land with a residence (for exclusion from listing in Schedule 1 to the Regulations) and how much land constitutes a single site for qualifying as a part-listed site (as an exempt disposal in Schedule 3 to the Regulations).

In order to ensure that the same rules apply to registered and unregistered land, the approach taken has not been based on title. Instead, it is necessary to look at whether the site in question is one coherent parcel of land all owned by a single owner, so that it is possible to reach one part from another without crossing land owned by somebody else.

However there are two qualifications to be taken into account:

- Firstly, “a single owner” has an expanded meaning covering more than simply the same person or joint owners. It includes also trustees of different trusts of land which was settled by the same settlor – see definition of “single owner” in regulation 1 of the Localism Act.
 - Secondly, where it would otherwise be reasonable to regard the land as one coherent parcel, the fact that it is crossed by a road, railway, canal or river in other ownership is to be ignored.
-