Assets of Community Value (ACV) FAQ’s

Please read the following information prior to completing the ACV form

- What is “Community Value”?
- Who can nominate an ACV?
- What is a “Voluntary/Community Body”?
- What is a “Community Interest Group”?
- What buildings or land can be nominated?
- What buildings or land cannot be nominated?
- What is a “Relevant Disposal”?
- What disposal are exempt?
- What is “Vacant Possession”?
- What is the definition of “Owner”?
- What will happen once a nomination is submitted?
- What will the Local Authority do when a nomination is successful?
- What are the moratorium periods?
- What is the protected period?
- What will not trigger the moratorium periods?
- What will trigger the moratorium periods?
- What is not achieved by listing an ACV?
- What are the owners’ rights and responsibilities?
- What happens if the owner does not notify the Local Authority of a relevant disposal?
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What is “Community Value”?

A Building or other land whose main (i.e. “non-ancillary”) use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future.

The Localism Act 2011 states that 'social interests' include (in particular but not exhaustively) cultural, recreational and sporting interests.

Who can nominate an ACV?

Local Authorities cannot list land on their own initiative, it must be nominated.

For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits, or with a neighbouring authority, and be a voluntary/community body.

What is a “Voluntary/Community Body”?

This is a group that can nominate an ACV, so long as it has a local connection with the land. This can be:

- Parish Council
- Neighbouring Parish Councils (If the parish council borders an unparished area)
• Unincorporated groups:
  - whose members include at least 21 individuals who appear on the electoral roll within the Local or neighbouring Authority, and
  - which does not distribute any surplus it makes to its members
• Neighbourhood forums (as set out section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011)
• Community Interest Groups

What is a “Community Interest Group”?

A Community Interest Group must have a local connection and may:

• Nominate land for listing (since the requirements for a voluntary/community body include the requirements for a community interest group)
• Be asked to be treated as a potential bidder for listed land which the owner wishes to sell, thus triggering the full moratorium of 6 months
• Buy listed land during the moratorium period

Community Interest Groups must have one of the following structures:

• A charity
• A company limited by guarantee that is nonprofit distributing
• A community interest company
• An industrial and provident society which does not distribute any surplus it makes to its members

A Parish Council can also be considered a Community Interest Group if the land is in the council’s area.

What buildings or land can be nominated?

• Village shops
• Village halls
• Public houses
• Former schools
• Swimming pools
• Public open space

These might currently be in public ownership, but they could also be owned by a private company or an individual.

What buildings or land cannot be nominated?

There are several situations where land or buildings are exempt from inclusion on the list or operation of the moratorium. These include:

• Residential Properties – including gardens, outbuildings and other associated land
• Hotels
• Land licensed as a residential caravan
• Operational Land (as defined in section 263 of the Town & Country Planning Act 1990)
• Assets being transferred between kindred businesses
• Church of England land holdings

**What is a “Relevant Disposal”?**

A relevant disposal is classed as one of the following:

• Sale of the freehold with vacant possession
• Grant of a qualifying leasehold estate (which is a lease for at least 25 years) with vacant possession
• Assigning the lease of the property (where the property owner is a Tenant of the property and their lease was initially granted for a term of more than 25 years)
• Entering into a contract to do any of the above

The owner must not enter into a relevant disposal unless these conditions have been met:

A. They have notified the local authority in writing of that person's wish to enter into a relevant disposal of the land
B. That either:
   (i) The interim moratorium period has ended, without a written request from any community interest group to be treated as a potential bidder
   (ii) The full moratorium period has ended
C. The protected period has not ended

**What disposals are exempt?**

Even though a property is registered as an ACV, there are still many disposals that can take place without triggering the moratorium periods, these include:

• Disposal which is a gift (including a gift to trustees)
• Disposal by personal representatives
• Disposal between certain family members
• Disposal of part listed land
• Disposal of land on which a business is carried on
• Disposal on becoming a trustee or ceasing to be a trustee
• Disposals by trustees
• Disposal on becoming a partner or ceasing to be a partner
• Disposal pursuant to a court order or tribunal order
• Disposal pursuant to separation agreement
• Disposals relating to incapacity
• Planning/section 106 agreements
• Options, rights of pre-emption etc.
• Disposals where the land was acquired by compulsory purchase but is no longer needed
• Sale by a lender under a power of sale where the land was security for a loan
• Disposal of land under bankruptcy or other insolvency proceedings
• Compulsory purchase disposals
• Grant of an agricultural tenancy to a successor on the death or retirement of the current tenant
• Transfers between connected companies in a group of companies
• Disposals of closed Church of England churches
• Disposals for the purpose of continuing health service provision on the land
• Disposal of land to be held for the purpose of a school
• Disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the ACV moratorium rules were complied with

As is apparent from the list of the above, there are various ways in which an ACV may change hands without triggering the statutory procedure. If a transfer falls within one of the exceptions above, the owner is not required to notify the Local Authority but will have to provide a certificate to Land Registry, signed by a Conveyancer confirming the transfer did not contravene the moratorium provisions of the act.

An owner must notify the Local Authority if the property is registered at the Land Registry (on first registration) or mortgages an unregistered asset.

**What is “Vacant Possession”?**

When buying or selling a property, ‘vacant possession’ means that the property is empty on the day of completion. Therefore the sellers or tenants have moved out and removed all of their belongings, only leaving behind items that have been agreed with the buyer.

The standard conditions of sale in England and Wales either allow a property to be sold with vacant possession or without vacant possession. If the property is sold without vacant possession each Tenancy Agreement relating to the property must be detailed in the contract for sale.

**What is the definition of “Owner”?**

“Owner” when referred to in the Act can be read as:

• The person in whom the freehold estate in the land is vested, but not if there is a qualifying leasehold estate in the land of more than 25 years
• If there is just one qualifying leasehold estate in any land, the owner of the land is the person in whom that estate is vested
• If there are two or more qualifying leasehold estates in the same land, the owner of the land is the person in whom is vested the qualifying leasehold estate that is more or most distant (in terms of the number of intervening leasehold estates) from the freehold estate

**What will happen once a nomination is submitted?**

• The Council will acknowledge receipt of the nomination and confirm whether the nomination has been accepted
• If the nomination requires further evidence this will be requested from the nominating voluntary/community body
• When all of the evidence for nomination has been received, the Council must then decide whether the nominated land or property should be included on its list of ACV’s. This decision will be made within eight weeks of accepting the nomination
• Nominations which meet statutory criteria will be added to the list of ACV’s. The property will remain on the list for a period of up to 5 years

What will the Local Authority do when a nomination is successful?

• The Local Authority will inform the nominating voluntary/community body, the owner, any leaseholders/tenants, the Parish Council and Ward Members of the decision
• The list of nominations held by the Council will be updated and the ACV will remain on the list for up to five years
• The listing will be registered as a local land charge
• The Local Authority must also register a restriction against the title to the land at Land Registry to ensure that the land is not disposed of in breach of the rules

What are the moratorium periods?

There are two moratorium periods. Both start from the date the owner of the asset informs the Local Authority of their intention to sell.

• Interim moratorium period - six weeks – during this time a community interest group can express an interest in bidding for the asset. If none do so, the owner is free to sell their asset at the end of the six weeks
• Full moratorium period - six months - during which time a community interest group (having declared they wish to bid) can develop a proposal and raise the money required to bid for the asset. The owner can continue to market and negotiate sales but may not exchange (unless this sale is to a community interest group)

What is the protected period?

The protected period exists for the benefit of the owner. This is a period of 18 months running from the date the owner notified the local authority of an intention to sell. During this time, once any moratorium period has finished, the same owner can sell the property. After this protected period ends, the owner must return to the beginning of the process and notify the Local Authority of its intention to dispose of the property.

What will not trigger the moratorium periods?

Even though a property is registered as an ACV, there are still many things that can take place without triggering the moratorium periods (see also exempt disposals), these actions include (please note this list is not exhaustive):

• Carrying out works to or altering the property (subject to obtaining the necessary permissions such as Planning or Building Control)
• Granting a lease of the property for a term less than 25 years
• Selling the property subject to an existing lease (i.e. with a tenant in place, non vacant possession)
• Any assignment or underletting of the property by a tenant (where the property is subject to a lease and the property owner as defined by the legislation is the Landlord)
• Granting rights over the property such as right of way
• Applying restrictive covenants to the property
• Transferring the property to fulfil certain types of contract that were in place before the property was listed as an ACV
• Disposal by representatives of a deceased person in order to raise money to pay debts, tax, administration of estate or pecuniary legacies

What will trigger the moratorium periods?

The moratorium periods will be triggered whenever the property owner intends to make a “relevant disposal” i.e.:

• Sell the freehold with vacant possession
• Grant a qualifying leasehold estate (which is a lease for at least 25 years) with vacant possession
• Assign the lease of the property (where the property owner is a tenant of the property and their lease was initially granted for a term of more than 25 years)
• Enter into a contract to do any of the above

What is not achieved by listing an ACV?

A property listed as an ACV under the Community Right to Bid will not:

• Restrict in any way who the owner of a listed asset can sell their property to, or at what price
• Give a right of first refusal, the right to purchase, or ‘preferential treatment’ to a community interest group. The asset owner will assess all bids that are submitted but they can choose to sell it on the open market to whoever they choose, but it must do so within 18 months running from the date of the initial notice, known as the “protected period” (or else they will have to go through the same procedures again)
• Automatically give a community interest group a chance to bid for the property. See What will trigger the moratorium periods?
• Stop the asset from closing down/ceasing business if the owner decides that the asset is no longer viable
• Force the sale of an asset
• Oblige the owner to enter in to any negotiations with a community interest group about a bid
• Prevent any change of use or impede development. Being listed as an ACV is only a material consideration when it comes to Planning Matters

What are the owners’ rights and responsibilities?

The owner of a property listed as an ACV has the right to request a review of the decision to list the property as an ACV. Such a request must be made in writing to the Council within 8 weeks of the decision to list the property.

In conducting a review of a decision to list a property the Local Authority will follow the procedure contained in Schedule 2 of The Assets of Community Value (England) Regulations 2012.

The owner of a registered ACV must contact the Local Authority whenever they are intending to enter into a relevant disposal.
What happens if the owner does not notify the Local Authority of a relevant disposal?

A disposal of listed land is ineffective if it is a disposal that contravenes section 95(1) of the Localism Act 2011. In this case ownership of the land remains with the original owner.

Further information

Localism Act 2011 – Part 5 – Chapter 3 (Assets of Community Value)

Assets of Community Value (England) 2012

Community Right to Bid: Non-statutory advice notes for local authorities