

Community Right to Bid – Guidance Document

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Disclaimer

This guide is intended as an introduction to the local scheme containing the initial procedures adopted by Tunbridge Wells Borough Council for the performance of its duty under Chapter 3 of Part V of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

These procedures may be subject to updates. The Guide is not and must not be taken as a statement of the law. Owners and community groups must obtain independent legal advice when considering their options for action under the scheme.

Introduction

Background

The Community Right to Bid was introduced under the Localism Act 2011 and provides Town and Parish Councils and local voluntary and community organisations with the right to nominate local land or buildings which they believe to be of importance to their community's social well-being, for inclusion on a list of assets of community value maintained by the local authority.

The aim is that, if the asset subsequently comes up for sale, then they will be given a fair chance to make a bid to buy it on the open market.

This document is intended to provide guidance to Council services, groups or organisations interested in nominating an asset for listing, and owners of those assets and to set out how Tunbridge Wells Borough Council will meet the associated requirements set out in The Assets of Community Value (England) Regulations 2012.

This document should be read in conjunction with the Regulations, which, read together with Chapter 3 of Part V of the Localism Act 2011 (sections 87-108) provide full details of the legislative provisions.

Monitoring arrangements

Arrangements for the way in which the Council will meet the requirements of the Regulations will be reviewed within 6 months of the implementation of this new legislation. The Council will monitor its compliance with the requirements set out in this document.

1. Who can nominate an asset for inclusion on the List of Community Assets?

1.1 Nominations may be submitted by the following:

- A body designated as a neighbourhood forum under the Town and Country Planning Act;
- Town and Parish Council;
- Unincorporated body with at least 21 individual members and which does not distribute any surplus it makes to its members;
- Charity;
- Company limited by guarantee which does not distribute any surplus it makes to its members;
- Industrial and Provident Society which does not distribute any surplus it makes to its members; and
- Community Interest Company.

1.2 The above groups (except the Town or Parish Council in which the asset is located) will need to demonstrate amongst other matters, a local connection, as follows:

- Activities wholly or partly concerned with local authority's area or neighbouring local authority area;
- Any surplus made wholly or partly applied for benefit of the local authority's area or a neighbouring local authority area; or
- unincorporated bodies must have at least 21 local members included on the register of electors.

2. What types of assets can be nominated?

2.1 Both privately or publicly owned land or buildings may be nominated where it is considered that the asset has 'community value'. Included in the Regulations' definition of land and buildings is part of a building, part of any other structure and mines and minerals, whether or not held with the surface.

2.2 Community Value is defined as follows:

- The principle use of the asset currently, or in the recent past, has furthered the social wellbeing or cultural, recreational or sporting interests of the local community; and
- This use will continue to further the social wellbeing or interests of the local community.

- 2.3 Where the asset does not currently demonstrate 'community value' (as above), it may still be nominated where it is possible to demonstrate that the asset's main use did further the social wellbeing or cultural, recreational or sporting interests of the local community in the recent past and where it is realistic to think that it will do so again in the next 5 years.
- 2.4 The following exemptions apply – the Regulations provide further detail and definition.
- Land attached to residential property;
 - Land covered by Caravan Sites Act;
 - Land used by public utilities; or
 - Non commercial disposals such as on inheritance (but owners and community groups must seek independent legal advice as there are many such exceptions).

3. How to make a nomination

- 3.1 Nominations must be in writing using the Council's Assets of Community Value Nomination Form available on the Tunbridge Wells Borough Council website or by contacting:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk

- 3.2 Nominations will need to be supported with the following information:
- A description of the nominated asset including its proposed boundaries – for example, as demonstrated by Land Registry title documents and supporting maps which are less than one month old;
 - A statement of all information which the nominator has with regard to the names of current occupiers and the names and current, or last known addresses, of all those holding a freehold or leasehold estate in the land;
 - Reasons for thinking that the Council should conclude that the land is of community value; and
 - Evidence that the nominator is eligible to make a nomination (in line with requirements set out above).

- 3.3 Nominations should be sent to:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk

- 3.4 The nominator's contact details, as provided on the nomination form, will be used for future correspondence, including, in the event that the asset is listed, notice that the owner has advised of an intention to dispose of the asset. It is therefore essential that the nominator ensures that any changes in contact details during the period of the listing are notified to the Council via the address above.

4. How we will deal with the nomination

- 4.1 Nominations will usually be acknowledged within 5 working days.

- 4.2 Nominations will be considered in line with the requirements set out in the Regulations including taking all practical steps to notify the following that the asset is being considered for listing:

- The relevant Town or Parish council;
- The owner of the asset;
- Where the owner is not the freeholder:
 - the holder of the freehold estate
 - the holder of any leasehold estate other than the owner; and
- Any lawful occupant.

- 4.3 The Council will decide whether the nominated asset should be included in the list within 8 weeks of receiving the nomination.

- 4.4 We will notify the following of the decision reached and the reasons for this decision:

- The owner of the land;
- The occupier of the land (if not the owner);
- The nominator;
- Where they are not the owner, the holder of the freehold estate and the holder of any leasehold estate; and
- The relevant Town or Parish Council.

- 4.5 Where the Council is unable to notify any of the above, we will publish details on the Tunbridge Wells Borough Council website and publish details in a local newspaper to bring the listing to the person's attention.
- 4.6 We will publish on the Tunbridge Wells Borough Council website on the following link www.tunbridgewells.gov.uk both:
- The List of Assets of Community Value; and
 - A list of assets nominated by unsuccessful community nominations.
- 4.7 Copies of these lists will also be available for inspection at the Town Hall. A copy of the lists may also be requested by visiting the Gateway or by contacting:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk

- 4.8 Assets will be listed for a period of 5 years and be notified to the Land Registry as a registered restriction upon the property (and a Local Land charge).

5. Owner's right to request a listing review

- 5.1 The owner of an asset included in the List of Assets of Community Value may ask the Council to review a decision. This request must be made in writing within 8 weeks of the date upon which we provided the owner with written notification of our decision, or longer where we have agreed to this in writing.

- 5.2 The request should be sent to:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk

- 5.3 We will usually acknowledge receipt of the request within 5 working days and advise of the procedure to be followed in connection with the review. The review will be undertaken by a Senior Officer independent of the original decision making process.
- 5.4 The owner may request an oral hearing and may appoint any representative to act on his or her behalf in connection with the review. Where no request for an oral hearing

is made by the owner, we will decide whether or not an oral hearing would be beneficial to the review process. The owner, or their representative, may make written and oral representation to the reviewer.

- 5.5 We will complete the review process within 8 weeks of receipt of the written request for the review, or a longer period where this has been agreed with the owner.
- 5.6 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 those parties set out at 4.4 above.
- 5.7 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 accordingly.
- 5.8 Where an owner remains dissatisfied with the outcome of the review, they may appeal to the First Tier Tribunal against our decision on the listing review.
- 5.9 The owner and Council will bear their own costs associated with the review.
- 5.10 Where the nominator is unhappy with our decision in connection with their nomination, they may request that we review our decision. This will be taken as a corporate complaint and dealt with in the line with our Complaints Procedure. Other recourses would be the Local Government Ombudsman and the Judicial Review Process. Community Groups should seek independent legal advice.

6. Implications of an asset being included in the List of Assets of Community Value

- 6.1 Where an asset is included in the List of Assets of Community Value, the owner is required to notify the Council in writing of their intention to dispose of the asset.
- 6.2 The Regulations detail circumstances where a disposal is exempt – for example where the disposal is as a result of a court order, a separation agreement made between spouses or civil partners, upon inheritance and as a result of insolvency proceedings. The Regulations should be consulted for the full list of exemptions and detailed definitions.
- 6.3 This notification will trigger a moratorium period during which the asset owner may not dispose of the asset (other than where the disposal is exempt under the Regulations). This interim moratorium is for a period of 6 weeks from the date upon which we receive written notification of the owner's intention to dispose of the asset.
- 6.4 During this 6 week period, suitably constituted community groups and organisations which can demonstrate a local connection may submit an intention to bid. Where this is received, the full 6 month moratorium period (starting from the date upon which we receive written notification of the owner's intention to dispose of the asset) is triggered during which no disposal may take place.

- 6.5 This 6 month period is intended to enable the community group or organisation to prepare to be able to submit a bid to the owner to purchase the asset. The sale takes place under normal market conditions. There is no obligation for the group to make a bid and the group has no rights of purchase over other potential buyers. The owner is under no obligation to sell the asset to the community group or any other person. If the owner decides to sell to the community group, they may do so within the 6 month moratorium period.
- 6.6 If after the 6 month moratorium period the community group has not successfully bought the property, a further 12 month protection period is triggered (the total 18 month period commencing on the day upon we received written notification of the owner's intention to dispose of the asset). During this protection period the asset may be sold by the owner on the open market without the risk of any further moratorium period being triggered.
- 6.7 If any land included in the List of Assets of Community Value which is unregistered becomes registered for the first time (because of a disposal, mortgaging or voluntary registration), the owner or new owner must notify the Council as soon as is practicable.

7. Procedure where an owner wishes to dispose of an asset included in the List of Assets of Community Value

- 7.1 Where an owner wishes to dispose of an asset which is included in the List of Assets of Community Value, they must notify the Council in writing of their intention to do so.
- 7.2 The notification should be sent to:
- Economic Development Team
Tunbridge Wells Borough Council
Town Hall
Tunbridge Wells TN1 1RS
business@tunbridgewells.gov.uk
- 7.3 We will usually acknowledge receipt of the notification within 5 working days, confirming the dates upon which the interim moratorium took effect and when this period will end.
- 7.4 The List of Assets of Community Value will be updated to show that we have received notice of an intention to dispose of the asset, together with the date of that notification and the resulting interim and full moratorium periods and the protected period.
- 7.5 We will notify the nominator in writing that we have received notice of an intention to dispose of the asset and will publish details in the area where the asset is situated

7.6 An intention to bid may only be submitted by a suitably constituted 'community interest group' which can demonstrate a local connection as set out at 1.2 above. Unincorporated organisations and neighbourhood forums are excluded. The Regulations provide a full definition of 'community interest group' for the purpose of the Community Right to Bid legislation.

7.7 The intention to bid should be submitted in writing together with evidence to support that the bid is being made by a suitably constituted 'community interest group'.

7.8 The intention to bid should be sent to:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk

7.9 We will pass the intention to bid to the owner of the land, or inform them of the details, as soon as practically possible after receipt.

8. Compensation

8.1 The owner or former owner of an asset included in the List of Assets of Community Value is entitled to make a claim for compensation from Tunbridge Wells Borough Council in respect of incurred loss or expense in relation to the asset which would be likely not to have been incurred if the land had not been listed. The Regulations should be consulted for details of bodies which are not entitled to compensation.

8.2 Claims should be made in writing and be made within 13 weeks after the loss or expense was incurred or finished being incurred. Claims must state the amount of compensation being claimed for each part of the claim and be accompanied by supporting evidence.

8.3 Claims should be sent to:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk

9. Owner's right to request a compensation review

- 9.1 The person making the compensation claim may ask for a review of the decision we reach in relation to their claim. This must be made in writing within 8 weeks of the date upon which we have advised you of our reasons for the decision in relation to the claim.
- 9.2 The request should be sent to:
- Economic Development Team
- Tunbridge Wells Borough Council
- Town Hall
- Tunbridge Wells TN1 1RS
- business@tunbridgewells.gov.uk
- 9.3 We will acknowledge receipt of the request and advise of the procedure to be followed in connection with the review. The review will be undertaken by a Senior Officer independent of the original decision making process.
- 9.4 The owner may request an oral hearing and may appoint any representative to act on his or her behalf in connection with the review. Where no request for an oral hearing is made by the owner, we will decide whether or not an oral hearing would be beneficial to the review process. The owner, or their representative, may make written and oral representation to the reviewer.
- 9.5 We will complete the review process within 8 weeks of receipt of the written request for the review, or a longer period where this has been agreed with the owner.
- 9.6 We will notify the owner in writing of the outcome of the review.
- 9.7 Where the owner remains dissatisfied with the outcome of the review, they may appeal to the First Tier Tribunal against our decision on the compensation review.

If you would like this information in another format please contact:

Economic Development Team

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells TN1 1RS

business@tunbridgewells.gov.uk