

ASSETS OF COMMUNITY VALUE (ACV) NOMINATION & LISTING GUIDANCE NOTE

The ACV provisions are set out in Pt 5, Chapter 3 (ss 87-108) of the Localism Act 2011 and the ACV Regulations (England) 2012.

Nomination

An asset may only be nominated for inclusion on the ACV list by:

- A local or neighbouring parish council
- A voluntary or community body with a local connection.

The regulations define voluntary and community bodies as:

- Neighbourhood forums
- An unincorporated body of at least 21 persons who appear on the register of local government electors of Wigan Council or a neighbouring authority and which does not distribute any surplus to its members
- Charities
- Companies limited by guarantee which do not distribute any surplus to members
- Industrial and provident societies which do not distribute any surplus to members
- Community interest companies.

A voluntary or community group will have a local connection if:

- Its activities are wholly or partly concerned with Wigan Borough, or the area of a neighbouring authority
- Any surplus it makes is wholly or partly applied for the benefit of the Wigan Borough or the area of a neighbouring authority.

Nominations must include:

- A description of the nominated asset, including its boundaries
- A statement of all the information which the nominator has regarding the names of the current occupiers of the asset and the names and current or last known addresses of all those holding a freehold or leasehold estate in the asset
- The nominator's reasons for thinking the asset is of community value
- Evidence that the nominator is eligible to make a community nomination.

Nominations should be sent to: the Assistant Director – Leisure, Cultural and Property Services, Civic Centre, Millgate, Wigan WN1 1AZ, or email: estates@wigan.gov.uk.

ACV – definition

ACVs are defined in s88 of the Localism Act 2011.

An asset (building or land) is an ACV if, in the opinion of the local authority:

- a) An actual current use of the asset that is not an ancillary use furthers the social wellbeing or social interests of the local community, and;

- b) It is realistic to think that there can continue to be non-ancillary use of the asset which will further (whether or not in the same way) the social wellbeing or social interests of the local community (s88(1)).

s88(2) extends this definition to an asset which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

Some categories of asset are excluded from listing. The principal one being residential property. (Schedule 1 ACV (England) Regulations 2012).

Listing Process

Once the Council receives a nomination from a qualifying body it must decide within 8 weeks whether or not the asset should be included on the ACV List.

Upon receipt of the nomination the Council must take all practicable steps to notify:

- The Parish Council (if one exists)
- The owner of the asset (as defined by the Act)
- The freeholder (if different from the owner)
- All leaseholders
- Any lawful occupants

If the nomination is accepted the Council will:

- include the asset on the ACV List
- give notice of its inclusion to the nominator, owner, freeholder, leaseholders and lawful occupiers
- include the listing on the Local Land Charges Register
- enter a restriction on the Land Register

If the nomination is rejected the Council must give its reasons to the nominator and include the asset on the list of unsuccessful nominations.

The Council must publish the lists and make them available for free public inspection.

Once listed an asset will remain on the ACV list for up to 5 years. The Council may remove an asset from the list during the 5 year period if it considers the asset to no longer be of community value.

An owner may request the Council to review its decision within 8 weeks of being notified of the listing. The review must be undertaken by an officer of appropriate seniority who did not take part in the decision to list. The Council must complete its review within 8 weeks and notify the owner of the review decision and of the right to an independent appeal.

If the owner is not satisfied with the Council's internal review they can appeal to the First Tier Tribunal within 28 days of the notice of decision.

Moratorium on Disposing of Listed ACVs

An owner must notify the Council of an intention to dispose of an ACV.

On receipt of this notice the Council must:

- update the ACV list to record that notice of intention to sell has been received
- notify the nominator and Parish Council (if any)
- publicise the matter in the local area

The receipt of the owner's notice of intention to dispose triggers a 6 week interim moratorium on the disposal during which time a community interest group may trigger a full 6 month moratorium on sale by making a written request to the Council to be treated as a potential bidder for the asset.

The Council must then:

- inform the owner of the request from a community interest group to be treated as a bidder
- inform the group which originally nominated the asset for listing.
- Update the ACV list with this information

A community interest group must have one of the following structures:

- A charity
- A community interest company
- A company limited by guarantee that is non profit distributing
- An industrial and provident society that is non profit distributing
- The Parish Council in whose area the asset is located

If no request is received from a community interest group to be treated as a potential bidder within the 6 week moratorium period the owner is free to sell the asset.

At the end of the 6 month full moratorium period the owner is free to sell to whomever they choose at whatever price.

The owner may sell to a community interest group during the moratorium period.

Once a listed ACV has been sold no further moratorium will apply until 18 months from the date the owner notified the Council of the intention to sell.

Schedule 3 of the Regulations contains types of disposals which are exempt from the moratorium provisions.

Compensation

Private owners may claim compensation for loss and expense incurred through the asset being listed.

A compensation claim must be received by the earlier of 13 weeks from the end of the interim or full moratorium periods or from the date when the asset ceases to be listed.

Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.

The Council must consider any claims and give written reasons for its decision.

An owner may request a review of the compensation decision within 8 weeks of being given written notice of the decision. The Council must review its decision and notify the owner within 8 weeks giving its reasons.

An owner may appeal to the First Tier Tribunal within 28 days of receiving the Council's decision.

Enforcement

The Council is required to register the listing of an ACV on the Local Land Charges Register, to apply to the Land Registry to enter a restriction on the Land Register and to notify the owner of the implications of listing.

Owners are required to inform the Council that listed land has been entered on the Land Register as a result of an application for first registration and also to inform the Council if they have become the new owner of a listed asset.

Non compliant sales of a listed asset will be void.