

Policy approved 21 June 2018

HIGH PEAK BOROUGH COUNCIL

Council Policy: Community Right to Bid/Assets of Community Value

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1. Introduction

This document sets out the Council's policy for implementing the Localism Act 2011 Part 5. Chapter 3: Assets of Community Value (known as the Community Right to Bid).

This policy is in force from 21 June 2018.

2. Background

The Community Right to Bid ('the Right'), is one of the new community rights derived from the Localism Act 2011. The aim of the Right is to empower communities wishing to protect valuable local assets (land and buildings). It requires the Council to maintain a list of assets in its area which are of community value. It requires the owners of listed community assets to notify the Council of an intention to sell listed assets and it provides the opportunity for the community to delay a sale in order to prepare a bid to buy it.

The Right does not restrict in anyway 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 interest groups.

The Right does not apply to residential property or operational land as defined in the Town and Country Planning Act 1990 Part 2.

3. 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. The Government has also published non statutory guidance (October 2012). However, how the Right will be administered in a locality has to be specified by the responsible local authority.

This section of the policy statement explains our local process for operation of the Right.

The process falls into three sections:

- Listing
- Review and Appeals
- Sale

A flow chart providing an overview of all the stages of our process is available at Appendix A.

3.1 Listing

The Council will complete this section of the process within 8 weeks of receipt of nominations.

Stage.1 – NOMINATION

The listing process is community led and is 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 (letter, email, e-form).

The criteria

An asset is of community value if the Council judges that;

- Current use of the building or land furthers the social well-being or social interests of the local community and it is realistic to think this use will continue, or there was a time in the recent past when the use of the building or land furthered the social well-being or social interests of the local community and it is realistic to think there would be a time in the next 5 years when there could be use that would further the social well-being or social interests of the local community;
- That use is the main one and not ancillary; and
- It does not fall within the list of exemptions

The Localism Act 2011 provides that 'social interest' includes (in particular) each of the following: cultural interests, recreational interests, sporting interests.

Organisations which are eligible to nominate

Only parish councils and voluntary and community organisations with a local connection have the right to make nominations for assets to be included on the list. The Localism Act and associated regulations provide definitions of eligible bodies, these bodies include:

- Neighbourhood Forums (section 61F of the Town & Country Planning Act 1990 – added by the Localism Act 2011)
- Parish Councils in respect of land in the parish council's area
- Unincorporated bodies (that has at least 21 individual members of 21 who are on the local electoral register)
- A Charity

- Company Limited by Guarantee (where profits are not distributed to members)
- Industrial or Provident Society
- Community Interest Company

The form of nomination and information required

Nominations must be in writing and include the following information:

- Clear identification of the asset
- Names of the current occupants of the asset and 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
- Identification of the nominating organisation and some proof of eligibility to make a community nomination

The Council will provide a nomination form to assist applicants and the assessment process.

Stage.2 – DECISION

Asset owners (and any leaseholders) will be notified of the asset nomination and asked to make any comments as will any occupants of the property and, if there is one, the parish council.

Having considered the information submitted with the nomination and any comments provided by the asset owners the Council will decide whether the nomination:

- Meets all criteria (above)
- Fails to meet the criteria
- Meets some criteria/ needs further consideration

The Council will write to the nominating organisation and everyone else notified of the nomination outlining the decision and including an explanation. This is called a 'Decision Notification Letter'

Only the Owner of the listed land has a right of review (see below) although like all council decisions the listing can be subject to judicial review by an interested party if the decision is taken without compliance with the law, unreasonably or unfairly.

Stage.3 – LISTING

The Council will maintain and publish in a single list:

- Assets of Community Value
- Assets Nominated but not accepted by the Council as fitting the Community Value criteria.

The lists will be updated on a monthly basis and available for public inspection. The Council will publish these lists on our website, and the Council will make hard copies available on request.

3.2 Review and Appeals

A landowner (land and/or buildings) whose asset has been included on the list of assets of community value may 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: rachel.rourke@highpeak.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; or,
- Any irrelevant or improper matter 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. If an oral hearing is not requested then the review will be considered on the papers submitted with the review.

Asset listing reviews will be determined by a Council Officer with appropriate seniority who has not been involved in making the original decision.

If the Review agrees finds in favour of the asset owner then the asset is removed from the list, if not then the asset will remain on the list.

The Council will complete this review within 8 weeks of receipt of the review request, or a longer period by agreement of both parties and must notify the owner of its decision with reasons. If the asset is removed from the list then the decision with reasons must be given to the person/group who made the nomination.

Appeal:

If a landowner is dissatisfied with the decision reached through the internal review process to maintain the listing of their land/property then they are

entitled to appeal to the independent First Tier Tribunal (Property) which is a Tribunal (akin to a court) specialising in land and property matters.

3.3 Sale

Owners duty to notify the Council

It is the responsibility of the asset owner to notify the Council 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 for example transfers of the property as a gift or inheritance.

Interim Moratorium Period

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

The Council will publish the owner's intention to dispose of the asset on its website so that relevant community interest groups can consider whether they would like to place a bid for the asset. The organisation which originally nominated the land/building for registration as a community asset will be contacted in writing.

A community interest 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 community interest groups only need to express an interest in bidding, they do not need to provide any details of their bid. The expression of interest 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. It is important to note however that the owner is under no obligation to accept this bid.

After the full moratorium period of 6 months has ended 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 received notification of the relevant disposal. This provides the owner with 12 months in which to dispose of the asset freely.

Claims for compensation

The owner of the listed asset may make a claim for compensation for any loss or expenses they may have incurred at a time when the land was listed, which they 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 Local Authority's decision to;

I. List the asset

II. To refuse to pay compensation, or

III. With regard to the amount of compensation offered or paid

The initial claim to the Council must be made in writing before the end of 13th week (90 days) after the loss or expense was incurred giving supporting evidence for each part of the claim and the Council must give its decision with reasons as to whether the claim is accepted or denied.

If compensation is denied then there are provisions for review and appeal which may be followed.

4. Policy Review

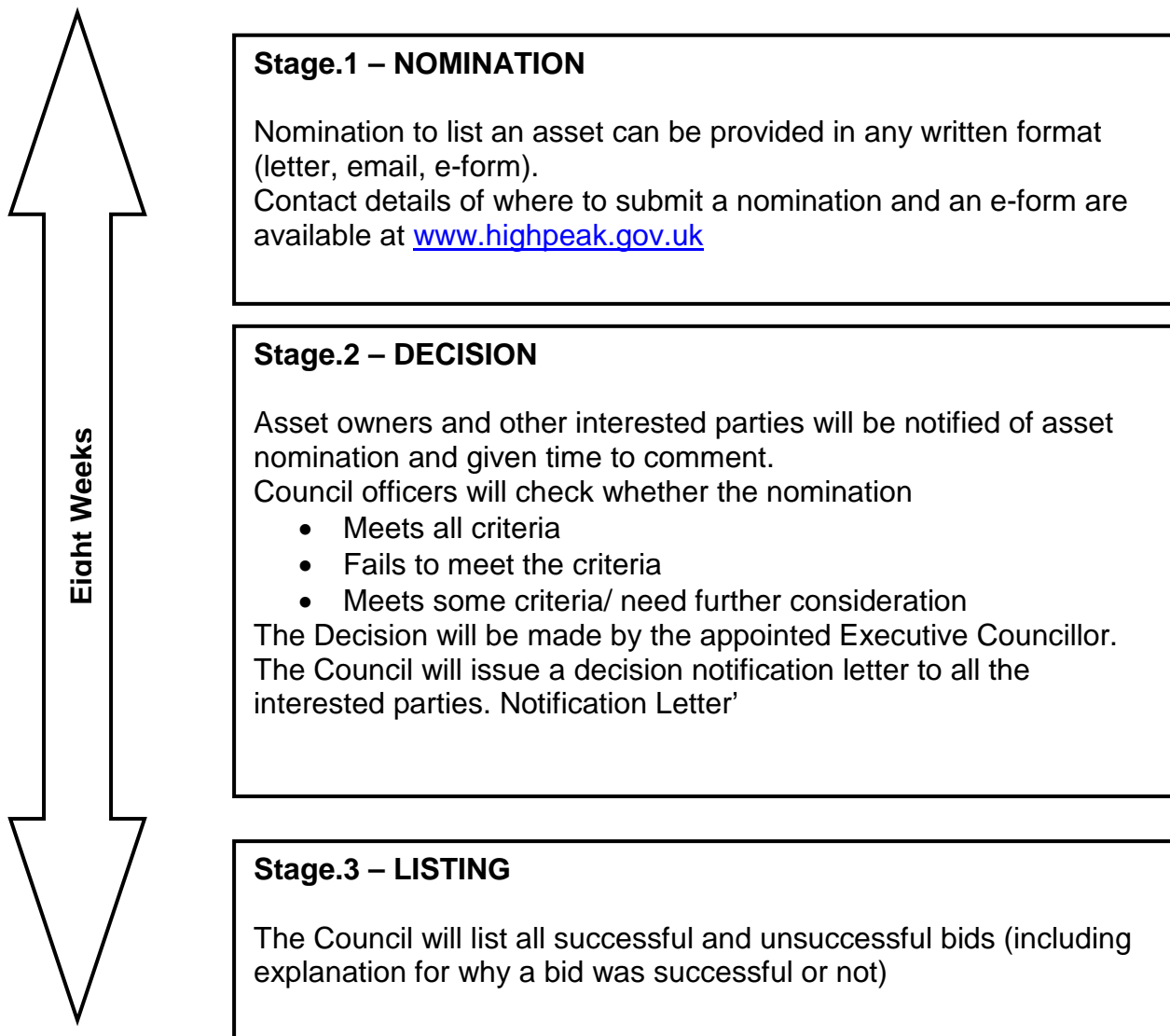
This policy will be reviewed periodically and may be amended to take account of developing best practice locally and nationally, or new government guidance.

5. Disclaimer

This policy document is not intended to provide any person with legal advice specific to any particular site or matter and contains general information only about the way in which the Council will normally deal with matters relating to assets of community value. You should consult a suitably qualified lawyer on any specific legal problem or matter.

Appendix A: The process

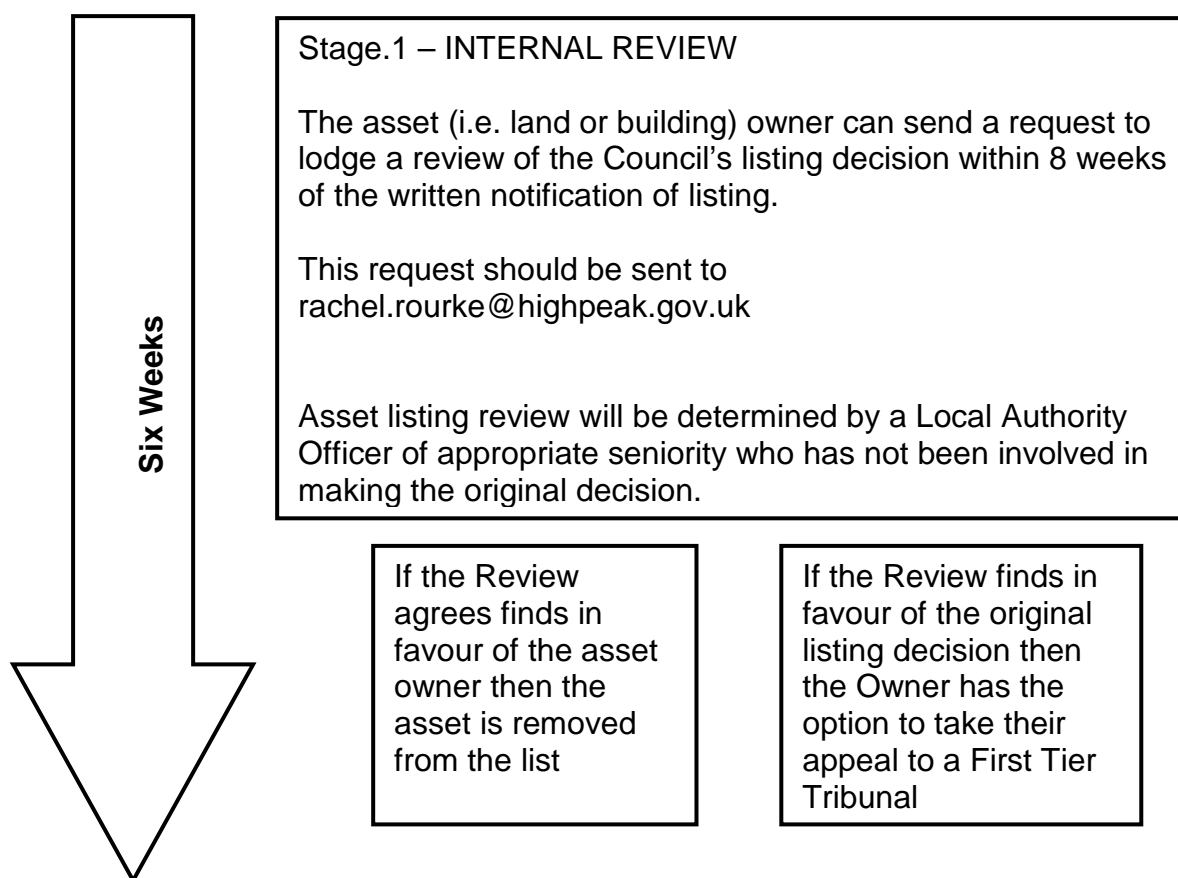
Listings Assets



What you need to know:

- Complete the nomination form if you are interested in nominating an asset for the list, give as much detail as you can as to why you consider the land/property meets the criteria as an asset of community value.
- The property (owner and occupier) and other interested parties will be informed of the nomination and be invited to make comment.
- All the information will be considered.
- You will be informed within 8 weeks of the Council's decision by a 'Decision Notification' letter.

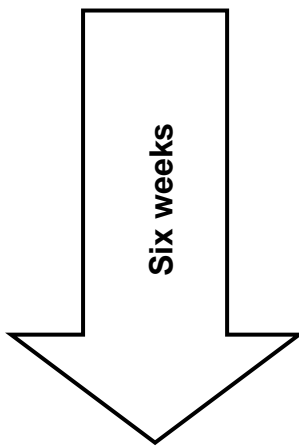
Review and appeals



What you need to know:

- The owner of a listed asset can request that the Council reviews its decision.
- Owners will be provided with information about how they can do this in the 'Decision Notification' letter.
- Owners and notifying organisations will be informed by a 'Review Notification' letter within 8 weeks.

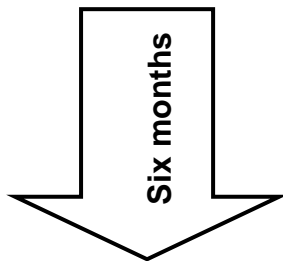
Sale



Interim Moratorium Period

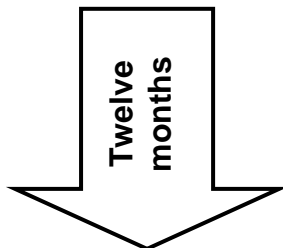
Owners of listed assets who intend to dispose of their listed asset will need to contact the Council.

This triggers an Interim Moratorium Period. The Council will publish the owner's intention to dispose of the asset on its website so that relevant community interest groups can consider whether they would like to place a bid for the asset.



Full Moratorium Period

If a relevant community interest group wants to place an offer, the Full Moratorium Period is given to enable the group to develop offer to purchase offer. Offers are made to the owner who may or may not accept them.



Protected Period

If no offer is made 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'.

What you need to know:

- If you are the owner of a listed asset and intend to sell please notify rachel.rourke@highpeak.gov.uk

Compensation

Stage 1 - The Initial Claim to the Council

Must be made before the end of 13th week (90 days) after the loss or expense was incurred. The owner can place an application for compensation: this must be written, include amounts sought and supporting evidence.

Stage 2 – The Review of the Council’s decision

Must be made before the end of the 8 week period from which the Council provides the owner with a written response to the outcome of Stage 1. This must be written, include amounts sought and supporting evidence.

Stage 3 - First Tier Tribunal

If owner is unhappy with the Council’s reviewing decision they can opt to take it to a First Tier Tribunal and request compensation and reasonable legal costs.