

**HIGH PEAK BOROUGH COUNCIL  
and  
STAFFORDSHIRE MOORLANDS DISTRICT  
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 ~~6<sup>th</sup> December 2012~~.

## 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 ~~, or its use in the past 5 years has done so;~~
- That use is the main one and not ancillary; and
- ~~It is realistic to think that the building or land will continue to be used in a way which will further the social well-being and social interests of the community within the next 5 years; 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 ~~assess~~ decide whether the nomination:

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

The Council will write to the nominating organisation and ~~owner of the asset (and any lawful occupant)~~ everyone else notified of the nomination outlining the decision and ~~(including an explanation where the nomination was unsuccessful).~~ This is called a 'Decision Notification Letter'

~~There is no right of review or appeal for community groups~~ 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 ~~T~~the Council will make hard copies available on request.

### **3.2 Review and Appeals**

~~In some cases, a~~ landowner (land and/or buildings) 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: [\\_rachel.rourke@highpeak.gov.uk](mailto:_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 Local Authority 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 an the independent First Tier Tribunal (Property) which is a Tribunal (akin to a court) specialising in land and property matters. ~~If successful in their appeal then the landowner may apply to the council for reasonable costs.~~

### **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. ~~these are:~~

~~Transfers made other than for value i.e. a gift  
Transfers between members of the same family i.e. made as a sale as well as a gift  
Transfers due to the inheritance of the asset  
Sales by personal representatives in order to pay estate debts or cash legacies  
Transfers occasioned by resignation or death of partners in a firm or trustees of a trust  
Transfers between trustees, between a trust and settler, and between a trust and a beneficiary  
Business to business transactions of a going concern, where the intention is to continue the existing use of the asset  
Transfers where the listed asset forms part of a larger estate  
Disposals made as a result of pre-existing arrangements  
Transfers between connected companies  
Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules  
Provision of on-going public service delivery~~

#### **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 and is free to dispose of their asset as they wish.](#)

~~If a bid is not received during~~ After the [full](#) moratorium period [of 6 months has ended](#) 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 ~~ds~~ notification of ~~athe~~ relevant disposal. This provides the owner with 12 months in which to dispose of the asset freely.

### **[Full Moratorium Period](#)**

~~If a relevant community interest group wants to place an offer, the Full Moratorium Period is launched to enable the group to develop offer to purchase offer.~~

~~Any offer to purchase is made directly to the owner of the land/buildings and does not involve the Council.~~

### **[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'.~~

## Claims for compensation

### Types of claim

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

~~Claims stage 1: The hinitial Cclaim 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. The owner can place an application for compensation: this must be written, include amounts sought and supporting evidence.~~

~~Claims 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.~~

~~Claims stage 3 - 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.~~

## 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.

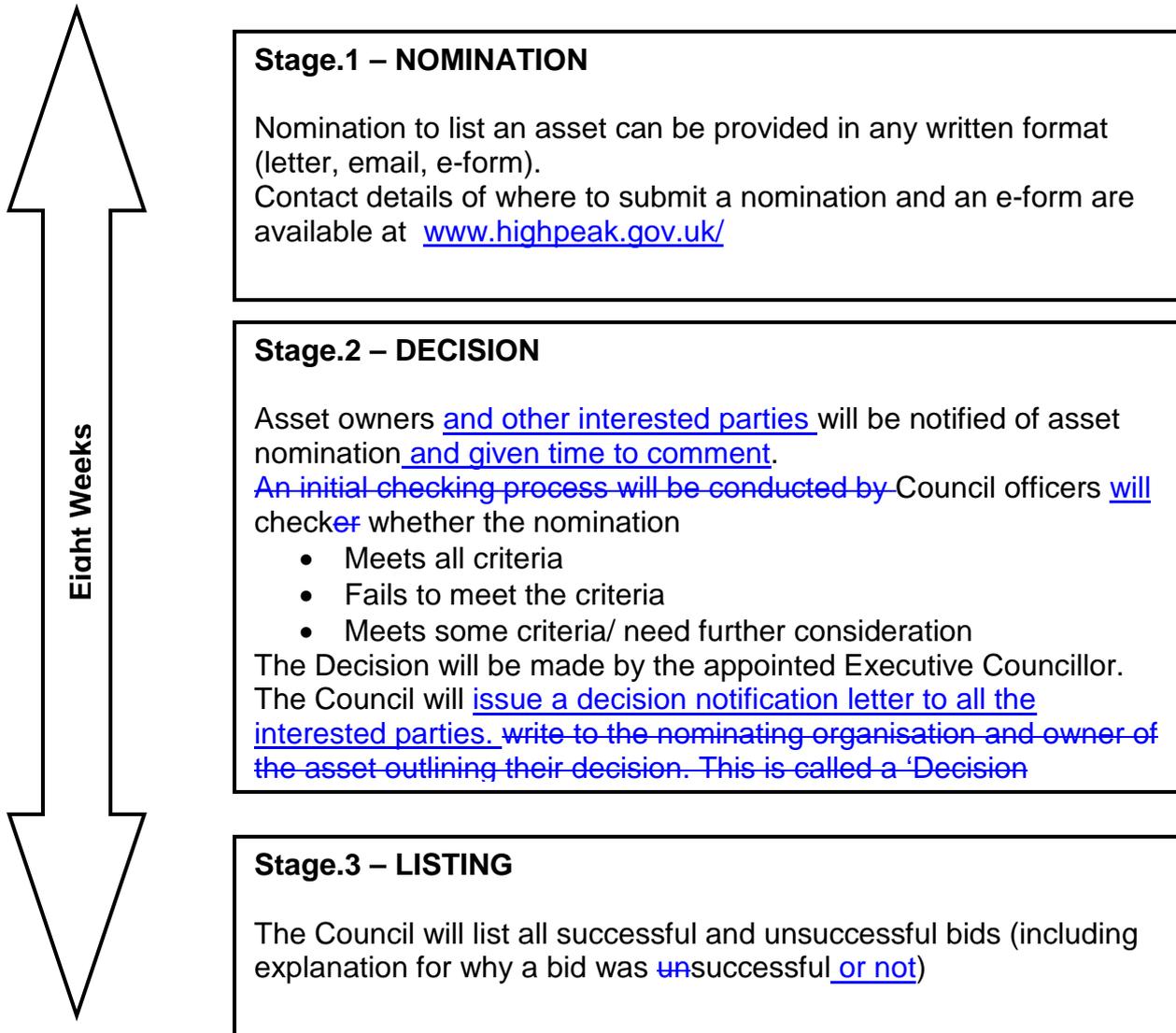
## 5. Disclaimer

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.

~~Any enquiries should be directed to ???~~

## Appendix A: The process

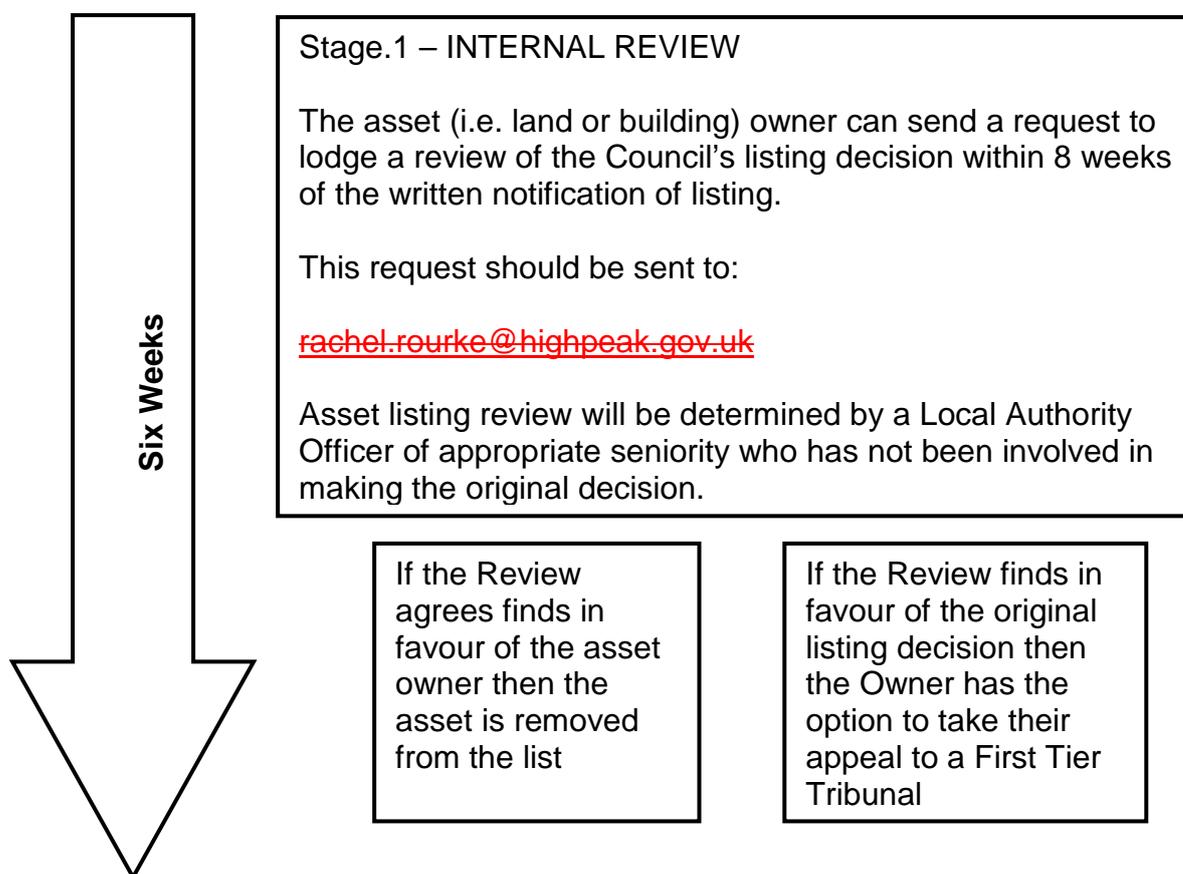
### Listings Assets



#### 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.

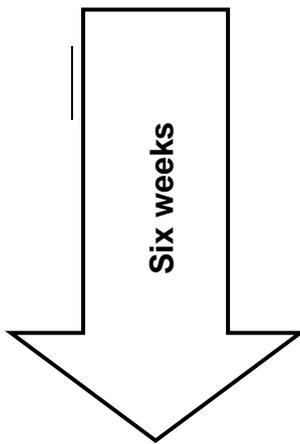
## Review and appeals



### 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 ~~which will be sent to notifying organisations, occupiers and owners following the Councils decision.~~
- Owners and notifying organisations will be informed by a 'Review Notification' letter within 8 weeks.

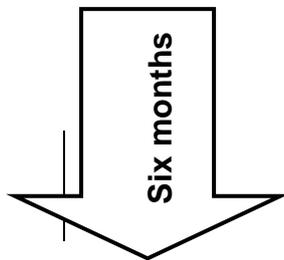
## Sale



### Interim Moratorium Period

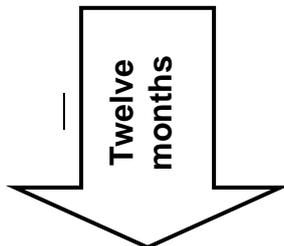
Owners of listed assets [who intend to dispose of their listed asset](#) will need to contact the **Council**.

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 [launched 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](mailto:rachel.rourke@highpeak.gov.uk)

## Compensation

### **Stage 1 - The Initial Claim to the Council**

Must be made before the end of 13<sup>th</sup> 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.