

# **BEDFORD BOROUGH COUNCIL** **COMMUNITY RIGHT TO BID POLICY**

## **Introduction**

1. This policy has been developed as a response to the Localism Act 2011 and, in particular, the Community Right to Bid provisions. It incorporates the requirements of The Assets of Community Value (England) Regulations 2012 (“The Regulations”) which will take precedence in the event of ambiguity.
2. This policy sets out the circumstances and conditions by which Bedford Borough Council will consider the listing of community assets and to give time for community organisations to prepare a proposal should that asset come up for sale.
3. This policy outlines the nature of organisations that the Council will consider applications from, the criteria by which applications for listing will be determined and the review process. The policy also details the process by which listed assets can be disposed of. The policy will be reviewed on a regular basis and at least annually.<sup>1</sup>

## **Eligible Organisations**

4. The Council can only consider nominations from certain organisations. These are:
  - Parish and Town Councils;
  - Unincorporated bodies – with at least 21 individual members who appear on the Borough Council’s electoral roll;
  - Neighbourhood forums – as described in the Town and Country Planning Act 1990;
  - The following categories of Community Interest Groups (with a local connection):
    - 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

In this context non-profit distributing means that any surplus is not distributed to its members but is wholly or partly applied to the Bedford Borough Council area or to a neighbouring local authority area.

5. The groups listed in section 4 will need to demonstrate a local connection such as their activities are wholly, or partly, concerned with the Borough Council’s area or with a neighbouring local authority area.

## **Assets of Community Value**

6. ‘Community Assets’ are land and buildings, either in public or private ownership, which can demonstrate ‘community value’. The definition of land and buildings includes part of a building, part of any other structure and mines and minerals, whether or not held with the surface. **Appendix A** to this Policy gives some examples of community assets.

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<sup>1</sup> Government has published information for Councils which should also be consulted: DCLG, ‘Community Right to Bid: Non-statutory advice note for local authorities (October, 2012)

7. An asset will have community value when its principal use, currently or in the recent past, furthers the social wellbeing or cultural, recreational or sporting interests of the local community. This use is also required to continue to further the social wellbeing or interests of the local community.
8. 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 has furthered 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 five years.

### **The Basis for Considering Assets**

9. Nominations must be in writing using the approved application form. This is available on the Bedford Borough Council website or by contacting the Head of Property Services.
10. Generally, the more evidence that is sent with a nomination, the quicker the Council will be able to reach a decision on whether the asset is eligible for listing. Supporting information must include:
  - (a) Evidence to support that the nominator is eligible to make a nomination (as appropriate to the organisation):
    - Memorandum of Association
    - Articles of Association
    - Companies House return
    - Trust Deed
    - Constitution/Terms of reference
    - Standing Orders
    - Interest Statement for Community Interest Company
    - Formal decision of the organisation making the nomination
  - (b) Information showing the boundaries of the asset being nominated – for example through one or more of the following:
    - Where the land is registered, the Land Registry Title Information document and map with boundaries clearly marked in red (less than one month old). Provision of Land Registry information is not essential but it may help the Council to reach a decision on the nomination more quickly.
    - A written description with ordinance survey location, and explaining where the boundaries lie, the approximate size and location of any building/s on the land and details of any roads bordering the site.
    - A drawing or sketch map with boundaries clearly marked in red
  - (c) Information about the freeholders, leaseholders and current occupants of the site.
  - (d) The reasons for nominating the asset, including why the nominator believes the asset has community value.

## Determining Applications

11. The Council will usually acknowledge receipt of the nomination within 3 working days. Nominations will then 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 owner of the asset;
  - Where they are not the owner, the holder of the freehold estate and the holder of any leasehold estate;
  - Any lawful occupant;
  - The relevant parish or town council;
  - The relevant Bedford Borough Council ward councillor(s);
  - Statutory undertakers (such as utility companies)
12. The Council will decide whether the nominated asset should be included in the list within eight weeks of receiving the nomination and will notify the following of the decision and the reasons behind this:
  - 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;
  - The relevant town or parish council;
  - The relevant Bedford Borough Council ward councillor(s);
  - Statutory undertakers.
13. The Council will publish a list of Assets of Community Value and also a list of unsuccessful nominations on its website. Assets will be listed for a period of five years and be notified to the Land Registry as a registered restriction in the land register for the land (and a Local Land Charge).

## Reviewing Decisions

14. The owner of an asset included in the list of Assets of Community Value can ask the Council to review the decision. This request must be made in writing within eight weeks of the date upon which the Council provided the owner with written notification of the decision, or longer where this has been agreed in writing.
15. The Council will usually acknowledge receipt of the request within 3 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. The owner may request an oral hearing and may appoint a representative to act on his or her behalf in connection with the review, including submitting any evidence to the senior officer. Each party will bear their own costs.
16. The Council will endeavour to complete the review process within eight weeks of receipt of the written request for the review, or a longer period where this has been agreed. The Council 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, the Council will also notify:

- 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;
- The relevant town or parish council;
- The relevant Bedford Borough ward councillor(s);
- Statutory undertakers.

Where the review concludes that a change to the listing is required, the Council will adjust the list of Assets of Community Value and advise the Land Registry accordingly.

17. Where an owner remains dissatisfied with the outcome of the review, they may appeal to the general regulatory chamber of the First Tier Tribunal against the decision on the listing review. Appeals should be sent to: Tribunal Clerk, Community Right to Bid Appeals, HM Courts and Tribunals, First Tier Tribunal (General Regulatory Chamber), PO Box 9300, Leicester, LE1 8DJ or via email to: [GRC.CommunityRights@hmcts.gsi.gov.uk](mailto:GRC.CommunityRights@hmcts.gsi.gov.uk)
18. Where the nominator is unhappy with the decision in connection with their nomination, they may request that the Council review the decision. This will be undertaken as a corporate complaint and dealt with in line with the Corporate Complaints Procedure.

### Disposal of Listed Assets

19. 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. 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.
20. The list of Assets of Community Value will be updated to show that the Council has 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. The Council will notify the nominator in writing that the Council has received notice (see paragraphs 21 to 26 below) of an intention to dispose of the asset and will publish details in the area where the asset is situated.
21. This notification will trigger a moratorium period (a period of delay) 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 six weeks from the date upon which the Council receive written notification of the owner's intention to dispose of the asset.
22. During this six week period, suitably constituted community groups and organisations may submit an intention to bid – unincorporated organisations and neighbourhood forums are excluded. If any intentions to bid are received in this period, the Council will inform the owner of the asset. This will then trigger the **full six month moratorium period** during which the asset cannot be sold.

23. This six 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. Any subsequent 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 a community group or any other person. If the owner decides to sell to the community group, they may do so within the six month moratorium period.
24. If after the six month moratorium period the community group has not successfully bought the property, a further 12 month protection period is triggered (the total eighteen month period commencing on the day upon the Council 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.
25. 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 and complete the Land Registry's Form QQ to enter a restriction on their land register.
26. There is nothing to prevent the owner actively marketing the asset during the moratorium period the restriction refers only to exchange of contracts on the sale of the asset.

### **Compensation**

27. 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 Bedford Borough Council. This is 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.
28. Claims should be made in writing and be made within thirteen 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.
29. The person making the compensation claim may ask for a review of the decision the Council has reached in relation to their claim. This must be made in writing within eight weeks of the date upon which the Council has advised of the reasons for the decision in relation to the claim.
30. The Council 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.
31. The owner may request an oral hearing and may appoint a representative to act on his or her behalf in connection with the review. The owner, or their representative, may make written and oral representation to the reviewer.
32. The Council will complete the review process within eight weeks of receipt of the written request for the review, or a longer period where this has been agreed. The Council will notify the owner in writing of the outcome of the review.

33. Where the owner remains dissatisfied with the outcome of the review, they may appeal to the general regulatory chamber of the First Tier Tribunal against the decision on the compensation review. Appeals should be sent to: Tribunal Clerk, Community Right to Bid Appeals, HM Courts and Tribunals, First Tier Tribunal (General Regulatory Chamber), PO Box 9300, Leicester, LE1 8DJ or via email to: [GRC.CommunityRights@hmcts.gsi.gov.uk](mailto:GRC.CommunityRights@hmcts.gsi.gov.uk)

### ASSETS OF COMMUNITY VALUE

The following list indicates what might be considered an asset of community value, this list is not exhaustive:

- Nurseries and schools
- Children's centres
- Health centres, surgeries and hospitals
- Day care centres, residential care homes
- Parks and open green spaces
- Sports and leisure centres
- Libraries
- Theatres
- Museums or heritage sites
- Cinemas
- Swimming pools/lidos
- Community centres
- Youth centres
- Public toilets
- Town, civic and guild halls
- Village shops
- Pubs
- Markets

The following are not considered community assets:

- Administrative offices
- Land or property where community use is ancillary to its main purpose
- Land attached to residential property (although the regulations set out certain exceptions for shops and pubs)
- Land covered by Caravan Sites and Control of development Act 1960
- Land used by public utilities, defined as operational land in section 263 of the Town and Country planning Act 1990