**Policy approved 6th December 2012**

**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 6th 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.

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**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, 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 ‘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 will be notified of asset nomination.

The Council will assess whether the nomination:

* Meets all criteria (above)
* Fails to meet the criteria
* Meet some criteria/ need further consideration

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

There is no right or review or appeal for community groups.

**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**

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: [mark.forrester@highpeak.gov.uk](mailto:mark.forrester@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 of improper manner 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.

Asset listing review will be heard by the Council’s Appeals Panel.

If the Review agrees finds in favour of the asset owner then the asset is removed from the list

The Council will complete this review within 6 weeks of receipt of the review request, or a longer period by agreement of both parties.

**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 independent First Tier tribunal. 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, 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 of 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. This 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. 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 the moratorium period 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 notification of a 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 he may have incurred at a time when the land was listed, which

he 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 Initial Claim to the Council must be made before the end of 13th week (90 days) after the loss of expense was incurred. 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 and may be amended to take account of developing best practice locally and nationally, or new government guidance.

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**Appendix A: The process**

**Listings Assets**

**Eight Weeks**

**Stage.1 – NOMINATION**

Nomination to list an asset can be provided in any written format (letter, email, e-form).

Contact details of where to submit a nomination and an e-form are available at [www.highpeak.gov.uk/](http://www.highpeak.gov.uk/)

**Stage.2 – DECISION**

Asset owners will be notified of asset nomination.

An initial checking process will be conducted by Council officers checker whether the nomination

* Meets all criteria
* Fails to meet the criteria
* Meets some criteria/ need further consideration

The Decision will be made by the appointed Executive Councillor.

The Council will write to the nominating organisation and owner of the asset outlining their decision. This is called a ‘Decision Notification Letter’

**Stage.3 – LISTING**

The Council will list all successful and unsuccessful bids (including

explanation for why a bid was unsuccessful)

**What you need to know:**

* Complete the nomination form if you are interested in nominating an asset for the list. (or otherwise put the nomination in writing)
* The property (owner and occupier), will be informed of the nomination.
* You will be informed within 8 weeks of the Council’s decision by a ‘Decision Notification’ letter.

**Review and appeals**

**Six Weeks**

Stage.1 – INTERNAL REVIEW

The asset (i.e. land or building) owner can send a request to lodge a review of the Council’s listing decision within 8 weeks of the written notification of listing.

This request should be sent to:

[mark.forrester@highpeak.gov.uk](mailto:mark.forrester@highpeak.gov.uk)

Asset listing review will be heard by the Council’s Appeals Panel.

If the Review finds in favour of the original listing decision then the Owner has the option to take their appeal to a First Tier

Tribunal

If the Review agrees finds in favour of the asset owner then the asset is removed from the list

**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.
* Asset owners will be asked if they wish to attend a Council Appeal Panel to review this decision.
* Owners and notifying organisations will be informed by a ‘Review Notification’ letter within 6 weeks.

**Sale**

**Six weeks**

**Interim Moratorium Period**

Owners of listed assets will need to contact the Council’s preferred property management organisation to advise if they intend to sell the asset.

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.

**Compensation**

**What you need to know:**

• If you are the owner of a listed asset and intend to sell please notify [mark.forrester@highpeak.gov.uk](mailto:mark.forrester@highpeak.gov.uk)

**Twelve months**

**Six months**

**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.

**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’.

**What you need to know:**

For compensation queries contact [mark.forrester@highpeak.gov.uk](mailto:mark.forrester@highpeak.gov.uk)

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

Must be made before the end of 13th week (90 days) after the loss of 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.