



## **Review of decision to include land in list of Assets of Community Value**

*[section 92 of the Localism Act 2011]*

**London Colney Village Club, St Albans,  
Hertfordshire AL2 1NX**

**Review date:** 29 June 2020

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## Localism Act 2011 c. 20

### s. 87 List of assets of community value



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Lists; Local authorities' powers and duties; Real property; Regulations; Time

#### 87 List of assets of community value

- (1) A local authority must maintain a list of land in its area that is land of community value.
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of assets of community value.
- (3) Where land is included in a local authority's list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry (unless the entry has been removed with effect from some earlier time in accordance with provision in regulations under subsection (5)).
- (4) The appropriate authority may by order amend subsection (3) for the purpose of substituting, for the period specified in that subsection for the time being, some other period.
- (5) The appropriate authority may by regulations make further provision in relation to a local authority's list of assets of community value, including (in particular) provision about—
  - (a) the form in which the list is to be kept;
  - (b) contents of an entry in the list (including matters not to be included in an entry);
  - (c) modification of an entry in the list;
  - (d) removal of an entry from the list;
  - (e) cases where land is to be included in the list and—

(i) different parts of the land are in different ownership or occupation, or

(ii) there are multiple estates or interests in the land or any part or parts of it;

(f) combination of the list with the local authority's list of land nominated by unsuccessful community nominations.

(6) Subject to any provision made by or under this Chapter, it is for a local authority to decide the form and contents of its list of assets of community value.

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## Localism Act 2011 c. 20

### s. 88 Land of community value



#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Buildings; Local authorities' powers and duties; Real property; Regulations; Social welfare; Statutory definition

#### 88 Land of community value

(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—

(a) an actual current use of the building or other land 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 building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

(3) The appropriate authority may by regulations—

(a) provide that a building or other land is not land of community value if the building or other land is specified in the

regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular)—

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—

(i) any of the land or other land, or

(ii) any of the matters within paragraphs (a) to (d);

(f) any price, or value for any purpose, of any of the land or other land.

(6) In this section—

“*legislation*” means—

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

“*social interests*” includes (in particular) each of the following—

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

“*statutory provision*” means a provision of—

(a) legislation, or

(b) an instrument made under legislation.

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## Localism Act 2011 c. 20

### s. 89 Procedure for including land in list



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Lists; Local authorities' powers and duties; Nomination; Real property; Regulations; Statutory definition

#### 89 Procedure for including land in list

(1) Land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value only—

- (a) in response to a community nomination, or
- (b) where permitted by regulations made by the appropriate authority.

(2) For the purposes of this Chapter "*community nomination*", in relation to a local authority, means a nomination which—

- (a) nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and
- (b) is made—
  - (i) by a parish council in respect of land in England in the parish council's area,
  - (ii) by a community council in respect of land in Wales in the community council's area, or
  - (iii) by a person that is a voluntary or community body with a local connection.

(3) Regulations under subsection (1)(b) may (in particular) permit land to be included in a local authority's list of assets of community value in response to a nomination other than a community nomination.

(4) The appropriate authority may by regulations make provision as to—

(a) the meaning in subsection (2)(b)(iii) of “*voluntary or community body*” ;

(b) the conditions that have to be met for a person to have a local connection for the purposes of subsection (2)(b)(iii);

(c) the contents of community nominations;

(d) the contents of any other nominations which, as a result of regulations under subsection (1)(b), may give rise to land being included in a local authority's list of assets of community value.

(5) The appropriate authority may by regulations make provision for, or in connection with, the procedure to be followed where a local authority is considering whether land should be included in its list of assets of community value.

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## Localism Act 2011 c. 20

### s. 90 Procedure on community nominations



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Lists; Local authorities' powers and duties; Nomination; Procedure; Real property; Reasons

#### 90 Procedure on community nominations

- (1) This section applies if a local authority receives a community nomination.
- (2) The authority must consider the nomination.
- (3) The authority must accept the nomination if the land nominated—
  - (a) is in the authority's area, and
  - (b) is of community value.
- (4) If the authority is required by subsection (3) to accept the nomination, the authority must cause the land to be included in the authority's list of assets of community value.
- (5) The nomination is unsuccessful if subsection (3) does not require the authority to accept the nomination.
- (6) If the nomination is unsuccessful, the authority must give, to the person who made the nomination, the authority's written reasons for its decision that the land could not be included in its list of assets of community value.

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## Localism Act 2011 c. 20

### s. 91 Notice of inclusion or removal



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Lists; Local authorities' powers and duties; Notices; Removal

#### 91 Notice of inclusion or removal

(1) Subsection (2) applies where land—

(a) is included in, or

(b) removed from,

a local authority's list of assets of community value.

(2) The authority must give written notice of the inclusion or removal to the following persons—

(a) the owner of the land,

(b) the occupier of the land if the occupier is not also the owner,

(c) if the land was included in the list in response to a community nomination, the person who made the nomination, and

(d) any person specified, or of a description specified, in regulations made by the appropriate authority,

but where it appears to the authority that it is not reasonably practicable to give a notice under this subsection to a person to whom it is required to be given, the authority must instead take reasonable alternative steps for the purpose of bringing the notice to the person's attention.

(3) A notice under subsection (2) of inclusion of land in the list must describe the provision made by and under this Chapter, drawing particular attention to—

(a) the consequences for the land and its owner of the land's inclusion in the list, and

(b) the right to ask for review under [section 92](#).

(4) A notice under subsection (2) of removal of land from the list must state the reasons for the removal.

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## Localism Act 2011 c. 20

### s. 92 Review of decision to include land in list



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Administrative decisions; Assets of community value; Landowners; Lists; Local authorities' powers and duties; Real property; Reviews

#### 92 Review of decision to include land in list

(1) The owner of land included in a local authority's list of assets of community value may ask the authority to review the authority's decision to include the land in the list.

(2) If a request is made—

(a) under subsection (1), and

(b) in accordance with the time limits (if any) provided for in regulations under subsection (5),

the authority concerned must review its decision.

(3) Where under subsection (2) an authority reviews a decision, the authority must notify the person who asked for the review—

(a) of the decision on the review, and

(b) of the reasons for the decision.

(4) If the decision on a review under subsection (2) is that the land concerned should not have been included in the authority's list of assets of community value—

(a) the authority must remove the entry for the land from the list, and

(b) where the land was included in the list in response to a community nomination—

(i) the nomination becomes unsuccessful, and

(ii) the authority must give a written copy of the reasons mentioned in subsection (3)(b) to the person who made the nomination.

(5) The appropriate authority may by regulations make provision as to the procedure to be followed in connection with a review under this section.

(6) Regulations under subsection (5) may (in particular) include—

(a) provision as to time limits;

(b) provision requiring the decision on the review to be made by a person of appropriate seniority who was not involved in the original decision;

(c) provision as to the circumstances in which the person asking for the review is entitled to an oral hearing, and whether and by whom that person may be represented at the hearing;

(d) provision for appeals against the decision on the review.

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## Localism Act 2011 c. 20

### s. 93 List of land nominated by unsuccessful community nominations



#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Lists; Local authorities' powers and duties; Nomination; Real property; Rejection

#### 93 List of land nominated by unsuccessful community nominations

- (1) A local authority must maintain a list of land in its area that has been nominated by an unsuccessful community nomination (see [sections 90\(5\)](#) and [92\(4\)\(b\)\(i\)](#)).
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of land nominated by unsuccessful community nominations.
- (3) Where land is included in a local authority's list of land nominated by unsuccessful community nominations, the entry in the list for the land—
  - (a) may (but need not) be removed from the list by the authority after it has been in the list for 5 years, and
  - (b) while it is in the list, is to include the reasons given under [section 90\(6\)](#) or [92\(3\)\(b\)](#) for not including the land in the authority's list of assets of community value.
- (4) Subject to any provision made by or under this Chapter, it is for a local authority to decide the form and contents of its list of land nominated by unsuccessful community nominations.

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## Localism Act 2011 c. 20

### s. 94 Publication and inspection of lists



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Fees; Lists; Local authorities' powers and duties; Nomination; Publication; Real property; Rejection

#### 94 Publication and inspection of lists

- (1) A local authority must publish—
  - (a) its list of assets of community value, and
  - (b) its list of land nominated by unsuccessful community nominations.
  
- (2) A local authority must at a place in its area make available, for free inspection by any person, both—
  - (a) a copy of its list of assets of community value, and
  - (b) a copy of its list of land nominated by unsuccessful community nominations.
  
- (3) A local authority must provide a free copy of its list of assets of community value to any person who asks it for a copy, but is not required to provide to any particular person more than one free copy of the same version of the list.
  
- (4) A local authority must provide a free copy of its list of land nominated by unsuccessful community nominations to any person who asks it for a copy, but is not required to provide to any particular person more than one free copy of the same version of the list.
  
- (5) In this section “*free*” means free of charge.

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## Localism Act 2011 c. 20

### s. 95 Moratorium



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Conditions; Disapplication; Disposition of property; Landowners; Lists; Local authorities' powers and duties; Moratoriums; Notification; Statutory definition

#### 95 Moratorium

- (1) A person who is an owner of land included in a local authority's list of assets of community value must not enter into a relevant disposal of the land unless each of conditions A to C is met.
- (2) Condition A is that that particular person has notified the local authority in writing of that person's wish to enter into a relevant disposal of the land.
- (3) Condition B is that either—
  - (a) the interim moratorium period has ended without the local authority having received during that period, from any community interest group, a written request (however expressed) for the group to be treated as a potential bidder in relation to the land, or
  - (b) the full moratorium period has ended.
- (4) Condition C is that the protected period has not ended.
- (5) Subsection (1) does not apply in relation to a relevant disposal of land—
  - (a) if the disposal is by way of gift (including a gift to trustees of any trusts by way of settlement upon the trusts),
  - (b) if the disposal is by personal representatives of a deceased person in satisfaction of an entitlement under the will, or on the intestacy, of the deceased person,

(c) if the disposal is by personal representatives of a deceased person in order to raise money to—

(i) pay debts of the deceased person,

(ii) pay taxes,

(iii) pay costs of administering the deceased person's estate, or

(iv) pay pecuniary legacies or satisfy some other entitlement under the will, or on the intestacy, of the deceased person,

(d) if the person, or one of the persons, making the disposal is a member of the family of the person, or one of the persons, to whom the disposal is made,

(e) if the disposal is a part-listed disposal of a description specified in regulations made by the appropriate authority, and for this purpose "*part-listed disposal*" means a disposal of an estate in land—

(i) part of which is land included in a local authority's list of assets of community value, and

(ii) part of which is land not included in any local authority's list of assets of community value,

(f) if the disposal is of an estate in land on which a business is carried on and is at the same time, and to the same person, as a disposal of that business as a going concern,

(g) if the disposal is occasioned by a person ceasing to be, or becoming, a trustee,

(h) if the disposal is by trustees of any trusts—

(i) in satisfaction of an entitlement under the trusts, or

(ii) in exercise of a power conferred by the trusts to re-settle trust property on other trusts,

(i) if the disposal is occasioned by a person ceasing to be, or becoming, a partner in a partnership, or

(j) in cases of a description specified in regulations made by the appropriate authority.

(6) In subsections (3) and (4)—

"*community interest group*" means a person specified, or of a description specified, in regulations made by the appropriate authority,

“*the full moratorium period*” , in relation to a relevant disposal, means the six months beginning with the date on which the local authority receives notification under subsection (2) in relation to the disposal,

“*the interim moratorium period*” , in relation to a relevant disposal, means the six weeks beginning with the date on which the local authority receives notification under subsection (2) in relation to the disposal, and

“*the protected period*” , in relation to a relevant disposal, means the eighteen months beginning with the date on which the local authority receives notification under subsection (2) in relation to the disposal.

(7) For the purposes of subsection (5)(d), a person (“M”) is a member of the family of another person if M is—

- (a) that other person’s spouse or civil partner, or
- (b) a lineal descendant of a grandparent of that other person.

(8) For the purposes of subsection (7)(b) a relationship by marriage or civil partnership is to be treated as a relationship by blood.

(9) For the meaning of “*relevant disposal*” , and for when a relevant disposal is entered into, see [section 96](#).

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## Localism Act 2011 c. 20

### s. 96 Meaning of “relevant disposal” etc in section 95



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Assignment; Disposition of property; Grant; Intention to create legal relations; Leaseholds; Sale of land; Statutory definition; Vacant possession

#### 96 Meaning of “*relevant disposal*” etc in section 95

- (1) This section applies for the purposes of [section 95](#).
- (2) A disposal of the freehold estate in land is a relevant disposal of the land if it is a disposal with vacant possession.
- (3) A grant or assignment of a qualifying leasehold estate in land is a relevant disposal of the land if it is a grant or assignment with vacant possession.
- (4) If a relevant disposal within subsection (2) or (3) is made in pursuance of a binding agreement to make it, the disposal is entered into when the agreement becomes binding.
- (5) Subject to subsection (4), a relevant disposal within subsection (2) or (3) is entered into when it takes place.
- (6) In this section “*qualifying leasehold estate*”, in relation to any land, means an estate by virtue of a lease of the land for a term which, when granted, had at least 25 years to run.
- (7) The appropriate authority may by order amend this section.

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## Localism Act 2011 c. 20

### s. 97 Publicising receipt of notice under section 95(2)



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Conditions; Disposition of property; Landowners; Lists; Local authorities' powers and duties; Moratoriums; Notification; Publication

#### 97 Publicising receipt of notice under section 95(2)

- (1) This section applies if a local authority receives notice under [section 95\(2\)](#) in respect of land included in the authority's list of assets of community value.
- (2) The authority must cause the entry in the list for the land to reveal—
  - (a) that notice under [section 95\(2\)](#) has been received in respect of the land,
  - (b) the date when the authority received the notice, and
  - (c) the ends of the initial moratorium period, the full moratorium period and the protected period that apply under [section 95](#) as a result of the notice.
- (3) If the land is included in the list in response to a community nomination, the authority must give written notice, to the person who made the nomination, of the matters mentioned in subsection (2)(a), (b) and (c).
- (4) The authority must make arrangements for those matters to be publicised in the area where the land is situated.

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## Localism Act 2011 c. 20

### s. 98 Informing owner of request to be treated as bidder



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Landowners; Lists; Local authorities' powers and duties; Moratoriums; Notification; Tenders

#### 98 Informing owner of request to be treated as bidder

(1) Subsection (2) applies if—

(a) after a local authority has received notice under [section 95\(2\)](#) in respect of land included in the authority's list of assets of community value, and

(b) before the end of the interim moratorium period that applies under [section 95](#) as a result of the notice,

the authority receives from a community interest group a written request (however expressed) for the group to be treated as a potential bidder in relation to the land.

(2) The authority must, as soon after receiving the request as is practicable, either pass on the request to the owner of the land or inform the owner of the details of the request.

(3) In this section "*community interest group*" means a person who is a community interest group for the purposes of [section 95\(3\)](#) as a result of regulations made under [section 95\(6\)](#) by the appropriate authority.

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## Localism Act 2011 c. 20

### s. 99 Compensation



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Compensation; Conditions; Entitlement; Local authorities' powers and duties; Regulations; Time limits

#### 99 Compensation

- (1) The appropriate authority may by regulations make provision for the payment of compensation in connection with the operation of this Chapter.
- (2) Regulations under subsection (1) may (in particular)—
- (a) provide for any entitlement conferred by the regulations to apply only in cases specified in the regulations;
  - (b) provide for any entitlement conferred by the regulations to be subject to conditions, including conditions as to time limits;
  - (c) make provision about—
    - (i) who is to pay compensation payable under the regulations;
    - (ii) who is to be entitled to compensation under the regulations;
    - (iii) what compensation under the regulations is to be paid in respect of;
    - (iv) the amount, or calculation, of compensation under the regulations;
    - (v) the procedure to be followed in connection with claiming compensation under the regulations;

(vi) the review of decisions made under the regulations;

(vii) appeals against decisions made under the regulations.

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## Localism Act 2011 c. 20

### s. 100 Local land charge



#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Lists; Local land charges; Real property

#### 100 Local land charge

If land is included in a local authority's list of assets of community value—

- (a) inclusion in the list is a local land charge, and
- (b) that authority is the originating authority for the purposes of the [Local Land Charges Act 1975](#).

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## Localism Act 2011 c. 20

### s. 101 Enforcement



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Compliance; Conditions; Disposition of property; Enforcement; Land registers; Landowners; Lists; Local authorities' powers and duties; Moratoriums; Regulations

#### 101 Enforcement

- (1) The appropriate authority may by regulations make provision—
  - (a) with a view to preventing, or reducing the likelihood of, contraventions of [section 95\(1\)](#);
  - (b) as to the consequences applicable in the event of contraventions of [section 95\(1\)](#).
  
- (2) The provision that may be made under subsection (1) includes (in particular)—
  - (a) provision for transactions entered into in breach of [section 95\(1\)](#) to be set aside or to be ineffective;
  - (b) provision about entries on registers relating to land.
  
- (3) The provision that may be made under subsection (1) includes provision amending—
  - (a) legislation, or
  - (b) an instrument made under legislation.
  
- (4) In subsection (3) “*legislation*” means—
  - (a) an Act, or

(b) a Measure or Act of the National Assembly for Wales.

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## Localism Act 2011 c. 20

### s. 102 Co-operation



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Co-operation; Local authorities' powers and duties; Real property

#### 102 Co-operation

If different parts of any land are in different local authority areas, the local authorities concerned must co-operate with each other in carrying out functions under this Chapter in relation to the land or any part of it.

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## Localism Act 2011 c. 20

### s. 103 Advice and assistance in relation to land of community value in England



Law In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Acquisition of land; Advice; Assets of community value; Community organisations; Guarantees; Loans; Ministers' powers and duties; Tenders

#### 103 Advice and assistance in relation to land of community value in England

(1) The Secretary of State may do anything that the Secretary of State considers appropriate for the purpose of giving advice or assistance—

(a) to anyone in relation to doing any of the following—

(i) taking steps under or for purposes of provision contained in, or made under, this Chapter so far as applying in relation to England, or

(ii) preparing to, or considering or deciding whether to, take steps within sub-paragraph (i), or

(b) to a community interest group in relation to doing any of the following—

(i) bidding for, or acquiring, land in England that is included in a local authority's list of assets of community value,

(ii) preparing to, or considering or deciding whether or how to, bid for or acquire land within sub-paragraph (i), or

(iii) preparing to, or considering or deciding whether or how to, bring land within sub-paragraph (i) into effective use.

(2) The things that the Secretary of State may do under this section include, in particular—

- (a) the provision of financial assistance to any body or other person;
  - (b) the making of arrangements with a body or other person, including arrangements for things that may be done by the Secretary of State under this section to be done by that body or other person.
- (3) In this section—
- (a) the reference to giving advice or assistance includes providing training or education,
  - (b) “*community interest group*” means a person who is a community interest group for the purposes of [section 95\(3\)](#) as a result of regulations made under [section 95\(6\)](#) by the Secretary of State, and
  - (c) the reference to the provision of financial assistance is to the provision of financial assistance by any means (including the making of a loan and the giving of a guarantee or indemnity).

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## Localism Act 2011 c. 20

### s. 104 Advice and assistance in relation to land of community value in Wales



Law In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Acquisition of land; Advice and assistance; Assets of community value; Community organisations; Guarantees; Loans; Ministers' powers and duties; Tenders; Wales; Welsh ministers

#### 104 Advice and assistance in relation to land of community value in Wales

- (1) The Welsh Ministers may do anything that they consider appropriate for the purpose of giving advice or assistance—
- (a) to anyone in relation to doing any of the following—
    - (i) taking steps under or for purposes of provision contained in, or made under, this Chapter so far as applying in relation to Wales, or
    - (ii) preparing to, or considering or deciding whether to, take steps within sub-paragraph (i), or
  - (b) to a community interest group in relation to doing any of the following—
    - (i) bidding for, or acquiring, land in Wales that is included in a local authority's list of assets of community value,
    - (ii) preparing to, or considering or deciding whether or how to, bid for or acquire land within sub-paragraph (i), or
    - (iii) preparing to, or considering or deciding whether or how to, bring land within sub-paragraph (i) into effective use.
- (2) The things that the Welsh Ministers may do under this section include, in particular—
- (a) the provision of financial assistance to any body or other person;

(b) the making of arrangements with a body or other person, including arrangements for things that may be done by the Welsh Ministers under this section to be done by that body or other person.

(3) In this section—

(a) the reference to giving advice or assistance includes providing training or education,

(b) “*community interest group*” means a person who is a community interest group for the purposes of [section 95\(3\)](#) as a result of regulations made under [section 95\(6\)](#) by the Welsh Ministers, and

(c) the reference to the provision of financial assistance is to the provision of financial assistance by any means (including the making of a loan and the giving of a guarantee or indemnity).

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## **Localism Act 2011 c. 20**

### **s. 105 Crown application**



**Partially In Force**

#### **Version 1 of 1**

15 November 2011 - Present

#### **Subjects**

Local government; Planning

#### **Keywords**

Assets of community value; Crown application

#### **105 Crown application**

This Chapter binds the Crown.

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## Localism Act 2011 c. 20

### s. 106 Meaning of “local authority”



Partially In Force

#### Version 1 of 1

15 November 2011 - Present

#### Subjects

Local government

#### Keywords

Assets of community value; Interpretation; Local authorities

#### 106 Meaning of “local authority”

(1) In this Chapter “*local authority*” in relation to England means—

- (a) a district council,
- (b) a county council for an area in England for which there are no district councils,
- (c) a London borough council,
- (d) the Common Council of the City of London, or
- (e) the Council of the Isles of Scilly.

(2) The Secretary of State may by order amend this section for the purpose of changing the meaning in this Chapter of “*local authority*” in relation to England.

(3) In this Chapter “*local authority*” in relation to Wales means—

- (a) a county council in Wales, or
- (b) a county borough council.

(4) The Welsh Ministers may by order amend this section for the purpose of changing the meaning in this Chapter of “*local authority*” in relation to Wales.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 1



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

#### 1.—

(1) These Regulations may be cited as the Assets of Community Value (England) Regulations 2012 and shall come into force on the day after they are made.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

“*the Act*” means the [Localism Act 2011](#);

“*compensation review*” means a review requested in accordance with [regulation 16](#);

“*the list*”, in relation to a local authority, means the list maintained by the authority of land in that authority’s area that is land of community value, and “*listed*” and “*listing*” are to be interpreted accordingly;

“*listing review*” means a review under [section 92\(2\)](#) of the Act (review of local authority’s decision to include land in its list);

“*neighbouring authority*” : a local authority in England is a neighbouring authority in relation to any land if any part of the boundary of that authority’s area is also part of the boundary of the area of the responsible authority;

“*registrar*” , “*register*” (other than in [regulation 4\(3\)](#)) and “*registered estate*” have the meaning given in [section 132\(1\)](#) of the [Land Registration Act 2002](#)<sup>1</sup>;

“*responsible authority*” in relation to any land means the local authority in whose area the land is situated;

“*a statutory compulsory purchase*” in relation to any land, means a purchase of the land by a purchaser authorised by or under an Act to acquire the land compulsorily (whether or not a purchase pursuant to the authorisation).

- (4) For the purposes of these Regulations, land is owned by a single owner if—
- (a) the land is owned by the same person; or
  - (b) in a case not within sub-paragraph (a), the land is held on trusts and was settled on those trusts by the same settlor.

## Notes

<sup>1</sup> There have been amendments to [section 132](#) which are not relevant to these Regulations.

# Assets of Community Value (England) Regulations 2012/2421

## reg. 2



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

## 2.

A local authority must as soon as practicable after receiving information that enables it to do so make the following amendments to an entry on the list—

(a) add to the entry—

(i) the information that, during the six weeks beginning with the date of receipt of a notice under [section 95\(2\)](#) of the Act in respect of any of the land to which the entry applies, it has received a request from a community interest group with a local connection to be treated as a potential bidder in relation to land to which the notice relates;

(ii) the name of that community interest group; and

(iii) that restrictions on entering into a relevant disposal of the land to which the notice relates continue to apply during the six months beginning with the date the notice was received, but at the end of that six months will then not apply for a further twelve months;

(b) amend or, as the case may be, remove the entry so as to exclude any of the land that has since it was included in the list been the subject of a relevant disposal other than one referred to in [section 95\(5\)](#) of the Act; and

(c) remove the entry if—

(i) an appeal against listing is successful, or

(ii) the authority for any reason no longer considers the land to be land of community value.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 3



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 3.

A building or other land within a description specified in [Schedule 1](#) is not land of community value (and therefore may not be listed).

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 4



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

#### 4.—

(1) For the purposes of these regulations and [section 89\(2\)\(b\)\(iii\)](#) of the Act, a body other than a parish council has a local connection with land in a local authority's area if—

(a) the body's activities are wholly or partly concerned—

(i) with the local authority's area, or

(ii) with a neighbouring authority's area;

(b) in the case of a body within [regulation 5\(1\)\(c\)](#), (e) or (f), any surplus it makes is wholly or partly applied—

(i) for the benefit of the local authority's area, or

(ii) for the benefit of a neighbouring authority's area; and

- (c) in the case of a body within [regulation 5\(1\)\(c\)](#) it has at least 21 local members.
- (2) For the purposes of these regulations and [section 89\(2\)\(b\)\(iii\)](#) of the Act—
- (a) a parish council has a local connection with land in another parish council’s area if any part of the boundary of the first council’s area is also part of the boundary of the other council’s area; and
- (b) a parish council has a local connection with land that is in a local authority’s area but is not in any parish council’s area if—
- (i) the council’s area is within the local authority’s area, or
- (ii) any part of the boundary of the council’s area is also part of the boundary of the local authority’s area.
- (3) In paragraph (1)(c), “*local member*” means a member who is registered, at an address in the local authority’s area or in a neighbouring authority’s area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts<sup>1</sup>.

## Notes

<sup>1</sup> See in particular [section 2](#) of the [Representation of the People Act 1983 \(c.2\)](#), inserted by [section 1](#) of the [Representation of the People Act 2000 \(c.2\)](#).

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 5



### Version 2 of 2

1 August 2014 - Present

### Subjects

Local government

### 5.—

(1) For the purposes of [section 89\(2\)\(b\)\(iii\)](#) of the Act, but subject to paragraph (2), “*a voluntary or community body*” means—

(a) a body designated as a neighbourhood forum pursuant to [section 61F](#) of the [Town and Country Planning Act 1990](#);

(b) a parish council;

(c) an unincorporated body—

(i) whose members include at least 21 individuals, and

(ii) which does not distribute any surplus it makes to its members;

(d) a charity;

(e) a company limited by guarantee which does not distribute any surplus it makes to its members;

(f) [a co-operative or community benefit society]<sup>2</sup> which does not distribute any surplus it makes to its members; or

(g) a community interest company<sup>3</sup>.

(2) A public or local authority may not be a voluntary or community body, but this does not apply to a parish council.

[

(3) In this regulation “*co-operative or community benefit society*” means a registered society within the meaning given by [section 1\(1\) of the Co-operative and Community Benefit Societies Act 2014](#), other than a society registered as a credit union.

]<sup>4</sup>

## Notes

<sup>1</sup> [Section 61F](#) was inserted by [paragraphs 1 and 2 of Schedule 9](#) to the [Localism Act 2011](#), with effect from 6th April 2012, in accordance with [article 8\(a\) of the Localism Act 2011 \(Commencement No. 4 and Transitional, Transitory and Saving Provisions\) Order 2012](#), S.I. 2012/628.

<sup>2</sup> Words substituted by [Co-operative and Community Benefit Societies and Credit Unions Act 2010 \(Consequential Amendments\) Regulations 2014/1815 Sch.1 para.32\(a\)](#) (August 1, 2014 immediately after 2014 c.14)

<sup>3</sup> A community interest company is a company which satisfies the requirements of [Part 2 of the Companies \(Audit, Investigations and Community Enterprise Act 2004 \(c.27\)](#). See in particular [sections 26, 35 and 36A](#). There have been amendments to [section 26](#) and a substitution of [section 36A](#) which are not significant for these Regulations.

<sup>4</sup> Substituted by [Co-operative and Community Benefit Societies and Credit Unions Act 2010 \(Consequential Amendments\) Regulations 2014/1815 Sch.1 para.32\(b\)](#) (August 1, 2014 immediately after 2014 c.14)

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 6



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 6.

A community nomination must include the following matters—

- (a) a description of the nominated land including its proposed boundaries;
- (b) a statement of all the information which the nominator has with regard to—
  - (i) the names of current occupants of the land, and
  - (ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;
- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and

(d) evidence that the nominator is eligible to make a community nomination.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 7



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 7.

The responsible authority must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 8



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 8.

A local authority which is considering whether land nominated by a community nomination should be included in the list must take all practicable steps to give the information that it is considering listing the land to—

- (a) a parish council if any of the land is in the council's area;
- (b) the owner of the land;
- (c) where the owner is not the freeholder—
  - (i) the holder of the freehold estate in the land; and
  - (ii) the holder of any leasehold estate in the land other than the owner; and

(d) any lawful occupant of the land.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 9



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 9.

A local authority which gives notice under [section 91](#) of the Act must, in addition to the persons specified in that section, give it to—

- (a) where they are not the owner, the holder of the freehold estate in the land and the holder of any leasehold estate in the land, and
- (b) a parish council if any of the land is in the council's area.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 10



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 10.

Where an owner of listed land asks the responsible authority to carry out a listing review, the review is to be carried out in accordance with the procedure set out in [Schedule 2](#).

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 11



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 11.—

- (1) An owner of listed land may appeal to the First-Tier Tribunal against the local authority's decision on a listing review in respect of the land.
  
- (2) The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 12



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 12.

For the purposes of these regulations and [section 95\(3\)\(a\)](#) of the Act—

- (a) a parish council is a community interest group in relation to land to which a notice under [section 95\(2\)](#) of the Act relates if any of the land is in the council's area; and
- (b) a body is a community interest group in relation to any land if the body—
  - (i) is within one or more of [sub-paragraphs \(d\) to \(g\) of regulation 5\(1\)](#); and
  - (ii) has a local connection with the land.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 13



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 13.—

(1) Where the responsible authority receives notice under [section 95\(2\)](#) of the Act in relation to any listed land, an owner of the land may enter into a relevant disposal of any of that land to a community interest group at any time in the eighteen months beginning with the date of receipt of the notice.

(2) [Section 95\(1\)](#) of the Act does not apply to a relevant disposal of listed land in the cases set out in [Schedule 3](#).

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 14



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 14.—

(1) An owner or former owner of listed land or of previously listed land, other than an owner or former owner specified in [regulation 15](#), is entitled to compensation from the responsible authority of such amount as the authority may determine where the circumstances in paragraph (2) apply.

(2) The circumstances mentioned in paragraph (1) are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed.

(3) For the avoidance of doubt, and without prejudice to other types of claim which may be made, the following types of claim may be made—

(a) a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused—

(i) by relevant disposals of the land being prohibited by [section 95\(1\)](#) of the Act during any part of the relevant six weeks that is on or after the date on which the responsible

authority receives notification under [section 95\(2\)](#) of the Act in relation to the land, or

(ii) in a case where the prohibition continues during the six months beginning with that date, by relevant disposals of the land being prohibited during any part of the relevant six months that is on or after that date; and

(b) a claim for reasonable legal expenses incurred in a successful appeal to the First-Tier Tribunal against the responsible authority's decision—

(i) to list the land,

(ii) to refuse to pay compensation, or

(iii) with regard to the amount of compensation offered or paid.

(4) In paragraph (3)(a) “*the relevant six weeks*” means the six weeks, and “*the relevant six months*” means the six months, beginning with—

(a) the date on which the responsible authority receives notification under [section 95\(2\)](#) of the Act in relation to the land, or

(b) if earlier, the earliest date on which it would have been reasonable for that notification to have been given by the owner who gave it.

(5) A claim for compensation must—

(a) be made in writing to the responsible authority;

(b) be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred;

(c) state the amount of compensation sought for each part of the claim; and

(d) be accompanied by supporting evidence for each part of the claim.

(6) The responsible authority must give the claimant written reasons for its decisions with respect to a request for compensation.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 15



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 15.

The following are not entitled to compensation under [regulation 14](#)—

- (a) an authority or other body in respect of loss or expense incurred at a time when it has accounts which are required by [section 2](#) of the [Audit Commission Act 1998](#)<sup>1</sup> to be audited in accordance with that Act;
- (b) a department, authority or other body in respect of loss or expense incurred at a time when [section 6](#) of the [National Audit Act 1983](#)<sup>2</sup> (“the 1983 Act”) applies to it; and
- (c) an authority or body in respect of loss or expense incurred in any of its financial years if its use of resources in that year is examinable under [section 7](#) of the 1983 Act.

## Notes

- 1 The accounts to which [section 2](#) applies are specified in [Schedule 2](#) to the 1998 Act, which has been amended from time to time.
- 2 The list of public bodies to which [section 6](#) applies has been amended from time to time.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 16



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 16.—

(1) A person who has under [regulation 14](#) made a claim for compensation may ask the responsible authority concerned to review either or both of its decisions, made in response to that claim, as to—

- (a) whether compensation should be paid to that person, and
- (b) if compensation is to be paid, the amount of that compensation.

(2) If a request for a compensation review is made in accordance with the provisions of [paragraph 2 of Schedule 2](#), the authority must in accordance with the procedure in [Schedule 2](#) review the decision or decisions of which review is requested.

(3) Where an authority carries out a compensation review, the authority must give written notification to the person who asked for the review of—

- (a) the decision on the review, and

(b) the reasons for the decision.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 17



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 17.

Where a local authority has carried out a compensation review, the person who requested the review may appeal to the First-Tier Tribunal against any decision of the authority on the review.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 18



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 18.

Where a local authority which has caused a restriction in Form QQ<sup>1</sup> to be entered in respect of a registered estate subsequently removes the land to which the registered estate relates from the list, the authority must as soon after doing so as is practicable apply to the registrar for cancellation of the restriction.

### Notes

<sup>1</sup> Form QQ is a new form of wording of a restriction added to [Schedule 4](#) to the [Land Regulation Rules 2003](#) (S.I. 2003/1417) by [paragraph 6 of Schedule 4](#) to these Regulations.

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 19



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 19.

(1) Where listed land is entered in the register on an application for first registration of the land made to the registrar—

(a) by an owner of the land, or

(b) under [rule 21](#) of the [Land Registration Rules 2003](#)<sup>1</sup>, by a mortgagee in the name of the owner,

the applicant must, as soon as is practicable after the land is entered in the register, inform the responsible authority of that.

(2) A person who as a result of a disposal has become the owner of listed land must as soon as practicable after becoming the owner give the responsible authority—

(a) information that the disposal has taken place; and

(b) full details of—

(i) the name of the person who has become the owner including, where that person is a body corporate subject to registration, its place of registration and registered number; and

(ii) the address of that person.

(3) In this regulation—

(a) “owner” includes a person who would be an owner as defined in [section 107](#) of the Act—

(i) but for the effect of [section 7\(1\) and \(2\)](#) of the [Land Registration Act 2002](#)<sup>2</sup>; or

(ii) if the disposition to that person had been completed by registration in accordance with [section 27\(1\)](#)<sup>3</sup> of that Act; and

(b) “disposal” means a transfer of a freehold estate or a grant or assignment of a leasehold estate in land, including—

(i) a relevant disposal, and

(ii) a binding agreement to make a disposal.

## Notes

<sup>1</sup> 2003/1417. See footnotes to [Schedule 4](#) for details of previous amendments to this instrument.

<sup>2</sup> [Section 7](#) was amended by the [Land Registration Act \(Amendment\) Order 2008](#) (S.I. 2008/2872).

## Notes

- 3      [Section 27](#) was amended by the [Commons Registration Act 1965 \(c.64\)](#) and by [section 157\(1\) and \(4\) of the Localism Act 2011](#), brought into force on 1st April 2012 by [article 6\(a\) of the Localism Act 2011 \(Commencement No. 4 and Transitional, Transitory and Saving Provisions\) Order 2012 \(S.I. 2012/628\)](#).

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# Assets of Community Value (England) Regulations 2012/2421

## reg. 20



### Version 1 of 1

21 September 2012 - Present

### Subjects

Local government

### 20.

The [Land Registration Rules 2003](#) are amended as set out in [Schedule 4](#).

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## **A guide to Assets of Community Value**

In order to nominate a building or piece of land as an asset of community value (ACV), there are a few things that you will need to consider.

### **What does it mean?**

If the asset is listed and it comes up for sale, the community will have six weeks to express an interest in buying the asset. Once an expression of interest is received the owner will be unable to sell the asset for six months. This allows a community time to prepare a bid for the asset. At the end of the six months the owner can sell the asset to any potential purchaser. There is no obligation to sell the asset to a community group.

### **What is a valid nomination?**

You will firstly need to prove that the nomination is being made by someone who is eligible to make a nomination under the Localism Act and the Assets of Community Value (England) Regulations 2012. These groups are set out in the Regulations and they include parish or town councils, charities, companies limited by guarantee, as well as community interest groups. Community interest groups can be formed by a group of at least 21 people who are registered as electors in the district or a neighbouring district. A group must check that their memorandum of association or constitution does not permit the distribution of any funds to members if the group is to be eligible. A company limited by guarantee must make sure that they provide authority to a local branch to establish that the local branch can submit a nomination on their behalf.

### **Are the premises suitable for nomination?**

Most types of building or land can be subject to a nomination, whether they are privately or publicly owned. However some types cannot be nominated and this includes any premises that is primarily residential. If the asset is owned by us, it may be useful to discuss any other options with the Council.

### **What are the criteria?**

We will assess your nomination on the criteria set out in the Localism Act:

A building or land in our area will be listed as an asset of community value if in the opinion of the local authority:

- Its current primary use of the building or land or use of the building or land in the recent past furthers or has furthered the social wellbeing or social interest of the local community.
- It is realistic to think that now or in the next five years there could be continued primary use of the building or land to further social wellbeing or social interests of the local community (whether or not in the same way)

Please read the criteria in the legislation in full before applying:

<http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3/enacted>

### **Owner Review**

Once an asset is listed an owner can lodge a request for a review of the initial decision to list the asset. This review may take place with or without a review hearing and only the owner can request a hearing. We have set out how we will deal with Review hearings on our website:

<http://www.stalbans.gov.uk/community-and-living/improvements/CommunityRights/assets.aspx>

If the review decision maker decides to retain the asset on the list of assets of community value, the owner can appeal to the General Regulatory Tribunal.

### **Where a property on the “unsuccessful nominations” list is nominated again**

Where a property was previously nominated as an Asset of Community Value and that nomination was unsuccessful, the same property can be re-nominated. We are not obliged to re-consider where the second nomination is the same as the first, i.e. a repeat. If a different nomination is made we will consider the merits. However, we will expect you to justify why the new nomination is different from the previously unsuccessful nomination. You should explain why the new nomination means that we should reach a different decision. You must include that material with the nomination.

Please check the successful and unsuccessful list on our website before applying.

### **The effect of listing an asset**

The owner of a listed asset cannot sell it or enter into a lease for over 25 years, without notifying us of their intentions. We will then notify the community to give them an opportunity

to prepare a bid. The owner cannot sell or lease the asset for a period of six weeks to allow the community to submit an expression of interest in the asset. If no expression of interest is received the owner can proceed. If an expression of interest is received, the owner has to wait for six months to allow the community to prepare a bid for the asset. The owner is under no obligation to sell the listed asset to the community group.

There is a protected period for the owner of 18 months from the time the owner notified the local authority of their intention to sell which means that the owner can sell if they wish during the remainder of the 18 months without any further restriction.

There are some occasions when a sale or lease will not trigger the moratorium.

### **Some tips before you submit a nomination**

- Understand how the process works;
- Make sure the nominating group is a valid nominator – think about what documentation you will need to submit to support this;
- If you are an ordinary member of the group, provide proof that the nomination is on the group's behalf, and if necessary, that the local branch of a company have authority;
- Make sure you have considered the criteria - include as much detail about the community use as possible in your nomination form and accompanying material;
- Include a plan that meets our criteria and shows the exact site you want to nominate.
- Further helpful information can be found at:

<http://www.stalbans.gov.uk/community-and-living/improvements/CommunityRights/assets.aspx>

### **Council Contacts:**

We cannot provide advice on what to put in your nomination but we can assist with the process and advise you of the legal requirements for submission.

Judith Adamson, Regulatory Solicitor

Tel. 01727 819559

Email: [ACV@stalbands.gov.uk](mailto:ACV@stalbands.gov.uk)

## **Localism Act 2011**

### **Assets of Community Value**

#### **St Albans City & District Council Review Procedure**

A nominating group can submit an application for an asset to be listed as an asset of community value (ACV) in accordance with Part 5 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012. The relevant parts of the Act, and the Regulations came into force on 21<sup>st</sup> September 2012.

#### **The Council's ACV Review process**

On receipt of a request for a listing review the Monitoring Officer will carry out the review, in consultation with the Leader of the Council. They will be assisted with any legal issues arising by the Regulatory Solicitor or another member of the Legal team.

Unless the request for a listing review specifically requests an oral hearing, the Council's review process will be carried out without an oral hearing.

The reviewer will receive the following documentation to enable them to carry out the review:

1. A copy of the original nomination form. If the validity of the nomination is contested they will be provided with details of the nominating group membership, their constitution and additional relevant material
2. Copies of any correspondence sent or received by the Council in connection with the nomination (where relevant to the issues)
3. A copy of the Act and the Regulations
4. A copy of the Site Inspection sheet and photographs for the visit made by the assets management team in determining whether or not the asset should be listed
5. A copy of the request for a listing review and any other correspondence relating to the review from the owner, including any representations made by the owner of the property either before or after the date of the request for the listing review
6. A copy of any representations from the Council and nominating group.

The party requesting the review will be notified in writing by way of acknowledgment of their request for a review. The Council's website will show a list of current reviews including any grounds submitted for review, the party requesting the review and the date of the review hearing (once known).

The party requesting the review or their legal representative may, pursuant to Schedule 2 of the Regulations, make representations in writing or orally, or both, to the reviewer.

Both the nominating group and council officer who made the decision will be invited to make representations in writing to the reviewer. If the owner requests an oral hearing these parties may attend and make representations both in writing and orally. All parties will be provided with a copy of the material submitted by each party in advance of the hearing, or in advance of the deadline for submitting comments where no hearing will take place.

Any photographs submitted by a party must be provided in colour, with the photographs in A5 or A4 size. A minimum of four copies of the photographs must be provided to the Council for an oral hearing. A minimum of one paper copy and an electronic copy must be provided to the Council where it is a paper hearing.

The reviewer must complete their review within eight weeks of the date of receipt of the request for a review, unless an extension is agreed. The party requesting the review will be notified of the decision and the reasons for it, in writing at or before the end of the eight week period, unless an extension is agreed.

If the party requesting the review asks for an oral hearing, this will be held at the Council's offices at a time to be agreed between the parties. The Council will not normally list the hearing for more than 3 hours and the hearing will be held in public.

The hearing will not take place until the reviewer has had a reasonable period of time to consider any written representations and material.

All parties must, prior to the oral hearing, provide the reviewer with a list of the names of any individuals proposing to attend the oral hearing, and identify the purposes of their attendance at the hearing.

The reviewer will be accompanied at such hearing by a legal officer of the Council.

The reviewer is, pursuant to section 92 of the Act, obliged to review the Council's decision to include the land in the Council's list of assets of community value. The listing review shall not be concerned with any other matters.

Following the conclusion of the review if the decision is that the asset should not have been included in the list, the reviewer will inform the relevant council officers to ensure that the asset is removed from the list and included in the list of unsuccessful nominations. The party who made the original nomination will also be notified. The Council will remove any entries made in the Local Land Charges Register as required by the Act.

# Asset of Community Value Review Hearing Procedure

The hearing shall take the form of a discussion led by the authority and cross examination shall not be permitted unless the authority considers it necessary. It is at the discretion of the Chair. The procedure set out below is designed to ensure that all parties are able to express their views openly and fairly.

The procedure of the committee will be:

- 1) The chair will open the hearing and ask the officers and those present to introduce themselves.
- 2) The chair will explain the procedure to be followed.
- 3) The **Council** outlines their decision and the reasons for that decision:  
The Owner or his/her representative may ask any relevant  
The Nominating Group or his/her representative may ask any relevant questions  
The Chair and Council Leader may ask any relevant questions.
- 4) The **Owner** or his/her representative will be asked to present their case:  
The Council representative may ask any relevant questions  
The Nominating Group or his/her representative may ask any relevant questions to the Council.  
The Chair and Council Leader may ask any relevant questions.
- 5) The **Nominating Group** or their representative will be asked to present their case.  
The Owner or his/her representative may ask any relevant questions  
The Council representative may ask any relevant questions  
The Chair and Council Leader may ask any relevant questions.
- 6) All parties may make a **final address** to the committee concluding with the Owner or his/her representative.
- 7) Chair will make the decision in consultation with the Council Leader. The decision will not be made at the hearing, but it will be made in **20** working days of the meeting or a longer period as specified by the Chair. The decision and the reasons for the decision will be notified to all parties.

If the Chair subsequently needs more time to make the decision all parties will be notified of the new decision date.



## St Albans City & District Assets of Community Value

### Nomination Form

<b>Section A – About your community organisation</b>			
Name of Organisation	London Colney Parish Council		
Name of Lead Contact & position in organisation	Emma Payne Clerk to Council		
Name of Deputy Lead Contact & position in organisation (to be contacted in the absence of the Lead Contact)	[REDACTED]		
Contact Address	Caledon Community Centre, Caledon Road, London Colney AL2 1PU		
Contact Phone Number	01727 821314		
Contact Email address	<a href="mailto:parishclerk@londoncolney-pc.gov.uk">parishclerk@londoncolney-pc.gov.uk</a>		
<b>Organisation type</b>			
Parish Council	<input checked="" type="checkbox"/>	Voluntary/Community Group	
Neighbourhood Forum	<input type="checkbox"/>	Community Interest Company	
Company Limited by Guarantee	<input type="checkbox"/>	Charity	
<b>To be completed by Charity/company limited by guarantee/community interest company/neighbourhood forum</b>			
Please provide documentary proof that you are a charity, company or neighbourhood forum.			
<b>To be completed by voluntary/community groups</b>			
<b>Please enclose the following documentation with your nomination form:</b>			
A completed membership list – this list should have a statement confirming that all those named on the list agree to be members of the community group. The list must include at least 21 electors registered to vote in the district or a neighbouring district			

A signed statement from the Chairman of the group, or copy of the constitution, confirming that the group does not distribute any surplus to its members	
A signed statement from the Chairman of the group, or copy of the constitution, confirming that the group will use any funds created for the benefit of the local community	
A signed statement from the Chairman of the group or set of minutes confirming that the group have given you authority to submit the nomination	
A signed statement or copy of a constitution setting out the local connection/purpose of the group	
<b>To be completed by company limited by guarantee – local branches</b>	
<b>Please enclose the following documentation with your nomination form:</b>	
If you are a local branch of a company, you must provide evidence of authority from the company for the local branch to submit the nomination.	
A signed statement from the Chairman or Secretary of the company confirming that the company gives authority for the local branch to make the nomination.	
<b>Section B – About the Asset to be Nominated</b> (Please note that the property should not be residential property including outbuildings and associated land, land licensed as a caravan site or operational land for statutory undertakers – Please see the Assets of Community Value Regulations 2012 schedule 1 for more detail on what cannot be listed.)	
Name of Property	London Colney Village Club
Name of Lead Contact & position in organisation	Paul Mardle & Mark Rushforth
Address of the property Full address with postcode	London Colney Village Club St Anne's Road London Colney AL2 1NX
Property owner's name & contact number	See above Telephone number not known
Owners Address	London Colney Village Club St Anne's Road London Colney AL2 1NX
Current occupier's name	
Current occupier's contact details	Postal address above
<b>Section C – Supporting information for nomination</b> (Any information entered in this section only may be copied and passed onto the owner of the property you are nominating. Definition of an asset of community value can be found in the guidance document.)	

**Why do you feel the property is an asset of community value? Please give as much information as possible.**

London Colney Village Club was built on land gifted to the village by Charles Morris in 1922 and held in trust for the development of a community facility to be enjoyed by the members of the club.

A social club was developed on the site which was run successful for many years as a member only facility and a popular venue for residents for family celebrations. Over time, the club's membership declined, and the building fell into a state of disrepair. The current owners of the site would like to develop it for housing with a smaller club house on the site.

The key to protection of the site, was the formation of trustees, the principle trustee was the Vicar of St Peter's Church and if the parish council were take over control of the site, it is intended that trustees would be responsible for the running of the facility, which would include parish councillors.

There is a thriving nursery school on the site, offering day care to children in the village and much needed childcare provision for working families. The nursery school will lose its home if the site is developed. The nursery has been on the site for 13 years and has a waiting list for places.

An application has been submitted for housing on this land and the parish council would like to ensure that the site is retained by the community.

If the Parish Council were to take over the site, any developments would be in fully consultation with existing users and the village.

**Section D – Boundary of the property**

**What do you consider to be the boundary of the property? Please give as much detail/be descriptive as possible.**

**You must submit a GIS plan with the nomination form**

- **Scale 1:1250**
- **have an arrow showing North**
- **Identify the area edged in red**
- **Be submitted as a PDF of no more than 1 MB**

Attached.

Site boundary plan



**Section F – Declaration**

**I can confirm that to the best of my knowledge the information contained in this nomination form is complete and accurate.**

**I understand that my personal details including my email and telephone number will be provided to the owner(s) of the land and/or the owner's solicitor on request.**

**I understand that my personal details will not be placed on the website, but a redacted copy of the nomination form will be provided to the public on request and/or placed on our website.**

**I confirm that I have read the privacy notice overleaf.**

**Copies of any documentation I provide including the membership list will be provided to the owner(s) of the land and/or the owner's solicitor on request.**

**(Where applicable) I have checked that the members are content to share their personal details with the Council and the owner (or associated solicitors) for the purposes of this nomination and I can confirm that they consent to the sharing of their name and the street name from their address for this purpose.**

**Signed:**



**Dated:** 23 April 2019

**Please note: Any applications submitted without all of the required documentation/ information will not be accepted. Any unsigned forms will be rejected but an electronic signature is acceptable.**

Please complete and return this form to [acv@stalbans.gov.uk](mailto:acv@stalbans.gov.uk) or posted to the address below:

Assets of Community Value Nominations  
Legal Department  
St Albans City & District Council  
Civic Centre  
St Albans  
Herts, AL1 3JE

If you need assistance completing this form please consider the guidance on our website or email [acv@stalbans.gov.uk](mailto:acv@stalbans.gov.uk) .

### **Privacy Notice**

This privacy notice explains how St Albans City & District Council (the Data Controller) will use any personal information we collect about you when you use our services.

### **What information do we collect about you?**

The information that the Council will collect varies depending on how you use the Council's Services. We are using the information provided in this case because we have a legal obligation (Art. 6(1)(c)). This means we collect your personal information from you so that we can carry out a function we are required by law to carry out. In this case we are collecting personal information for your application to nominate an Asset of Community Value.

*Please note if you're providing us with special category personal information (such as details about your health) we will be processing this under Art. 9(2).*

## **How will we use the information about you?**

We use the information to process your application. We will share the information with other departments at the Council to enable us to deal with your application and determine the outcome. We will only share the information to enable us to deal with this matter.

Your personal details may be shared with the owner(s) of the land/ and or the owner's solicitor on request.

The nomination form that you provide will be made available to the public on our website and on request. Your personal details will not be placed on the website as we will redact the nomination form.

We will not share the personal information we hold with any external organisations except for partner organisations. We may be required to share your personal information with the Police, Internal Audit or similar agency, or another Council for the purposes of preventing and detecting fraud.

We will ensure that all personal information is kept securely.

## **How long will we keep this information?**

We will destroy this personal information in accordance with our Disposal Schedules. To determine how long we should keep information, we consider what the legislation states and what is good practice. This means we will securely destroy the information once we no longer need it. If you would like to know the specific period of time that relates to your personal information please contact [GDPR@stalbans.gov.uk](mailto:GDPR@stalbans.gov.uk)

## **Individuals' Rights**

You have a right to request a copy of the personal information that we hold about you. If you would like a copy of some or all of your information, please contact [foi@stalbans.gov.uk](mailto:foi@stalbans.gov.uk) and ask for a subject access request.

If you consider we hold inaccurate personal information about you, you can contact us to ask for this information to be corrected. We will consider your request and respond within one month. Please contact [GDPR@stalbans.gov.uk](mailto:GDPR@stalbans.gov.uk).

You can find out more about your rights on our website:

<http://www.stalbans.gov.uk/council-and-democracy/departmentsPoliciesPlans/data-protection/>

## **Cookies**

Cookies are text files placed on your computer to collect standard internet log information and visitor behaviour information. This information is used to make your use of the internet

better. For further information on how we use these and how you can control it, please visit <http://www.stalbans.gov.uk/about-this-site/legal-notice/cookies.aspx>

## Changes to our Data Protection Policy

We have a Data Protection Policy in place and this can be found here:

[http://www.stalbans.gov.uk/Images/GDPR%20Personal%20Data%20Policy%20Version%201%20-%20202.3.18\\_tcm15-63804.pdf](http://www.stalbans.gov.uk/Images/GDPR%20Personal%20Data%20Policy%20Version%201%20-%20202.3.18_tcm15-63804.pdf) We review this policy annually.

## Data Protection Officer

Our Data Protection Officer for the purposes of Articles 37 to 39 of the General Data Protection Regulation is Charles Turner, Solicitor to the Council. He can be contacted by emailing [GDPR@stalbans.gov.uk](mailto:GDPR@stalbans.gov.uk) or calling 01727 819209 for our Complaints Team.

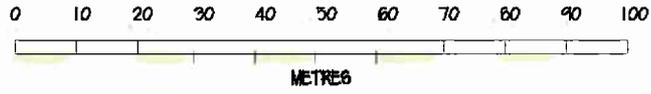
## How to contact us

Please contact us if you have any questions about our Data Protection Policy, or concerns about how we handle your information: by emailing [foi@stalbans.gov.uk](mailto:foi@stalbans.gov.uk) or write to us at: FOI Team, St Albans City & District Council, St Peter's Street, St Albans, AL1 3JE.

## Complaints

You have a right to complain to the Information Commissioner if you are unhappy with how we process your personal information. You can do so through their website: <https://ico.org.uk/concerns/> or by emailing: [casework@ico.org.uk](mailto:casework@ico.org.uk) or calling their helpline on 0303 123 1113.

<b>Author</b>	
Nomination Form created	2012
Updated	November 2013, April 2016, September 2016, 24 May 2018
Policy reviewer	Regulatory Solicitor
Policy review due	December 2018



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**ROBERT DAVIES JOHN WEST LIMITED**

RIBA Chartered Practice

The Courtyard 59 Church Street  
Staines upon Thames Middx TW18 4XS  
Tel: 01784 459211 E-mail: info@rdjw ltd.com

DATE  
10/12/17

SCALE  
1:1250 @ A4

DRANN / CHKD  
-



PROPOSED DEVELOPMENT,  
ST ANNES ROAD  
LONDON COLNEY  
LOCATION PLAN

DRNG No

**L2524/LP**

REV

C

## Community Asset – Right to Bid Nomination

Chapter 3, Ss 87 to 108 Localism Act 2011, Assets of Community Value (England) Regulations 2012

### Site Inspection Form

Date of inspection:	21/8/19	Name of person inspecting:	Lyn Henny
Nominated Asset Name:	London Colney Village Club		
Nominated Asset Address:	St Anne's Road London Colney AL2 1NX		
Land Registry Title Number:			
Plan attached:	Yes		
Description as set out in the Nomination:	London Colney Village Club together with the separate nursery school		

### Site Inspection:

Photographs	See link to the photos folder
Public access E.g. fenced off	There is a gate to the site but this is locked by the Nursery at the end of the day & opened by them the next day
Evidence of use of the site	<p>The site is dominated by the Community building &amp; car park however there is a separate nursery school on the Site. The land is leased to the nursery school however they provided the building. At the time of inspection their ground lease was due to expire on 31 August 2019 but they are in the process of negotiating an extension until 29 February 2020. They were initially granted a 10 year lease from 2005 but this was extended by 2 years and they are now holding over pending a further extension. The nursery is operated Monday to Friday all year and is for the ages 3months to 5 years. They currently have 24 children. The building consists of a kitchen, children's wc's, baby and toddler area, outside area, kitchen &amp; office. It is well maintained.</p> <p>I have been unable to gain access to the Community centre. However from looking through the windows on 2 sides it is apparent that the building is not used on a regular basis. The grounds to the side &amp; rear are overgrown and old fridges/freezers</p>

	<p>dumped. The nursery try and keep on top of the weeding in the communal garden &amp; have occasionally repaired any potholes. The nursery provide their own external lighting.</p> <p>The owner of the nursery advised that there is occasional use in the evenings and a religious group have use on a Friday.</p> <p>From an external inspection there is a main bar/function room and a smaller bar area/function area with rooms off. There are wc's off the main corridor together with a disabled toilet in the main function room. There is a stage but there is rubbish lying around.</p> <p>In the main entrance there is a notice board with few notices and there is a trophy cabinet containing a number of trophies.</p> <p>The centre has double glazing but it is showing signs of neglect and it is understood that the roof leaks (covered by a tarpaulin).</p>
Signage	<p>External signage for both the Nursery &amp; Community Club are on display at the entrance. The Club provides contact numbers to join</p>
Other observations	<p>The overall appearance of the community club is one of neglect and it isn't very welcoming.</p> <p>The nursery appears to be a well-run establishment but the owner is concerned about being able to operate from the site in the future. They would prefer to stay and have spent their own money carrying out repairs to the car park and by providing external lighting since the car park lights failed.</p> <p><b>Check planning situation</b></p>
Recommendation	<p>It is considered that there is a realistic chance of the community centre could be opened up to the wider community if the current Trustees invested money in to the property. It is located in a good position in a predominately residential area. It appears to have a number of facilities within the building which could be used for a variety of community uses.</p> <p>I would therefore recommend that it is listed as an asset of Community value</p>















ALL VISITORS MUST  
BE SIGNED IN BY A  
CURRENT MEMBER  
AND A FEE OF £4  
MUST BE PAID

MEMBERS

ONLY

# London Colney Village Club

function room hire new members welcome

01727 762331

function room hire new members welco

01727 769331

42

**HOLD  
FOB  
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0161 969 6262**

43

**VISITORS~**  
**PLEASE**  
**PRESS BUTTON**

THE GAMING MACHINES  
IN THIS CLUB ARE  
PROTECTED BY



TEL: 0114 285 5816

0172 158







01727 828 608









## Best Friends Childcare Centre Ltd

Open 7:30am - 5:30pm Monday - Friday  
Age range from 3 months to 5 years

Telephone 01273 801000 or 01273 801001



Best Friends Childcare Centre Ltd  
10000 10000 10000 10000  
10000 10000 10000 10000



THE VILLAGE CLUB  
CHILDREN'S CENTRE  
100-102 THE VILLAGE



# Best Friends CHILD CARE CENTRE

01727 828058

Adjacent to the Village Club

For ages 1 to 5 years • Mon to Fri 7.30 to 6.30

CHILD CARE CENTER

Best Friends now in CD-118  
11-27-2018

Best Friends  
CANDIDATE

CHILD CARE CENTER  
11-27-2018













Car Wash  
Car Wash  
Car Wash  
Car Wash  
Car Wash





## COMMUNITY RIGHT TO BID

### DECISION NOTICE

(Section 91 Localism Act 2011)

To:

**Applicant** London Colney Parish Council

**Owners (freeholder, leaseholder, occupiers)**

London Colney Village Club (Property Holding) Limited

Best Friends Childcare Centre

An application was made on 23 April 2019 under section 89 of the Localism Act 2011 for the inclusion of land in the Council's list of Assets of Community Value.

The Land in question is the land situated at and known as

London Colney Village Club, St Anne's Road, London Colney AL2 1NX

**Land Registry No.:** HD447485 & HD457912 **Plan attached** Yes

The Council hereby gives Notice in accordance with section 91 of the Localism Act 2011 that the land in question has been included in the list of Assets of Community Value.

The primary use of the land, now or in the recent past, furthers or has furthered the local community's social wellbeing or interest for the reasons set out below.

The land comprises a community building, car park and a separate nursery school.

The nursery is operated Monday to Friday all year and is for the ages 3 months to 5 years. The building consists of a kitchen, children's toilets, baby and toddler area, outside area, kitchen & office. The building is well maintained and there are 24 attendees at the nursery school at present.

The primary use of the nursery furthers the local community's social wellbeing by providing a local service which benefits the children and parents of the community. The nursery provides a social and educational service and appears to be a successful run establishment, serving a wide range of ages. The nursery operates all year round which indicates the nursery is well used and perhaps relied upon by the community.

Although there are concerns regarding the future of the nursery school due to the status of the lease, it is realistic to think that the site can continue to further to the social wellbeing of the community. The lease of the nursery school is being negotiated. Although future use of the land is not guaranteed, there are other possible uses of the site which would benefit the social wellbeing or interests of the community.

It was not possible to carry out a full inspection of the community building, however an external inspection was carried out. The building comprises a main bar/function room, a smaller bar area with rooms off, an accessible toilet and a stage. In the main entrance there is a notice board with few notices and there is a trophy cabinet containing a number of trophies.

Although the building is showing signs of neglect, there is apparently occasional use in the evenings and a religious group makes use of the building weekly.

Despite the current use of the building being limited, it is likely that the current use does further social wellbeing by being a meeting point for community groups.

In addition to this, it appears the building has furthered the social wellbeing and interests of the community in the recent past. The building has several facilities such as a bar and stage providing the opportunity for different uses and benefits to the community. The notice board indicates the building has been used as an information point for the community. This use appears to be in the recent past as the facilities remain with the building.

In addition to this, it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building that would further the social wellbeing or interests of local community. There is a realistic chance that the community centre could be opened up to the wider community if the current Trustees invested money in to the property. It is located in a good position in a predominately residential area. It appears to have a number of facilities within the building which could be used for a variety of community uses, for example the stage and the bar area. Accordingly, there are a number of realistic options for the building [*Worthy Developments Limited V Forest of Dean DC CR/2014/0005*].

A planning application for the site was made in 2018 but this was withdrawn by the applicant. There are no planning permissions granted for the site nor is there other evidence to suggest a change of future use.

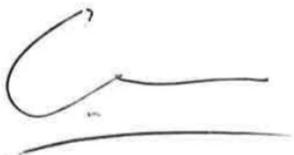
The use of the car park in the recent past furthered the social wellbeing of the community by providing convenient means of access to the site [*C, S and D V Shropshire Council CR/2015/0002*]. The car park serves both the nursery school and the community building, therefore is an integral part of the site.

It is realistic to think that use of the car park can continue to further the social wellbeing of the local community by providing a means of access and parking. As well as the community building, it is also realistic to think there is a time in the next five years when there could be non-ancillary use of this part of the land that would further the social wellbeing or social interests of the local community.

The asset will remain listed for **five** years from

09/01/2020

Signed



Dated 09/01/2020

### Review of Decision

Only the owner of the land has the right to seek a review of the decision to **include** any land on the list in accordance with section 92 of the Localism Act 2011. The Owner can ask the Council to review its decision to include the land on the list. This must be done in writing within **8 weeks** of this written notice of inclusion of the land in the list.

Judith Adamson  
Regulatory Solicitor  
St Albans City and District Council  
Civic Centre,  
St Peters Street  
St Albans  
Hertfordshire, AL1 3JE

**Our ref:** MT/19/16291

**Email:** [REDACTED]

**Your ref:**

**Date:** 4 February 2020

**By post and email:** [Judith.adamson@stalbans.gov.uk](mailto:Judith.adamson@stalbans.gov.uk); [acv@stalbans.gov.uk](mailto:acv@stalbans.gov.uk)

Dear Ms Adamson

**LONDON COLNEY VILLAGE CLUB (PROPERTY HOLDING) LIMITED – ASSETS OF COMMUNITY VALUE**

We act on behalf of our client, LONDON COLNEY VILLAGE CLUB (PROPERTY HOLDING) LIMITED.

We refer to your letter dated 16 January 2020 and the Decision Notice enclosed with that letter.

**Request for review of decision**

Our client requests a review of the decision to list the land. We would be grateful if you could send us details of the procedures to be followed regarding the review of the decision as soon as possible so that we can prepare for the review.

**Time taken to reach decision**

We would appreciate your views on the following as we may be misreading the legislation and the procedural requirements.

The application to list the land was made on 23 April 2019 under section 89 of the Localism Act 2011 (**LA 2011**). The Decision Notice is dated 9 January 2020.

Regulation 7 of The Assets of Community Value (England) Regulations 2012 (**ACV Regulations 2012**) states:

7. The responsible authority must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination.

We would appreciate your views on the meaning of the above regulation and whether or not it has been complied with in this case.

Birchwood Solicitors Limited  
First Floor, Bourne House  
Cores End Road, Bourne End  
SL8 5AR

tel 01628 530855  
email [info@birchwoodlaw.co.uk](mailto:info@birchwoodlaw.co.uk)  
web [www.birchwoodlaw.co.uk](http://www.birchwoodlaw.co.uk)

**Guidance on whether a proposed transaction is a "relevant disposal"**

Section 95(1) LAA 2011 provides that a person who is an owner of land included in a local authority's ACW list must not enter into a "relevant disposal" of the land unless three conditions are met.

By way of a letter to you dated 17 July 2019, we informed you of an agreement that has been signed by our client in relation to the transfer of the land (**Development Agreement**). The existence of the Development Agreement has led to a Unilateral Notice being registered against the title of the land.

We informed you again of this in a follow-up email on 16 August 2019 in which we referred to the guidance to Local Authorities; "*Community Right to Bid: Non-statutory advice note for local authorities*" dated October 2012. Annex A to that guidance states that there is no requirement for the owner to inform the Local Authority of an exempt disposal. The Annex goes on to state:

*"There is no requirement in the legislation that in such circumstances the owner has to explain to the local authority that the disposal is exempt. However it would be helpful for them to do so, and authorities might want to include advice to this effect in any explanation they send to owners about how the moratorium rules work."*

In your reply to our email of 16 August 2019, you stated that, if the asset is listed, you would consider "if the moratorium provisions are effected by the restriction and the unilateral notice"

Our client is now informing you of a transaction that it considers to be an exempt disposal and, as stated in the Annex referred to above, we would welcome your advice as to whether you agree that the proposed transaction is, indeed, exempt.

Our client entered in the Development Agreement on 3 November 2017 between our client and Kossway Automatics Limited and Ravensgate London Colney Limited (**Developer**).

The Development Agreement is conditional on the satisfaction of certain conditions (**Conditions**). The Conditions include the Developer obtaining satisfactory planning permission and a satisfactory environmental report. Once the Conditions have been satisfied, the Development Agreement will become unconditional.

Under the terms of the Development Agreement, once the agreement is unconditional, our client will be obliged to sell part of the land to the Developer (**Sale of Part**). The Developer will then build a new clubhouse for use as a social club on land retained by our client.

Section 96(4) of the LA 2011 states:

*"If a relevant disposal within subsection (2) or (3) is made in pursuance of a binding agreement to make it, the disposal is entered into when the agreement becomes binding."*

The Development Agreement became binding when it was executed on 3 November 2017. It is clear that if the Conditions are satisfied the Sale of Part to the Developer will be made in pursuance of the binding Development Agreement. Therefore, the date of the relevant disposal will precede the application for nomination and will not be affected by the moratorium. This is our understanding that the moratorium applies to disposals that are dated, or deemed to be dated, after the moratorium has come into effect. We would appreciate your advice on this point.

In addition, and perhaps more relevant, is Schedule 3 to the ACV Regulations 2012 that contains a list of exceptions of what will not be regarded as "relevant disposals" for the purposes of section 95(1) of the LA 2011

Paragraph 4 of Schedule 3 provides, as an exception, "...a disposal—

(b)made in pursuance of the exercise of a legally enforceable—

(i)option to buy,

(ii)nomination right,

(iii)right of pre-emption, or

(iv)right of first refusal.

We understand that the general view is that the reference in paragraph 4(b) to an "option to buy" may have been intended to be interpreted widely and to cover a sale that was entered into before the land was listed as an asset of community value. If this were not the case the legislation would be retrospectively appropriating private property rights without compensation, which is unusual and unlikely to have been the intention.

We understand that this wide interpretation has been echoed by a number of local authorities.

For the reasons above, we consider that the sale contract that has been executed, the Development Agreement, requiring our client to sell part of the land once the Conditions have been satisfied, as tantamount to an option to buy. We would appreciate your views on this point.

As an aside, if the Development Agreement becomes unconditional, and if our client is prevented from selling the part of the land as and when set out in the Development Agreement, our client will be in breach of contract and may be faced with a claim for significant damages.

Yours sincerely



Michael Twomey

Solicitor

**Birchwood Solicitors Limited**

## Community right to bid – Representations of the owner on Review of Decision to List

Re: London Colney Village Club, St Anne's Road, London Colney AL2 1NX  
(Property)

We act on behalf of the London Colney Village Club (Property Holding) Limited (Owner), the owner of the Property.

The Owner challenges and opposes the decision to list the Property as an asset of community value and requires that the reviewer decides that the Property should be removed from the list.

The representations of the Owner are:

### 1. Failure to comply with mandatory requirements

- 1.1 The local authority, St Albans City & District Council (**local authority**), received an application under section 89 of the Localism Act 2011 on 23 April 2019.
- 1.2 The decision of the local authority for the inclusion of the Property in the local authority's list of assets of community value was made on 9 January 2020, over 37 weeks after the receipt by the local authority of the application.
- 1.3 Section 89(5) of the Localism Act 2011 states:

*(5)The appropriate authority may by regulations make provision for, or in connection with, the procedure **to be followed** where a local authority is considering whether land should be included in its list of assets of community value*
- 1.4 This provision is mandatory and not directory in that the provisions are "to be" followed.
- 1.5 The relevant regulations enacted under the powers set out in section 89(5) of the Localism Act 2011 are The Assets of Community Value (England) Regulations 2012 (2012 Regulations).
- 1.6 Regulation 7 of the 2012 Regulations state:

7. The responsible authority **must** decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination.

- 1.7 The requirement that the responsible authority must reach its decision within eight weeks is mandatory and not advisory.
- 1.8 The local authority failed to reach a decision within the required period, taking over 37 weeks. The decision of the local authority is therefore a nullity.
- 1.9 In correspondence, the local authority accepts that the decision was not reached in compliance with the mandatory time stated in Regulation 7. However, the local authority states:

*We consider that this does not invalidate the determination. I would draw your attention to the First Tier Tribunal decision of Crendain Developments Limited v Ealing Council [CR/2017/0009], paragraph 13:*

*“..The statutory instrument should not be construed in such a way that the breach by the Council of its duty under the Regulations to decide the application for listing within eight weeks enables the owner to defeat the purpose of the statute...”*

- 1.10 The local authority is, therefore, relying on this single dictum of Judge Christopher Hughes in arguing that the failure of the local authority to comply with the mandatory time requirements set out in Regulation 7 has no effect whatsoever on the validity of the decision to list the Property.
- 1.11 If the local authority is correct, a local authority could ignore the mandatory provision of the Regulations with impunity. The time stated in Regulation 7 is set at 8 weeks. The decision in relation to the Property took over 8 months. If the local authority is correct in its argument, the local authority could have taken 8 years.
- 1.12 Furthermore, the dictum of Judge Christopher Hughes in *Crendain* is of limited if any assistance to the question of whether a failure to comply with Regulation 7 invalidates a decision to list. In *Crendain*, the appeal was on two substantive points and there was no appeal before the court in relation to the failure to comply with Regulation 7. The dictum of Judge Christopher Hughes is therefore, at best, obiter. The judge was not asked to consider this point and there is no indication of any arguments being put before the judge on this point.
- 1.13 In addition, the judge’s dictum in *Crendain* is of even more limited application as, on the facts of the case, the relevant transfer was not affected by the

moratorium provisions and the delay did not, therefore, affect the outcome and was unnecessary to the decision of the judge.

- 1.14 Even if the dictum is of assistance, the judge comments that the failure to comply with the eight weeks timing “*should not be construed in such a way that the breach ....enables the owner to defeat the purpose of the statute.*” The purpose of the statute is to enable a community body to seek a listing of an asset of community value. This will not be defeated by requiring the mandatory provisions of the Localism Act 2011 to be adhered to.
- 1.15 The relevant provisions of the Localism Act 2011 and the 2012 Regulations are mandatory (and not directory) statutory duties and not statutory powers and, therefore, strict compliance is necessary. See *Cullimore v Lyme Regis Corporation [1962] 1 QB 718*, a High Court decision of Edmund Davies J.
- 1.16 In *Cullimore*, a borough council, as coast protection authority, prepared a works scheme for carrying out coast protection work under section 6 of the Coast Protection Act 1949 which was duly approved by the Minister. The scheme designated the contributory land in respect of which coast protection charges were to be payable pursuant to section 7 (1) of the Act and, in compliance with section 7 (4) (b), provided that

*"The council will within six months after the completion of the works determine the interest in the contributory land by reference to which coast protection charges are to be levied, and in the case of each of those interests the amount of the charge leviable in respect thereof."*

The work was completed on October 7 1957, but the council did not determine the interests and the amount of the charges leviable in respect thereof until September 14 1959. On October 16 1959, the council, purporting to act under section 7 (5), served on the plaintiff, the owner of one of the properties charged, a notice under section 10 of the Act that the charge for which he would be responsible amounted to £425.

The plaintiff sought declarations that the determination of September 14 1959, was ultra vires, null, void and of no effect; that the notice served on him was invalid; and that in the circumstances no coast protection charges were leviable on, payable by, or due from him to the council:-

Held,

(1) that the council in formulating the works scheme was exercising statutory powers and not merely performing statutory duties, and that it was therefore obligatory on the council strictly to comply with the mandatory provisions of section 7 (5) and to determine the charges to be levied within the period of six months specified in the scheme; accordingly, a purported determination made 23 months after completion of the works was null and void, and the plaintiff was entitled to the declarations sought.

(2) That even if the council had not been exercising statutory powers but merely performing statutory duties so that the provisions as to the manner of their exercise were to be regarded as directory only, there had not, on the facts, been anything amounting to substantial compliance with those directions.

- 1.17 *Cullimore* is a clear authority that mandatory provisions must be strictly complied with.
- 1.18 The judge in *Cullimore* also held that even if the provisions has been powers but duties that would be directory, there had been substantial non-compliance with those directions.
- 1.19 The Owner argues that the decision of the local authority to list, a decision made 8 months after receipt of the application, fails to comply with the mandatory statutory duty set out in Regulation 7 of the 2012 Regulations and is void and of no effect.
- 1.20 In the alternative, the Owner argues that, if the provisions of Regulation 7 amount to statutory powers and are directory, there has not been substantive compliance with those powers and that the decision to list is, for this reason, void and of no effect.

## **2. Failure to consider relevant facts and existing development agreement**

2.1 The Decision Notice states:

“There are no planning permissions granted for the site nor is there other evidence to suggest a change of future use”

2.2 This is incorrect.

2.3 To the full knowledge of the local authority, the Owner had entered into a development agreement dated 3 November 2017.

2.4 By way of a letter to the local authority dated 17 July 2019, the representatives of the Owner informed the local authority of an agreement that has been signed by our client in relation to the transfer of the land (**Development Agreement**). The existence of the Development Agreement led to a Unilateral Notice being registered against the title of the land.

2.5 The Development Agreement is between the Owner and Kossway Automatics Limited and Ravensgate London Colney Limited (**Developer**) conditional on the satisfaction or waiver by the Developer of certain conditions (**Conditions**). The Conditions include the Developer obtaining satisfactory planning permission and a satisfactory environmental report. Once the Conditions have been satisfied or waived by the Developer, the Development Agreement will become unconditional. Under the terms of the Development Agreement, once the agreement is unconditional, the Owner will be obliged to sell part of the land to

the Developer. The Developer will then build a new clubhouse for use as a social club on land retained by the Owner and build residential units on the rest of the land currently comprised in the Property.

- 2.6 The Owner challenges the decision to list on the ground that the local authority clearly did not take into account the clear and known evidence of a future change of use of the Property.

8 March 2020

Birchwood Solicitors Limited  
on behalf of London Colney Village Club (Property Holding) Limited

Judith Adamson  
Regulatory Solicitor  
St Albans City and District Council  
Civic Centre,  
St Peters Street  
St Albans  
Hertfordshire, AL1 3JE

**Our ref:** WGB/17/16134

**Email:** [REDACTED]

**Your ref:**

**Date:** 17 July 2019

By post and email: [Judith.adamson@stalbans.gov.uk](mailto:Judith.adamson@stalbans.gov.uk)

Dear Ms Adamson

**Our client: LONDON COLNEY VILLAGE CLUB (PROPERTY HOLDING) LIMITED**

We act on behalf of our client, LONDON COLNEY VILLAGE CLUB (PROPERTY HOLDING) LIMITED.

Our client has received a letter from St Albans City and District Council dated 4 July 2019 informing our client of an application by the London Colney Parish Council "for the London Colney Village Club" to be nominated as an asset of community value.

Please provide a description of the nominated land and, in particular, its proposed boundaries so that we can advise our client. This information must have been provided to you as part of the nomination as required by regulation 6 of The Assets of Community Value (England) Regulations 2012.

We hereby inform you that by way of a contract dated September 2017 between the (1) London Colney Village Club (Property Holding) Limited, and (2) Kossway Automatics Limited, and (3) Ravensgate London Colney Limited (the Agreement), our client has entered into an agreement to sell and transfer the land to Ravensgate London Colney Limited.

Given the existence of the Agreement for the sale and transfer of the land, it cannot be appropriate to list the land. Again, we would ask you to provide details of the proposed boundaries of the nominated land.

However, if the land is listed, we are confident that our client will succeed in a review of any such decision. In addition, we consider that section 95 of the Localism Act 2011 (2011 Act) will not prevent our client from transferring the land in performance of the Agreement.

As you are aware, section 96(4) of the 2011 Act states:

"If a relevant disposal within subsection (2) or (3) is made in pursuance of a binding agreement to make it, the disposal is entered into when the agreement becomes binding."

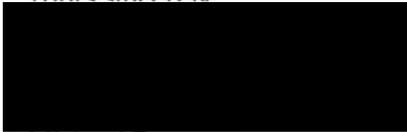
The binding agreement is the date of the Agreement, namely September 2017. The date of the relevant disposal will therefore precede the application for nomination and will not be affected by the moratorium. The listing of the land is, therefore, pointless.

If, however, a decision to list the land is made, and if, contrary to our opinion, a listing will delay the performance of the Agreement, we are hereby putting the Council on notice that such a decision will cause our client loss and expenses. Our client will, therefore, seek compensation including but not limited to its legal costs.

We look forward to receiving confirmation from you that the land will not be added to the list of assets of community value as the land has already been disposed of for the purposes of the Act.

Please do not hesitate to contact me should you require further information.

Yours sincerely

A black rectangular redaction box covering the signature of Michael Twomey.

Michael Twomey  
Solicitor  
Birchwood Solicitors Limited

ft.

**Archived:** 16 June 2020 17:27:07

**From:** [Lyn Henny](#)

**Sent:** Fri, 15 May 2020 13:57:25 +0000Authentication

**To:** [Anna Deon](#)

**Subject:** ACV Review - London Colney Village Club

**Sensitivity:** Normal

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Dear Anna

I refer to the above review and confirm that no comments to make regarding the review based on the advice provide by my colleague set out in her email dated 19/2/20 sent to the representatives on London Colney Village Club (Property Holding) Limited.

Kind regards

Lyn

**Lyn Henny**

Regeneration and Investment Manager

Commercial and Development

**St Albans City & District Council**

Direct Dial 01727 819517

Mobile 07825142129

Council general home page: [www.stalbans.gov.uk](http://www.stalbans.gov.uk)

Council contact details and address: [www.stalbans.gov.uk/contact-us](http://www.stalbans.gov.uk/contact-us)

**Archived:** 16 June 2020 17:28:15  
**From:** Asset of Community Value (ACV)  
**To:** Wendy Byrne; Michael Twomey  
**Cc:** Asset of Community Value (ACV)  
**Subject:** Review: London Colney Village Club (Property Holding) Limited - Assets of Community Value  
**Sensitivity:** Normal

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Dear Both

Further to my earlier email regarding the review request please find a more full response to your points below.

#### **Review**

We do not appear to have received the grounds of your review. Please can you respond with this as soon as possible so we can notify the parties of the terms of your review.

#### **Time taken to reach the decision**

We note your concern about the time taken to determine the nomination for London Colney Village Club to be listed as an asset of community value. We accept that section 89 of Localism Act 2011 and Regulation 7 of The Assets of Community Value (England) Regulations 2012 state that a nomination must be determined within eight weeks of the nomination being validated. Obviously we accept that the nomination was not determined in this timeframe, however there is no penalty for exceeding this period set out in the legislation. We consider that this does not invalidate the determination. I would draw your attention to the First Tier Tribunal decision of Crendain Developments Limited v Ealing Council [CR/2017/0009], paragraph 13:

*“..The statutory instrument should not be construed in such a way that the breach by the Council of its duty under the Regulations to decide the application for listing within eight weeks enables the owner to defeat the purpose of the statute...”*

The decision does highlight the fact that the determination should be made on the basis of the situation at the date by which the decision should have been made. We have determined this matter in accordance with this decision.

#### **Guidance on whether a proposed transaction is a “relevant disposal”**

We have considered whether the Development Agreement signed on 3<sup>rd</sup> November 2017, before the nomination was submitted or determined, is a relevant disposal. We note that section 96(4) of the Localism Act 2011 states that a relevant disposal that is triggered by a binding agreement is made at the time the agreement becomes binding. We accept that the Development Agreement became binding in November 2017. We have considered if the provision in section 96(4) can still be relied upon where the agreement is conditional. Given that even a conditional agreement will require the owner to comply with the terms of the agreement, we consider the Development Agreement amounts to an existing contractual obligation making it exempt under section 96(4).

Therefore the proposed transaction can be treated as an exempt disposal.

I would be grateful if you could let me know the grounds of your review and if you wish us to hold an oral hearing. I look forward to hearing from you.

Kind regards

#### **Judith**

Ms Judith Adamson  
Regulatory Solicitor  
Finance & Legal

#### **St Albans City and District Council**

Direct: +44 (0)1727 819559 Ext 9559

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**From:** Judith Adamson <Judith.Adamson@stalbans.gov.uk>  
**Sent:** 07 February 2020 16:18  
**To:** Wendy Byrne [REDACTED] Michael Twomey [REDACTED]  
**Cc:** Asset of Community Value (ACV) <ACV@stalbans.gov.uk>  
**Subject:** RE: London Colney Village Club (Property Holding) Limited - Assets of Community Value

Dear Both

The procedure for the asset of community value review process can be found on our website [here](#). The review will be determined within 8 weeks (unless otherwise agreed) and without an oral hearing unless one is specifically requested by you. If necessary the period for determination can be extended as set out in the procedure.

The review is conducted by the Monitoring Officer, Charles Turner.

Please let me know if you would like an oral hearing and if so, please provide details of any dates you cannot attend until end of April.

I look forward to hearing from you.

Kind regards

#### **Judith**

Ms Judith Adamson  
Regulatory Solicitor  
Finance & Legal

**Archived:** 16 June 2020 17:38:02

**From:** Parish Clerk

**Sent:** Tue, 12 May 2020 11:08:40 +0000ARC

**To:** [Asset of Community Value \(ACV\)](#)

**Subject:** RE: Review: London Colney Village Club (Property Holding) Limited - Assets of Community Value

**Sensitivity:** Normal

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Hi Anna

Apologies for not getting back to you sooner. We won't be making a further representation.

Regards

**Emma Payne**

**Clerk to London Colney Parish Council**



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Community Right to Bid**

**Appeal Reference: CR/2017/0009**

**Heard at Fleetbank House  
On 15 December 2017**

**Before**

**JUDGE CHRISTOPHER HUGHES**

**Between**

**CRENDAIN DEVELOPMENTS LIMITED**

**Appellant**

**and**

**EALING COUNCIL**

**First Respondent**

**GOLDSMITHS RESIDENTS ASSOCIATION**

**Second Respondent**

Appearances

The Appellant:

Mr David Parry (Director)

First Respondent:

Mr Ned Westaway (instructed by Helen Harris,  
Director of Legal and Democratic Services)

Second Respondent:

Mr Alistair Milward

Cases:-

Wellington Pub Company v RBKC & Norland Conservation Society CR/2015/0007

Banner Homes Limited v St Albans City and District Council & Verulam Residents Association [2016] UKUT 232 (AAC)

Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government and another [2011] UKSC 15 [2011] 2 AC 304

## DECISION AND REASONS

### **Introduction**

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period known as “the moratorium” will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

### **Legislation**

2. The Localism Act 2011 provides:-

#### **87 List of assets of community value**

- (1) A local authority must maintain a list of land in its area that is land of community value.
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of assets of community value.
- (3) Where land is included in a local authority’s list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry (unless the entry has been removed with effect from some earlier time in accordance with provision in regulations under subsection (5)).

#### **88 Land of community value**

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area is land of community value if in the opinion of the authority –
  - (a) an actual current use of the building or other land 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 building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area that is not

land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

...

(6) In this section –

....

“social interests” includes (in particular) each of the following –

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

## ***Assets of Community Value (England) Regulations 2012***

### **Land which may not be listed**

3.

A building or other land within a description specified in Schedule 1 is not land of community value (and therefore may not be listed).

### **Procedure when considering whether to list land**

7.

The responsible authority must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination.

### **Appeal against listing review decision**

11. –

(1) An owner of listed land may appeal to the First-Tier Tribunal against the local authority’s decision on a listing review in respect of the land.

(2) The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.

#### SCHEDULE 1

Land which is not of community value (and therefore may not be listed)

1. – (1) Subject to sub-paragraph (5) and paragraph 2, a residence together with land connected with that residence.

(2) In this paragraph, subject to sub-paragraphs (3) and (4), land is connected with a residence if –

(a) the land, and the residence, are owned by a single owner; and

(b) every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.

(3) Sub-paragraph (2)(b) is satisfied where a part of the land cannot be reached from the residence by reason only of intervening land in other ownership on which there is a road, railway, river or canal, provided that the additional requirement in sub-paragraph (4) is met.

(4) The additional requirement referred to in sub-paragraph (3) is that it is reasonable to think that sub-paragraph (2)(b) would be satisfied if the intervening land were to be removed leaving no gap.

(5) Land which falls within sub-paragraph (1) may be listed if –

(a) the residence is a building that is only partly used as a residence; and

(b) but for that residential use of the building, the land would be eligible for listing.

2. For the purposes of paragraph 1 and this paragraph –

(a) “residence” means a building used or partly used as a residence;

(b) a building is a residence if –

(i) it is normally used or partly used as a residence, but for any reason so much of it as is normally used as a residence is temporarily unoccupied;

(ii) it is let or partly let for use as a holiday dwelling;

(iii) it, or part of it, is a hotel or is otherwise principally used for letting or licensing accommodation to paying occupants; or

(iv) it is a house in multiple occupation as defined in section 77 of the Housing Act 2004(1); and

(c) a building or other land is not a residence if –

(i) it is land on which currently there are no residences but for which planning permission or development consent has been granted for the construction of residences;

(ii) it is a building undergoing construction where there is planning permission or development consent for the completed building to be used as a residence, but construction is not yet complete; or

(iii) it was previously used as a residence but is in future to be used for a different purpose and planning permission or development consent for a change of use to that purpose has been granted.

3. Land in respect of which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960(2), or would be so required if paragraphs 1, 4, 5 and 10 to 11A of Schedule 1 to that Act were omitted.

### **The appeal**

3. The land under consideration is about 0.6 acres in extent in Acton in the London Borough of Ealing situated to the rear of the Goldsmiths Almshouses built in 1811. Since the 1940s the land has been used by members of the local community as allotments. The Goldsmiths Company sold the almshouses and adjacent land to a property company in 2001. This company applied for planning permission to improve the almshouses in 2007, in granting permission conditions protecting the allotments were imposed. On appeal the planning inspector noted that the allotments were “well-cared for” but concluded that the conditions were unnecessary to protect the allotments. The allotments were sold at auction in 2012 and were bought by Mr Parry in his own name.
4. Mr Parry served notice on the allotment holders to vacate the site. In response on 19 July 2015 the Second Respondent (“GRA”) applied to the First Respondent (“The Council”) for these allotments to be listed as an asset of community value. The Council’s processes were not as expeditious as they should have been. While by 20 August 2015 the extent of the land had been identified it was not until 26 November 2015 that the owner was contacted for comment (he did not respond). A draft report was prepared recommending listing on 28 January 2016 but was not signed. Mr Parry contacted the Council for the first time seeking to know the outcome of the application on 15 August 2016. In September 2016 Crendain Limited (“Crendain”) was formed with Mr Parry as its sole director and on 29 September 2016 Mr Parry sold the land to Crendain for the sum of £150,000; the transfer was registered on 21 October 2016. On 1 November 2016 Crendain became the registered owner of an adjoining house 10 Perryn Road. On 14 November 2016 Mr Parry again contacted the Council arguing that he believed the land was exempt from listing; on that date the Council conducted a land registry search which confirmed the change in ownership of the allotments. On 27 March 2017 the Council finally listed the land in that decision the Council officer concluded that the allotments and the property at 10 Perryn Road lacked the necessary functional connection and therefore the exemption from listing of residential property did not apply. Mr Parry requested a review of the listing on 5 April 2017.
5. The Council held a hearing of the request for review and by a decision of 25 May 2017 upheld the designation. It was uncontested that allotment use was a community use and this only ceased in 2015. The allotments were designated as a Community Open Space in 2012. 10 Perryn Road was acquired in October 2016; it and the allotments were held on separate registered titles. Mr Parry claimed that the allotments were being used as a garden for 10 Perryn Road, however this was a change of use requiring planning permission and no application had been made. The decision noted that:- *“an access between 10 Perryn Road and the allotment was created, after the purchase of 10 Perryn Road, by demolishing part of a garden wall. It appears that there is no historic connection between the two pieces of land.”* The reviewer found that:- *“given the date of purchase of 10 Perryn Road I am not satisfied that there is a sufficient functional relationship between it and the allotments, in order for the allotments to be considered as part of a garden.”* The reviewer therefore concluded that the land was eligible for listing and the exemption from listing for residential land was not applicable.
6. In the notice of appeal Crendain made two substantive points:-

- It argued that there was a current physical and functional relationship between 10 Perryn road and the allotments, they had 6/7 metres of common boundary with direct access between the two, they were both currently being renovated and while not currently physically occupied they were still in joint use and had been since 21 October 2016. Planning considerations were irrelevant since the question was of actual rather than authorised use.
  - There was no prospect of community use in the next five years; the residents had not bid at the auction in 2012. While the council had stated that the residents had expressed a willingness to bid for the land in future there was no evidence from the residents of their ability so to bid. There was no access to the land other than using Crendain's rights of way however Crendain would not assign those rights. Crendain had a range of plans for the use of the land for which it would submit applications for planning permission none of those would permit community use.
7. In the hearing Mr Parry (for Crendain) repeated these points. The land was excepted land which meant that it should not have been designated. Furthermore he had no intention of disposing of the allotment land separately or of permitting community use of it there was no possibility in practical terms of a community use. He stated, but produced no evidence, that the house was currently occupied by a friend and the friend was using the allotments as part of the garden. I find this improbable, I am not satisfied that there is any such use and occupation.
  8. A recent photograph was produced showing a view of the end of the garden at 10 Perryn Rd and the boundary wall separating it from the allotment land. The end of the garden appears to have some paving and gravel around a circular pond. Adjacent to it is a large shed and behind both is a wall approximately 1.5-1.8 m high with a jagged hole about 80-100cm wide broken in it. There is a difference in level between the two areas of land. The allotments, following removal and destruction of plants and allotment-holders equipment as well as spraying of herbicide is drab and barren.
  9. In resisting the first ground of appeal the Council argued that the residential exemption did not apply, the allotment site has never been ancillary to the residential use claimed. It was a separate planning unit with a separate designation. The history of the site was relevant to the issue and the acquisition of 10 Perryn Road was not sufficient to circumvent the provisions of the Localism Act. The Council relied on the decision of this tribunal *Wellington Pub Company* in arguing that particular factors in the identification of a planning unit were useful in considering Schedule 1 of the Act. These included the physical and functional relationship of the properties. There was no evidence that 10 Perryn Road was inhabited. It was stretching beyond breaking point to argue a connection between the properties given the significant difference of level and the wall. Shortly before the review hearing Mr Parry had knocked a hole in that wall. There was not ready access and the partial demolition of the wall in this conservation area would require consent. The first ground therefore fell.
  10. With respect to the second ground of appeal the test was it whether it was realistic to think that it could be brought into community use in the next five years. There were

clearly a range of possibilities and the Appellant's approach, that he would not permit it, was essentially trying to render the statutory framework entirely voluntary. The Council relied on the reasoning in *Banner Homes* that whether a future community use was a realistic prospect was a matter for the decision-making council in the circumstances of the case.

11. Mr Milward emphasised that the land had been of community benefit for many generations, considerable shock and distress had been caused by the eviction of the allotment holders, 10 Perryn Rd had been vacant for some time, the allotments were precisely the sort of land which designation as an ACV was intended to protect. The written submissions on behalf of GRA gave details of its membership and expressed confidence in the ability and determination of GRA to acquire the property for the benefit of the community. The submission set out planning considerations rendering it unlikely that planning consent for development could be obtained and argued that under such circumstances the appellant's best hope of recouping his expenditure was to sell the property to the community group.

### Consideration

12. This appeal has proceeded in two grounds; the first that the residential exemption applied; the second that there is no realistic prospect of future community use. Before proceeding to a consideration of those two grounds it is appropriate to consider the shortcomings of the handling of this matter by the Council. The application for listing was made on 19 July 2015. Regulation 7 of Assets of Community Value (England) Regulations 2012 requires the Council to make its listing decision within 8 weeks; i.e. by 13 September 2015. While some delay will often arise during a process such as this, a delay of over 18 months is a matter of considerable concern. If I were not deciding the substantive appeal on the basis that I am, then given the actions of the Appellant during that intervening period; his actions which were directed to creating facts to defeat listing could have been effective in causing de-the listing of this site and so depriving the community of the opportunity to protect the allotments as an ACV, a foreseeable and avoidable consequence of the Council's inaction.
13. Despite the Appellant's strenuous efforts to create facts to establish the residential property exemption I am not satisfied that it has done so. *Crendain's* case is that it owns a house, on the other side of a wall (through which it has now knocked a gap) it owns lands which have been historically used as allotments. The Appellant argues that the provisions in Schedule 1 to the Regulations (which are intended to give effect to the community right to bid) mean that these two parcels of land are connected and the allotment land is exempt from listing. This is resisted on the basis of the reasoning in *Wellington Pub* in that there is no functional or structural relation between the two, that they are distinct registered parcels of land with distinct histories of use and distinguished in planning terms, the use as a garden is contrary to planning law as is the partial demolition of the wall. I am satisfied that the latter is the correct analysis, there is insufficient nexus between the two parcels of land to justify considering them as a single unit. I am fortified in this analysis by the Upper Tribunal in *Banner Homes* of the reasoning of the Supreme Court in *Welwyn* where Lord Mance stated (paragraph 54):- "*Whether conduct will on public policy grounds disentitle a person from relying upon an apparently unqualified statutory provision must be considered in context and with regard to any nexus existing between the conduct*

*and the statutory provision.*" In this case we have a long history of use, attempts to change the planning use, a claimed deliberate breach of planning control (use as a garden, demolition of a wall) in the interests of private gain and at the expense of the public interest of the ACV. I am not satisfied on the evidence that there is any real occupation of the house as a residence in recent times and at no time a use of the house and garden as a single unit, on any proper construction of the statute there is no connection. I am however satisfied that to recognise these actions as effective would breach the *in bonam partem* principle. Furthermore the inaction of the Council in failing to discharge its duty in a timely manner (also laid down in the regulations which create the residential exemption) which occasioned the opportunity for the Appellant to attempt to create new facts, should not be allowed to defeat the public interest the Council is supposed to protect. At the time that the Council should have decided the case (in autumn 2015) the house in Perryn Road and the allotments were in separate ownership. The Localism Act creates rights for communities to obtain some protection for assets of community value. A statutory instrument made under the Act creates a duty on the Council to act promptly and the same statutory instrument also creates an exception to the types of land which may be listed as assets of community value. The statutory instrument should not be construed in such a way that the breach by the Council of its duty under the Regulations to decide the application for listing within eight weeks enables the owner to defeat the purpose of the statute. Regulation 7 provides that:- "*The responsible authority must decide whether land nominated by a community nomination should be included in the list within eight weeks of receiving the nomination*" This is a mandatory obligation. I am satisfied that in considering whether land is connected, the proper time to evaluate the situation is the date by which the decision should have been made.

14. The second ground of appeal may be dealt with more briefly. This relies entirely on the expressed intention of Mr Parry to prevent any community use of the land. As has been observed above to permit that to be determinative would be to render the entire statutory framework meaningless. At the moment Mr Parry's company has substantial capital tied up in two non-performing assets. The permitted use of the allotment land is for that use. Various planning policies are designed to protect such use, to maintain green spaces for community use in the middle of the city and to prevent more intensive development. This far Mr Parry has been unsuccessful in obtaining planning consent for development; the continuation of the ACV listing will provide further protection for the green space and render any development which does not provide community benefit more unlikely. The implicit position of Mr Parry is that the company will retain the land and continue to seek planning consent until something is granted. It is entirely possible that the Council will continue to resist development. The period of protection is for five years. To consider the level of uncertainty over that period of time it is salutary to consider the last two five year periods. The last two five year periods have seen the 2008 banking crisis and the vote to leave the European Union in 2016; both were largely unexpected and both have had significant impacts; the next few years are foreseeably unforeseeable. The economic pressures and his own personal circumstances may be such that Mr Parry will change his mind and the company he controls may adopt a different approach to the possible community use of the land, or may decide to dispose of the interest in the land entirely to another person or entity prepared to develop community use of the land. These are among foreseeable consequences occurring in the period of listing.

15. For the reasons stated I am satisfied that the grounds for listing this land under section 88 are made out and this appeal is dismissed in its entirety.

**Judge Hughes**

**9 January 2018**

## \*718 Cullimore v Lyme Regis Corporation.

 Positive/Neutral Judicial Consideration

### Court

Queen's Bench Division

### Judgment Date

26 October 1961

### Report Citation

[1960 C. No. 2674.]; [1961] 3 W.L.R. 1340  
[1962] 1 Q.B. 718



Queen's Bench Division

Edmund Davies J.

1961 Oct. 26.

*Coast Protection—Works scheme—Cost of works—Designation of contributory land—Scheme providing for determination by authority of apportionment of costs within six months of completion of work—No determination until 23 months after completion—Whether authority exercising statutory powers or performing duty—Whether obligatory to make determination within six months—Whether a substantial compliance— [Coast Protection Act, 1949 \(12, 13 & 14 Geo. 6, c. 74\)](#), ss. 6, 7.*

*Statute—Construction—Directory or obligatory—Coast protection work—Works scheme prepared by authority—Period within which apportionment of costs to be made—Whether obligatory to make determination within specified period— [Coast Protection Act, 1949](#), ss. 6, 7.*

On December 8, 1952, a borough council, as coast protection authority, prepared a works scheme for carrying out coast protection work under [section 6 of the Coast Protection Act, 1949](#) , <sup>1</sup> which was \*719 duly approved by the Minister. The scheme designated the

contributory land in respect of which coast protection charges were to be payable pursuant to [section 7 \(1\)](#) of the Act and, in compliance with [section 7 \(4\) \(b\)](#) , provided that “The council will within six months after the completion of the works determine the interest in the contributory land by reference to which coast protection charges are to be levied, and in the case of each of those interests the amount of the charge leviable in respect thereof.” The work was completed on October 7, 1957, but the council did not determine the interests and the amount of the charges leviable in respect thereof until September 14, 1959. On October 16, 1959, the council, purporting to act under [section 7 \(5\)](#) , served on the plaintiff, the owner of one of the properties charged, a notice under [section 10](#) of the Act that the charge for which he would be responsible amounted to £425.

The plaintiff sought declarations that the determination of September 14, 1959, was ultra vires, null, void and of no effect; that the notice served on him was invalid; and that in the circumstances no coast protection charges were leviable on, payable by, or due from him to the council:-

Held:

(1) that the council in formulating the works scheme was exercising statutory powers and not merely performing statutory duties, and that it was therefore obligatory on the council strictly to comply with the mandatory provisions of [section 7 \(5\)](#) and to determine the charges to be levied within the period of six months specified in the scheme; accordingly, a purported determination made 23 months after completion of the works was null and void, and the plaintiff was entitled to the declarations sought.

(2) That even if the council had not been exercising statutory powers but merely performing statutory duties so that the provisions as to the manner of their exercise were to be regarded as directory [\\*720](#) only, there had not, on the facts, been anything amounting to substantial compliance with those directions.

Dicta of Denman J. in *Caldow v. Pixell* (1877) 2 C.P.D. 562 , Littledale J. in *Smith v. Jones* (1830) 1 B. & Ad. 328 , and Sir Arthur Channell in *Montreal Street Railway Co. v. Normandin* [1917] A.C. 170; 33 T.L.R. 174 , P.C. applied.

ACTION.

The plaintiff, Dudley John Cullimore, was at all material times the owner of the fee simple in the property known as Bay Garth, East Cliff, in the Borough of Lyme Regis. The defendants, the Lyme Regis Corporation, the coastal authority for that part of the coast, decided to carry out coast protection work because the sea was encroaching, and on December 8, 1952, prepared a works scheme within [sections 6 and 7 of the Coast Protection Act, 1949](#), which was approved by the Minister of Housing and Local Government.

Paragraph 4 of the works scheme designated contributory land, which affected 44 properties, one of which was Bay Garth. Paragraph 5 of the works scheme provided that “The council will within six months after the completion of the works determine the interest in the contributory land by reference to which coast protection charges are to be levied, and in the case of each of those interests the amount of the charge leviable in respect thereof.”

The work was completed on October 7, 1957, but it, was not until nearly two years later, on September 14, 1959, that the council determined the apportionment of the cost of the works and the parties interested, who would have to bear a proportion of the cost. The total sum involved was £25,000; and on October 16, 1959, notice was served on the plaintiff under [section 10](#) of the Act of 1949 that the charge for which he would be responsible under the Act amounted to £425.

The plaintiff brought an action against the council for the following declarations (1) That the determination of September 14, 1959, was ultra vires, null, void and of no effect. (2) That the notice of the amount of £425 served on him was invalid and ineffective and the council had no power to serve it. (3) That no coast protection charge was leviable, payable, or due on, by or from the plaintiff to the council in respect of the works scheme.

*Sir Frank Soskice Q.C. and C. Dehn* for the plaintiff. The provisions of the [Coast Protection Act, 1949](#), under which the **\*721** council purported to act are mandatory and must be strictly complied with, and the council failed to do so. If that be wrong and the provisions are directory only, then the council must substantially comply with the terms, and that they have not done.

In considering whether or not the terms are mandatory the Act must be looked at as a whole, and, so doing, it is seen here that the council are not exercising a public duty but a power. The terms of [section 1](#) of the Act are mandatory; [section 6](#) gives a power to make a scheme for carrying out the work, and in [section 7](#) the terms are mandatory - the basis of that section is that, provided the council act within the provisions, they may prepare a works scheme and levy charges. [Sections 1 to 7](#) should be read as a whole, and there must be strict compliance with their terms by those who exercise them. Even if they were exercising a duty, upon its true construction, strict compliance with the relevant provisions is necessary.

It is elementary justice that those who have to meet the levies charged shall know the amount and the date on which they are payable, for they have to budget accordingly. Such knowledge is

also of vital importance where an owner of property subject to a levy wishes to sell it. The principles to be applied in determining whether statutory provisions are mandatory or not are stated in Maxwell on Interpretation of Statutes, 10th ed. (1953), pp. 374, 376-381; and at p. 381, under the heading "Performance of a Public Duty," it is said: "... where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only." *Montreal Street Railway Co. v. Normandin* <sup>2</sup> is cited as authority for that. It is a public duty to carry out coast protection work but it is not a public duty to shift the payment from the ratepayers, Treasury or county council to those persons who have had their properties benefited. If this order is held to be invalid, the ratepayers will have to pay.

If the terms are mandatory they must be strictly complied with, but if directory there must be a substantial compliance: *\*722 Pope v. Clarke* <sup>3</sup> and *Woodward v. Sarsons*. <sup>4</sup> Here there has been neither a strict nor a substantial compliance with the statutory requirements. This Act encroaches on private right and there must be a strict and right adherence to the formalities: *per* Viscount Simonds in *East Riding County Council v. Park Estate (Bridlington) Ltd.*, <sup>5</sup> which was applied by Lord Parker C.J. in *Cater v. Essex County Council*. <sup>6</sup>

*G. D. Squibb Q.C.* and *D. Widdicombe* for the council. The plaintiff's first contention was that the terms of the Act are mandatory. That contention is answered by looking at the Act and not at the facts. The second contention was that, if the terms are directory, there has not been a substantial compliance; and that contention is answered by looking at the facts only. The plaintiff has had his land increased in value by £425 and he seeks to avoid paying for the improvement. The determination only affects the person who has to pay, and that person is the owner of the property - here the plaintiff. The making of the works scheme is an exercise of a power but once made the council are only exercising duties and one of those duties is to collect money.

[EDMUND DAVIES J. Are the council under a public duty to make a works scheme and to collect money? They can make a works scheme without levying charges and it would seem that they were under no duty to collect the money.]

If the money is not to be provided by other means, then it is collected by levying a charge, and once the decision is made the council are under a public duty to collect. Reliance is placed on *Montreal Street Railway Co. v. Normandin*, <sup>7</sup> and it is submitted that the council were exercising a public duty. The effect of the legislation is to determine who is to pay, and that is not affected by the time of the determination. The provisions in regard to time are directory only, not mandatory, and must be complied with in a reasonable time after the period prescribed: *per* Littledale J. in *Smith v. Jones* <sup>8</sup> and Denman J. in *Caldow v. Pixell*. <sup>9</sup>

The council had to insert in their works scheme the time within which the amount would be determined. The legislature inserted the provisions in relation to the time so that the matter would not be left entirely at large. If the terms are directory, it does not mean that no regard need be paid to the provision as to \*723 time in the order, but there must be substantial compliance. The time limit is not nugatory and the plaintiff can come to the court on the grounds of prejudice and also of unreasonable delay. He has not pleaded prejudice, and none of the facts support it, nor has he suffered through unreasonable delay. The Act specifies no limit as to the time within which the determination has to be made, and that perhaps indicates that the provision as to time is directory rather than mandatory.

*Sir Frank Soskice Q.C.* was not called on to reply.

EDMUND DAVIES J.

stated the facts set out above and continued: This case involves a short point which to my way of thinking presents no great difficulty. The conclusion I have quite firmly come to is that the plaintiff is entitled to each and every one of the declarations he has asked for. In coming to that conclusion, I have directed myself, as Denman J. did in *Caldow v. Pixell*,<sup>10</sup> that, in determining the sort of questions which are raised by these proceedings, the whole scope and object of the particular piece of legislation under consideration requires to be looked at, and I accordingly turn to consider the Act of Parliament, the [Coast Protection Act, 1949](#), with which we are here concerned, though fortunately not with every portion of that Act of Parliament.

It is described as “An Act to amend the law relating to the protection of the coast of Great Britain against erosion and encroachment by the sea; ... and for purposes connected with” that matter and other matters. By Part I coast protection authorities are provided for. [Section 1 \(1\)](#) provides that The council of each maritime county borough or county district shall ... be the coast protection authority for the county borough or county district, as the case may be.” They are to have such powers and perform such duties in connection with the protection of land in their area as are conferred or imposed on coast protection authorities by this Act.” [Section 4](#) makes provision for the general powers of coast protection authorities. They are to “have power to carry out such coast protection work whether within or outside their area as may appear to them to be necessary or expedient for the protection of any land in their area.” By [section 6](#) : “(1) Where a coast protection authority propose that coast protection work (not being work of maintenance or repair) should be carried out on any land, and it \*724 appears to the authority - (a) that the work cannot be carried out except in the exercise of compulsory powers, or (b) that persons interested in land benefited by the carrying out of the work ought to pay to the authority charges (hereinafter referred to as ‘coast protection charges’) in accordance with the following provisions of this Act in that behalf, the authority may prepare a scheme (hereinafter referred to as a ‘works scheme’) for the carrying out of the work. (2) A works scheme shall - (a) indicate the nature of any work to be carried out by the authority on land vested in them or proposed to

be acquired by them for the purposes of the scheme; (b) specify the work (if any) to be carried out on land not so vested or proposed to be acquired; and (c) specify the estimated cost of all work comprised in the scheme.” and then, by [section 7](#) : “(1) A works scheme may indicate land (hereinafter referred to as ‘contributory land as land in respect of which coast protection charges are to be payable under the scheme on the ground that it will be benefited by the carrying out of the work provided for by the scheme. (2) Coast protection charges under a works scheme shall be levied by reference to interests in contributory land.” A limitation upon the charge is imposed by [subsection \(3\)](#), and [subsections \(4\) and \(5\)](#) contain the provisions with which we are particularly concerned in this present action. By subsection (4): “A works scheme which provides for the levying of coast protection charges shall either - (a) specify the persons by whom such charges are to be paid, the amount of the charge to be paid by each person and the interest in land by reference to which the charge is levied upon him; or (b) state that the authority by whom the scheme is prepared will, within such period after the completion of the work as may be specified in the scheme, determine the interests in land by reference to which coast protection charges are to be levied and, in the case of each of those interests, the amount of the charge leviable in respect thereof; and in a case falling within [paragraph \(b\)](#) of this subsection a coast protection charge shall be payable by the person who, at the time of the determination of the interest by reference to which the charge is to be levied, is entitled to that interest.”

In this particular case the Lyme Regis Corporation proceeded under the second limb, i.e., [subsection \(b\) of section 7 \(4\)](#) . By their scheme, which is dated December 8, 1952, they set out the estimated cost at £49,980, which the Minister on confirmation reduced by £400. By paragraph 4 of the scheme they provided [\\*725](#) that: “The land coloured orange on the plan annexed hereto ... is hereby designated as contributory land, that is to say, land in respect of which coast protection charges will be payable under this works scheme on the ground that it will be benefited by the carrying out of the works,” and designated in that manner were some 44 properties of which the plaintiff’s property is one. This is accordingly described as in the nature of a test action and is one of considerable importance, therefore, not only to a large body of ratepayers but to the defendants as the coast protection authority and the rating authority. The sum involved is something in the region of £25,000 in totality. The action is also of considerable interest to the 43 other persons interested in the contributory lands designated in the works scheme. Paragraph 5 provided that: “The council will within six months after completion of the works determine the interests in the contributory land by reference to which coast protection charges are to be levied, and in the case of each of those interests the amount of the charge leviable in respect thereof.” That paragraph, of course, was inserted to comply with [section 7 \(4\)](#) and the second limb thereof. The defendant council certainly did not within six months after completion of the works, namely, on October 7, 1957, determine the interests in the contributory land. They did not do so for two years or thereabouts after that date. The plaintiff says that that failure, which arose from reasons not disclosed to this court, is such as to render the notices when they were served on the parties interested in the contributory lands null and void, and the sums specified therein are consequently irrecoverable. The grounds on which those submissions

are made on the plaintiff's behalf are shortly stated thus: It is said the council were here exercising powers conferred on them by the Act of 1949, and the directions in subsections (4) and (5) as to the manner in which the powers could be exercised were accordingly mandatory, those mandatory provisions were not complied with, and accordingly the actions of the council were and are null and void. Secondly, it is said that if it be wrong that the council were exercising powers, and if the council were indeed discharging duties, and the provisions in subsections (4) and (5) are to be regarded as directions as to the manner in which the duties are to be fulfilled, then, although on that basis substantial compliance with the provisions would be sufficient, there was here nothing like substantial compliance, so that in the result the position is exactly the same as though these were powers and the provisions as to their exercise mandatory.

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For the council it was submitted that all they were here doing was to discharge duties imposed on them by the statute, that accordingly it was sufficient if they substantially complied with the provisions in subsections (4) and (5) and that substantial compliance there has been.

I agree with Mr. Squibb to this extent: that the first question, namely, whether these provisions are mandatory or directory, depends on the Act as a whole without reference to the particular facts in this case. I agree with him further that the second question, whether, assuming the provisions are directory only, there has been substantial compliance therewith, cannot be answered without reference to the facts of this particular case. A number of cases have been helpfully cited to me by counsel, but every case where questions of the kind raised here come before the court has to be determined primarily by looking at the statute which is under consideration and examining the whole scope and purpose thereof. Other cases may provide some assistance in determining what the general principles to be applied are, and those general principles are conveniently stated in summary form in Maxwell on Interpretation of Statutes, 10th ed. (1953), p. 376 et seq. I quote therefrom certain passages. "It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequences in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment." "A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty and where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature. But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative." And, a little later, quoting from a judgment of Sir Arthur Channell, in **\*727 Montreal Street Railway Co. v. Normandin**, <sup>11</sup> Maxwell (at p. 381) continues:

“On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only.” I turn to the statute once more. It is quite clear that the works scheme need not have provided for the payment of contributions at all. [Section 7 \(1\)](#) has as its opening words: “A works scheme may indicate land (hereinafter referred to as ‘contributory land’) as land in respect of which coast protection charges are to be payable under the scheme. ...” It is a matter for the coast protection authority to decide whether or not its work scheme will designate contributory land. It may not seek to recover contributions from people interested in such properties. There are provisions in later sections of the Act, particularly [sections 20 and 21](#) , whereby the cost of carrying out a works scheme may be met by contributions or by Exchequer grants.

The conclusion that I have come to here is that most certainly the council in formulating this particular scheme were exercising powers conferred on them by the Act of 1949. They were, in formulating this particular works scheme in the form which it took, exercising powers conferred on them by section 7 and particularly by subsection (4) thereof. It was entirely open to them to designate, having decided to proceed under [subparagraph \(b\) of section 7 \(4\)](#) , what period of time should be left to them for determining the interests in the lands after completion of the work. They it was who chose to fix a period of six months from the completion of the work, and, they being the unfettered judges in deciding that period, it is certainly not without relevance when one comes to deal with the subsidiary question as to whether or not there was substantial compliance in this case with the provisions of the Act, assuming that they were merely directory, that the period of time which elapsed between completion of the work and the determination of the interests and the costs exceeded the period of six months designated by nearly four times that period.

This case is and must be one virtually of first impression, and **\*728** having come to the conclusion that the council were here exercising statutory powers it seems to me beyond dispute that it was obligatory on them to comply with the provisions of [section 7 \(5\)](#) . In other words, it was essential for them, were they to act regularly and effectively, that within the period of six months specified in their scheme they determine the charges to be levied. That, it is admitted, they have not done, and I cannot accordingly regard their purported action as having any validity at all.

Let me turn to the second question. It is undisputed in law that if these be mere duties and if, accordingly, the provisions as to their exercise are to be regarded as directory only, it is sufficient if there has been substantial compliance with those directions. In *Smith v. Jones* <sup>12</sup> Littledale J. said <sup>13</sup> : “But it has often been held, where an Act ordered any thing to be performed by a public body, and merely pointed out the specific time when it was to be done, that such act

was not imperative, but directory, and might be complied with in a reasonable time after the period prescribed.” and in *Caldow v. Pixell* <sup>14</sup> Denman J. said <sup>15</sup> that “... where a public officer is directed by a statute to perform a duty within a specified time, the provisions as to time are only directory, and also that in considering whether a statute is imperative, a balance may be struck between the inconvenience of rigidly adhering to, and the inconvenience of sometimes departing from, its terms.” That some regard must be had to the six months’ period designated by the council in their own works scheme is conceded by Mr. Squibb on their behalf. Almost his last words to this court were that admittedly serious inconvenience might have resulted if the determination had been indefinitely delayed, but he added that of course here the determination had not been indefinitely delayed and that a lapse of 23 months between completion of the works and determination was a substantial compliance with the provision in the works scheme that such period would be six months only. Every case must turn on its own facts. I simply cannot accept Mr. Squibb’s submission. It is highly desirable that there should be no unnecessary delay in interested parties knowing with exactitude what their financial liabilities are. After all, here are a coast protection authority, doubtless having formed the view that coast protection works were called for, seeking to impose upon people interested in the lands liability to pay not inconsiderable sums of \*729 money, and the sooner they know the extent of their liability, the better for them. I entirely accept that Sir Frank has said on behalf of the plaintiff here, that considerable inconvenience may well result if some promptitude is not exhibited in determining the liability of interested parties. The owner of “Black Acre,” which is on the sea front, may have a prospective purchaser at a good price. As an upright man, it would be his duty to disclose to the prospective purchaser that there was an impending liability to pay a proportion of this substantial cost of works, and on being asked, as he naturally would be, by the prospective purchaser that the sum would be likely to be, the answer which he would be compelled to make, namely, “I have no idea at all if there has been any determination,” would be highly unsatisfactory to the prospective purchaser, and might inconvenience and might be unfortunate for both parties.

I am satisfied here that for the reasons I have stated it was obligatory on the council strictly to comply with the provisions of their own scheme and particularly paragraph 5 thereof, because they were, in formulating this scheme, exercising statutory powers. If that be wrong, and if they were exercising duties under the provisions in section 7 (5) and those provisions are regarded as directory only, then quite clearly, in my judgment, there was nothing approaching substantial compliance therewith.

It is said by Mr. Squibb that in the result this plaintiff, the value of whose land has been enhanced by some £425, and the 43 other interested land owners whose properties have been enhanced in the aggregate by something like £25,000, will have had their properties improved without being under any liability to pay one penny towards the works. If that be the case, I think that is an unfortunate result, but it is a result which is entirely flowing from the failure of the council to implement and fulfil the terms of their own scheme. For those reasons, in my judgment the plaintiff is entitled to succeed and I accordingly make each and every one of the

declarations asked for.

## Representation

Solicitors: Longbourne, Stevens & Powell for Roper & Roper, Lyme Regis ; Charles Russell & Co. for Kitson & Trotman, Beaminstor .

*Declarations accordingly. Costs to the plaintiff. ([Reported by H. JELLIE, Barrister-at-Law.] )*

## Footnotes

- <sup>1</sup> The [Coast Protection Act, 1949, s. 6](#) : “(1) Where a coast protection authority propose that coast protection work (not being work of maintenance or repair) should be carried out on any land, and it appears to the authority - (a) that the work cannot be carried out except in the exercise of compulsory powers, or (b) that persons interested in land benefited by the carrying out of the work ought to pay to the authority charges (hereinafter referred to as ‘coast protection charges’) in accordance with the following provisions of this Act in that behalf, the authority may prepare a scheme (hereinafter referred to as a ‘works scheme’) for the carrying out of the work. (2) A works scheme shall - (a) indicate the nature of any work to be carried out by the authority on land vested in them or proposed to be acquired by them for the purposes of the scheme; (b) specify the work (if any) to be carried out on land not so vested or proposed to be acquired; and (c) specify the estimated cost of all work comprised in the scheme.” [S. 7](#) : “(1) A works scheme may indicate land (hereinafter referred to as ‘contributory land’) as land in respect of which coast protection charges are to be payable under the scheme on the ground that it will be benefited by the carrying out of the work provided for by the scheme. ... (4) A works scheme which provides for the levying of coast protection charges shall either - (a) specify the persons by whom such charges are to be paid, the amount of the charge to be paid by each person and the interest in land by reference to which the charge is levied upon him; or (b) state that the authority by whom the scheme is prepared will, within such period after the completion of the work as may be specified in the scheme, determine the interests in land by reference to which coast protection charges are to be levied and, in the case of each of those interests, the amount of the charge leviable in respect thereof; ... (5) Where a works scheme contains such a statement as is mentioned in paragraph (b) of the last foregoing subsection, the authority may, at any time within the period specified in the scheme, determine the charges to be levied thereunder as mentioned in that paragraph, and shall serve on each person upon whom a charge is leviable under the scheme a notice containing full particulars of their determination as to all

the charges to be so levied.”

2        *[1917] A.C. 170, 174; 33 T.L.R. 174* , P.C.

3        *[1953] 1 W.L.R. 1060 , 1063; [1953] 2 All E.R. 704* , D.C.

4        *(1875) L.R. 10 C.P. 733* .

5        *[1957] A.C. 223, 233; [1956] 3 W.L.R. 312; [1956] 2 All E.R. 669* , H.L.

6        *[1960] 1 Q.B. 424, 436; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213* , D.C.

7        *[1917] A.C. 170* .

8        *(1830) 1 B. & Ad. 328 , 334.*

9        *(1877) 2 C.P.D. 562* .

10       *(1877) 2 C.P.D. 562 , 566.*

11       *[1917] A.C. 170, 174; 33 T.L.R. 174* , P.C.

12       *(1830) 1 B. & Ad, 328.*

13       Ibid. 334.

14       *2 C.P.D. 562* .

15       Ibid. 567.

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