



Assets of community value

What happens after registration?

Introduction

The Localism Act 2011 put in place a procedure designed to make the community aware of the potential sale of any registered Asset of Community Value (AoCV). The process temporarily stops certain proposed sales of the property so that community groups can put together a bid to buy it. This information sheet sets out the process in more detail and gives general advice to both property owners and community groups as to their rights and responsibilities once a property is registered as an AoCV. However there are many rules that are case specific and so anybody involved in a particular case is encouraged to seek independent legal/professional advice.

Note, the Council will register the fact that your asset is an AoCV, as a Local Land Charge and as a Restriction against your title at the Land Registry. If your asset is **unregistered**, then when it is first registered, or when you next mortgage the asset, **you must** apply to enter a Restriction against your title on the register. *You should seek independent legal advice on the process and wording.*

If you are the owner, you have been provided with information on your right to request a review. If a review is requested, or at a later date you request the removal of the asset from the AoCV list, then, as part of a fair and open process the Council will seek representations from the nominating party and take these into account in any review or request for removal decision.

Also note that a pub listed as an AoCV will¹ require planning permission to change their use or be demolished (for the duration that it is listed). In addition to making such an application, please inform our AoCV administration that you intend or have made that application.

Myth busting

Whilst the statutory procedure is a very useful tool for communities wanting to retain a community asset, there are some common misconceptions over what the legislation allows. It is important to note that the scheme **does not**:

- Force a property owner to sell their asset to a community group or prevent a property owner from selling their property on the open market indefinitely
- Empower NHDC to make any judgement on whether the property should be sold to the community group or not

The Statutory Procedure

What will trigger the statutory procedure?

¹ As from 6 April 2015

The procedure will be triggered whenever the property owner intends to make a “relevant disposal” i.e.:

- Sell the property with vacant possession
- Grant a lease of more than 25 years with vacant possession
- Assign the lease of the property (where the property owner is a Tenant of the property and their lease was initially granted for a term or more than 25 years)
- Enter into a contract to do any of the above

What will not trigger the procedure?

Even though a property is registered as an AoCV, there are still many things that can take place without triggering the statutory procedure.

Some examples are listed below (this list is not exhaustive):

- Carrying out works to or altering the property (although note that other permissions may have to be obtained)
- Granting a lease of the property for a term of less than 25 years
- Selling the property subject to an existing lease (i.e.. with a tenant in place)
- Any assignment or underletting of the property by the Tenant (where the property is subject to a lease and the property owner as defined by the legislation is the Landlord)
- Granting rights over the property such as a right of way
- Applying restrictive covenants to the property
- Giving the property away
- Selling the property to certain family members
- If the property is part of a business, selling the property as part of the business as a going concern
- Selling the property to fulfil a separation agreement between spouses or civil partners
- Selling the property to fulfil a court order
- Transferring the property to fulfil certain types of contract that were in place before the property was listed as an AoCV

As is apparent from the list above, there are various ways in which the AoCV may change hands without triggering the statutory procedure. In addition there are rules that apply in special cases such as the death or insolvency of the property owner; part listed properties and properties in trust. Even if a transfer falls within one of the exceptions above, the owner is requested to notify NHDC when any of the above takes place and if a new owner or leasee is involved their name and address. *An owner **must** also notify the Council if property is registered at the Land Registry (on first registration) or mortgages an unregistered asset (contact details below).*

What are the property owner’s responsibilities after registration?

The owner of a registered AoCV must contact NHDC whenever they are intending to enter into a relevant disposal. A relevant disposal is any of the transactions that would trigger the statutory procedure as set out above. The solicitor dealing with the transaction should be able to advise the property owner whether a transaction is a relevant disposal or not. **However**, to be on the safe side inform the Council, because if you fail to comply with the statutory procedure for a relevant disposal, the disposal is likely to be ineffective².

² As it will contravene section 95(1) of the Localism Act 2011

Whenever an owner of a registered AoCV intends to enter into a relevant disposal, they should contact NHDC at the earliest opportunity. It is not possible to shorten the statutory procedure so it is in the property owner's interest to engage with the Council as soon as a relevant disposal becomes likely. Details of the property and the proposed transaction should be sent to:

Ian Couper (Service Director - Resources)
Council Offices
Gernon Road
Letchworth Garden City
Herts.
SG6 3JF

Tel: 01462 474243

Email: AOCV@north-herts.gov.uk

The statutory procedure will begin on the date that NHDC receives notification of the proposed disposal.

Stage 1 – The interim moratorium

The first stage of the procedure is a six week 'moratorium'. This means that the property owner cannot proceed with the transaction for a period of six weeks in order to give community groups an opportunity to request to be treated as a potential bidder for the property.

What will NHDC do during the interim moratorium?

- Update the AoCV register to show:
 - o That notice of a proposed relevant disposal has been received
 - o The date on which the notice was received; and
 - o The date on which the interim moratorium will end.
- Notify the group that nominated the property to become an AoCV that notice of a proposed disposal has been received.
- Publicise in the area local to the property the fact that notice of a proposed disposal has been received.
- Inform the property owner and update the register of AoCV if a community group notifies NHDC that it wishes to be treated as a potential bidder for the property.

What can a property owner do during the interim moratorium?

- Must not complete the transaction that triggered the procedure.
- May conduct negotiations to move the transaction forward (i.e. instruct solicitors, negotiate contract etc.)
- May sell the property to any community group that is eligible to request to be treated as a potential bidder for the property.

What can a community group do during the interim moratorium?

- Need not do anything if the community is content for the proposed disposal to go ahead.
- May notify NHDC that it wishes to be treated as a potential bidder to buy the property. This can be any community interest group (as defined by the Localism Act) and does not have to be the group that originally nominated the property to become an AoCV.

If no community group expresses interest in the property during the interim moratorium then the statutory procedure ends here and the property owner may sell the property to whomever they choose and at whatever price.

Stage 2 – The full moratorium

If during the interim moratorium a community group notifies NHDC that it wishes to be treated as a potential bidder for the property, the full moratorium will apply. This means that the owner cannot proceed with the proposed disposal for a period of six months in order to give the community group an opportunity to put together a bid to buy the property. The six months will run from the date that NHDC originally received notice of the relevant disposal from the property owner.

What can a property owner do during the full moratorium?

- Must not complete the transaction that triggered the procedure.
- May conduct negotiations to move the transaction forward (i.e.. instruct solicitors, negotiate contract etc.)
- May sell the property to any community group that would have been eligible to trigger the full moratorium (whether or not that group did).

What can a community group do during the full moratorium?

- Put a bid directly to the property owner to purchase the property.
- Does not have to do anything.

Stage 3 – The protected period

After the full moratorium has ended, the property owner may sell the property to whomever they choose and at whatever price during the protected period. The protected period lasts for 18 months beginning on the date that NHDC originally received notice of the relevant disposal from the property owner. Even if a community group has made a bid to purchase the property during the moratorium period, the owner does not have to sell to the community group.

Once the 18 month protected period is over, the statutory procedure will once again apply and the property owner must notify NHDC of any proposed relevant disposals.

Enforcement

The statutory procedure is enforced by making sure that potential purchasers of a property are aware if it is registered as an AoCV. Any purchaser will want to ensure that the procedure for sale of an AoCV has been followed, as failure to do so could result in the sale being considered void in law.

NHDC is required to notify potential purchasers of a property that it has been registered as an AoCV by:

- a) Placing it on the register of AoCV;
- b) Registering the fact that it is an AoCV on the local land charges register; and
- c) In the case of registered land, applying for a restriction to be placed on the land registry title.

Compensation

In introducing the new scheme, Central Government acknowledged that there may be some financial impact on owners of an AoCV as a result of the need to follow the statutory procedure. NHDC is therefore required to provide a compensation scheme to owners (other than public bodies).

NHDC will consider compensation claims where an owner has incurred loss or expense which it is likely would not have been incurred if the property was not registered as an AoCV.

Any owner wishing to make a claim under the scheme should write to the Head of Finance, Performance and Asset Management at the address given above and should:

- State the amount of compensation sought for each part of the claim;
- Enclose supporting evidence for each part of the claim.

A claim for compensation must be made before the end of the thirteenth week from the date that the loss or expenditure finished being incurred.

It is possible to request a review of a compensation decision and this will be explained in any relevant decision letter. As with the listing review, this will be undertaken by a Senior Officer who has not been involved in the original decision.

Appeals: Following a review decision an owner may appeal to the First Tier Tribunal. If this is relevant the owner will be informed of that right in the decision notice/ or correspondence accompanying the notice.