

IT'S THE LAW:

Does my asset look big in this?

What would Sir Humphrey say?

'Assets of Community Value' were, with much fanfare, introduced by the Localism Act 2011. The Government's soft sell at the time said that they were designed to give communities more power to be involved in the way local services are delivered by stimulating social, environmental and economic growth and regeneration through community asset ownership. A phrase Sir Humphrey would be proud of.

In a nutshell

Essentially, with some exceptions, where the owner of land which is listed as an ACV wants to dispose of it, they must first give notice to the Local Authority and then wait for a moratorium period, to give (at least in theory) local community groups a chance to put in an offer to buy it. Importantly, the owner is not obliged to sell to a local community group or even give them a right of first refusal. If the owner wants, it can simply sit out the moratorium period. At the end of the period it's free to do whatever it wants.

What is an Asset of Community Value

The Act states that land is of 'community value' (and so potentially subject to listing as an ACV) if it falls into either of the following two categories:-

Category 1: Its primary current use furthers the social well-being or social interests of the local community and it is realistic to think that it can continue to be used in a way that will further the social well-being or social interest of the local community. Note that there is no requirement that the current and future uses are the same uses. Just that they must both further the social well-being or social interest of the local community.

Category 2: The land has been used for purposes furthering the social well-being or social interests of the local community in the recent past and it is realistic to think that it will be used for the same purposes again within the next five years.

Social interests are defined by the Act so as to include cultural interests, recreational interests and sporting interests. To date, more successful listing applications have been made in relation to pubs than in relation to sports facilities. That may say a lot about the good people of England. Other possible community value uses include:-

- Community buildings such as village halls, youth centres and estate hubs;
- Nurseries, crèches and children's centres;
- Buildings of historic value;
- Parks, playing fields and other green spaces;
- Car parks; and
- Health centres, surgeries and hospitals.

When the legislation was being considered there was a degree of concern that housing, particularly social housing, would be hit – so restricting the disposal of stock by Registered Providers. However, regulations which sit alongside the Act now specifically state that residences are excluded. The position can get a bit tricky where a property is mixed residential and non-residential (e.g. the flat above the Queen Vic in EastEnders) but, for most situations that RPs will face, they can be confident that their housing stock can't be caught. However, many RPs will have elements of non-residential stock that might be potentially listed – from community halls to play areas – so, do read on.



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Who can nominate an asset?

An asset which is of community value will only be caught by the restrictions on disposal discussed in this edition of IT'S THE LAW if it is formally listed. Each Local Authority is obliged to maintain such a formal list but only certain organisations/people have the right to nominate an asset to be placed on that list. Those organisations include a local parish council, a person on behalf of a voluntary or community body with a local connection and a local Neighbourhood Planning Forum.

What happens next?

Once a Local Authority receives a nomination it must do two things. It must consider the nomination (and decide whether to accept it) and it must keep the owner of the land informed. It must reach its decision as to whether or not to list the asset within 8 weeks. Oddly, whilst the Local Authority has to keep the owner notified, they don't, at this stage, have an obligation to invite the owner to make comments. Our strong advice, if you have received notice that the Local Authority is considering an application in relation to one of your properties, is to make representations quickly and loudly if you wish to object.

Once the Local Authority decides that the asset should be listed, it must do so. The owner of the land then has 8 weeks to ask the Local Authority to reconsider. If, on that reconsideration, the Local Authority still stands by its listing then the owner can appeal to the First-tier Tribunal within 28 days of the review decision. These time deadlines are tight and strict – so if you are an affected landowner you will need to take action quickly.

And then what happens?

As referred to above, the fact that property has been included on the list of ACVs does not require the landowner to sell to a community group or even to give community groups the right of first refusal – but the listing does still have some impacts on the owner that can't just be ignored.

Once a property is listed, its owner can't dispose (with vacant possession) of the freehold of it, nor grant nor transfer a lease of it with a term of 25 years or more, unless three conditions are satisfied. These types of disposal are called Relevant Disposals and, as we said, they can't be made unless three conditions are satisfied.

A, B & C

Condition A: the owner has notified the Local Authority that they want to make a disposal. Once that notice has been given, Local Authorities have a duty to notify certain people of the proposed disposal and publicise it – giving local community groups an opportunity to 'get their act together' to mount a bid.

Condition B: the interim moratorium period of 6 weeks has expired without the Local Authority having received a request from a community interest group that they want to be treated as a potential bidder or, if such a request has been received, then the full moratorium period of 6 months has expired. During these moratorium periods the owner can progress with marketing and a sale – but cannot complete or exchange contracts for it. There is no

obligation on the owner to give due (or any) consideration to offers received from community groups. They can simply sit tapping their fingers on the desk and staring at the clock, if that is what they want to do.

Condition C: the protected period of 18 months has not expired. The 18 months starts from the time that notice was given as referred to in Condition A. If a disposal is not made within that 18 month window, then the owner would have to start again by giving a new notice to the Local Authority (Condition A) and then waiting again as the new moratorium period ticks away (Condition B).

Exempt Disposals

As always, it's not quite that simple! Certain disposals, called Exempt Disposals, are (you guessed it) exempt. These disposals can take place without jumping through the A, B & C hoops above. The list of Exempt Disposals is actually quite long, certainly too long to quote here. But it includes:-

- disposal by way of gift;
- disposal to a family member;
- disposal as part of the disposal of a business as a going concern (note that this would likely cover a stock transfer scenario); and
- disposal to a group company.

Once an ACV always an ACV?

Well, actually, no. An ACV can only stay on the list of ACVs for 5 years. After that time it is to be removed. There is nothing stopping a relevant organisation re-applying to list the asset at that time and the whole procedure will apply again.

An ACV must be removed from the list of ACVs once it is the subject to a Relevant Disposal (where the A, B & C conditions have been met). Again, there would be nothing to stop a fresh application for listing to be made and considered at that time.

Planning

The listing of an asset as an ACV and, in some cases, just a mere application for such listing can impact its planning status – but that is for another day and another edition of IT'S THE LAW.

The tiny print

This is one of a series of leaflets published by Devonshires' Real Estate & Projects Department aimed at our property owning clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

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