



Assets of Community Value and the Localism Act 2011 - how it works in practice

Peter Wadsley, St John's Chambers

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Peter Wadsley, Planning and Administrative Law Barrister, looks at Assets of Community Value under ss. 87-108 Localism Act 2011 and some of the problems and pitfalls.



Summary

The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. 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 and to pay costs in appropriate cases.

Background

The Localism Act 2011 was one of the manifestations of the commitment made by the coalition Government to devolve greater power and autonomy to local government and community groups – including a range of "*specific rights that can be exercised on the initiative of local people*".¹

¹ HM Government, Decentralisation and the Localism Bill: an essential guide, December 2010, p 7 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5951/1793908.pdf

Amongst the powers aimed at achieving this policy objective is the community right to bid, contained in Chapter 3 of the Act at sections 87 to 108. The Explanatory Memorandum to the Assets of Community Value (England) Regulations 2012 sets out the policy intention of the Assets of Community Value provisions:

The Government's policy in introducing these provisions is to assist local community groups to preserve buildings or land which are of importance to their community's social well-being. The background to this is a trend in recent years of communities losing local amenities and buildings of importance to them. Evidence seen by DCLG indicates that being unaware of a proposed sale, and the speed with which local assets are frequently sold, are both important factors in the local community being unable to make an alternative proposal for use of the site. The focus of the Assets Scheme is therefore to give the local community early warning of sales and to enable eligible local groups to delay sales by 6 months to provide time for them to put together a competitive bid to buy the asset. The scheme does not require the owner to sell to a community group, but improves the opportunity for this outcome. [para 7.1]

At the latest estimate, since coming into force in September 2012, more than 1,800 assets have been listed as ACVs; 122 groups showed an intention to bid by triggering the six month moratorium; and nine assets have been bought by community groups.²

The Right to Bid was designed to provide people with that time and involves the following process, usefully summarised in a recent report by the Communities and Local Government Select Committee – Community Rights (20 Jan 2015):³

- a community group can nominate a local building or land for listing by the local authority as an Asset of Community Value(ACV);
- if the local authority decides to list it, the asset sits on a register for five years;
- listing gives local people an opportunity to bid for the ACV if the owner decides to sell, as this usually triggers a six month moratorium, during which time the asset cannot be sold except to a community bidder;
- the six month period includes an initial six week window in which local groups, if they wish to bid, must express an interest.
- local groups then have the remainder of the six month period to organise the bid; and

² Evidence submitted by the DCLG to the Communities and Local Government Select Committee Inquiry into community rights - <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communities-and-local-government-committee/community-rights/written/16834.html>

³ House of Commons, Communities and Local Government Committee, Community Rights, Sixth Report of Session 2014-15, (20 January 2015)

- at the end of the six months, the owner may sell, but they do not have to sell to a community bidder. If the sale begins before the asset is listed, the moratorium does not apply, even if the property is subsequently listed.

Regulation 11 of The Assets of Community Value (England) Regulations 2012 (SI 2012/2421) provides for an appeal mechanism for the owner of land listed as an ACV to appeal to the first tier tribunal against the listing. Although first tier tribunal decisions are not binding precedent, and no ACV cases have yet made it into the High Court, these appeal decisions provide the only judicial guidance to the operation of this power. The guidance provided in the appeal decisions, in the absence of either a well-defined legislative framework or statutory guidance, will be particularly instructive to local authorities, landowners and community groups on the exercise of these still relatively new, but increasingly well-used powers.

The *New Church* and Bristol City Council

One such case was the *General Conference of the New Church v Bristol City Council* (Localism Act 2011) [2015] UKFTT CR 2014 0013 (GRC). The property at the centre of the appeal was a Church built in 1899 and the adjoining land. The Church was built specifically for the purpose of religious services and continued to be used for such until it closed its doors in November 2013, following declining numbers in its congregation. A number of other groups also used the building – the Council as a polling station; by the Brownies until February 2013; dance classes until May 2013; two meditation groups that ceased in November 2011 and October 2012; and, use by two mother and baby groups twice weekly until the closure of the Church.

The owners of the Church, the General Conference of the New Church, successfully appealed against the listing. The decision of the Tribunal offers some particularly useful guidance, both generally and to cases involving churches.

Definition of Ancillary Use

The term “ancillary use” appears in several places in section 88 of the Act, but is nowhere defined. In section 88(2)(a), it is stated that a property can be listed as an ACV where 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". Section 88(1)(a) carries a similar provision but refers to an actual or current use. Although some assistance towards finding a useable definition can be found in general planning law, the Tribunal has not shown a willingness to put it any higher than "helpful".⁴ The Tribunal in *New Church*, taking some guidance from planning law⁵ and the explanatory memoranda, decided that "*context is all*".

In assessing the context of the use of the Church, other than for religious services, the Tribunal had particular consideration to the frequency of the other uses, the regularity of the use and whether the uses were still in place when the Church was closed. It found that at the point of closure the Church was still a church and not a "*community or social centre*", and therefore the other uses were ancillary.

Furthering the social wellbeing or interests of the local community

In order to be listed as an ACV, the property must be actually used, or used in the recent past, for an activity furthering the social wellbeing or interests of the local community.⁶ The Tribunal in *New Church* accepted that religious worship did not fall within the (non-exhaustive) definition of "*social interests*" at section 88(6); cultural interests; recreational interests; and sporting interests. It should be caveated that the Tribunal was unwilling to make a definitive finding, but it was able to support submissions that had Parliament intended to include religious interests in the definition above, it would have done so – as it has done in other pieces of legislation.⁷

Future Use

Finally, in order to be listed, it must be realistic to think that there can continue to be, or there is a time in the next five years when there could 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.⁸

⁴ Tribunal Reference CR/2013/0009 at para 7, and *General Conference of the New Church v Bristol City Council* (Localism Act 2011) [2015] UKFTT CR 2014 0013 (GRC) at para 18.

⁵ In particular the Planning Encyclopaedia at P55.39 and P55.42, the test of functional relationship rather than extent between primary and ancillary use.

⁶ s.88(1)(a) and 88(1)(b) Localism Act 2010.

⁷ s. 10 Equality Act 2010 and Article 9 of the ECHR.

⁸ s. 88(1)(b) and 88(2)(b) Localism Act 2010.

The Tribunal has found previously, that it is not necessary to show that commercial viability is the test for future use.⁹ In *New Church* the Tribunal knew the running costs of the Church, and so was able to assess what level of use would be needed to keep the property open. It was not enough for the community group to produce a speculative list of potential uses but nor, on the other hand, was a fully costed business plan required. As with the finding on ancillary use, it appears that “*context is all*” also applies to assessing continuing or future use of the property. If it is not required to show that there is a commercially viable plan, any proposals for future use must be more than a speculative list. For landowners seeking to make an appeal against a listing, evidence showing the running costs of the building may increase the pressure on the local authority and/or community groups to show that their proposals will be able to meet these running costs over the five year period set out in the legislation.

Planning concerns not relevant

Concerns were raised at the appeal that development of the Church, would have a negative impact upon wildlife, trees and fauna. The Tribunal Judge decided that these complaints should be addressed through the general planning law related to development control.

Comment

All the indicators show that the use of ACVs will continue to rise. Consequently there are likely to be more appeals. In the absence of judicial guidance from the High Court, tribunal decisions such as the *New Church* greatly assist the interpretation of the legislation in the absence of any other guidance of any note or clarity in the legislative drafting. Perhaps most important for landowners and listing groups, there is a need to show that it is 'realistic' to think that there is a time in the next 5 years when there could be non-ancillary use of the building or land which will further the social well-being or social interests of the local community. When that test is applied there may be many hoped for uses of an ACV which are, sadly, unrealistic.

Peter Wadsley
Peter.Wadsley@stjohnschambers.co.uk

⁹ Tribunal Reference CR/2013/0009 at para 12.