



Department for
Communities and
Local Government

Community Right to Bid: Non-statutory advice note for local authorities

Part 5 Chapter 3 of the Localism Act 2011 and the Assets of
Community Regulations 2012

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Ministerial foreword



From local pubs and shops to village halls and community centres, the past decade has seen many communities lose local amenities and buildings that are of great importance to them. As a result they find themselves bereft of the assets that can help to contribute to the development of vibrant and active communities. However on a more positive note, the past decade has also seen a significant rise in communities becoming more active and joining together to save and take over assets which are significant for them.

Part 5 Chapter 3 of the Localism Act, and the Assets of Community Value (England) Regulations, which together deliver the Community Right to Bid, aim to encourage more of this type of community-focused, locally-led action by providing an important tool to help communities looking to take over and run local assets. The scheme will give communities the opportunity to identify assets of community value and have them listed and, when they are put up for sale, more time to raise finance and prepare to bid for them.

This scheme requires an excellent understanding of the needs of the local community. As such local authorities will have a pivotal role in implementing the Community Right to Bid, working with local communities to decide on asset listing, ensuring asset owners understand the consequences of listing, enforcing the Moratorium period and in taking decisions as part of any appeals process

This advice note, which has non-statutory status, is aimed at helping local authorities to implement the scheme so that they can work with their communities to protect the buildings and amenities which are of great local significance to the places where people live and work.

A handwritten signature in black ink, appearing to read 'Don Foster', with a horizontal line underneath.

The Rt Hon Don Foster MP

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Section1

Introduction and scope of advice

- 1.1 The Localism Act (“the Act”) was enacted on 15 November 2011¹, and the Assets of Community Value provisions in Part 5 Chapter 3 were commenced for England at the same time as the Regulations made under those provisions came into force, both on 21 September 2012.
- 1.2 The status of this advice note is non-statutory and applies only to England.
- 1.3 A glossary of terms is at Annex A at the end of this guidance.

¹ <http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3/enacted>

Section 2

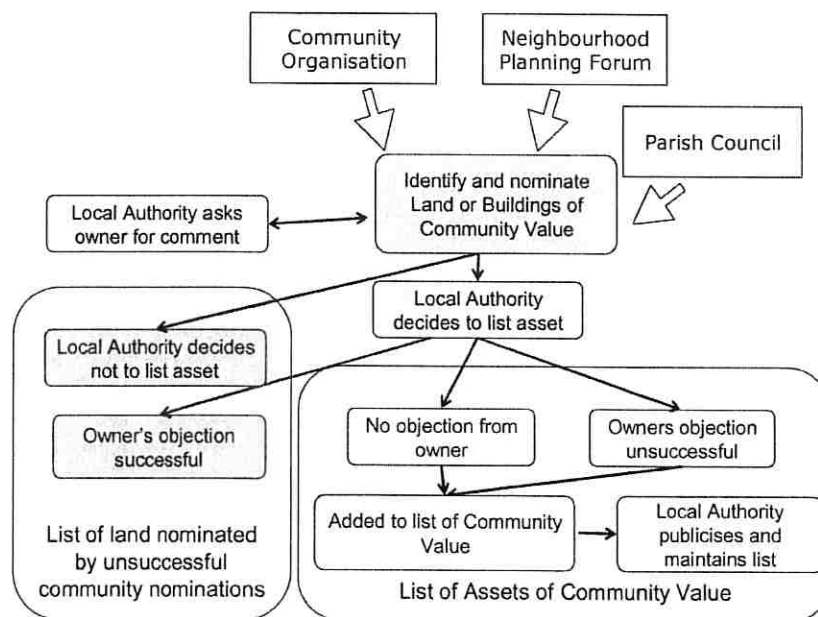
Outline of how the scheme works

- 2.1 The provisions give local groups a right to nominate a building or other land for listing by the local authority as an asset of community value. It can be listed if a principal (“non-ancillary”) use of the asset furthers (or has recently furthered) their community’s social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. When a listed asset is to be sold, local community groups will in many cases have a fairer chance to make a bid to buy it on the open market.
- 2.2 The Assets of Community Value legislation places requirements on the following local authorities in England:
 - (a) a district council,
 - (b) a county council for an area 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.
- 2.3 The scheme has two main parts: nominating and listing assets and the moratorium.

Nominating an asset

- 2.4 It is open to parishes and community organisations, including neighbourhood forums (as constituted under section 61F of the Town and Country Planning Act 1990, added to that Act by the Localism Act) to nominate local assets to their local authority, to be included on the list of assets of community value. Nominated assets may be owned by anybody, including the local authority and the Crown.
- 2.5 A neighbouring parish council can nominate an asset. Where the land is in a parish area, this means a parish which shares a border with it; or if an asset is in an unparished local authority area, so that there is no immediately adjoining parish council within the same local authority area, a parish council that borders the local authority could nominate an asset.

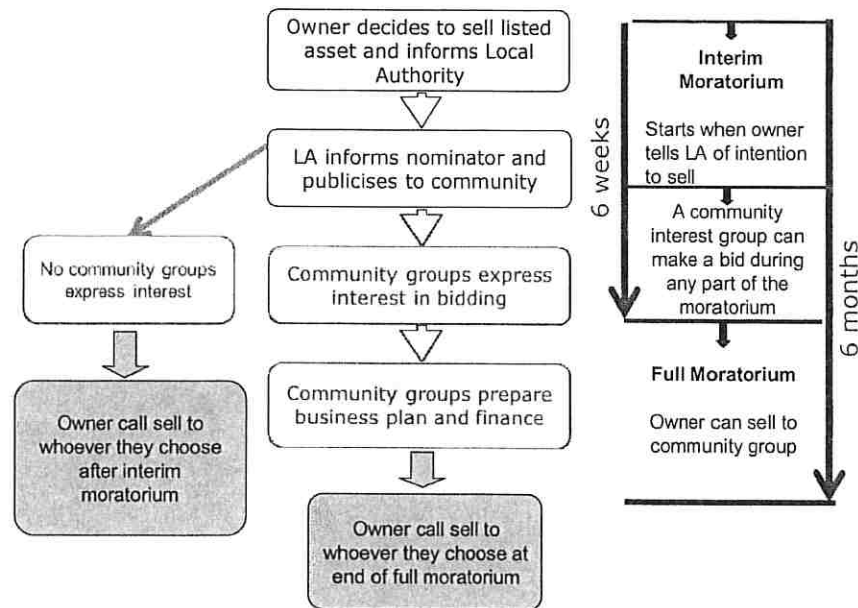
- 2.6 The local authority will then have 8 weeks to make a judgement about whether the asset meets the definition set out in section 88 of the Act or whether it falls into one of the excluded categories, including residential property, set out in Schedule 1 to the Regulations.
- 2.7 If the nominated asset is properly nominated, is in the local authority's area, meets the definition, and is not excluded, the local authority must list it and inform all specified parties (including the parish council). They must also place the asset on the local land charges register and, if the land is registered, apply for a restriction on the Land Register in Form QQ (for details see below under Enforcement).
- 2.8 If the owner objects to their property being placed on the List, they will have a right to an internal review by the council of the decision to list. The details of this process are set out below. If the owner remains in disagreement with the listing after the internal review they have a right of appeal to an independent Tribunal.
- 2.9 If the local authority do not agree that the asset nominated meets the section 88 definition, or it is in one of the excluded categories, they must place it on a list of assets nominated but not listed. If an owner is successful in their appeal against listing at internal review or Tribunal stage then the asset must also be moved to the list of unsuccessful nominations. It is for the local authority to decide how long they hold unsuccessful nominations on this list. The intention of this is to ensure transparency and to avoid multiple nomination of an asset that does not meet the definition.



Moratorium

- 2.10 Once an asset has been listed nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least twenty-five years).
- 2.11 Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired.
- 2.12 The first part of this window is a 6 week interim period, which will apply in all cases, from the point the owner notifies the local authority. This will allow community interest groups to make a written request to be treated as a potential bidder. If none do so in this period, the owner is free to sell their asset at the end of the 6 weeks.
- 2.13 If a community interest group as defined in regulation 12 of the Regulations (referring to the bodies in paragraph (1) (d) to (g) of regulation 5) does make a request during this interim period, then the full 6 month moratorium (again from the point the owner notifies the local authority) will operate. During this period the owner may continue to market and negotiate sales, but may not exchange contracts (or enter into a binding contract to do so later). There is one exception. The owner may sell to a community interest group during the moratorium period.
- 2.14 After the moratorium period – either the 6 weeks if there has been no community interest, or the full 6 months – the owner is free to sell to **whomever they choose and at whatever price**, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the local authority of wishing to sell). The process and lengths of the moratorium periods are contained in section 95 of the Act².

² <http://www.legislation.gov.uk/ukpga/2011/20/section/95/enacted>



2.15 Not all proposed sales have to be notified to the local authority however. A range of disposals will be exempted from the provisions. A number are set out in section 95(5) of the Act, and others are in the Regulations. The full list of exemptions is given in Annex A.

Compensation

2.16 The scheme recognises that these provisions may have some financial impact on owners and provides a compensation scheme for private property owners. This will not be available to public bodies. The local authority will be responsible for administering the compensation scheme, including assessing and determining compensation awards. Owners and former owners will have rights of review and appeal regarding the authority's compensation decisions (see Section 10).

Enforcement

2.17 The scheme provides for various mechanisms to encourage compliance by requiring local authorities to:

- Inform owners and other interested parties that an asset has been listed
- enter on the local land charges register the fact that an asset has been listed; and

- in the case of registered land, apply for a restriction on the Land register.
- 2.18 Additionally, to give a strong incentive to owners to comply with the scheme, non-compliant sales will be void (ineffective), meaning that the change of ownership has not taken place (regardless of whether it has erroneously been registered on the Land Register - which would have to be rectified once the fact that the sale was void was discovered). However this penalty will not apply if the owner was unaware through no fault of their own that the land was listed when it was sold.

What the provisions do not do

- 2.19 These provisions do **not** restrict in any way who the owner of a listed asset can sell their property to, or at what price. They also do **not** confer a right of first refusal to community interest groups (unlike the Scottish scheme).³
- 2.20 The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

³ <http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/Community>

Section 3

List of assets of community value

- 3.1 In addition to the list of assets, local authorities are required to maintain a list of assets nominated unsuccessfully by community nomination. The local authority may remove land from this second list whenever it considers would be appropriate. Local authorities must publish both lists; it is up to them to decide how they publish them, but they must make them available for free inspection by any person and must provide a free copy of either to anyone who asks for it (but are not required to provide more than one free copy of each). The two lists may be combined into one document if the local authority wishes. The list of unsuccessful nominations must include reasons for the land not being listed.
- 3.2 It is up to local authorities to decide on the detailed contents and layout of the lists and when to modify them, except for the following requirements.
- 3.3 Local authorities are required to add to the list of assets, as soon as practicable:
- a) that a notification by the owner of intention to dispose of the land has been received by the local authority and the date this was received
 - b) in all cases under (a), the end dates of the interim and full moratorium periods and the protected period
 - c) where relevant, that the full moratorium has been triggered
 - d) where (c) applies, the identity of the community interest group that triggered the full moratorium
- 3.4 Local authorities are required to remove an asset from the List, as soon as practicable:
- a) after a relevant disposal (other than an exempt disposal)
 - b) when an appeal against a listing has been successful
 - c) when they form the opinion that the land or building is no longer of community value
 - d) or no later than 5 years from the date of entry on the list.

Land which may, and may not, be listed as an asset of community value

3.5 If a local authority receives a valid nomination, it must determine whether the land or building nominated meets the definition of an asset of community value as set out in section 88 of the Act. 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.

(Section 88(1) Localism Act 2011)

Section 88(2) of the Act extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

3.6 There are some categories of assets that are excluded from listing. The principal one is residential property. This includes gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal where they are in the same ownership as the associated residence. Details of this are set out in paragraphs 1 and 2 of Schedule 1 to the Regulations. "The same ownership" includes ownership by different trusts of land settled by the same settlor, as well as literally the same individual owner.

3.7 There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

3.8 There are two further categories of assets excluded from listing:

- (a) Land licensed for use as a residential caravan site (and some types of residential caravan site which do not need a licence), in paragraph 3 of Schedule 1 to the Regulations.

(b) Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990, in paragraph 4 of Schedule 1 to the Regulations.

Section 4

Who may nominate

4.1 Local authorities cannot list land on their own initiative - it must be nominated. For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located).

4.2 The voluntary or community bodies which may make community nominations are set out below:

Parish Councils. This may be for an asset in its own area, or in the neighbouring parish council.

Neighbouring Parish Councils. If the parish council borders an unparished area, then they may nominate an asset within that neighbouring local authority.

Unincorporated groups. Nominations can be accepted from any unincorporated group with membership of at least 21 local people who appear on the electoral roll within the local authority, or a neighbouring local authority. This will for instance enable nomination by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure.

Neighbourhood forums. The procedure for becoming a neighbourhood forum is set out in section 61F of the Town and Country Planning Act 1990, added by the Localism Act 2011. There can only be one neighbourhood forum for an area. Existing community groups, civic societies and others can put themselves forward to be a 'neighbourhood forum'. Prospective neighbourhood forums need to ensure they meet the conditions for designation set out in the legislation, for example a forum should have an open membership policy and seek to draw its membership from across the neighbourhood area and from different sections of the local community.

Community interest groups with a local connection. These must have one or more of the following structures:

- a) A charity
- b) A community interest company
- c) A company limited by guarantee that is non profit distributing

d) An industrial and provident society that is non-profit distributing (these groups will be renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 when it comes into force)

4.3 In this context, non-profit distributing means that any surplus is not distributed to its members but is wholly or partly applied to the local authority area where the asset is based or to a neighbouring authority area.

Section 5

Contents of a nomination

- 5.1 A nomination must include the following information for the local authority to consider:
 - I. A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.
 - II. Any information the nominator has about the freeholders, leaseholders and current occupants of the site.
 - III. The reasons for nominating the asset, explaining why the nominator believes the asset meets the definition in the Act.
 - IV. The nominator's eligibility to make the nomination.
- 5.2 Local authorities may wish to consider having a named point of contact for community groups to send their nominations to.
- 5.3 Community nominations may be made at any time, including after an asset has been put onto the market. However no restrictions on sale arise from nomination - it is only listing which brings the statutory provisions into play.

Section 6

Procedure when considering listing

- 6.1 The local authority is required to make a decision in response to a nomination within 8 weeks of receiving the nomination.
- 6.2 The local authority must take all practicable steps to inform the following if an asset has been nominated:
- a parish council (if any) in which the land lies (or partly lies),
 - the owner as defined in section 107 of the Localism Act. This definition ensures that only one level of legal proprietary rights will qualify as ownership for the Act. In summary this is the freeholder or, if the asset is leased, the leaseholder with the lease most distant from the freehold which when granted had at least 25 years to run. So if there are a number of leases the leaseholder with a qualifying lease or sub-lease most distant from the freeholder is the owner for the purposes of these provisions.
 - all others with a legal estate, i.e. if the owner is not the freeholder then the holder of the freehold estate, and any other leaseholder apart from the owner; and
 - any lawful occupant (which could include a licensee).
- 6.3 When an asset is added to or removed from the list, the local authority must inform the owner, the occupier of the land if not the owner, and the successful community nominator of the asset. This is set out in section 91(2) of the Localism Act.⁴
- 6.4 Local authorities must also inform any freeholders and leaseholders of the asset who are not the owners, together with the parish council the land lies in (or partly lies in), that an asset has been added to, or removed from, the list. (See regulation 9 of the Regulations)
- 6.5 A local authority which is not able to give notice to any of these people in the usual way – for instance due to lack of names or addresses – can take reasonable alternative steps to bring the notice to a person's attention. This could include, for instance, a notice attached to the property. (See section 91(2) of the Act)

⁴ <http://www.legislation.gov.uk/ukpga/2011/20/section/91/enacted>

Section 7

Procedure to be followed for listing review

- 7.1 If an asset has been included on the List, an owner has the right to request the local authority to review its decision, under section 92 of the Act. The deadline for the owner to request this review is set out in paragraph 1 of Schedule 2 to the Regulations: it is 8 weeks from the date written notice of listing was given (or from the date that alternative steps were completed to bring listing to the owner's attention) or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.
- 7.2 Basic procedural rules for the review are set out in Schedule 2 to the Regulations. It must be conducted by an officer of appropriate seniority, who did not take part in the decision to list. The owner may appoint a representative and the local authority will be required to provide all relevant documents to the representative.
- 7.3 The owner and/or their representative may make representations to the reviewer orally and/or in writing. The authority must complete their review within 8 weeks, unless a longer period has been agreed in writing.
- 7.4 The owner and authority will bear their own costs of the review.
- 7.5 If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the local authority's review decision. The written response following the internal review should inform the owner of their right to an independent appeal. The owner making the appeal can be either the same owner who requested the review, or - if the property has been sold in the meantime - the new owner.

Section 8

Appeal against a listing review

- 8.1 An owner's appeal against a local authority listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 28 days from the date on which notice of the decision appealed against was sent to the owner. Appeals may be both on points of law and on findings of fact. The property will remain listed during the appeal process.
- 8.2 Owners should send the appeal in writing to the First-Tier Tribunal at:
- Tribunal Clerk,
Community Right to Bid Appeals
HM Courts & Tribunals
First-tier Tribunal (General Regulatory Chamber)
P.O. Box 9300
Leicester, LE1 8DJ
- 8.3 Owners may also send an appeal to the First-Tier Tribunal by email at: GRC.CommunityRights@hmcts.gsi.gov.uk

Section 9

Moratorium

- 9.1 The moratorium requirements, as set out in section 95 of the Act, apply only to relevant disposals. "Relevant disposal" is defined in section 96. It means a transfer of the freehold or grant or assignment of a qualifying lease which gives vacant possession of the buildings and other land in question. However they will not apply to all relevant disposals, as some types of relevant disposal are exempt. These exemptions are partly in the Act and partly in the Regulations; the full combined list is set out in Annex A below. The moratorium provisions apply only to disposals, so for example if a building listed as an asset of community value is to be demolished without being sold, the moratorium rules in section 95 do not apply.
- 9.2 An owner of a listed site may not make a relevant disposal of their asset during the 6 week interim moratorium period (unless it falls within one of the exemptions or is to a community interest group). This interim moratorium runs from the date the local authority receives notification from the owner of their intention to dispose of their listed asset
- 9.3 Once the local authority has been notified of the intent to dispose, they are required to update the list to show the owner's intention to dispose and to give the interim and full moratorium end dates, and the end date of the protected period. The nominating community group must be informed. The local authority must also publicise all of these matters in the neighbourhood of the asset in question. It is for the local authority to determine how they do this.
- 9.4 During the interim moratorium period a community interest group may request in writing to be treated as a potential bidder for the asset; this will bring the full moratorium period into force. The community interest group does not have to provide any evidence of intention or financial resources to make such a bid. A community interest group must have one or more of the following structures:
- (a) A charity
 - (b) A community interest company
 - (c) A company limited by guarantee that is non profit distributing
 - (d) An industrial and provident society that is non profit distributing
- (these groups will be renamed as community benefit societies by the

Co-operative and Community Benefit Societies and Credit Unions Act 2010 when the relevant provisions come into force)

- 9.5 Once a local community interest group makes a written request to the local authority during the interim moratorium period to be treated as a potential bidder, the owner may not dispose of their asset during the full 6 month moratorium (except as permitted). The local authority must as soon as practicable let the owner know that this request has been received (section 98 of the Act).
- 9.6 There is one type of disposal that may be made during a moratorium. An owner may sell during the interim or full moratorium period to a local community interest group – i.e. one which either did, or would have been eligible to, trigger the full moratorium.
- 9.7 There are a number of types of disposals which are exempt from the moratorium requirements, as set out in section 95(5) of the Act and in Schedule 3 to the Regulations. The full list of exemptions is set out in Annex A.

Section 10

Compensation

- 10.1 Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.
- 10.2 The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.
- 10.3 Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.
- 10.4 The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.
- 10.5 The compensation scheme does not extend to public authorities and bodies. These are defined as:
- Government departments, authorities and other bodies to which section 6 of the National Audit Act 1983 applies;
 - bodies which receive the majority of their funding from public sources which may be examined by the Comptroller and Auditor General under section 7 of the National Audit Act 1983; and,
 - local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998

- 10.6 As with other costs incurred by local authorities in meeting the requirements placed on them, we have reflected the estimated costs of compensation within the new burdens funding. The compensation elements of new burdens funding are estimated on the basis of 40 successful claims for compensation across all administering local authorities over a year.
- 10.7 In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.
- 10.8 Local authorities can write into the department with a request for financial support providing evidence of the compensation costs incurred either in writing to:
- Albert Joyce,
Community Assets Team,
5/A4 Eland House,
Bressenden Place
London
SW1E 5DU
- or by email at: righttobid@communities.gsi.gov.uk
- 10.9 New Burdens payments will be processed and made available to all administering local authorities in England (as set in section 106 of the Localism Act) on 15 October. We will write to local authority finance officers to inform them about the payment. The department will also notify local authorities in the same way for the periods April 2013 and April 2014.

Section 11

Internal review of compensation decision

- 11.1 The Regulations provide that an owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions. Schedule 2 to the Regulations provides that the owner must make the request within a period of 8 weeks, beginning on the date on which the local authority provides the owner with written notification of the decision. The local authority may allow longer for a review request to be made.
- 11.2 The local authority must review their decision, and notify the owner of the result within 8 weeks of receiving the request, with reasons. The procedure for the review, in Schedule 2 to the Regulations, is the same as for the local authority's review of a listing decision.

Independent Appeal

- 11.3 An owner may appeal to a Tribunal against the local authority's review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review. Only the owner – or former owner – who requested the review may appeal against the review decision (i.e. unlike with listing appeals, a new owner who bought the land following a request for a review may not appeal against the compensation review decision).
- 11.4 As with listing appeals, the current position is that the appeal will be to the General Regulatory Chamber of the First-tier Tribunal.

Section 12

Enforcement

- 12.1 The Regulations introduce a clear penalty for non compliance, and measures to minimise the chance of a disposal not being compliant with the scheme. These will be achieved partly by amendment to the Land Registration Rules 2003.
- 12.2 Local authorities are required to add that an asset has been listed to the local land charges register. This will ensure that all prospective new owners will be aware that an asset has been listed, since local land charges apply to both registered and unregistered land.
- 12.3 Local authorities are required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform local authorities that the land has been entered on the Land Register as a result of an application for first registration, and also to inform the local authority if they have become the new owner of listed land (together with giving their name and address details) .
- 12.4 Amendments to the Land Registration Rules 2003 have been made to add further safeguards against non-compliance. Local authorities are required to apply to the Land Registry for entry of a restriction on the Land Register when they list a building or other land as an Asset of Community Value, or, if necessary, where the owner of the listed asset has changed. This restriction will be in a form of wording newly added to Schedule 4 to the Rules, as Form QQ. This is "No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011". An owner of previously unregistered listed land, who applies to the Land Registry for first registration (or a mortgagee who applies for first registration on behalf of the owner), is required at the same time to apply for a restriction against their own title. The local authority is also required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.
- 12.5 When a listed asset is disposed of, and a new owner applies to the Land Registry to register a change of ownership of a listed asset, they will therefore need to provide the Land Registry with a certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act (the moratorium requirements).

Annex A

Exemptions

With regard to the following exemptions (with the exception of the first), the local authority will usually not know that the disposal is taking place, because an owner who is confident that the transfer they contemplate will be exempt will not need to notify the authority of intention to sell under section 95(2) of the Act. In some cases an owner may not be sure whether they are going to succeed in making an exempt disposal or not – for instance if they wish to sell the land together with a business sold as a going concern – and may notify the authority as a precaution. In that situation, if they were successful in arranging an exempt disposal, they could enter into a binding contract during the moratorium period. 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.

The full list of exemptions is as follows. The first is in a different category to the remainder, in that the moratorium rules will have been triggered by notification from the owner, but the sale will be able to take place during the moratorium. Categories (b) to (j) are in section 95(5) of the Act, and (k) to (y) are in Schedule 3 to the Regulations. Item (f) – part-listed land – is partly defined in the Act, and partly in the Regulations.

- a. disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13(1)
- b. disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c. disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d. disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e. disposals between family members (“family member” is defined in section 95(7) of the Act as the owner’s spouse or partner and descendants of grandparents – which includes the owner’s own parents, but not the grandparents)
- f. part-listed land – i.e. sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)

- g. sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)
- h. disposals occasioned by somebody becoming or ceasing to be a trustee
- i. disposal by trustees in connection with the trust, as specified
- j. a disposal occasioned by a person becoming or ceasing to be a partner in a partnership
- k. transfers made in pursuance of a court order
- l. transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m. a transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with "incapacity" being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n. a disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before the land was listed (and in this context it should be noted that an option etc entered into *after* the land is listed would count as a relevant disposal under section 96(4) of the Act)
- o. disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 "Compulsory Purchase and the Crichton Down Rules":
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>
- p. sale by a lender under a power of sale (i.e. where the land was security for a loan)
- q. disposal of land under bankruptcy or other insolvency proceedings – the wording is "insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986", which gives a very wide definition of insolvency proceedings
- r. compulsory purchase disposals (see the wide definition of "statutory compulsory purchase" in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)

- s. the grant of a agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986
- t. transfers between connected companies in a group of companies (using the definition of "group undertaking" in section 1161(5) of the Companies Act 2006, modified to restrict "undertaking" to a body corporate)
- u. disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e)⁵. See final paragraph below for details.
- v. disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.
- w. disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)
- x. a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy
- y. disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.

Details regarding part-listed land and land with a residence

Similar rules apply for determining how much land constitutes land with a residence (for exclusion from listing in Schedule 1 to the Regulations) and how much land constitutes a single site for qualifying as a part-listed site (as an exempt disposal in Schedule 3 to the Regulations). In order to ensure that the same rules apply to registered and unregistered land, the approach taken has not been based on title. Instead, it is necessary to look at whether the site in question is one coherent parcel of land all owned by a single owner, so

⁵ 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 –

- (1) part of which is land included in a local authority's list of assets of community value, and
- (2) part of which is land not included in any local authority's list of assets of community value.

that it is possible to reach one part from another without crossing land owned by somebody else. However there are two qualifications to be taken into account:

- Firstly, "a single owner" has an expanded meaning covering more than simply the same person or joint owners. It includes also trustees of different trusts of land which was settled by the same settlor – see definition of "single owner" in regulation 1.
- Secondly, where it would otherwise be reasonable to regard the land as one coherent parcel, the fact that it is crossed by a road, railway, canal or river in other ownership is to be ignored.

Annex B

Glossary

<i>Asset</i>	A building or other land
<i>The Community Right to Bid</i>	The name by which the Assets of Community Value scheme is commonly known.
<i>Land of community value</i>	Building or other land whose main (i.e. “non-ancillary”) use furthers the social wellbeing or social interests of the local community, or has recently done so, and is likely to do so in the future. See section 88 of the Act.
<i>List of assets of community value</i>	A list maintained by a local authority of land in its area of community value. See section 87 of the Act.
<i>Voluntary or community body</i>	A group which can nominate land, so long as it has a local connection with the land. See regulation 5.
<i>Local connection</i>	The requirement that a group's activities and use of any profits (where relevant) must be concerned with the local authority area or a neighbouring authority area. In the case of a parish council, the requirement is that it must share a border with the relevant area in which the asset lies. See regulation 4.
<i>Relevant disposal</i>	The transfer of the freehold, or the grant or assignment of a lease originally granted for at least 25 years, giving vacant possession to the new owner. See section 96 of the Act.

Exempt disposal

A relevant disposal for which the land owner does not have to observe section 95(1) of the Act. There are two sorts of exempt disposal:

- one where the owner does notify the local authority of intention to sell, so that the moratorium applies, but can sell during the moratorium to a community interest group;
- fully exempt disposals where the owner can simply go ahead without notifying the local authority at all. These are set out in section 95(5) of the Act and Schedule 3 to the Regulations.

Moratorium period

A period of time during which the owner of listed land cannot make a non-exempt relevant disposal, other than to a voluntary or community body. There are two moratorium periods (see section 95(6) of the Act), both running from the same start date (when the owner notifies the local authority of an intention to sell):

- the interim moratorium - 6 weeks;
- the full moratorium - 6 months.

Protected period

A period of 18 months (running from the date the owner notified the local authority of an intention to sell). Once any moratorium period has finished, the same owner can sell during the remainder of the protected period without having to comply with the section 95 requirements again.

Listing review

A review by a local authority at the request of the owner of their decision to list a building or other land as an asset of community value. See section 92 of the Act, and for procedure on the review Schedule 2 to the Regulations.

<i>Compensation review</i>	A review by a local authority at the request of the owner of their decision in response to a claim for compensation for loss or expense caused by listing their building or other land as an asset of community value. See section 99 of the Act, regulation 16, and for procedure on the review Schedule 2 to the Regulations.
<i>Conveyancer</i>	The owner of listed, or formerly listed, land will in some circumstances have to provide a certificate by a conveyancer that a disposal has not contravened section 95(1) of the Act. "Conveyancer" in this context has the meaning given in rule 217A of the Land Registration Rules 2003, including a solicitor, a barrister, and a licensed conveyancer.
<i>The Act</i>	The Localism Act 2011
<i>Community interest group</i>	<p>A group which, for land with which it has a local connection, may –</p> <ul style="list-style-type: none"> ○ ask to be treated as a potential bidder for listed land which the owner wishes to sell, thus triggering the full moratorium of 6 months ○ buy listed land during the moratorium period ○ nominate land for listing (since the requirements for a voluntary or community body include the requirements for a community interest group). <p>It must be a charity or community interest company, or a non-profit distributing industrial and provident society or company limited by guarantee.</p> <p>See sections 89 and 95, and regulations 5 and 12.</p>
<i>Nomination</i>	A request to the relevant local authority that land be entered on its list of assets of community value, containing the information specified in regulation 6. See also section 89 of the Act.

(Note that although the Act allows for a possible distinction between community nominations and other nominations, the regulations provide only for community nominations – therefore all nominations will be community nominations.)

Local authority

In England, a district council, county council for an area with no district councils, London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly. See section 106 of the Act.

Restriction on the Land Register

An entry on the register preventing dealing with the land until the requisite condition has been complied with – in this case set out in Form QQ to be added to Schedule 4 to the Land Registration Rules 2003:

No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011.

Ineffective transfer of land

A purported disposal of land which in fact does not have any effect – ownership of the land remains with the original owner.

Appeal Decision

Site visit made on 12 May 2015

by Nicholas Taylor BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 July 2015

Appeal Ref: APP/Y5420/W/14/3001921

The Alexandra, 98 Fortis Green, London N2 9EY.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by CLTX Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2014/1543, dated 30 May 2014, was refused by notice dated 19 December 2014.
 - The development proposed is the conversion of Public House with ancillary accommodation above to provide 2 no. 3 bed single family dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of Public House with ancillary accommodation above to provide 2 no. 3 bed single family dwellings at The Alexandra, 98 Fortis Green, London N2 9EY in accordance with the terms of the application, Ref HGY/2014/1543, dated 30 May 2014, subject to the conditions set out in the schedule attached to this decision.

Application for costs

2. An application for costs was made by CLTX Ltd against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

Main Issue

3. The Council gave one, heritage-related reason for refusal. However, there is considerable third party interest, which ranges beyond heritage to more general planning considerations. Therefore, I consider that there are two main issues in this case:
 - the effect of the proposal on the public house as an undesignated heritage asset and whether the character or appearance of the Fortis Green Conservation Area would be preserved or enhanced; and
 - whether the proposal would be acceptable having regard to policies concerning community facilities.

Reasons

Heritage

4. The appeal premises are a small, detached former public house with a flat above, within the conservation area, on Fortis Green, a fairly busy road with a mixture of commercial and residential uses. It is necessary, firstly, to assess the significance of the building itself, and then the conservation area, as heritage assets, before going on to assess the impact of the proposal.
5. The building is not formally listed, either at national or local level. However, the Council considers that it has heritage significance. The appellant's Heritage Statement (HS) identifies that the building is based upon a pair of 19th Century cottages which were extensively remodelled and enlarged in 1926, to create the present building. There is little surviving internal or external evidence of those 19th Century origins. The HS finds that the building has limited evidential or aesthetic value, being an interesting example of 'domestic' pub architecture of its time. That is a view with which the Council concurs, although it argues that its value is ingrained in its evolution and adaptation, rather than its visual quality. I can find little evidence, including from my own site visit, that the building possesses (or did possess, before internal fittings and decorations were recently removed) any more than limited aesthetic value, although, externally, it exhibits a quirky architectural style which adds to the variety and colour of the street scene.
6. Where the Council radically departs from the HS is in its assessment of the building's historic and communal value. The HS states that the building has some historical value, based on evidence that beer has been sold on the site for at least 140 years; up until the start of the 20th Century probably from the front rooms of the cottages. The Council argues that the pub's intrinsic place in the historic development of the conservation area merits much greater weight, but to my mind the limited documentary evidence from the last two centuries does not suggest any greater than low to moderate, purely local, historic value.
7. The HS also acknowledges that the building has some communal value arising from its traditional role in the community and, in particular, its association with Ray and Dave Davies of The Kinks, who grew up in the area. The Council ascribes this communal value to the 'collective memory' associated with the pub use. It cites English Heritage (EH) guidance¹ that social value is associated with places that people perceive as a source of identity, distinctiveness, social interaction and coherence, which may be comparatively modest, acquiring communal significance through the passage of time as a result of a collective memory of stories linked to them.
8. I acknowledge the strength of feeling among former patrons of the pub and some in the local community, expressed through numerous individual representations and a petition with a large number of signatories. The nomination of the pub by the Save the Alexandra Action Committee as an Asset of Community Value (ACV) and its placement on the Council's list of ACV² provides evidence of that feeling. Many of the representations before me, including some from further afield, are prompted in no small degree by the

¹ *Conservation Principles Policies and Guidance*, English Heritage, 2008 (NB now published by Historic England)

² Pursuant to Section 90 of the Localism Act 1990

pub's association with the Davies brothers. Indeed, there is mention of tourists making specific trips to the pub because of that connection. However, whilst The Kinks' musical reputation endures, I have not been given any evidence that the building or its use had a particularly crucial or singular role in nurturing the band or its music. Consequently, I am not persuaded that its 'associative value', as EH calls it, is very strong.

9. I have read many accounts of how the Alexandra was a very traditional, inclusive, no frills pub with a great atmosphere. I understand the affection for that type of establishment and appreciate that such places are becoming less common. However, there did not appear to be any great historic or aesthetic merit to the internal arrangement, fittings or furniture of the pub. Even taking into account the ACV listing, there is a lack of strong heritage-related evidence and I am wary of attaching significant heritage weight to a particular business model. Nor is it clear that the pub's former character is so rare as to amount to a strong special interest.
10. Moreover, it is clear from a substantial number of representations that not all local residents valued the pub in the same way or regarded it as a benign presence in the locality. I am not convinced that the evident emotional attachment to the pub is indicative of a very strong source of identity, distinctiveness or coherence shared by a wide cross-section of the community. Although there is evidence of communal value through recent collective memory, prompted by the current proposal, I have been given no strong evidence that it was documented or otherwise consciously thrived before that. Overall, therefore, mindful that the building itself has not received, or as far as I have been made aware put forward for, any formal heritage designation, I consider that its significance as a heritage asset is limited and of a very local nature.
11. There is no appraisal document for the conservation area and I have been given limited evidence regarding its significance as a heritage asset. The HS, the Council and third parties describe it as having grown from a small hamlet, through the Victorian period and now comprising several residential streets and the main thoroughfare of Fortis Green. The latter is primarily residential, with Victorian dwellings and some later apartment blocks, but also has a small cluster of varied commercial uses forming a neighbourhood hub.
12. The juxtaposition of generally small to medium scale commercial uses and varied dwellings within this part of Fortis Green, contributes to the character and appearance, and hence, in the historical context, the significance, of the conservation area. However, an inherent aspect of the character of such areas, particularly within a major city, is the evolution of business uses over time. In my view, change and evolution, rather than stagnation, often contributes considerably to vitality and vibrancy. In any case, I am not convinced that vitality and vibrancy is the defining, or even a major, characteristic of the conservation area.
13. There is some merit in the Council's argument that the historic and communal significance of the appeal property, as a pub, adds to the vitality and vibrancy of the area, creating a pleasant contrast with the more subdued residential streets. However, the Council acknowledges that this is a subjective view and, evidently, not all local people viewed the Alexandra as making a positive contribution to the character of the conservation area. Indeed, in the Council's

committee report, its planning officers considered that the pub's contribution to vibrancy was limited. As I have found that the heritage significance of the appeal property is limited, so too its contribution to the overall significance of the conservation area as a designated heritage asset is very modest.

14. Turning to the impact that the appeal proposal would have on the building and the conservation area as heritage assets, I consider that the limited proposed external alterations would preserve and, arguably, enhance the important design elements contributing to the aesthetic value of the building and conservation area. Whilst it is argued that there would be loss of historical value from the change of use, it would be offset by reverting to the original residential use of the site. Given that the historical value is limited in any case, the development would be part of the evolution of the building and the area and would not be harmful in that regard.
15. There is no strong evidence before me to indicate that the social or communal value of the pub is an important reason for the designation of the conservation area or its inclusion within it. Whilst there would be some loss of communal value, it does not reach the threshold, either in terms of effect on the limited heritage significance of the building or on the significance of the conservation area, to amount to material harm.
16. I consider that the Council considerably overstates the importance of the Alexandra to the vitality and vibrancy and, therefore, character of the conservation area. In its absence, the area would retain a mixture of uses, including another pub, the Clissold Arms, almost directly opposite. Its décor and atmosphere is apparently different to that of the Alexandra, less traditional and more contemporary, but that, as I have already observed, is not a strong heritage argument in this case. Given that vitality and vibrancy is not of critical importance to the significance of the conservation area, that, in any case, evolution and change is an inherent component of vitality and vibrancy, and that residential uses are an established part of the mix in this locality, the proposed change of use would not amount to material harm to heritage interests.
17. The Council and third parties refer to other instances of threats to traditional pubs and other appeal decisions. In particular, the Council has referred me to three decisions³ in The Royal Borough of Kensington and Chelsea. I have considered those decisions carefully and accept that there are some parallels between them and the current appeal but there are also some important differences. For example, whilst each involved changes of use from traditional pubs to residential use and they shared a common statutory and national planning policy context, the development plan context was different. The earlier decisions support the principle that a pub use is capable of contributing to the significance of a conservation area as a heritage asset. However, it is apparent from the decisions that the particular character of the conservation areas (two of which were the same) and the location and roles of the uses within them were distinctive. The Inspector in the Phene Street appeal, within the Cheyne Conservation Area specifically said that those factors were paramount in his reasoning. Moreover, the historic and aesthetic value of the buildings differed and the Inspectors did not reach the same conclusions on community value. In matters such as these, fine distinctions can be significant

³ APP/K5600/A/12/2172028, 2175522, 2172342 and 2177513

and it is my judgement that, taking into account the established principle that each case should be considered on its merits, there are important differences between the earlier appeals and the current case.

18. Overall, therefore, I conclude on the main issue that the conversion to residential use of the appeal premises would not result in material harm to the building as a non-designated heritage asset of limited significance. Consequently, the scheme would be acceptable with regard to the objectives of *London Plan* Policy 7.4, which seeks a high quality design response to local character, and Policy 7.8, which requires development to conserve heritage assets. There would be no conflict with Policy SP12 of *Haringey's Local Plan* (LP), which seeks to conserve the historic significance of the borough's heritage assets. Nor would there be conflict with Paragraph 135 of the *National Planning Policy Framework* (the Framework), which requires the decision maker to take account of the significance of a non-designated heritage asset and to reach a balanced judgement regarding the scale of any harm.
19. Furthermore, there would be no material harm to the significance of the conservation area, a designated heritage asset, and its character and appearance would be preserved. Accordingly, the duty, under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area, is satisfied. Similarly, the proposal would satisfy paragraph 132 of the Framework, which requires great weight to be given to the conservation of designated heritage assets. It follows that the local policies referred to above would also be satisfied with regard to the effect on the conservation area.

Community Facilities

20. In addition to the Council's objection on heritage grounds, third parties raise the related matter of the general community value of the pub. Reference is made to the Framework, which says at paragraph 60, albeit in the context of design, that it is proper to seek to promote or reinforce local distinctiveness. Paragraph 7 states that there is a social as well as environmental and economic dimension to sustainable development, which is a key tenet of the planning system. Paragraph 69 says that planning decisions should aim to promote opportunities for meetings between members of the community. Paragraph 70 requires, among other things, that planning should seek the provision of community facilities, including pubs, and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs.
21. I will not repeat all that I have written in relation to the main issue, above. To reiterate, briefly, whilst a significant section of the community clearly lament the closing of the pub, as it provided an opportunity to meet and socialise, it has not been clearly demonstrated that it provided a uniquely important facet of local distinctiveness or that it was universally valued by a wide cross-section of the community.
22. The listing of the premises as an ACV does provide a tangible demonstration that a section of the community considers that, through recreation, the pub furthered the social wellbeing or social interests of the local community. I am aware also that the Council has reviewed the listing and considers that there is a realistic chance that, as a non-ancillary use, the property could do so again

within the next five years (whether or not in the same way as before). However, the Council's finding regarding re-use of building is contingent upon the current appeal being dismissed. The relevant ACV legislation sets out specific tests which are narrower than the planning considerations before me. The primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development. Accordingly, whilst I afford it some weight in this case it is not determinative.

23. Notwithstanding its conclusion with regard to past and future viability as part of the ACV process, the Council does not refer in this case to any specific local planning policies requiring examination of future viability. Past trading performance, the cost of necessary refurbishment of the building, its shortcomings in terms of size and configuration, together with the realism of the marketing exercise are all disputed. However, overall, the evidence I have been given regarding viability and future potential does not enable me to conclude with certainty that the loss of the pub would be unnecessary in the terms of paragraph 70 of the Framework.
24. Were the pub use to be re-instated, the different owners might well introduce a different business model and character. Moreover, whilst the Clissold Arms is said to have a different character, it is not the role of the planning system to protect one business or business offer from another or from market trends. In addition to the Clissold Arms, there are other pubs in East Finchley and Muswell Hill centres, each a few minutes walk or short bus ride away. Therefore, it has not been argued convincingly that the loss of the Alexandra reduces the community's ability to meet its day to day needs in the context of this well-developed part of north London.
25. I accept that the pub will have generated some economic benefits, through employment and, possibly, spend on other services, including from tourists, but there is no strong evidence that the benefits were substantial or that the effect of the proposal on other local businesses would be significant. Conversely, the appeal scheme would result in a net gain of one dwelling and a qualitative gain in terms of the quality of the dwellings. Moreover, there is clear evidence that near neighbours, particularly those living in the immediately adjacent Fortis Green Cottages, would benefit significantly from a reduction in problems of noise and anti-social behaviour. The appeal scheme would secure a viable future for the building which, according to the photographic evidence, was very run down and vandalised prior to current building works. All in all, therefore, there would be no clear or strong conflict with the objectives of the Framework with regard to the retention of community facilities and its role in the achievement of sustainable development.
26. Third parties argue that the proposal would conflict with LP Policy SP15. The policy seeks to safeguard and foster the borough's cultural heritage through, among other things, "supporting the provision of new work spaces and social and cultural venues in all areas of the borough that support all formal and informal cultural and leisure activities". The provision of a new social and cultural venue is not at issue here and so that part of the policy has limited relevance. The policy also refers to "protecting and enhancing, where feasible, existing cultural facilities and access to cultural heritage throughout the borough". I have already concluded, in relation to the main issue, that the existing pub has only very limited significance in terms of cultural heritage,

thereby limiting the relevance of that part of the policy. The Council confirms that pubs fall within the policy's definition of leisure facilities. The second part of the policy refers to the protection and enhancement of sporting and leisure facilities in areas of deficiency. I concur with the Council's acceptance that, with the Clissold Arms and other pubs nearby, the area is not deficient in pubs. Consequently, I am satisfied that there would be no material conflict with Policy SP15.

27. It has come to my attention that the *Further Alterations to the London Plan* (FALP), adopted by the Mayor of London on 15 March 2015, contain the provision, at policy 4.8B(c), that local planning authorities should prepare a policy framework for maintaining, managing and enhancing local and neighbourhood shopping and facilities which provide local goods and services, and develop policies to prevent the loss of retail and related facilities that provide essential convenience and specialist shopping or valued local community assets, including public houses, justified by robust evidence. I have not been advised of any adopted LP policy to that effect and the Council does not seek to place weight on its emerging local plan, which as it is at an early stage, carries very limited weight.

Other Matters

28. I turn now to whether the proposal would be acceptable in other respects. The Council's committee report identified that the appeal premises are in a sustainable location and concluded that, given that it is not a designated town or local centre, and in the light of Policy SP15 and other policies which support housing provision, there was no objection in principle to the conversion of the appeal premises. It further concluded that the proposed alterations to the exterior of the building, which principally amount to small extensions to either side, a pitched roof to an existing rear extension and a guard rail to a roof terrace at the front, would be acceptable, particularly given that the existing appearance of the building would be largely retained.
29. The Council concluded that there would be an acceptable relationship with neighbouring dwellings, particularly the cottages to the rear, in terms of the living conditions of their occupiers, and would be likely to result in an improvement in terms of noise and disturbance. It also accepted the lack of dedicated parking provision, in view of the high accessibility rating of the site. It concluded that the two proposed dwellings would provide acceptable living conditions and would be acceptable with regard to sustainability and refuse storage. I see no reason to disagree with any of the Council's initial findings on those matters.
30. The Council confirms that the proposal is eligible for the Community Infrastructure Levy. In addition, had it approved the scheme, the Council would have required a financial contribution towards affordable housing, to be secured via a s106 Agreement. There is no legal agreement or planning obligation in place and the appellant argues that an affordable housing contribution should not be required in the light of changes made to the government's *Planning Practice Guidance* (PPG) in November 2014. Those changes exempt schemes of fewer than 10 dwellings from the requirement to provide a contribution to affordable housing and also set out the terms of a 'vacant buildings credit'. The Council has not contested the appellant's argument on this matter and, in view of all the facts of this case and the up to

date expression of national policy provided by PPG, I consider that a contribution to affordable housing is not required.

31. Overall, therefore, in the light of the submitted evidence, the Council's committee report, third party representations, other relevant evidence and the local and national policies referred to, I am satisfied that, subject to appropriate conditions, the proposal is acceptable in all respects, including its effect on the character and appearance of the conservation area and its effect on the living conditions of nearby occupiers.

Conditions

32. I have considered the Council's suggested conditions in the light of national policy and guidance⁴ and for succinctness and clarity and have amended them accordingly where necessary. In addition to the usual commencement condition, it is necessary, in the interests of proper planning and for the avoidance of doubt, to specify the approved plans. In the interests of the character and appearance of the area and because the front of the building is prominent and open to the pavement, full details of external materials and of the refuse storage structure and front light well should be submitted.
33. In view of the restricted site and proximity of neighbouring dwellings, there are exceptional grounds which justify the removal of permitted development rights with regard to alterations and extensions and buildings and structures within the curtilage. It also necessitates a condition requiring a construction management plan to be submitted, for which I have amended the suggested condition. The submitted drawings show the retention of the existing pub sign on the front of the building; it is not, therefore, necessary to impose a condition to that effect or to require approval of any replacement.

Conclusion

34. For the reasons set out above, the appeal should be allowed.

Nicholas Taylor

INSPECTOR

⁴ *National Planning Policy Framework* (paragraphs 203 and 206) and *Planning Practice Guidance* (Use of conditions)

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered: 985.12-100-A, 985.12-101, 920.17.102-A, 929.17.103, 985.12.200, 985.12.201, 985.12.300A and 985.12.301A.
- 3) Notwithstanding the description of materials in the application, no development shall take place until details of the materials to be used in the external surfaces of the development, including glazed screens, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the proposed screened refuse and recycling storage facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of the proposed front light well have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the dwellings hereby permitted shall not be altered or extended, nor shall any building, structure or enclosure (other than those approved as part of this permission, including the discharge of conditions) be erected within the curtilage of the dwellings.
- 7) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The plan shall, among other things, provide for measures to minimise any disruption to occupiers of adjoining buildings and to traffic and pedestrians on Fortis Green, particularly during peak periods.

End of schedule