



## **Assets of Community Value / Community Right to Bid Review – 21 June 2021**

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### **1. Context:**

#### **Uttlesford has one of the highest number of ACV in the England:**

Uttlesford had 87 Assets of Community Value (ACV) in June 2020. This is the highest or one of the highest numbers of ACVs in local authorities in England<sup>1</sup>. Some local authorities have as few as 5. Christopher Cant<sup>2</sup> considers that this is not just down to differences in the size of an authority's area, but is also dependent on factors such as the character of the authority's area and the demographic of the local residents. The rigour and policy of the LA also accounts for this difference.

#### **There is some misunderstanding about the benefits of ACV and the Community Right to Bid:**

However, there is also a misapprehension that listing an ACV is a kind of "listing lite" mechanism, i.e., that will protect sites from development. Linked to the Community Right to Bid, it provides a window of time to prepare and submit a bid for land at market value, if the owner thereof should ever wish to sell. ACV listing gives no protection against development (though it is a material planning consideration); it is not a right to force a sale and it is not a right to purchase at anything other than market value. Nor is it permanent, having to be renewed every five years. A determined landowner can defeat a renewal by removing their property from community usage and mothballing it for between five and ten years (which is what Banner Homes seem to have done in a case in St Albans).

It is unfortunate that the Government have never issued definitive (and detailed) guidance as to how this procedure should be administered. However, some clues lie in the appellate process, which is only available to the landowner. Their rights are of review by a senior officer who has had no previous involvement in the case, and thereafter of appeal to the First Tier Tribunal which also reviews the handling of the application, sets out its views and thereafter remits the case back to the local authority for decision. That rather suggests the intention of the legislature was that decision making be fully delegated. Research into practice elsewhere does tend to confirm this, as does the fact over the last ten years overall the number of registered ACVs has fallen.

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<sup>1</sup> Recent Freedom of Information request from identified that 'Uttlesford council have received 118 nominations to date with 14 nominations alone this year, which ranks the council 4th in the number of nominations received throughout all England' [www.section88.co.uk ACV – help advice for property owners]

<sup>2</sup> Christopher Cant, specialist property barrister. Assets of Community Value Guide 6<sup>th</sup> Edition (2017) p8  
<https://www.christophercant.co.uk/wp-content/uploads/2018/06/Assets-of-Community-Value-guide-6th-Ed-8.6.18.pdf>

### **Need for a more analytical approach and higher quality nominations:**

UDC has recently learnt from the legal challenge on *The Gate Inn* nomination and the complex case of *Andrewsfield Airfield*. *The Gate* is by way of being a classic public house scenario when the premises have become a restaurant. Caselaw is clear that the community must have substantial recourse to the premises for activities other than the consumption of food and drink.

Simon Pugh (former Assistant Director: Legal and Governance) acknowledged the need to move from rubber-stamping ACV nominations to a more analytical approach. Historically, some assets have been listed on the basis of a couple of lines of text, and some have already been in the ownership of the nominators.

In 2020-2021 there may be 12 nominations submitted for re-listing. However, in 2022 there could be 27 and in 2023 there could be 38 nominations to re-list. Also, there may be a surge in further nominations for public houses resulting from the negative impact of the Covid-19 pandemic on hospitality.

ACVs take time and resources and there are legal and cost implications should owners challenge the decision. They have a limited entitlement to compensation in respect of adverse consequences of a listing and UDC will have to fund such awards from its own resources. A challenge requires a legal input to a review and a landowner if still dissatisfied has a right of appeal to the First Tier Tribunal.

Moving forward there is a need to communicate the exact nature of ACVs, and what the Community Right to Bid can and cannot achieve; and to encourage higher quality nominations supported by best evidence, and for a greater rigour in determining whether or not an Asset is listed.

### **Nature of the review:**

The review is intended to:

- Learn from The Gate Inn review
- Understand the different decision-making approaches adopted by other LAs for determining ACV applications, and review whether the UDC approach is the best one
- Optimise the process to enable us to
  - Gather accurate and detailed information on which to base a decision
  - Consider how to consult Legal early in the process and involve them throughout
  - Avoid challenges in the future
- Prepare for and deliver any training needed
- Evolve the UDC nomination form and guidance to gather the information required and minimise the need for further research
- Developing clearer guidance – improve website as required
- Plan to contact PC/key nominating bodies in advance of re-listing to achieve higher quality nomination forms and weed out inappropriate listings

## 2. Review of current Assets of Community Value:

Uttlesford has 87 assets listed as ACV, the key groups are:

- Open spaces, recreation grounds, village greens and allotments (22)
- Pubs (19)
- Community halls and centres (16)
- Public amenities – schools, library, car parks (13)
- Sports grounds and buildings (6)
- Historic monuments and venues (6)
- Shops and cafes (3)
- Other (2)

From these there are likely to be 65 nominations in 2022/2023.

### 87 ACV listed in Uttlesford (June 2020)

Type of asset		Number:
Airfield		1
Allotments		7
Open spaces	Village greens	6
	Pond	2
	Recreation ground/play area	7
Sports	Sports facilities	3 (golf course, tennis courts)
	Clubs / pavilions	2 cricket
	Leisure centre	1 (Lord Butler Centre)
Community hall or centre	Church hall / village hall	9
	Community / day centre	4
	Youth centre	1
	Voluntary sector office	1
	Social Club	1
Café / Clubhouse		1
Public houses		19
Car Park		4
Monuments and structures		3 (castle, fountain, windmill)
Museum / historic venues		3 (mills, museum)
Library		1
Schools		8
Shop		2
Village sign		1
<b>TOTAL</b>		<b>87</b>

### ACV by expiry dated

Year of expiry	Number of ACV
Expired 2018/2019	2
2020	11
2021	1
2022	27
2023	38
2024	5
2025	3

### **3. Uttlesford District Council's Procedure:**

The Council is required by the ACV Regulations 2012 to decide whether land nominated as an ACV is to be listed as such within 8 weeks of receiving the nomination.

Planning Policy receive all nominations and a Planning Policy Officer prepares the report with a recommendation, to be decided by Cabinet or the Assets of Community Value and Local Heritage List Committee.

The following procedures and templates are in place, which have been developed over time, with legal advice:

- For nominations and listings
  - ACV nominations process/checklist
  - Community Right to Bid nomination form
  - Letter templates for nomination and listings
- Cabinet/Committee report template
- For selling an asset
  - Action list
  - Letter templates
- ACV indicated on the constraints map
- Entry upon Local Land Charges Register

All decisions are made by Cabinet or Committee. This requires reports to be reviewed and published in advance and discussed at JET. This compresses the time available to review the evidence and come to a decision to approximately 4-5 weeks.

The system in place was set up in 2011/2012 when the Localism Act was introduced. However, the legislation is open to interpretation, there is room for improvement to the existing procedure and templates to reflect case law learning, and best practice developed over the last ten years.

### **4. Procedure adopted by other Local authorities:**

We have recently worked with Braintree DC on a joint ACV nomination and Joanna Hill has had recent conversations with Central Bedfordshire and South Cambridgeshire District Councils to understand their processes. The UDC Legal team and Joanna Hill have also received training from St Alban's Legal Team/Public Law Project (11 November 2020).

The Community Right to Bid and ACV List are managed by different departments in different local authorities (LA), including Legal, Communities, and Assets. Assessment of whether or not to list tends to be a fully delegated decision, with officers informing ward councillors, town and parish councils (if not already nominated by them) and portfolio holders on receipt of nominations.

### Summary of key learning from other local authorities:

- a. ACVs are managed by different departments in different LAs but Legal usually leads; and decision-making processes vary:
  - Braintree: Managed by Legal. Nominations are decided by an ACV Panel consisting of: Head of Governance, Head of Asset Management, Head of Planning & Economic Growth
  - Central Bedfordshire: Managed and reports prepared by the Community Engagement team. A delegated decision process with recommendations reviewed by Director of Place & Communities, Exec member for communities, Deputy leader of the Council
  - South Cambridgeshire: Managed by the Sustainable Communities & Wellbeing team. An administrator checks all nomination materials and the Land Registry. A Community Development Officer makes a recommendation to the Head of Service (department now called 'Transformation'). A delegated decision. Councillors only look at 1 out of 10 nominations in detail e.g. if contentious. Reviews are conducted by Head of another department, usually Head of New Communities
  - St Albans: Managed by the Legal Department. A report is prepared and a surveyor who makes a site inspection. The estates team make the decision, as they have an idea of how a building is used by the Community. A delegated decision
  - 10 years ago, when ACVs were introduced, there was a tendency towards everything being listed. As time has passed and case law increased, the nature of listings has been reassessed and many listings have not been renewed
- b. Delegated decisions are the norm, with only exceptional cases going to Cabinet or Committee
- c. Supporting information and robust third-party evidence is required for all nominations
  - Nominations may include the minimum required by the Regulations to be valid, but if they do not include sufficient supporting information to make an informed decision, they are not accepted. The nominee is informed why. They go straight to the 'ACV not listed' list
  - The 8-week process is not started until sufficient information/evidence is submitted to make an informed decision, i.e. there is a rigorous validation process
- d. Decision notices, in some LAs, have moved from simply stating listed/not listed to detail the reason for the decision. This is to make the decision making process clear to an owner considering challenging the decision

- e. Public houses are the most contentious due to their inherent social nature. Such caselaw as there is suggests that a pub is unlikely to be listed unless there is evidence of its active role in promoting social events (other than one of merely serving drinks, food, and being a meeting place) If it operates purely as a restaurant and groups only use it in order to dine, then it is unlikely to qualify

## 5. Recommendations for Uttlesford:

1. There is a need to improve the quality of nominations (with the aim to increase understanding and relevance of nominations) by:
  - The requirement to submit detailed supporting information or evidence
  - Improve the nomination form and guidance to outline the types of evidence required
  - Consider digital submission, enabling material to be uploaded e.g. scale plan, documents, activity programmes, screen grabs and links
  - Require sufficient site photographs (taken within last 12 months)
2. Provide further guidance to communicate the benefits of Community Right to Bid and what it does not do e.g. stop sale or development of an asset or enable a community to purchase an asset at reduced cost.
3. Communicate with nominating bodies at an early stage before a nomination is accepted or validated:
  - Seek to persuade inappropriate nominations or nominations with insufficient evidence to improve the evidence submitted or withdraw the nomination
  - In the case that the land is already owned by the UDC, a parish council or community group, advise to seek other legal mechanisms to protect the land
  - Nominations with insufficient supporting information or evidence, or nominations without a clear rationale for why they should be listed (in the case that the land is owned or leased by the Council or nominating body) which are not improved or withdrawn will be moved straight to the List of ACV not listed and the nominating body will be informed
  - Intending nominators must also understand that a landowner is free to close/mothball their asset and deprive the community of access thereto. It is therefore possible for them to defeat the renewal of a registration in this manner, and this is, it is understood, the ultimate object of the landowner in the leading *Banner Homes* case
4. Incorporate Legal input from the beginning of a nomination, to identify any potential issues early
5. Contact Parish Councils 6 to 12 months in advance of ACV expiry dates to inform them when an ACV will expire and the requirements for nomination
6. Develop the ACV assessment template to outline the evidence against the key regulatory requirements; highlight risk including financial and legal

7. Make the recommendation to Cabinet that ACV decisions are delegated:
  - Informing the Ward Councillors of nominations within their Wards and providing a 4 week window (from the validation date) to allow Councillors the opportunity to call in nominations to be decided by the Assets of Community Value & Local Heritage List Committee
  - ACV assessment and recommendation will be prepared by a Planning Policy Officer
  - Decision review and sign off will be made by a senior manager of the Local Plan & New Communities Team, following consultation with the Assistant Director Governance and Legal and the Cabinet member who is Chair of the Assets of Community Value and Local Heritage List Committee
8. Develop the Decision template to communicate the reason why / why not to list an Asset
9. Improve letter templates to communicate the steps in the process in plain English, the implications and any action required
10. Provide training as required:
  - The Members of the ACV & LHL committee– as required
  - The legal team and Joanna have attended a training session run by St. Albans legal team (Public Law Project free training).
  - Land Registry and Land charges – what is required, the process and what to look for. Joanna Hill to work with Ruth Cox on this

# Assessment of Asset of Community Value nominations

