

OPERATIONAL POLICY

Crawley Borough Council Policy on Assets of Community Value Scheme

Purpose

This document explains Crawley Borough Council's policy for implementing the Assets of Community Value Scheme as set out in the Localism Act 2011.

Introduction

The Localism Act provides certain community groups with an opportunity to protect and preserve local assets of community value, be they land or buildings.

The Council is required to maintain two lists – one listing nominations of assets of community value that have been approved, and a second listing failed nominations, with reasons. The key steps for considering a nomination to the List of Community Assets are set out in Flow Chart 1.

Owners of assets on the list of successful nominations must inform the Council of an intention to sell or dispose of the asset. Eligible community groups may then delay the sale or disposal in order to bid to buy it. This right does not give the community group a right to buy, only a right to bid.

Buildings and land in both public and private ownership can be the subject of an Application to List and subsequent right to bid. Certain categories of land and buildings cannot be listed as an asset of community value. These include:-

Residential properties or land.
Land licensed for use as a residential caravan site and some types of residential caravan sites which do not need a licence.
Operational land of a statutory undertaker as defined in the Town and Country Planning Act 1990.

There are three distinct processes that the Council must address. These are:

1. Processing nominations and determinations of applications to nominate and listing of Assets of Community Value.
2. Managing contested nominations, reviews, appeals and applications for compensation.
3. Managing assets that are to be sold.

The Process

Nominations and Listing

The first stage of the process is triggered by receipt of a nomination (nomination forms will be made available to potential nominators both on-line and in hard copy).

Nominations will be assessed against the following three criteria:

1. Is the nominating organisation eligible to make the nomination?

Only certain organisations are eligible (as defined in the Localism Act and associated regulations) to make nominations. These are:

- Neighbourhood Forums
- Parish Councils
- Unincorporated bodies (with at least 21 individual members who are registered at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors)
- A charity
- A company limited by guarantee where profits are not distributed to members
- An Industrial or Provident Society
- A Community Interest Company

Completed nominations will be acknowledged and then processed within a target maximum of 8 weeks. The Council will determine whether the nomination is successful or not by having regard to the criteria above and will advise the nominating organisation and the land owner within 7 days of the decision being taken. There is no right of appeal for the nominator to the Council's decision.

Nominations will be processed by the Head of Legal and Democratic Services. Decisions on the determination of assets to be listed as Assets of Community Value will be made by an Assets of Community Value Panel (ACVP) comprising three Heads of Service drawn from a pool of Officers (Head of Legal and Democratic Services, Head of Community Services, Head of Strategic Housing and Planning Services, Head of Property, Head of Planning and Environmental Services) in consultation with the Cabinet Member for Community Engagement and in the event of a conflict of interest then the Leader of the Council. The decision will be recorded on a validation form. This is a formal record of the meeting which records the final decision and reason why an asset is accepted or rejected as an asset of community value.

2. Is the nomination form properly completed?

The nomination must be in writing (hard copy or electronic). It must identify the nominating organisation and provide adequate proof of that organisation's eligibility (see above for list of eligible organisations). It must identify the asset and any occupiers and details of those holding a freehold or leasehold estate in the asset. It must provide reasons as to why the asset is of community value. A nomination template form has been developed to assist potential nominators. The Council will acknowledge nominations within five working days of receipt. The Council will when it is considering whether land nominated by a community nomination should be included in the list take all practicable steps to give the information that it is considering listing the land to the owner of the land, where the owner is not the freeholder the holder of the freehold estate in the land and the holder of any leasehold estate in the land other than the owner, any lawful occupier of the land and finally any parish or neighbourhood Council where the land is situated within a parish or neighbourhood boundary.

Notification that a nomination has been received will also be sent to the Leader of the Council, the relevant local member(s), the Council's Corporate Management Team and internal Crawley Borough Council departments.

3. Is the nominated asset of community value?

The asset is of community value if the Council judges that:

- Current use of the building or land furthers the social well-being or social interests of the local community, or such use has existed within the recent past (within three years);
- The community use has been the main use rather than an ancillary use;

- It is realistic to think that the building or land could continue to be used in a way which will further the social well-being and social interests of the community within the next five years, and:
- It is not an exempted building or piece of land.

(The Localism Act defines “social interest” as including cultural, recreational and sporting interests).

The Assets of Community Value Panel will consider all written information provided as part of the community nomination and all written responses received as a result of the notification procedure. Oral presentations will not be permitted.

The Council will maintain, and publish on its web site, two lists – one of assets of community value (resulting from successful nominations) and one listing unsuccessful nominations. This latter list will give reasons why the nomination was unsuccessful. Hard copies of the lists will be made available on request. Upon listing of an asset, a land charge will be registered against the land or property and a restriction entered at the Land Registry.

Managing Reviews and Appeals

The Director of Transformation and Housing will hear reviews and will consult with the Leader of the cabinet.

Reviews

The owner of an asset that has been listed as an asset of community value has the right to ask the Council to review its decision. In such cases the owner (of the listed land or building) must write to the Council within 8 weeks of receipt of notification from the Council that the asset is to be listed. The asset will remain listed while the review is carried out.

The owner is entitled to request an oral hearing which must be done in writing and if not then the review will be considered on the papers.

A review hearing will take place at which the owner will present a case for removing the asset from the list. The Director hearing the review will determine the outcome having regard to:

- Whether the nomination was properly submitted and whether this was by an eligible group;
- Whether the asset is eligible to be listed;
- Any new information that has come to light since the nomination was determined;
- Any improper actions or failure to follow procedure on the part of the Council that has affected the original decision.

The owner will be entitled to be present at the review meeting but must submit a written case including all evidence prior to a review meeting being arranged.

The Director of Transformation and Housing in consultation with the Leader of the Cabinet will be empowered to remove the asset from the list of assets of community value if he finds in favour of the Owner and after consultation with the Leader of the Cabinet..

Appeals

If the owner of a listed asset is dissatisfied with the Council’s decision reached at its review hearing he/she is entitled to appeal to an independent first tier tribunal (The General Regulatory Chamber of the First Tier Tribunal). If a tribunal appeal is successful the owner may apply to the Council for reasonable costs.

Managing Assets That Are To Be Sold

The owner of a listed asset is required to notify the Council of an intention to dispose of the property. Certain forms of disposal are exempt in the Regulations, these are:

- Transfers made other than for value (a gift).
- Transfers between members of the same family (whether it be a sale or a gift).
- Transfers due to the inheritance of the asset.
- Sales by personal representatives in order to pay estate debts or cash legacies.
- Transfers occasioned by resignation or death of partners in a firm of trustees or a trust.
- Transfers between trustees, between a trust and settler, and between a trust and beneficiary.
- Business to business transactions of a going concern, where the intention is to continue the existing use of the asset.
- Transfers where the listed asset forms part of a larger estate.
- Disposals made as a result of pre-existing arrangements.
- Transfers between connected companies.
- Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules.
- Provision of on-going public service delivery.

Moratorium Period

At such time as the Council receives notification of the intention to make a (non-exempt) disposal of a listed asset a 6 week initial moratorium period will commence. During this period eligible community interest groups have the opportunity to decide whether they wish to prepare a bid to purchase the asset.

The Council will publish the owner's intention to dispose of the asset on its web site and notify in writing the organisation that originally nominated the asset.

Community groups eligible to bid to purchase the asset are:

- A body with a local connection which is constituted in one of the following ways:
 - A company limited by guarantee
 - An Industrial or Provident Society
 - A Community Interest Company
 - Any other body which is registered as a charity including a Charitable Incorporated Organisation.

If within this 6 week period an eligible community group expresses an interest to bid, a full moratorium period of 6 months will commence (from the date of the notification of disposal). During this period a sale is prohibited and the community group has the opportunity to prepare and submit a full bid to the owner for the asset. The owner is under no obligation to accept the bid.

If at the end of the 6 month moratorium a bid has not been received the owner is free to dispose of the asset as they wish. No further moratorium can then commence for 18 months from the date that the Council received notification of disposal. This provides the owner with 12 months in which to dispose of the asset freely. The key steps to be undertaken should an Asset of Community Value be sold are set out in Flow Chart 2.

Compensation

The owner of a listed asset may make a claim for compensation for any loss or expenses he/she has incurred during the time the asset is listed, which would not have been incurred had the asset not been listed. A claim may therefore be made for:

- Any loss resulting from a delay in the owner entering into a binding agreement to sell the asset, that has been caused by either the initial or full moratorium period
- Any reasonable legal expenses incurred in a successful appeal to the first tier tribunal against the Council's decision to list the asset, refusal to pay compensation, or the amount of compensation offered or paid.

Compensation claims will be progressed in three stages:

Stage 1 – The initial claim to the Council must be made before the end of thirteen weeks of the loss or expense being incurred. The claim must be in writing and sent to the Head of Legal and Democratic Services, and include the amounts sought and supporting evidence. The Head of Legal and Democratic Services and the Council's Section 151 Officer will consider the validity of any claim as soon as practicable.

Stage 2 – Within 56 days of being notified of the Council's decision at stage 1 above, a request to review that decision may be submitted, in writing and including the amounts sought and supporting evidence. The review will be heard by the Council's Director of Transformation and Housing.

Stage 3 – The owner may refer a claim to the first tier tribunal where he/she is not satisfied with the outcome of a stage 2 claim.

Policy Review

Crawley Borough Council must review and amend this policy in light of developing good practice and guidance.