

# Community Right to Bid Policy and Guidance

## 1. Introduction:

This document seeks to set out the Council's policy position with regards to the Community Right to Bid in order to provide information and guidance for nominating groups and asset holders, as well as clarifying the process and responsibilities therein for members and officers.

## 2. Background:

The Localism Act 2011 gives communities new rights to identify buildings or land they believe to be important and benefit their community. The Act requires Local Authorities (District and Unitaries) to maintain a *Register of Assets of Community Value* containing the assets nominated by the community and approved by the Council. If the asset then comes up for sale, the community group will be given time to make a bid to buy it on the open market.

The aim of the Right is to empower communities wishing to protect valuable local assets (land and buildings) by requiring the Council to maintain a list of assets in its area which are of community value, so that upon sale, the community will have a chance to delay a sale in order to prepare a bid to buy it. The Right does not restrict in anyway who the owner of the asset can sell their property to, or at what price and it does not confer a right of first refusal to community or voluntary groups.

## 3. Structure

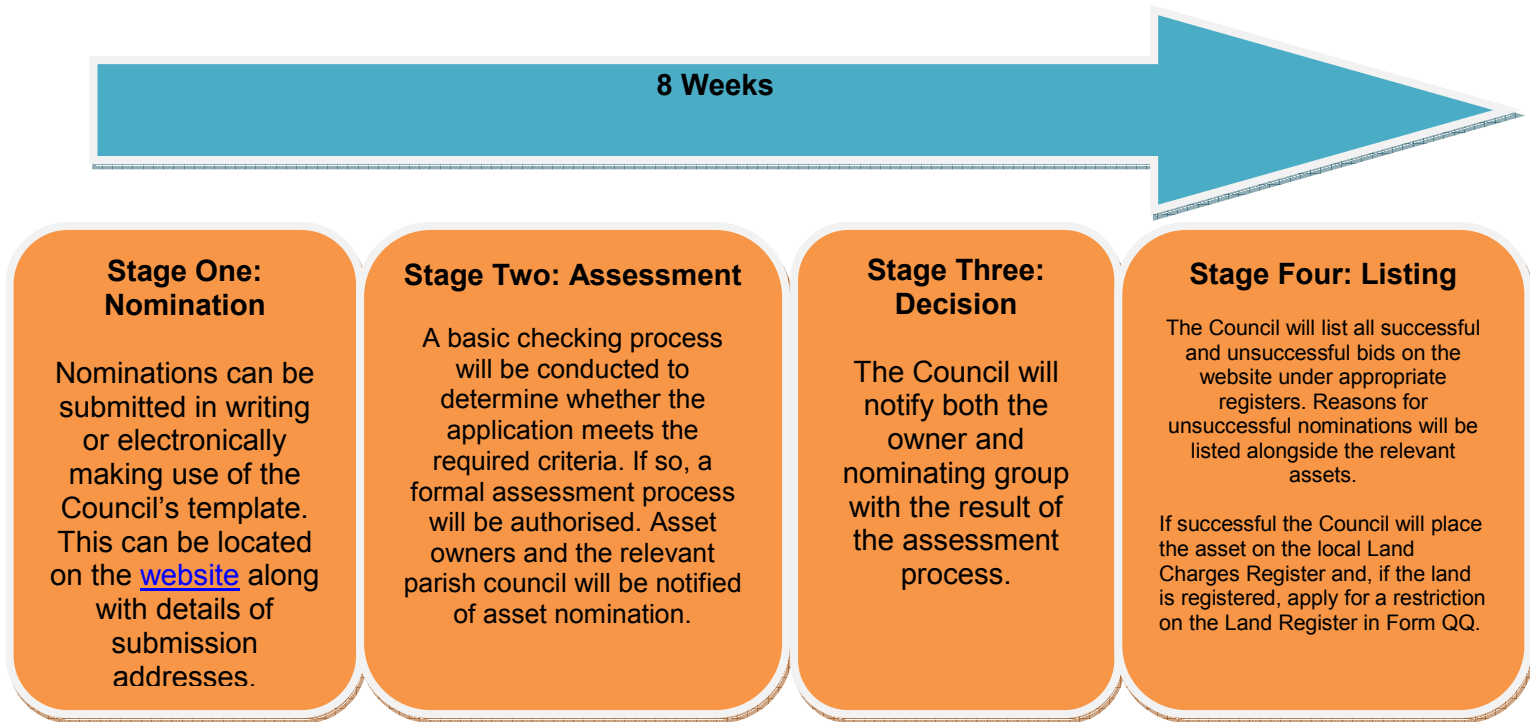
The government has published [legislation](#) and [regulations](#) pertaining to the Community Right to Bid, which provide the statutory parameters that local authorities must enact. However, there is no specification as to how each authority must administer the Right in practise. As such, this document will clarify the process by which Cheshire East Borough Council will administer the Community Right to Bid, whilst also providing the relevant guidance for nominating groups and asset owners at each stage of that process.

There are therefore four sections to this document:

- Nominations
- Review and Appeal
- Sale
- Compensation

## 4. Nominations

### 4.1 Process Diagram: Nominating Assets



### 4.2 Making a Nomination

Nominations can be submitted in writing to the Resilient Communities team or electronically by sending an email to [communityrights@cheshireeast.gov.uk](mailto:communityrights@cheshireeast.gov.uk).

### 4.3 Nomination Content

The Localism Act (2011) and Assets of Community Value Regulations (2012) *predicate* that nominations to the register of 'assets of community value' contain the following information:

- The nominator's reasons for thinking that the responsible authority should conclude that the land is of community value.
- Evidence that the nominating group is eligible to make a community nomination.
- Evidence that the nominating group has a 'local connection'.

### 4.4 What Can Be Nominated?

Assets of Community Value cannot be:

- Residential properties and associated land

- Land licensed for use as a caravan site
- Operational land used for transport and other infrastructure
- an 'ancillary' use, such as a café within a workplace

## 4.5 Assessment Criteria

A building or land in a local authority's area will be listed as an asset of community value if, in the opinion of Cheshire East Borough Council:

- current primary use of the building/land or use of the building/land in the recent past furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community
- it is realistic to think that now or in the next five years there could continue to be primary use of the building/land which will further the social well-being or social interests of the local community (whether or not in the same way as before)

A nomination of an asset of community value should include:

- The address and location of the property
- Details of the owner and current occupants
- The extent of the site and its proposed boundaries
- Details and documents proving that the nominating group is constitutionally eligible to nominate (see below)
- Details evidencing that the nominating group has a sufficient 'local connection' to nominate (see below)
- Why it is felt the asset is of community value. This should entail:
  - How the asset currently boosts the social well-being and interests of the community?
  - If the asset is not currently used for community benefit, how was it used to sustainably further social well-being and community interests in the past?
  - How is it anticipated that the asset will sustainably further social well-being and community interests in the future?
  - Details of how the asset will benefit different sections of the community if its use is targeted at one or more community groups?
  - Evidence that the asset currently has a beneficial social impact to the community
  - Evidence that the asset currently has a beneficial economic impact to the community

## 4.6 Who Can Nominate?

The Localism Act Section 89 and The Assets of Community Value (England) Regulations 2012 list the types of organisations and groups considered eligible to nominate. For a nomination to be considered, a group must have an eligible constitution **and** a demonstrable local connection.

To date the guidance includes the following organisational groups as eligible to nominate:

- a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990
- a parish council
- an informal body:
  - whose members include at least 21 individuals on the local electoral register
  - which does not distribute any surplus it makes to its members
- a charity

- a company limited by guarantee which does not distribute any surplus it makes to its members
- an industrial and provident society which does not distribute any surplus it makes to its members
- a community interest company

A body must have a local connection within the definition of The Assets of Community Value (England) Regulations 2012 (4). An organisation is defined by the Assets of Community Value Regulations (2012) as having a 'local connection' with the land if:

- the body's activities are wholly or partly concerned:
  - with the local authority's area
  - with a neighbouring authority's area
- any surplus it makes is wholly or partly applied:
  - for the benefit of the local authority's area
  - for the benefit of a neighbouring authority's area
- it has at least 21 local members.
- a parish council has a local connection with land in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area. A parish council has a local connection with land that is in a local authority's area but is not in any parish council's area if:
  - the council's area is within the local authority's area
  - any part of the boundary of the council's area is also part of the boundary of the local authority's area.

#### **4.7 What Happens Following a Nomination – Assessment Process**

The Council has to decide whether or not to list the asset within eight weeks following the nomination.

Once we have received a nomination, the nomination will be formally assessed by the Director of Economic Growth and Prosperity in consultation with the Portfolio Holders, any appropriate ward members, with support from an officer steering group.

A nominated case officer from the officer steering group will take all practicable steps to notify the owner and lawful occupants as well as the relevant parish council that it is considering listing the property. We will also notify these people of the outcome of the nomination.

The organisation which originally nominated the asset will be notified of the outcome, together with reasons if the application is unsuccessful. They will also be notified if the asset is subsequently removed from the list, following a review of the decision.

#### **4.8 Registers of Assets**

A nominated property that has been approved by the Council as an 'asset of community value' will be added to the council's 'Register of Assets of Community Value'. The register can be viewed via the council's [website](#) and will be maintained by the Assets team.

The asset will also be added to the local land charges register and, if the land is registered, apply for a restriction on the Land Register in Form QQ. This provision ensures that any sale of a registered asset of community value that does not comply with the scheme is deemed

void. There are also requirements on owners or mortgagees applying for first registration of listed land to apply for a restriction on the land register. They require a person who has become an owner of the land following a disposal to inform the local authority and provide ownership details.

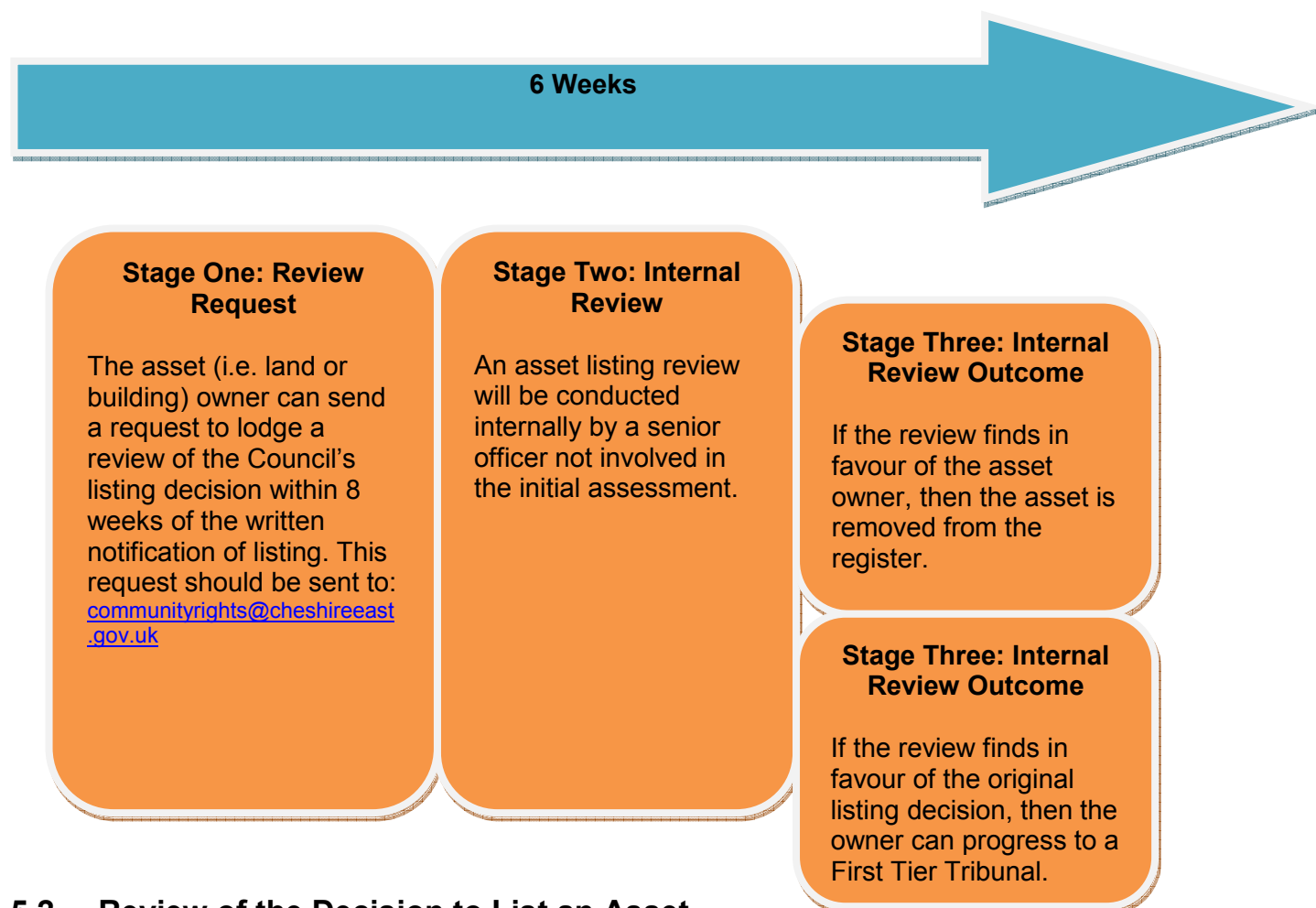
Listed nominations will be removed from the register after five years, at which point the asset can be nominated again by a community group.

If the nominated asset is not considered to be an asset of community value, or if the nomination was ineligible, we will provide an explanation as to why it was unsuccessful to the organisation which made the nomination. In such circumstances, the property will be added to the list of 'Land Nominated by Unsuccessful Community Nominations' and will remain on the list for five years.

If we decide to list a property, the property owner can ask for a review (see section 5). Nominators are not able to appeal the decision made in respect of their nomination. However, they can make a complaint through the council's complaint procedure if they feel we have not followed the correct procedure.

## 5. Review and Appeal

### 5.1 Process Diagram: Review and Appeal



### 5.2 Review of the Decision to List an Asset

In some cases, a landowner whose asset has been included on the list of assets of community value may wish to ask the Council to review its decision. **An internal review can only be requested by the asset owner.** In such cases, the landowner must write to the assigned case

officer or send an email to the Community Rights mailbox ([communityrights@cheshireeast.gov.uk](mailto:communityrights@cheshireeast.gov.uk)) within 8 weeks of receipt of the Council's notification that the asset is to be listed.

The landowner must present a case for removing the asset from the list based on whatever evidence they consider appropriate, but it should be relevant to the following issues:

- Whether or not the asset is eligible to be listed;
- Whether or not the asset was nominated by an eligible group;
- Any new factors which have come to light since the original nomination was made;
- Anything irrelevant or improper which the Council might have taken into account when reaching its original decision.

The landowner should present this in writing in the first instance, but may also request an oral hearing and be represented at this hearing by whomever they wish.

The Council will complete this review within 6 weeks of receipt of the review request, or a longer period by agreement of both parties. The review will be completed by a senior officer who was not connected to the initial assessment.

Nominators are not able to appeal the decision made in respect of their nomination. However, they can make a complaint through the Council's complaints procedure if they feel the Council has not followed the correct procedure.

### **5.3 Appeal**

If the owner is dissatisfied with the internal review, they will have 28 days from the date on which the Council notifies them of the internal review decision to appeal for a review by the General Regulatory Chamber of the First-Tier Tribunal.

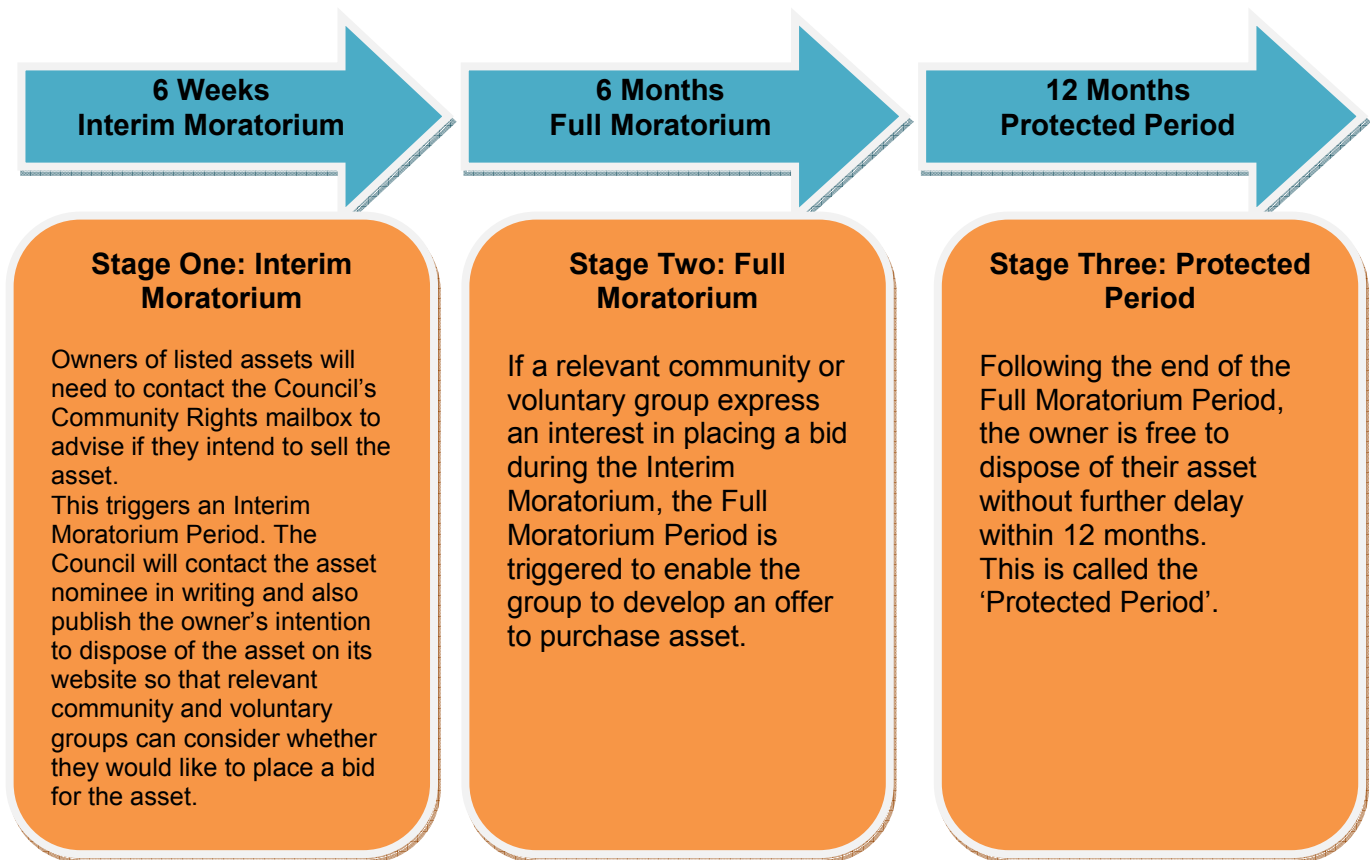
Owners must submit their appeal in writing to the First-Tier Tribunal by either:

Email: [grc.communityrights@hmcts.gsi.gov.uk](mailto:grc.communityrights@hmcts.gsi.gov.uk)

Post: Tribunal Clerk,  
Community Right to Bid Appeals,  
HM Court & Tribunals,  
First-tier Tribunal (General Regulatory Chamber),  
P.O. Box 9300,  
Leicester, LE1 8DJ.

## 6. Sale

### 6.1 Process Diagram: Sale



### 6.2 Relevant Disposal

It is the responsibility of the asset owner to contact the Resilient Communities team or send an email to the Community Rights mailbox ([communityrights@cheshireeast.gov.uk](mailto:communityrights@cheshireeast.gov.uk)) to notify the Council of the intention to make a 'relevant disposal' of a registered asset. A 'relevant disposal' is one where the sale of the asset transfers:

- a freehold interest if it is a disposal with vacant possession;
- a qualifying leasehold interest (that is, the granting of a lease for a period of 25 years or more (or the transfer of a lease which was of 25 years or more originally) if it is a grant or assignment with 'vacant possession'.

A full list of exempt sales can be found in Appendix A.

### 6.3 Moratorium

Once the owner of a listed asset has notified the Council of their intention to instigate a relevant disposal of the asset, a six week 'interim moratorium' period begins. The Assets

team will update the register to show that the asset is eligible for bids and provide the interim and full moratorium dates.

The nominated case officer will then notify the nominator and any community bodies who have registered interest of the owner's intention to dispose. The owner's intention to dispose of the asset will also be publicised in the neighbourhood of the asset in question.

At this stage, community or voluntary groups should inform the Council that they have an interest in bidding for the asset by writing to the Resilient Communities team or sending an email to the Community Rights mailbox ([communityrights@cheshireeast.gov.uk](mailto:communityrights@cheshireeast.gov.uk)). This will trigger the Full Moratorium period of 6 months.

In order to express interest in bidding, a community or voluntary sector group must be incorporated; unlike when nominating an asset, a group cannot be an unincorporated collection of local people or a neighbourhood planning forum. The eligible groups at this stage of the process are:

- A Parish Council in whose area the asset lies
- 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

An eligible expression of interest will trigger a full moratorium period of 6 months in total from notification of the relevant disposal, during which time a sale is barred and the interested groups are able to prepare a bid for the asset.

If a bid is not received during the moratorium period then the landowner is free to dispose of their asset as they wish and no further moratorium period can be triggered for a protected period of 18 months from the date that the council receives notification of a relevant disposal.

After the moratorium period – either the initial 6 weeks if there has been no community interest, or the full 6 months if interest was lodged – 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).

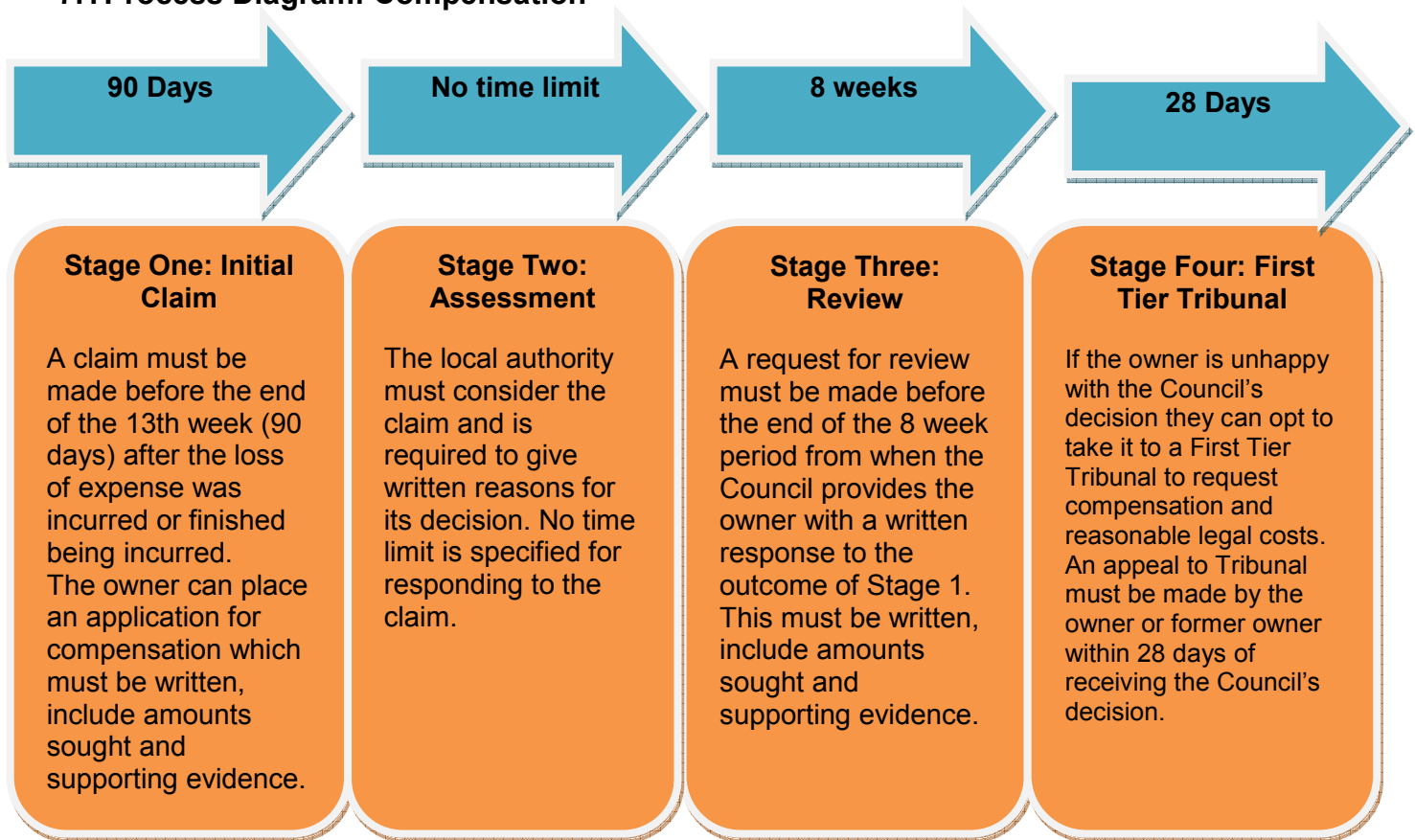
Owners of listed assets cannot dispose of them without:

- Letting the local authority know that they intend to sell the asset.
- Waiting until the end of a six week 'interim moratorium' period if the local authority does not receive a request from a community interest group to be treated as a potential bidder.
- Waiting until the end of a six month 'full moratorium' period if the local authority does receive a request from a community interest group to be treated as a potential bidder.



## 7. Compensation

### 7.1 Process Diagram: Compensation



### 7.2 Types of Claim

**The owner of the listed asset** may make a claim for compensation for any loss or expenses incurred at a time when the land was listed, which he would not have incurred had the land not been listed.

The following claims may therefore be made:

- For any loss, arising from any period of delay in the owner entering into a binding agreement to sell the land, which has been caused by either the interim or full moratorium periods.
- A claim for reasonable legal expenses incurred in a successful appeal to the First Tier Tribunal against the Local Authority's decision to:
  - List the asset
  - To refuse to pay compensation
  - With regard to the amount of compensation offered or paid

### 7.3 Who can claim

Only the owner of a nominated asset can make a claim for compensation. 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
- local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998.

## **7.4 Making a Claim**

Claims can be made in writing to the assigned case officer or by sending an email to the Community Rights mailbox ([communityrights@cheshireeast.gov.uk](mailto:communityrights@cheshireeast.gov.uk)). 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.

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 Council will reach a decision as quickly as is practicable.

## Appendix A

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

Crichel 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)<sup>5</sup>. 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.