

## THE COMMUNITY RIGHT TO BID DRAFT POLICY

### 1.0 Background

- 1.1 The Localism Act 2011 (the Act) introduces a right for local groups to nominate land and buildings (assets) for listing by the Council as an asset of community value. Once an asset is listed as being of community value there is an obligation on the owner of the asset to allow the community the opportunity to acquire the asset for its use should the owner choose to dispose of it. These provisions came into force on 21 September 2012.
- 1.2 An asset can only be listed if its principal use supports or has recently supported the community's social wellbeing or social interests (including cultural, sporting or recreational interests) and is likely to do so in the future.
- 1.3 In accordance with the Act the Council will hold, administer and publish a list of assets which it has accepted as being of community value and also a list of unsuccessful nominations where it has determined that the asset is not of community value. The form of these lists will be as set out in annex 1 and 2 to this policy.
- 1.4 This policy sets out the arrangements which the Council has adopted in order to operate the Community Right to Bid.
- 1.5 The flow charts included in annex 3 & 4 to this policy set out the Council's processes to be followed in considering whether land or a building should be listed as an asset of community value.

### 2.0 The nomination process

- 2.1 Local groups can make an application to the Council at any time nominating land or buildings as an asset of community value. All applications must be made in writing and addressed to the Strategic Manager, Assets.
- 2.2 Within five (5) working days of the receipt of a nomination the Strategic Manager, Assets will acknowledge the receipt of the nomination and will inform relevant parties (where it is able to identify them) with an interest in the asset including but not limited to:
  - The relevant Isle of Wight Council ward member(s).
  - The relevant town / parish council(s).
  - The owner of the asset as defined by section 107 of the Act.
  - The occupier of the asset (if not the owner).
  - All other parties with a legal estate in the asset.
- 2.3 In addition the Council will post a notice at the asset and on a dedicated page of the Council's website to advise interested parties about the nomination.

2.4 Applications will be considered by a panel (the Community Right to Bid panel) of three officers (or their authorised deputies) drawn from:

- The Strategic Manager, Assets.
- The Strategic Manager for Economy, Tourism and Events.
- The Commissioning Development Manager.
- Commissioning Manager, Building Community Capacity.

Where the nomination relates to an asset owned by the Isle of Wight Council then the Strategic Manager, Assets will not participate in the deliberations of the panel.

2.5 The officer panel will determine all applications only on the basis of the information supplied by the nominating party. The local group making the nomination and the owner of the property cannot attend or address the meeting of the panel where the nomination is discussed.

2.6 In agreeing to a nomination the panel must have satisfied itself that:

- The asset is located on the Isle of Wight.
- The local group making the nomination is eligible to do so.
- The nominating group is able to demonstrate that the asset has been used to and is likely to further the community's well-being or social interests.

2.7 Any nominations which are considered by the panel to be of a significant nature, particularly those relating to Council assets, will be subject to consultation with the relevant Cabinet Member prior to final determination.

2.7 In accordance with the Act all nominations for assets to be listed will be determined within eight (8) weeks from the date of receipt of the nomination.

2.8 Where the panel has considered the nomination of an asset it will ensure that it is added to the appropriate Isle of Wight List within five (5) working days of the determination meeting. In the same period it will also notify its decision in writing to all of the relevant parties (where it is able to identify them) that may have an interest in the asset including but not limited to:

- The owner of the asset.
- The occupier of the asset (if not the owner).
- The local group that made the successful nomination.
- The relevant Isle of Wight Council ward member(s).
- The relevant town / parish council(s).
- Any freeholders and leaseholders of the asset (who are not the owners).

2.9 Assets which the panel has agreed are assets of community value will be added to the Isle of Wight list of community assets. An entry will be made in the local land charges register that the asset has been included in the Isle of Wight list of community assets. Where the asset is registered with the Land Registry the council will apply for a restriction to be entered on the register, the effect being that no transfer or lease of the asset can be registered, and thereby effectively transferring

the asset, unless s.95(1) of the Localism Act 2011 (the provision of a Moratorium) has been complied with. Assets which have been unsuccessfully nominated will be added to the Isle of Wight List of unsuccessful nominations as community assets. Written reasons as to why the asset could not be included in the list of community assets will be given to the person who made the nomination.

- 2.9 Assets which the panel has agreed are assets of community value will be added to the Isle of Wight list of community assets. Assets which have been unsuccessfully nominated will be added to the Isle of Wight List of unsuccessful nominations as community assets.
- 2.10 The Council will post a notice of the decision of the panel at the asset and on a dedicated page of the Council's website to advise interested parties of outcome of the panel's deliberations.

#### What is an Asset of Community Value?

- 2.11 The Isle of Wight Council will only approve nominations for assets of community value where the asset complies with section 88 of the Act and where, in the panel's opinion:
- The actual main current use of a building or land furthers the social wellbeing or social interests of the local community and it is realistic to expect that the main use for the building or land can continue to benefit the local community in the medium term (up to five (5) years).
  - The land has recently (in the previous three (3) years) been used in support of local social wellbeing and interests and it is realistic to expect that it may do so again within the next five (5) years.
- 2.12 The Isle of Wight Council will not approve nominations for assets of community value where the asset, in the panel's opinion is:
- A residential property, including the gardens, outbuildings and residential land (except where the residential element of a property is ancillary to its main use which meets the criteria set out in 2.11 above).
  - Land registered for use as a residential caravan site.
  - Operational land of statutory undertakers or
  - Where the asset is already listed on the Isle of Wight list of unsuccessful nominations.

#### Who can nominate an Asset to the Isle of Wight List of Assets of Community Value?

- 2.13 The Isle of Wight Council will only consider nominations for assets of community value by local groups that can demonstrate their activities are wholly or partly concerned with the Isle of Wight. A local group must be made up of two or more people (it may be a branch of, or affiliated to larger regional or national

organisations) and provide a specific benefit in the area in which it is situated. Local groups able to make nominations are as set out below:

- A town or parish council in which the asset is situated.
- A neighbouring town or parish council to an unparished area (where the asset is in the unparished area) – although there are no unparished areas on the Isle of Wight.
- A body designated as a neighbourhood forum (in accordance with section 61F of the Town and Country Planning Act 1990).
- An unincorporated not for profit body with at least twenty one (21) members who are registered at addresses in the Isle of Wight Council's area (or neighbouring area) as local government electors.
- A charity.
- A not for profit company limited by guarantee.
- A not for profit industrial and provident society.
- A not for profit community interest company.  
[Where not for profit shall mean any surplus made must be wholly or partly applied for the benefit of the Isle of Wight, or for the benefit of a neighbouring authority's area.]

#### What should a nomination contain?

2.14 In order for the Council to properly assess the nomination of an asset as being of community value the nomination must contain the following information:-

- A description of the nominated land or building including its proposed boundaries including a location plan.
- The address of the asset being nominated including postcode.
- Names and addresses of the existing occupants of the asset (if relevant) and of all those holding a freehold (ownership) or leasehold interest in the asset.
- Evidence that the local group making the nomination is eligible to do so under the terms of this policy.
- A written statement and supporting evidence to demonstrate that the asset is of community value. This should include evidence that the asset is currently of benefit to the community and justification for why it may continue to be so in the medium term.

- 2.15 The Isle of Wight Council will not normally enter into correspondence with local groups making a nomination and will determine the nomination only on the evidence provided as part of the nomination process, although it may – at its discretion – seek clarification on certain aspects if initially unclear. Therefore a local group considering making a nomination should ensure that it complies in full with the requirements of this policy before it is submitted to the Council.
- 2.16 If the Community Right to Bid panel has incomplete information on which to judge a nomination it will normally declare the nomination unsuccessful and it will add the asset to the Isle of Wight List of unsuccessful nominations as community assets.
- 2.17 Where the Council receives a nomination for the same asset from different local groups (both of which are entitled to make a nomination), it will consider the nomination which was received first. The determination of which list the asset will be added to will be made only on the basis of this nomination and the later nomination will not be considered. Local groups considering making a nomination of an asset to the Council are encouraged to enter into local dialogue in the first instance to ensure that there is no duplication of local effort in respect of the asset. The Council will not involve itself in the coordination or initiation of such dialogue; this must be led locally by the relevant groups considering the nomination of an asset.
- 2.18 Local groups making nominations are reminded that all of the paperwork provided in support of a nomination is considered to be in the public domain and therefore will not be treated as confidential. It is likely that the nomination and all of information provided in support of the nomination will be shared with the owner of the asset if it chooses to seek a review of the listing of an asset. Such information is also likely to be subject to disclosure under the requirements of the Freedom of Information Act.

### **3.0 The Appeals Process**

- 3.1 Where the Council's panel has determined, on the basis of the evidence provided by a local group, that an asset will be added to the Isle of Wight List of assets of community value then the owner of the asset shall have the right to have the decision reviewed.

#### Stage 1: Internal Review

- 3.2 If the owner requires a review of the decision it must do so within eight (8) weeks of the date of the notice of listing provided to it by the Council. Requests for a review of the decision must be made in writing to the Strategic Manager, Assets by the due date. The owner or his nominated representative may request an oral hearing but this should be notified at the time the review is requested.
- 3.3 All reviews will be considered by one of three officers nominated for this purpose:
- The Director of Economy and Environment;
  - The Deputy Director of Economy and Environment;
  - Head of Commissioning for Community Well-being.

### Review including an oral hearing

- 3.4 Where the owner or their representative have requested an oral hearing the date of the hearing will be notified to them within five (5) working days of receipt of the request for the hearing. The Council will, at the same time, provide any written documentation that it holds on the asset and the reasons for listing it as an asset of community value, if this has not been already provided at the time of notification. The hearing date will not be less than three weeks after the request for a review has been received.
- 3.5 No less than five (5) working days before the hearing the owner or their representative must supply to the Council a written case setting out the reasons why it believes the asset is not of community value including any supporting evidence.
- 3.6 A representative of the Council's panel which agreed to the listing of the asset and the owner or his representative will attend the hearing which will be chaired by the Council's nominated officer for the review. The process for the hearing shall be as below:
- Opening remarks by the nominated officer.
  - Presentation of the case for listing by a representative of the Council's panel.
  - Questions put to the representative of the Council's panel by the owner of the asset or their representative.
  - Questions from the nominated officer to the representative of the panel.
  - Presentation of the case against listing by the owner of the asset or their representative.
  - Questions put to the owner of the asset or their representative by the representative of the Council's panel.
  - Questions from the nominated officer to the owner of the asset or their representative.
  - Summing up by the representative of the Council's panel.
  - Summing up by the owner of the asset or their representative.
  - Closing remarks by the nominated officer.
- 3.7 At the end of the hearing the nominated officer will retire to consider all of the evidence presented to them and will inform all parties of their final decision in writing within ten (10) working days of the date of the hearing.

### Review without an oral hearing

- 3.8 Where an oral hearing has not been asked for as part of the request for a review of the listing of an asset, and where the nominated officer does not consider that an oral hearing is necessary, the Council's nominated officer will review the decision to list an asset only on the basis of the paperwork provided to them.
- 3.9 Within five (5) working days of receipt of the request for a review by the Council it will provide to the owner of their representative any written documentation it holds on the asset and the reasons for listing it as an asset of community value, if this has not been already provided at the time of notification.
- 3.10 The owner of their representative will be invited to provide the Council with a written case setting out the reasons why it believes the asset is not of community value including any supporting evidence. This case should be with the nominated officer for the review no more than four (4) weeks after the date the review was requested.
- 3.11 After the nominated officer has considered all of the evidence available for and against the listing of the asset they will inform all parties of their final decision in writing.
- 3.12 All internal reviews (whichever approach is adopted) will be determined by the Council's nominated officer within eight (8) weeks of the receipt of the request for a review from the asset owner or their representative, unless otherwise agreed in writing between the Council and the owner or their representative.
- 3.13 An asset will remain on the list of assets of community value for the period of the review of its listing.
- 3.14 The Council and the owner of the asset will be responsible for their own costs associated with the review process.

### Stage 2: External Review

- 3.15 If the owner of a listed asset of community value remains unhappy with the outcome of the Council's internal review it is able to make a further application for review to the General Regulatory Chamber of the First Tier Tribunal. This application must be within 28 days of from the date on which the notice of the decision being appealed against was sent to the owner. The asset will remain listed throughout the review period.
- 3.16 Appeals should be made in writing to:

The Tribunal Clerk, Community Right to Bid Appeals, HM Courts & Tribunals, First Tier Tribunal (General Regulatory Chamber), PO Box 9300, Leicester LE1 8DJ.

Email – [GRC.CommunityRights@hmcts.gsi.gov.uk](mailto:GRC.CommunityRights@hmcts.gsi.gov.uk)

The Tribunal's decision shall be final.

#### **4.0 Management of the Isle of Wight List of Assets of Community Value**

- 4.1 The list of these assets will be kept in the form as shown in annex 1 to this policy and will be published on a dedicated web page on the Council's website. The Strategic Manager, Assets will be responsible for the maintenance and management of the list. Members of the public may request a free copy of the list from the Council.
- 4.2 Any successful nomination to the list will be added to it no more than five (5) working days of the panel's decision to accept the asset as being of community value. At the same time as the asset is listed the Strategic Manager, Assets will ensure that the asset's listing is placed on the local land charges register and where it is registered with HM Land Registry apply for a restriction on the Land Register.
- 4.3 Where the inclusion of an asset on the list has been successfully challenged by the owner under the review process then it will be removed from the list and added to the list of unsuccessful nominations as community assets no more than five (5) working days following date of the notification of the outcome of the review. If and when such a change takes place a brief explanation will be provided as a side note to the list, to avoid any confusion about why a previously agreed asset is no longer listed. At the same time the Strategic Manager, Assets will ensure that the asset is removed from the local land charges register and where a restriction was entered on the register at HM Land Registry to apply for the removal of the restriction on the Land Register.
- 4.4 The Council will amend the entry for an asset on the list within no more than five (5) working days of it receiving notification from the owner of their intention to dispose of the asset, this shall include:
- The date the notification to dispose was received.
  - The end dates of the interim and full moratorium periods.
  - The end date of the protected period.
- 4.5 Where the Council has been notified that a local community group wishes to consider the acquisition of the asset the Council will within five (5) working days of the notification amend the entry on the list for that asset to show:-
- That the full moratorium has been triggered.
  - The identity of the community group that triggered the full moratorium.
- 4.6 An asset will be removed from the list within five (5) working days of the receipt of notification that a relevant (but not exempt disposal) has taken place.
- 4.7 The Community Right to Bid Panel will review annually in September all assets of community value that have been on the list of for more than two years in order to confirm that the assets are still considered to be of community value. Where the panel is of the opinion that any of these assets are no longer of community value then at its absolute discretion it will remove them from the list of assets of community value.

4.8 Any asset on the list of assets of community value will automatically be removed from the list on the fifth anniversary of the date it was first entered on to the list.

4.9 Where an asset is removed from or added to this list the Council will notify the change in writing to all of the relevant parties (where it is able to identify them) that may have an interest in the asset including but not limited to:

- The owner of the asset.
- The occupier of the asset (if not the owner).
- The local group that made the successful nomination.
- The relevant Isle of Wight Council ward member(s).
- The relevant town / parish council(s).
- Any freeholders and leaseholders of the asset (who are not the owners).

## **5.0 Management of the Isle of Wight List of Unsuccessful Nominations as Community Assets.**

5.1 The list of these assets will be kept in the form as shown in annex 2 to this policy and will be published on a dedicated web page on the Council's website. The Strategic Manager, Assets will be responsible for the maintenance and management of the list. Members of the public may request a free copy of the list from the Council.

5.2 Any addition to the list will be added to it no more than five (5) working days of the panel's decision to decline the nomination of the asset as being of community value.

5.3 Any asset on the list of unsuccessful nominations as an asset of community value will automatically be removed from the list on the fifth anniversary of the date it was first entered on to the list.

5.4 Where an asset is removed from or added to this list the Council will notify the change in writing to all of the relevant parties (where it is able to identify them) that may have an interest in the asset including but not limited to:

- The owner of the asset.
- The occupier of the asset (if not the owner).
- The local group that made the successful nomination.
- The relevant Isle of Wight Council ward member(s).
- The relevant town / parish council(s).
- Any freeholders and leaseholders of the asset (who are not the owners).

## **6.0 The Disposals Process**

6.1 The owner of an asset of community value is not required to dispose of the asset as a consequence of its listing. It is however, not able to dispose of the asset through a freehold sale or the grant or assignment of a qualifying lease (ie at least 25 years) which gives vacant possession of the asset (known as a relevant disposal) unless and until it has followed a process prescribed by the Act. To begin this process the

owner must inform the Council through the Strategic Manager, Assets of its intention to dispose of the asset.

- 6.2 Once the Council has been notified of the owner's intention to dispose of the asset it will, within five (5) working days of the receipt of this notification, publish the intention to dispose on its website and inform the local group which nominated the asset as being of community value of the owner's intention to dispose. It will also make the necessary changes to its list of assets of community value as required under this policy.

### Interim Moratorium

- 6.3 This period extends for six (6) weeks from the date the Council is notified of the owner's intention to dispose of the asset. In this period the owner cannot make a relevant disposal of the asset unless it is exempt or to a relevant community interest group which must have one or more of the structures set out below:-

- A charity.
- A community interest company.
- A company limited by guarantee that is non profit distributing.
- An industrial and provident society that is non profit distributing.

- 6.4 If, during the interim moratorium period a community interest group advises the Council in writing that it wishes to be treated as a potential bidder for the asset then a full moratorium on the disposal will apply. There is no requirement for the community interest group to demonstrate that it has the financial resources to proceed with the acquisition of the asset for it to register its interest as a potential bidder.

- 6.5 The Council will advise the owner of an asset within five (5) working days of the receipt of notification from a community interest group of its wish to be treated as a potential bidder for the asset. If an owner has not heard from the Council during the interim moratorium period it should check with the Strategic Manager, Assets in writing that it is not required to enter into the full moratorium period before taking any further action in respect of the disposal of the asset. The Council will not take any responsibility for any claims made by or against the owner where it has failed to check this position with the Council before proceeding with a disposal.

- 6.6 If, during the interim moratorium period no community interest group advises the Council that it wishes to be treated as a potential bidder for the asset then the owner is able to proceed with its disposal without further restriction provided that it is achieved within 18 months of the date it first advised the council of its intention to dispose of the asset. If a disposal cannot be achieved in this 'protected period' then the owner is required to begin the process again should it wish to continue with the disposal of the asset.

### Full Moratorium

- 6.7 This period extends for six (6) months from the date the Council is first notified of the owner's intention to dispose of the asset and will only apply where a community

interest group has confirmed to the Council that it wishes to be treated as a potential bidder for the asset. In this period the owner cannot make a relevant disposal of the asset unless it is exempt or to a relevant community interest group.

- 6.8 During the moratorium period the owner cannot exchange contracts or enter into a binding contract to do so, except with a community interest group, but may continue to market and negotiate a sale of the asset.
- 6.9 At the end of the six month period the owner is free to sell to any bidder and at whatever price, provided it is within the 18 month protected period. If a disposal cannot be achieved in the protected period then the owner is required to begin the process again should it wish to continue with the disposal of the asset.
- 6.10 There is no obligation on the owner to dispose of the property to a community interest group and there is no obligation or restriction on the owner to sell the asset to a community interest group at a rate that is less than the full market value of the asset.

#### Exempt Disposals

- 6.11 There are a number of exemptions to the process for the disposal of an asset of community value which are summarised in annex 5 to this policy. Owners of assets of community value are advised to take appropriate independent advice if intending to secure an exempt disposal of their asset.

#### Failure to follow the Disposals Process

- 6.12 Where the new owner applies to the Land Registry to register a change of ownership of a listed asset, the Land Registry will require proof that the requirements of the disposal process outlined in this policy have been met in full. Where this is not the case the new owner will be unable to register their title to the asset; effectively the sale / transfer will not be recognised.

### **7.0 Compensation**

- 7.1 It is recognised that private owners of listed assets of community value may suffer financial loss because of the disposal process they are required to follow as a result of the asset being listed and / or for the expenses incurred in making a successful appeal against listing to the Tribunal.
- 7.2 The Council will therefore consider compensation claims for loss or expense associated with the listing of the asset provided that such claims are received by the earlier of 13 weeks from either:
- The end of the interim or full moratorium period, or
  - The date from which the asset ceased to be listed.

- 7.3 Claims for compensation will must be made in writing to the Strategic Manager, Assets and must set out in detail the amount of compensation requested with full supporting evidence to substantiate the claim. The burden of proof falls to the owner.
- 7.4 Claims for compensation will be determined by the Community Right to Bid Panel and will normally be determined within twelve (12) weeks of the receipt of a claim. In the case of more complex claims the Council reserves the right to extend the determination period and will advise the claimant within four weeks following the receipt of the claim whether it will do so.
- 7.5 The Council will not consider claims for compensation from public authorities and bodies.
- 7.6 Where an owner is not satisfied with the outcome of their claim for compensation then they may request a review of the decision of the panel by the Council. Such a request must be made to the Strategic Manager, Assets not more than eight (8) weeks following the date of notification of the Panel's decision in respect of the compensation claim.
- 7.7 The internal review process for compensation claims shall follow the same procedures as for the review of a listing decision as set out in this policy with the exception that there will be no oral hearing in the review of a claim for compensation.
- 7.8 The external review process of the Council's decisions in respect of a compensation claim by an owner shall be the same as for the review of a listing decision as set out in this policy.
- 8.0 Documentation**
- 8.1 The Council will retain all documentation in relation to the listing of an asset of community value electronically for a maximum period of three years after the asset has been removed from the relevant list or has been disposed of.

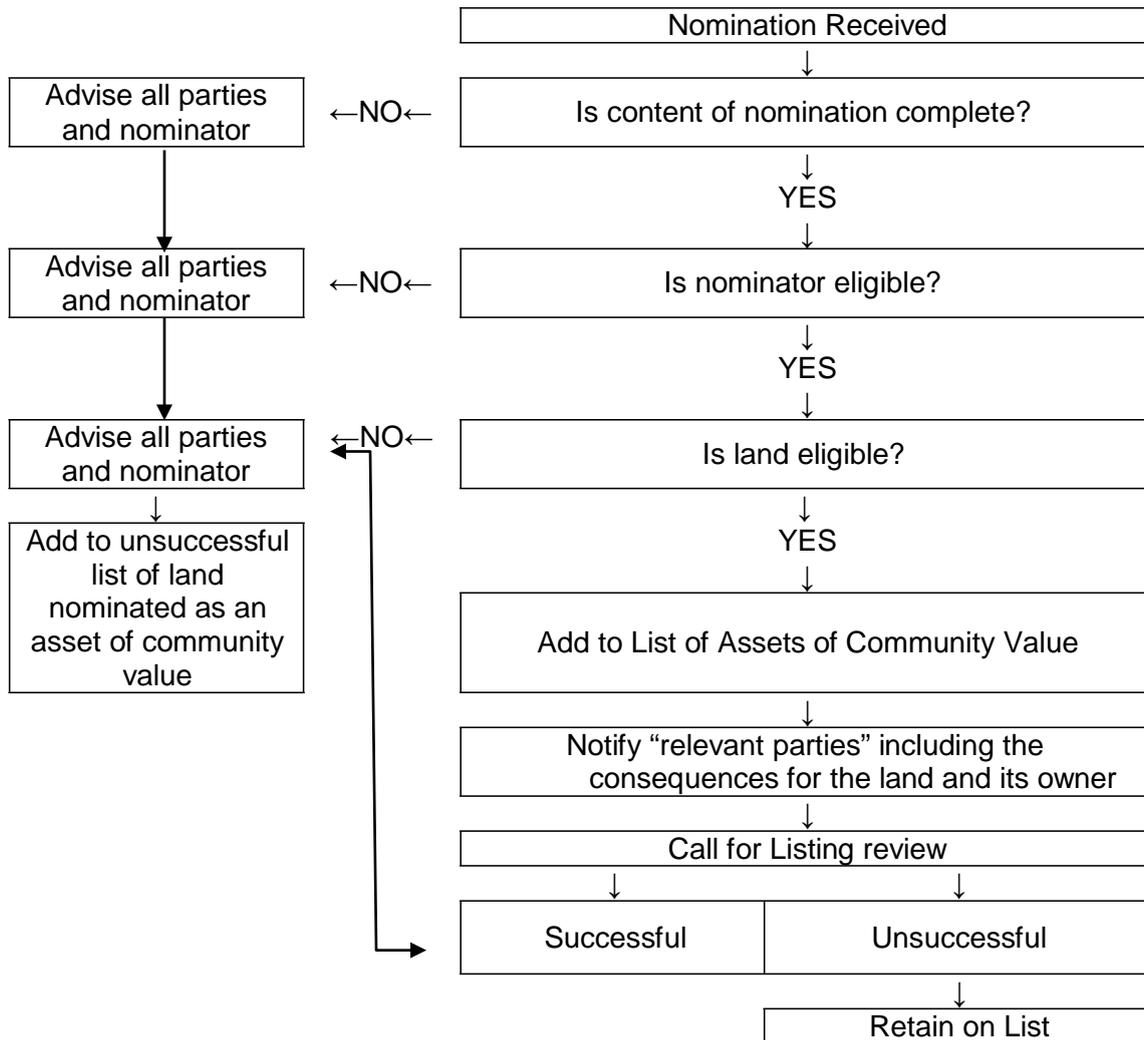
### Isle of Wight List of Assets of Community Value

<b>Property Address</b>				
<b>Owner</b>				
<b>Date of Nomination</b>				
<b>Source of Community Nomination</b>				
<b>Reason for Inclusion</b>				
<b>Isle of Wight Council Ward</b>				
<b>Town / parish council</b>				
<b>Land Charges Reference Number</b>				
<b>Date of five year anniversary</b>				
<b>Date of Notice to dispose received by IWC</b>				
<b>Date Nominator advised of Notice to Dispose</b>				
<b>Request to be Treated as Bidder by CIG Confirmed</b>				
<b>Interim Moratorium Expires</b>				
<b>Full Moratorium Expires</b>				
<b>Protected Period Expires</b>				

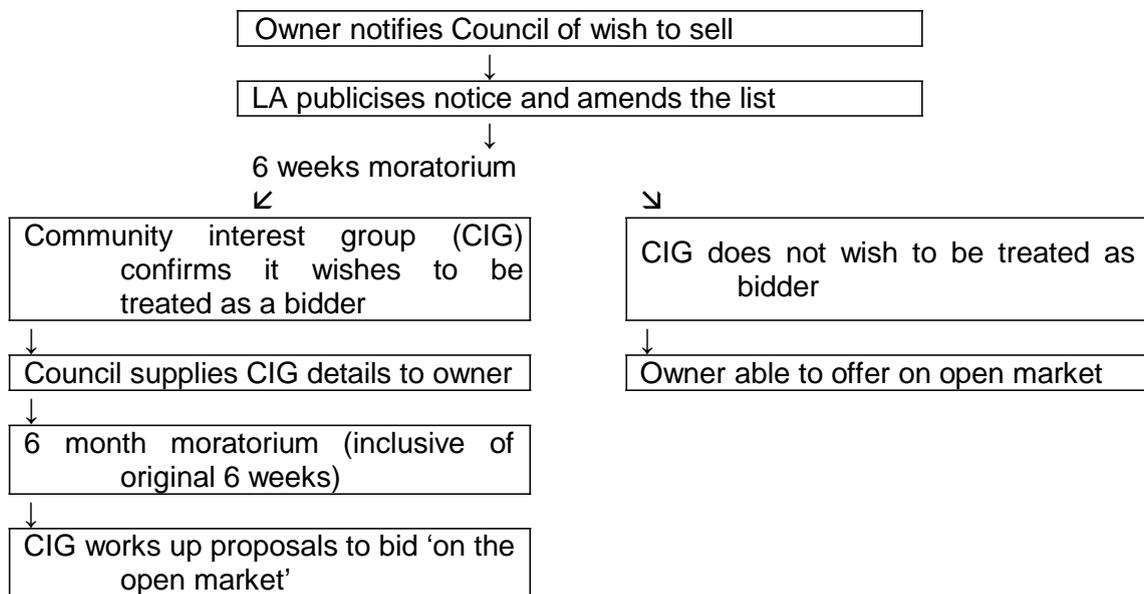
**The unsuccessful list of assets  
(not deemed to be of community value)**

Property Address								
Owner								
Date of Nomination								
Source of Community Nomination								
Reason for Non – Inclusion								
Date Nomination Deemed Unsuccessful								
Isle of Wight Council Ward								
Town / parish council								
Land Charges Reference Number								

**NOMINATION FLOWCHART**



### DISPOSAL MORATORIUM FLOWCHART



### **Summary of Exemptions from the Process for the Disposal of Assets of Community Value**

- a. Disposal to a local community interest group, which can be made during a moratorium period.
- b. Disposals which are gifts.
- 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.
- 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.
- g. Sale of land on which a business is carried on, together with sale of that business as a going concern.
- 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.
- o. Disposals of a description which brings them within the Crichel Down rules.
- 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.
- r. Compulsory purchase disposals.
- s. The grant of an agricultural tenancy to a successor on the death or retirement of the current tenant.
- t. Transfers between connected companies.
- u. Disposals of part-listed land.
- v. Disposals of closed Church of England churches.
- w. Disposals by any owner for the purpose of continuing health service provision on the land.
- x. A disposal of land to be held for the purpose of a school.
- 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.