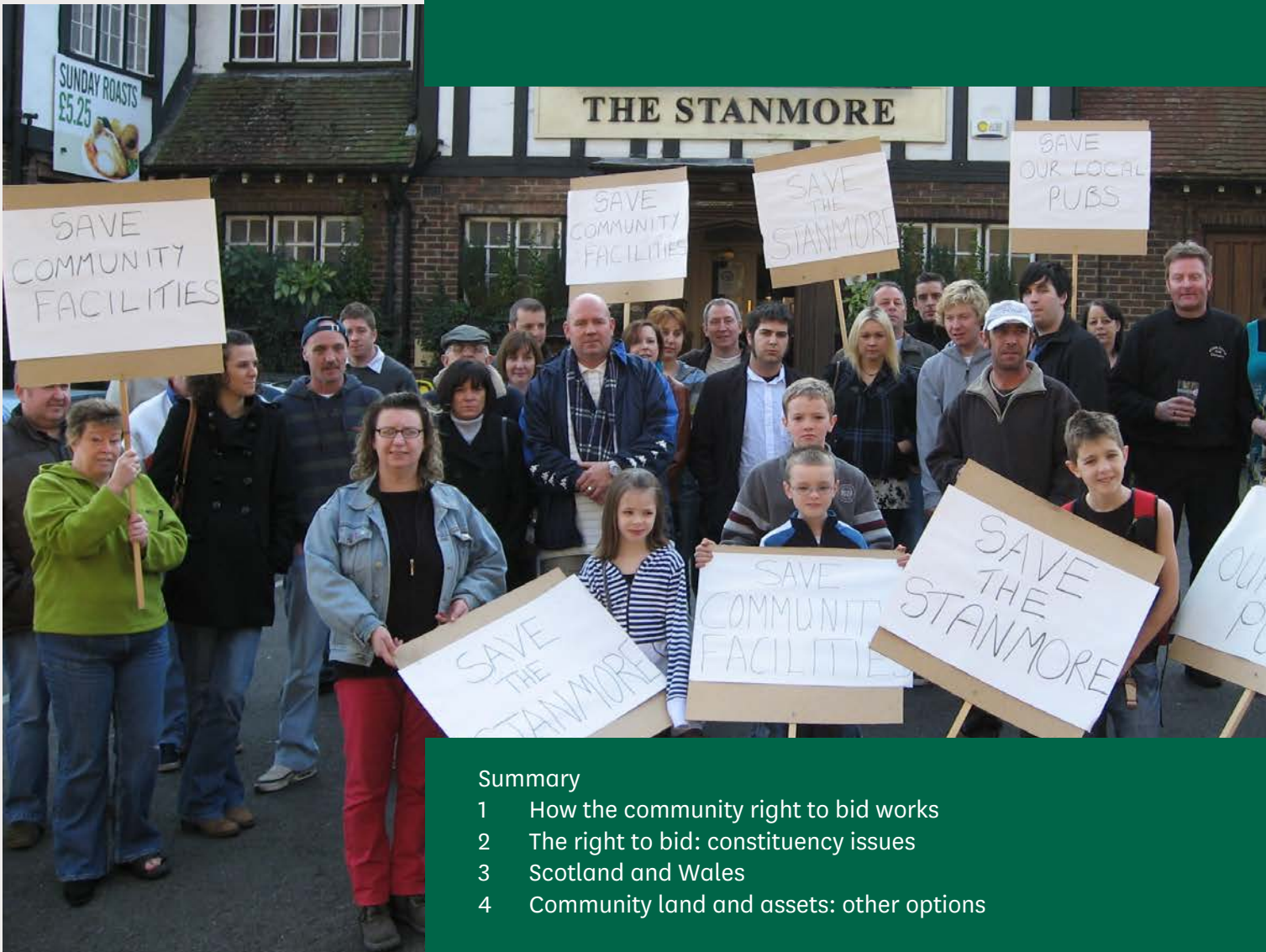


Research Briefing

By Mark Sandford

10 March 2022

## Assets of community value



### Summary

- 1 How the community right to bid works
- 2 The right to bid: constituency issues
- 3 Scotland and Wales
- 4 Community land and assets: other options

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## Summary

This briefing paper provides information about the process of nominating ‘assets of community value’, found in the [Localism Act 2011](#). Assets of community value can be nominated by parish councils or by groups with a connection with the community. If the nomination is accepted, local groups will be given time to come up with a bid for the asset if and when it is sold. These provisions are also known as the ‘community right to bid’.

The right to bid only applies when an asset’s owner decides to dispose of it. There is no compulsion on the owner to sell it, and when they sell the property they may sell to whomever they choose.

The briefing also addresses other community powers regarding land and property, including the community right to reclaim land, community asset transfer, the Right to Contest and the proposed Right to Regenerate, requests for Compulsory Purchase Orders, and the Government’s One Public Estate programme.

The Community Right to Bid exists in England only. This briefing paper also provides some details of the community right to buy in Scotland, and the process of community asset transfer in Wales.

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# 1 How the community right to bid works

Part 5 Chapter 3 of the [Localism Act 2011](#) requires district and unitary councils to maintain a list of assets of community value, which can be either land or buildings, nominated by local community groups or parish councils. When listed assets come up for sale or change of ownership, the Act then gives local community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. These provisions are also known as the community right to bid. The Government said that the aim of the measure is as follows:

...to give many more communities the opportunity to take control of assets and facilities in their neighbourhoods by levelling the playing field [and] by providing the time for them to prepare a proposal.<sup>1</sup>

The provisions extend to England and Wales, but the Welsh Government has not commenced the Act with regard to Wales, thus it applies only in England.

## 1.1 Nomination

The first element of the community right to bid is nominating a community asset. Parish councils and community organisations may nominate land or buildings to their district or unitary council, to be included in its list of community assets. Nominations may not be made by individuals,<sup>2</sup> or by county, district or unitary local authorities themselves. A more detailed definition of bodies that have a local connection (and which therefore may propose assets for listing) can be found in the [Assets of Community Value \(England\) Regulations 2012](#).

Regulation 6 of the 2012 regulations sets out the content of a community nomination, which must include a description of the nominated land and its boundaries, as well as the names of the occupants of the land and those holding a freehold or leasehold estate in the land. The reasons why the land is considered to be of community value must also be included.

Following receipt of a nomination of land or buildings, the local authority then has eight weeks to make a judgement on whether the land should be listed. If it decides that the nomination meets the criteria, the local authority must enter it on its list of assets of community value. Properties remain on the list for five years, unless they are sold following a moratorium period being

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<sup>1</sup> DCLG, [Assets of Community Value – Policy Statement](#), 2011

<sup>2</sup> See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.10

triggered.<sup>3</sup> A list of unsuccessful nominations must also be maintained; it is up to the local authority how this is published.

The asset must be a building or land, as defined in section 88 of the 2011 Act. The contents of a building, or related services or business assets, are not covered by the Act.

Residential property is excluded from listing, except where an asset that could otherwise be listed contains integral residential quarters, such as a pub or caretaker's flat. Further classes of property are excluded by Schedule 1 of the [Assets of Community Value \(England\) Regulations 2012](#). These include temporarily unoccupied residences, holiday lets and caravan sites. Land and buildings used for statutory undertakings (e.g. working electricity sub-stations) are also exempt.

Once listed, the local authority must inform the owner of the property and other interested parties that it has been listed, enter the listing on the local land charges register and, in the case of registered land, apply for a restriction on the land register. Provisions exist for appeals against the local authority's decision, and for compensation to be paid if the owner applies and the local authority accepts that listing has had a detrimental effect on the value of the property.

## 1.2

### Bids to purchase community assets

The second element of the community right to bid is the submission of a bid. The provisions for a community group to prepare a bid only apply when the asset is being put up for sale. The act of listing the asset does not compel the owner of the listed asset to sell it, nor does it create any restriction on what the owner can do with the property while they own it.

A moratorium will be applied when a listed asset is put up for sale. There is an initial six-week interim period, during which a community group may express interest in bidding. If one does, a six-month moratorium begins from the point at which the asset is put up for sale, i.e. including the six-week interim period, to allow a community interest group to put a bid together. After a moratorium period has ended, another moratorium period cannot begin for a further 12 months.

There is no community right to buy the asset, just to bid. This means that the local community bid may not be the successful one. The owner can, at the end of the moratorium, sell to whomever they choose for whatever price they choose. There is no requirement that a property owner must co-operate with a community bid, for instance by providing additional information about or

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<sup>3</sup> [Localism Act 2011](#) section 87 (3); [Assets of Community Value \(England\) Regulations 2012](#), regulation 2 (b). A property will be removed from the list after it is sold, whether that sale is to a community group or another body.



access to the property. The owner is also at liberty to negotiate a sale with a preferred buyer during the moratorium period: but the sale cannot be concluded during that period.

A community bid does not have to come from the same organisation that initially applied to list the asset. Equally, there is nothing in the legislation to prevent two or more community bids for the same asset.

The local authority can pay compensation to the owner of land if they have incurred loss or expense in relation to the land which would not have been the case if it had not been listed.<sup>4</sup>

If an owner disposes land on the assets list in contravention to the requirements of the scheme, the Act provides that the land transaction is invalid in law.

## 1.3 Funding for bids

In March 2021 the Government announced a £150 million Community Ownership Fund. This will cover the whole of the UK, and run for four years (2021-2025), with at least eight bidding rounds. It will make funding available to local groups of up to £250,000 to buy or renovate community assets, and up to £1 million for sports-related assets. The Fund will be available to community and voluntary organisations, but not to parish and town councils.

The deadline for the first round was 13 August 2021, and details of successful bids [were published in October 2021](#). The second round was expected to open in December 2021. However, the first round was reopened until 28 February 2022 for unsuccessful first-round bidders only.<sup>5</sup> The second round is expected to open in spring 2022, with an updated prospectus.<sup>6</sup>

Criteria for a successful application to the Fund include the following:

All applicants must demonstrate the potential of their projects to deliver against all of the following outcomes:

- protect a community asset or amenity that is at risk and preserve its community value
- develop a sustainable operating model to secure the long-term future of the community asset in community ownership
- safeguard the use of community assets and associated local amenities

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<sup>4</sup> [Assets of Community Value \(England\) Regulations 2012](#), regulation 14

<sup>5</sup> DLUHC, [Community Ownership Fund: explanatory note on the assessment and decision-making process](#), 23 Dec 2021

<sup>6</sup> DLUHC, [Community Ownership Fund: application form](#), 14 Dec 2021

All applicants must also show how their project will help deliver one or more of the following outcomes for their place:

- increase feelings of pride and improve perceptions of the local area as a place to live
- improve social trust, cohesion and sense of belonging
- increase local participation in community life, arts and culture and/or sport
- create additional local economic outcomes – including creating jobs, volunteering opportunities and improving employability and skills levels in the local community
- create additional social and wellbeing outcomes – including delivering positive impact in physical and/or mental health and reducing loneliness and social isolation

We will invest in community ownership projects where these assets and amenities make the biggest difference to the local place.<sup>7</sup>

Applicants may apply to the Fund for a maximum of 50% of the capital funding that they seek for a project. They may also apply for revenue funding, which may comprise up to 20% of their total funding bid (to a maximum of £50,000). Applicants are not required to seek match funding for the revenue funding element of a bid. Proposals to fund new-build projects, housing, and general community activities are not eligible for funding. Local authority-owned assets are within scope only where they are used for discretionary activities, no longer in use, or scheduled for disposal: and applications to the Fund must cover refurbishment, not the purchase of such properties.

Bids will need to demonstrate that the community asset has been used in the ‘recent past’, reflecting the provisions of the Community Right to Bid:

The asset will be used and accessed by the community or have had a community use in the recent past, which applicants will need to evidence in their application. We may fund applications relating to assets that are currently derelict, however there will need to be evidence that the asset had a community use within the last 5 years.<sup>8</sup>

## Other funding sources

Prior to the Community Ownership Fund, there was no dedicated source of funding for communities seeking to buy assets. When the right to bid was established, a small funding programme existed to enable local groups to prepare a bid, but not to fund a purchase.<sup>9</sup>

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<sup>7</sup> DLUHC, [Community Ownership Fund: prospectus](#), 14 Dec 2021

<sup>8</sup> Ibid.

<sup>9</sup> See MHCLG, [More than £30 million for communities taking over valued services and assets](#), 6 Jul 2012, announcing a £19 million Community Ownership of Assets programme.

The think-tank Localis had recommended that a more robust source of funding for community bids should be made available, in its 2020 report [Local delivery: protecting social infrastructure](#). It said:

...communities are at a disadvantage when coming up against private actors with capacity to carry out feasibility assessments and ready access to finance. Moving forward, communities must be enabled by government finance to compete on an even footing to preserve assets of value to both local society and public health.<sup>10</sup>

Similarly, Locality's 2016 report [Places and Spaces](#) proposed a £1 billion Community Asset Investment Plan, to enable local groups to take control of community assets. It proposed that half of this sum be obtained from dormant bank accounts and other financial assets.

Local organisations are free to apply to appropriate grant funders for such uses, or to arrange alternative forms of financing. A list of possible funding schemes can be found [on the Locality website](#), and another on the [My Community website](#).

## 1.4

## Reviews of community rights

The Communities and Local Government Committee published a report, [Community rights](#), on 5 February 2015. It recommended a number of adjustments to the right to bid, including:

- Extending the moratorium period from six months to nine: this was a particular concern in disadvantaged areas, which are perceived to be making less use of community rights than other communities;
- Allowing the moratorium period to end if the community bidder withdrew from the process;
- A right of appeal for nominators, under certain circumstances, when the local authority refuses to list an asset, including a right of appeal to an independent tribunal;
- A greater focus on what communities wish to achieve, instead of the legal processes associated with the various community rights;
- Requiring local authorities to maintain a “basic level of data” on the “take-up of all community rights”.<sup>11</sup>

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<sup>10</sup> Grace Newcombe, [Local delivery: protecting social infrastructure](#), Localis, 2020, p19

<sup>11</sup> Ibid., p. 38

The Government did not accept any of these recommendations in its response.<sup>12</sup> The Conservative Party's 2015 manifesto then made reference to the moratorium period:

We will extend the length of time communities have to purchase these assets, and require owners to set a clear 'reserve' price for the community to aim for when bidding. We will set up a Pub Loan Fund to enable community groups to obtain small loans to pay for feasibility work, lawyers' fees, or materials for refurbishment, where they have bid to run the pub as part of our reforms to the Community Asset Register.<sup>13</sup>

No change has been made to the moratorium period. The Pub Loan Fund was established in September 2015.<sup>14</sup>

DCLG stated in January 2015 that it planned to carry out a full review of community rights during that year.<sup>15</sup> No review document has been published, and a further answer to a Parliamentary Question, on 6 November 2017, suggested that none would be forthcoming.<sup>16</sup> A further question answered on 12 February 2020 stated:

**Bim Afolami:** To ask the Secretary of State for Housing, Communities and Local Government, what assessment he has made of the effectiveness of regulations used by local authorities in relation to changing the classification of assets of community value.

**Jake Berry:** The Government has committed to improving the assets of community value scheme which was introduced through the Localism Act 2011. As part of this, we will assess the overall the effectiveness of the regulations for local authorities, asset owners and voluntary and community groups to ensure that any legislation the Government introduces will meet our objective of supporting communities to protect those assets that are under threat.<sup>17</sup>

## 1.5

## Statistics and guidance

The Plunkett Foundation maintains [a list of assets of community value](#), including properties that have been removed from local authorities' lists and those rejected for listing.

The Communities and Local Government Committee report, in February 2015, stated that 11 assets had been bought by community groups, whilst 122 groups had triggered the moratorium period.<sup>18</sup> A Parliamentary Question in

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<sup>12</sup> See DCLG, [Government response to the Communities and Local Government Select Committee Inquiry into the Community Rights](#), Cm 9052, March 2015

<sup>13</sup> Conservative Party, [Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future](#), 2015, p21

<sup>14</sup> DCLG, [Run your local with £1.5 million Pub Loan Fund](#), 11 September 2015

<sup>15</sup> See [HCWS221](#), 26 January 2015; see also [HL Deb 24 May 2016](#) c264

<sup>16</sup> [House of Lords PQ 2642](#), 2017-19

<sup>17</sup> [PQ HC 12315 2019-21](#), 12 Feb 2020

<sup>18</sup> Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 8-11

January 2017 stated that around 4,000 assets of community value had been listed in England.

The first asset to be bought by a local community was the [Ivy House pub](#) in Nunhead, London Borough of Southwark.

The DCLG issued [a non-statutory advice note](#) on 4 October 2012, giving general information about the policy. An LGA guide is also available on the use of local assets more generally.<sup>19</sup> An [interactive map](#) showing the use of all of the community rights is available, though it is not dated. Resources for local organisations that wish to pursue a community right to bid (or other routes to local ownership of land or properties) are available from the website [www.mycommunity.org.uk](http://www.mycommunity.org.uk).

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<sup>19</sup> LGA, [Empowering communities: making the most of local assets](#), 2011

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## 2 The right to bid: constituency issues

### 2.1 Saving a threatened local asset

Frequently a community will seek to list a local asset at short notice as a way of preventing it from being sold or redeveloped. This may or may not be an effective approach.

Listing an asset cannot in itself prevent an asset from being sold. If a sale process has begun but the asset is not yet listed, it may be possible to delay a sale if the local authority lists the asset before the sale concludes. This depends on how quickly the local authority considers the application to list. If the sale concludes before the authority lists the asset, the community will not be able to trigger the moratorium procedure until the asset is next sold.

Nominations do not have to take account of current patterns of land ownership. For instance, where adjoining land and buildings have the same owner, either the land or the buildings can be nominated separately if the nominators wish. By the same token, an owner may sell part of a nominated asset but not all of it, so long as they comply with the moratorium procedures.

### 2.2 Use by the community

To be successfully listed as an asset of community value, a property must have been 'used' by the community in the 'recent past'. There is no definition in statute or in guidance of the term 'recent past'. It is for local authorities to decide whether an asset has been used recently enough to justify its inclusion on the list. An asset must also face a realistic prospect of reuse by the community in the next five years. However, that does not mean that an actual proposal to take the asset over must be in place in order for the asset to be listed (*Henthames Ltd v South Oxfordshire DC*, 2015).<sup>20</sup>

A building or land which has never been used by the community will not be eligible to be listed. A community which wishes to use a building as a community asset when it has never been one in the past cannot use the Right to Bid to achieve this.

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<sup>20</sup> This case, and a number of other recent cases, are noted on the [Local Government Lawyer](#) website.

## 2.3 ‘Going concerns’

There are certain types of land and asset disposal to which the provisions for the community right to bid do not apply. These are listed in Schedule 3 of the 2012 regulations, and explained on pages 22-24 of the guidance note.<sup>21</sup>

One of these provisions is that disposal of an asset as a ‘going concern’ does not trigger the moratorium procedures. This would enable, for instance, the sale of a pub to another pub owner to take place without triggering the moratorium period and possibly a community bid. The 2015 CLG Committee report noted concerns that pubs were being sold as ‘going concerns’ to owners who were unlikely to want to continue to manage them, and stated:

We recommend that the Government...bring forward proposals to close the loophole in the current legislation which allows an Asset of Community Value to be sold as a going concern when the buyer has no intention of retaining it in its current use.<sup>22</sup>

## 2.4 The five-year period

Assets remain on the relevant list of assets of community value for five years (unless they are sold after a moratorium period is triggered: see section 1.1). After five years, the property must be removed from the list. There is no explicit provision either permitting or preventing a community group from then applying to have the asset re-listed. However, the local authority could conclude that the conditions for listing are no longer met at the point of the second application for listing. For instance, an asset may not, by then, have been used by the community in the ‘recent past’.<sup>23</sup>

## 2.5 Pubs and change of use rights

The Government issued a written statement in January 2015,<sup>24</sup> stating that it planned to pass regulations providing that any property listed as an asset of community value would have to apply for planning permission to change its use class, instead of being able to do so under permitted development rights. This was done via the [Town and Country Planning \(General Permitted Development\) \(Amendment\) \(England\) Order 2015](#) (SI 2015/659), effective as of 6 April 2015.

<sup>21</sup> See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.22-24

<sup>22</sup> Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 16

<sup>23</sup> See also the discussion in Christopher Cant, [Assets of community value](#), 2018, p183-186

<sup>24</sup> See [HCWS221](#), 26 January 2015

The aim was to close a loophole in the law, whereby owners of pubs which had been listed as assets of community value could use permitted development rights to convert them to residential property. As noted above, residential properties cannot be assets of community value. Pub owners could therefore use this route to sell the property whilst avoiding the moratorium period and/or a bidding process.

## 2.6 The right to bid and planning applications

There have been instances of the listing of a property as an asset of community value being regarded as a ‘material consideration’ for planning purposes. In other words, the grant or refusal of planning permission might take into account the fact that the property was listed as an asset of community value. This would take place at the discretion of the relevant planning committee: the matter is not mentioned in legislation. The Government’s [non-statutory guidance note of late 2012](#) says:

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.<sup>25</sup>

There are examples of applications for change of use being rejected with the planning authorities citing listing as a community asset as a factor: these include the Peterborough Arms, Dauntsey (near Chippenham, Wiltshire).<sup>26</sup> Some additional cases are noted [on the Planning Law blog](#): see also the [guide to Assets of Community Value](#) by the barrister Christopher Cant. The 2015 Communities and Local Government Committee report said:

We recommend that the Government, as part of its review of Community Rights later in 2015, consult on a proposal to amend its guidance so that ACV listing is a material consideration for local authorities in all planning applications other than those for minor works.<sup>27</sup>

## 2.7 Extending the right to bid

The right to bid covers only land and buildings. It does not cover any business or service run from a building. Nor does it cover any other elements of community life that could be described as ‘assets’. A number of suggestions

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<sup>25</sup> DCLG, [Community Right to Bid: Non-Statutory advice note for local authorities](#), 2012, p. 6

<sup>26</sup> See [the Wiltshire Council officers’ report to the relevant planning committee](#)

<sup>27</sup> Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 12



have been made for extending the right to bid to different categories of ‘asset’:

- Helen Goodman MP suggested, in a Westminster Hall debate on 30 March 2017, that it should be possible to classify newspapers and other local businesses as community assets.<sup>28</sup> This attracted some interest from the responding Minister, Matt Hancock MP:

The legislation on such assets, however, refers only to the land and buildings. That might potentially cover the physical assets of a local newspaper, but her point is that there is more to the assets of a local newspaper than the physical asset. I will therefore have a conversation with Ministers at the Department for Communities and Local Government, the lead Department, to see whether we can make any progress. We will have to look into the practical questions, but I understand her thrust.<sup>29</sup>

- During the Committee Stage of the [Bus Services Bill 2016-17](#), Daniel Zeichner MP introduced an amendment that would have permitted bus routes to be designated as community assets.<sup>30</sup> Later in the debate, the Transport Minister, Andrew Jones, said:

I do not think that it is reasonable or sensible to force operators to continue to operate a service, potentially at significant financial detriment, for six months rather than the 56 days currently required. Doing so could act as a disincentive for operators to trial new services, step in to see whether they can make a service viable or operate services commercially where local authority funding is precarious and can be kept going for only a short time.<sup>31</sup>

- A debate on rural post offices, on 17 November 2016, saw several references to the status of post offices as ‘community assets’, though this was not explicitly linked to the assets of community value regime.<sup>32</sup>

None of these suggestions have resulted in changes at the time of writing. There is an element of overlap between these ideas and the “community right to challenge”, which allows local groups to bid to take over public services (see the Library briefing paper [The community right to challenge](#)).

## 2.8

## Appeals

Although the owner of an asset may appeal against its inclusion on the list, there is no provision for a community nominator to appeal if the local authority rejects an application to list land or buildings as an asset.

Regulation 11 of the 2012 regulations provides that the owner of a building may appeal against its listing as an asset of community value. The first such

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<sup>28</sup> [HCDeb 30 Mar 2017](#) c200-01WH

<sup>29</sup> *Ibid.*, c224

<sup>30</sup> [HCDeb 14 Mar 2017](#) c77

<sup>31</sup> [HCDeb 14 Mar 2017](#) c80. See also [HLDeb 24 May 2016](#) c265

<sup>32</sup> [HCDeb 17 Nov 2016](#) c202-228

tribunal case concerned the [Chesham Arms pub](#) in Hackney. At a hearing on 17 October 2013, the judge ordered that the pub should remain on Hackney's list of assets of community value.

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## 3 Scotland and Wales

### 3.1 Wales: Community asset transfer

The [Localism Act 2011](#) extends the community right to bid to Wales, but the Welsh Government has not commenced the relevant provisions. It has focused instead on community asset transfer (see more details in section 3.1 below). The Welsh Government issued a [general disposal consent](#), equivalent to that for England (see section 3.1), to Welsh local authorities, national park authorities, police and fire authorities in 2003.

The Welsh Government issued a consultation on 21 May 2015 seeking views on either commencing the Localism Act provisions or introducing an alternative scheme in Wales, or doing neither.<sup>33</sup> A Written Statement in December 2015 indicated support for some form of scheme from the consultation. The Welsh Government then expressed cautious support for commencing the [Localism Act 2011](#) provisions with regard to Wales following the 2016 National Assembly election.<sup>34</sup> However, this did not take place. The Welsh Government piloted a support programme for community asset transfer in late 2015 and early 2016. It produced a series of resources, including a best practice guide, [available on its website](#).

An evaluation of community asset transfer in Wales was published in 2016.<sup>35</sup> A report from the Wales Audit Office in 2018 recommended that local authorities work more closely with town and community councils to identify assets that could be transferred to them, and the procedures needed to achieve this effectively.<sup>36</sup> It also included some case studies of successful community asset transfers in Wales.

A study in 2020 by the Building Communities Trust identified 438 community assets across Wales. These have been presented [in an online map](#).<sup>37</sup> Further research published by the Welsh Government in 2021 found that a majority of Welsh local authorities had in place a strategy for community asset transfer.<sup>38</sup> The most common types of property transferred were community halls, sports and leisure facilities, green spaces, and public toilets.

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<sup>33</sup> Welsh Government, [Protecting Community Assets](#), May 2015

<sup>34</sup> Welsh Government, [Written Statement: Assets of Community Value](#), 7 December 2015

<sup>35</sup> CMI, [Evaluation of the community asset transfer programme](#), May 2016

<sup>36</sup> Wales Audit Office, [Provision of local government services to rural communities: Community Asset Transfer](#), November 2018, p7

<sup>37</sup> Building Communities Trust, [Mapping community assets in Wales](#), 2020

<sup>38</sup> Welsh Government, [Community asset transfer: research with the third sector, local authorities and community and town councils](#), March 2021, p27

## 3.2

### Scotland: community right to buy

The right to bid does not extend to Scotland. Scotland had earlier introduced a community right to buy in the [Land Reform \(Scotland\) Act 2003](#). As with the assets of community value process in England, certain classes of community body are permitted to register an interest in a piece of land or property. This must include details of the property, the current pattern of ownership, details of the community, and evidence of community support for the registration. The guidance suggests that petition support from 10% of the local electorate would normally meet this criterion. The land remains on the register for five years, and may be re-registered at the end of that time.

The registration process permits ‘timeous’ applications and ‘late’ applications. The latter are applications to register an interest in land which the owner has already put on the market. Late applications must include, where available, evidence that the community group had begun to work towards submitting a timeous application. They also require evidence of greater support from the community than timeous applications do.

When an owner decides to sell land, the community body must indicate whether it wishes to proceed with the purchase. In effect, it is permitted ‘first refusal’ on the land. The Scottish Government will appoint an independent valuer to produce a market valuation of the land, if the owner and the community cannot agree on a price. The community must also give its approval in a referendum.

The application to buy the land must then be submitted to the Scottish Ministers. If they give their approval, the community then has eight months, from the date on which they confirmed that they wish to proceed, to buy the land.

Further details are available in guidance on the Scottish Government website.<sup>39</sup>

Part 3 of the 2003 Act allows Crofting Community Bodies (CCBs) to purchase crofting land, eligible additional land and associated fishing, mineral and sporting rights at any time, i.e. without the need to wait for the land to come onto the market. This right can only be exercised with the consent of Scottish Ministers and after a ballot of the crofting community produces a simple majority in favour of purchasing the land.

Further rights for community bodies to compulsorily purchase “abandoned, neglected or detrimental” land came into force in June 2018.<sup>40</sup> Community bodies may ask the Scottish Ministers to order the sale of land or property

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<sup>39</sup> For more details on the community right to buy, see Scottish Government, [Community Right to Buy in Scotland](#).

<sup>40</sup> See new part 3A of the Land Reform (Scotland) Act 2003, specifically the element introduced by section 74 of the [Community Empowerment \(Scotland\) Act 2015](#)

that fits this description. The community body must first have approached any relevant regulator and attempted to use the standard right to buy process. [Further information and guidance is available](#) on the Scottish Government's website.

### 3.3 Scotland: community asset transfer

The Scottish Parliament introduced the concept of 'community asset transfer' in the [Community Empowerment \(Scotland\) Act 2015](#). This encompasses the description of community asset transfer, the 'community right to reclaim land' and the 'right to contest' in England. It covers a range of public bodies listed in schedule 3 of the 2015 Act. This part of the 2016 Act came into force in January 2017.

The 2015 Act requires the public body to which a request is made to "to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal".<sup>41</sup> While a request is under way, the public body cannot dispose of the land or property to anyone else. Requests can be made by community groups, either representing a particular geographical area or a community of interest: "faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations".<sup>42</sup>

Guidance for Scottish community organisations is available from the [Community Ownership Support Service](#). [Scottish Government guidance](#), for both local authorities and organisations seeking the transfer of assets, is also available. Scottish community councils (the equivalents of parish and town councils in England) are not covered by this legislation.

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<sup>41</sup> Scottish Government, [Asset Transfer: Guidance for Community Transfer Bodies](#), 2017, p1

<sup>42</sup> Scottish Government, [Asset Transfer: Guidance for Community Transfer Bodies](#), 2017, p14

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## 4 Community land and assets: other options

### 4.1 Community Asset Transfer

Community asset transfer is a central government policy directed at local authorities' use of their redundant assets. It is entirely separate from the community right to bid, operating on a discretionary basis rather than forming a 'community right'. The powers under which it takes place predate the [Localism Act 2011](#).

Community organisations seeking to take on assets from local authorities would normally need a business plan and evidence of organisational stability, in order to negotiate a successful transfer with the local authority. Local authorities will want to minimise the likelihood of facing future pressure to step in if a community organisation fails after taking on an asset.

A short guide can be found on the My Community website. It says:

...communities interested in Community Asset Transfer are encouraged to obtain a copy of their local authority's strategy or, alternatively, contact the Council's property department to discuss where to start. Ordinarily, this involves them submitting a headline expression of interest, and subject to an invitation from the Council, developing a business case to demonstrate that the community is capable of maintaining and operating the land or buildings on a sustainable basis.

A range of agreements can be entered into to facilitate the transfer of an asset to a community-based organisation – but the most common form is long leasehold. Often, local authorities will explore shorter term agreements in discussion with newly formed community organisations.<sup>43</sup>

### Legal powers

The [Local Government Act 1972](#) section 123 (2) states:

Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

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<sup>43</sup> My Community, [Understanding Community Asset Transfer](#), 2018, p3

The Government published a general consent for English local authorities to dispose of land to community organisations at below market value in 2003.<sup>44</sup> The consent specifies the following conditions:

The specified circumstances are:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
  - i) the promotion or improvement of economic well-being;
  - ii) the promotion or improvement of social well-being;
  - iii) the promotion or improvement of environmental well-being; and
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).<sup>45</sup>

The Government consulted on (amongst other things) reforming the general consent in 2018, publishing a response to consultation in May 2019. The consultation asked whether the £2 million threshold should be increased; and whether a general consent should be extended to land held for planning purposes. Both proposals were supported by a majority of those responding.<sup>46</sup> There have been no further developments since.

## Current practice

English local authorities are expected to have a strategy for asset disposal. A number of means are available through which this can take place:

A range of organisational structures are now commonly used to provide legal entities through which community organisations can own and manage local assets. These include community interest companies, companies limited by guarantee, charitable incorporated organisations, charitable trusts and industrial and provident societies. These structures can incorporate social enterprises and social firms, mutuals, development trusts and housing associations.<sup>47</sup>

The think-tank Localis published a report in 2014 entitled [Public land, public good](#), which recommended that local authorities seek to use assets as sources of revenue as central grants continued to fall. NLGN and Power To

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<sup>44</sup> DCLG, [Circular Q6/03: Local Government Act 1972 general disposal consent \(England\) 2003 disposal of land for less than the best consideration that can reasonably be obtained](#), 2006

<sup>45</sup> *Ibid.*, p. 11

<sup>46</sup> MHCLG, [Government response to consultation on planning reform: supporting the high street and increasing the delivery of new homes](#), May 2019, pp20-22

<sup>47</sup> LGA/IDeA, [Improving efficiency in the culture and sport sector](#), 2010, p.3

Change published a joint report in 2016 highlighting good practice and case studies of community asset transfers in England.<sup>48</sup>

## Policy development

In 2006, the then Government announced the establishment of a review of existing powers and policies on community asset transfer under the chairmanship of Barry Quirk, then chief executive of the London Borough of Lewisham. The Quirk Review ([Making Assets Work](#)) reported in May 2007. Its main conclusions were summarised in the accompanying press release as follows:

...there are no substantive barriers to prevent councils transferring assets into community management or full ownership. Powers already exist for this but the report finds that many are not fully aware of them, or are not using them to full benefit. Therefore a change in culture is required so that every community has the chance for more active citizenship, a greater role in running services and owning assets, and improving wellbeing in their communities.

Underpinned by safeguards to ensure good management councils can sell off or lease assets for as little as £1 where it is clear it is for the good of the community. Other assets that could be transferred include redundant police stations, old hospital sites, empty shopping parades and closed down pubs on estates.<sup>49</sup>

A community empowerment white paper, published in July 2008, repeated the Government's commitment to this policy and summarised progress made to date.<sup>50</sup> The white paper announced the establishment of the Asset Transfer Unit (ATU), which provided advice and support to individuals and groups (including local authorities) on asset transfer. This was later folded into the independent organisation [Locality](#). A Government response to the Quirk Review, entitled [Building on Strong Foundations](#), was published in 2009.

Latterly, alternative viewpoints on the use of public land and property have been advanced. The 2014 Localis report [Public land, public good](#) advocated the use of land and property by local authorities as a capital asset that could supply revenue for local services. A similar point was made by the 2015 Centre for Cities report [Delivering change: making the most of public assets](#). Local authorities may be influenced by a combination of concerns in making decisions about local assets, including facilities and quality of life for residents, economic growth, and revenue streams. The Centre for Cities report says:

The sale of an asset (or liability) might sometimes be an appropriate response, but there is a shift away from focusing on cost-reduction and disposal above all else. The appropriate responses to managing public land and property

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<sup>48</sup> NLGN / Power To Change, [A Common Interest: the role of asset transfer in developing the community business market](#), 2016

<sup>49</sup> DCLG, "[Councils urged to reap the benefits of handing assets to communities](#)", News release 2007/0092, 15 May 2007. The main report is entitled [Making assets work: the Quirk Review](#), May 2007.

<sup>50</sup> See [Communities in control: real people, real power](#), Cm 7427, July 2008, chapter 8.



assets should be assessed through the lens of place and the contribution an asset can play [sic] in the local economy, rather than a silo-led approach to disposing of assets by sale on a case by case basis as standard.<sup>51</sup>

## 4.2 Community right to reclaim land

Schedule 16 of the [Local Government, Planning and Land Act 1980](#) allows the Secretary of State to direct specific bodies to dispose of land or property. This formed the basis of what used to be known as the Public Request to Order Disposal (PROD) process, which since 2011 has been referred to as the community right to reclaim land.<sup>52</sup> This procedure overlaps with the Right to Contest (see section 3.4 below). Local groups can request a disposal of land by a public body, and the Secretary of State may direct it to do so under this schedule. Brief details of this procedure, together with an application form to request the Secretary of State to direct the disposal of land, can be found on the gov.uk website.<sup>53</sup> The Government has also published [a list of public bodies affected by the provisions](#).

The procedure applies to the public bodies listed in schedule 16 of the 1980 Act, and requests can be made to other public bodies which have signed a memorandum of understanding with DCLG. Under this procedure, land is sold on the open market: there is no first refusal for community groups. The 2015 CLG Committee report stated that 42 requests had been received between February 2011 and June 2014, of which two were under consideration. Locality, in evidence in the 2015 CLG Committee report, proposed a ‘right to demand discounted asset transfer’ – i.e. for discounted transfer to be available as of right, not at the Government’s discretion. The Committee did not endorse this suggestion, but recommended that the Government issue draft guidance on what constitutes under-used land, to help proposers to know where this procedure might best be used.

In January 2015, the Government published a table of recent requests under this procedure, in response to a series of Parliamentary questions.<sup>54</sup> This recorded 78 applications in four years. None of them resulted in a decision to direct disposal, though fourteen applications were under consideration at the time of publication. In a response to a Parliamentary Question in 2015, the Minister, Brandon Lewis, indicated that requests under this community right would be dealt with under the Right to Contest in future (see section 3.3 below).<sup>55</sup>

<sup>51</sup> Centre for Cities, [Delivering Change: making the most of public assets](#), 2015, p.30

<sup>52</sup> See DCLG, “[Communities to be given a right to reclaim land](#)”, 2 February 2011. The 1980 Act provisions covered England and Wales, though the developments outlined here cover England only.

<sup>53</sup> See DCLG, [Public request to order disposal process](#), 5 October 2011. See also Locality, [Empowering communities: making the most of local assets: an officer companion guide](#), 2011, p.18-22

<sup>54</sup> [PQ HC220952 2014-15](#), 15 January 2015

<sup>55</sup> [House of Commons PQ 220952 2014-15](#)

## 4.3

## Right to Contest

The Government introduced the ‘Right to Contest’ in January 2014, relating to land owned by central government and its agencies.<sup>56</sup> Members of the public may submit a form specifying land and buildings which they believe are surplus to central government requirements, or could be put to better economic use. This right also covers local authority-owned land and buildings that are under-used or derelict. The guidance states:

Anyone can use Right to Contest, including businesses, local authorities or members of the public, to challenge the government about a site, as long as they believe that all the following apply.

Land owned by a central government department or one of their arms’ length bodies

The site:

- is potentially surplus or redundant
- could be put to better economic use, e.g. for housing or to help businesses develop or expand

Please note that you can use the Right to Contest to challenge central government sites which are in use, as long as you think that operations could be moved to a different location.

Land owned by a local authority or certain other public bodies

- the site is empty or under-used
- there are no plans to bring it back into use<sup>57</sup>

The relevant department may then agree to sell the land or buildings concerned on the open market. If it does not, the Department for Communities and Local Government (DCLG) will effectively act as arbiter, taking both perspectives into account. The relevant department may indicate that it does not wish to sell if “the site is vital for operational purposes” or “other considerations outweigh the potential better economic use”.<sup>58</sup>

In March 2021 the Government launched a consultation on transforming the Right to Request into a ‘Right to Regenerate’. This sought views on a number of changes:

- Whether the government should extend the coverage of the right to land owned by parish and town councils;

<sup>56</sup> [HCWS509 2014-15](#), 26 Mar 2016

<sup>57</sup> See Cabinet Office, [Right to Contest: government guidance](#), 8 Jan 2014

<sup>58</sup> Ibid. The application form is also available at this link.

- Whether the Government should order the sale of land where the local authority has identified a long-term use, but no temporary use. The aim would be to incentivise a temporary use to be found;
- Whether those seeking to use the right should be obliged to contact the local authority owner in the first instance;
- Whether there should be a presumption in favour of disposal;
- Whether local authorities should be required to publish requests and their outcomes;
- Whether a right of first refusal, spanning a limited period of time, should be available to community groups making the request;
- Whether the Secretary of State should have the power to attach conditions when ordering a disposal.<sup>59</sup>

This consultation describes the community right to reclaim land (see section 3.2 above) as ‘strand 2’ of the Right to Contest. (‘Strand 1’ is the Right to Contest as described in this sub-section.) It states that “since 2014, 192 requests have been submitted under Strand 2. Of these, 145 were refused, 10 withdrawn, 9 are still pending, 27 were not a valid request and one direction to order disposal was issued”.<sup>60</sup>

No response to this consultation had been published as of early March 2022.

## 4.4 Compulsory purchase order requests

In 2015, the Government issued revised guidance covering the right of community organisations to call on local authorities to issue compulsory purchase orders on land or buildings which are unused and have been, or could be, of benefit to the community. This can be found on page 90 of the revised ‘Crichel Down regulations’. The guidance states:

225. What requests can be made to a local authority?

Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.

226. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial

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<sup>59</sup> MHCLG, [Right to regenerate: reform of the Right to Contest](#), 12 March 2021

<sup>60</sup> MHCLG, [Right to regenerate: reform of the Right to Contest](#), 12 March 2021

groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process either from their own resources, or with a partial or full contribution from those making the request.

Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.<sup>61</sup>

## 4.5 One Public Estate

The One Public Estate programme began in 2013. The programme is designed to encourage local councils to work with central government and other public sector organisations to share buildings and re-use or release surplus property and land.<sup>62</sup> It may lead to land and buildings being sold, shared, repurposed, or used for income generation. It is being jointly delivered by the Cabinet Office's Government Property Unit and the [Local Government Association](#).

The Cabinet Office has said that the One Public Estate programme is designed to:

- Deliver significant savings for the taxpayer
- Provide better, more integrated local services, in places which are more convenient for users; and
- Release land and property which can be reused for housing and new enterprise, boosting local jobs, growth and house-building.<sup>63</sup>

The programme was launched in May 2013, with twelve participating councils.<sup>64</sup> A further twenty councils joined the programme in August 2014.<sup>65</sup> A series of case studies can be found in a joint Cabinet Office / Local Government Association publication from August 2014.<sup>66</sup> Participants in One Public Estate are required to upload details of their property assets to the Government database 'E-PIMS'.<sup>67</sup> This underlies the [Government Property Finder](#) database.

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<sup>61</sup> DCLG, [Compulsory purchase process and the Crichel Down rules: guidance](#), July 2019, p. 103

<sup>62</sup> Cabinet Office, '[Chloe Smith welcomes new pilot property scheme](#)', 25 June 2013

<sup>63</sup> [PQ 13191](#) [Public Sector: Assets], 11 November 2015

<sup>64</sup> Cabinet Office, [Chloe Smith welcomes new property pilot scheme](#), 25 June 2013

<sup>65</sup> Cabinet Office, [Successful government estate programme expands](#), 6 August 2014

<sup>66</sup> Cabinet Office / LGA, [One Public Estate: Transforming Property and Services](#), August 2014

<sup>67</sup> [HL Deb 6 Feb 2017 c351](#)

The LGA and Cabinet Office publication, [One Public Estate: Unlocking the Value in Public Sector Assets](#), describes the work of the programme during its first two years:

We began OPE as a pilot programme with 12 areas in 2013. In 2014, a further 20 areas were successful in joining the programme. Together, these 32 areas forecast the following benefits from being on the programme compared with operating alone: 20,000 jobs, c.9,000 homes, reducing running costs by £77 million, and raising £129 million from land and property sales.<sup>68</sup>

An additional £6 million was then announced in the 2015 Summer Budget to expand the programme, with larger partnerships of councils and further schemes.<sup>69</sup> In July 2015 councils were invited to join Phase 3 of the programme: this was then launched in December 2015.<sup>70</sup> 107 local councils agreed to join Phase 3.<sup>71</sup>

In January 2016 the LGA and the Cabinet Office also published [One Public Estate: Unlocking the Value in Public Sector Assets](#). This stated that “central government is set to release land for 160,000 homes and raise at least £5 billion from land and property disposals and local government is forecast to raise over £9 billion from land sales”.<sup>72</sup> The [Invitation to Apply](#) for Phase 4 was published on 1 April 2016.<sup>73</sup> [A list of participating councils](#) was published in December 2017.

Applications for phase 8 of One Public Estate closed in November 2020. This included a £10 million fund for “collaborative public sector property projects”, alongside £20 million allocated to the Land Release Fund (see below).<sup>74</sup> The prospectus for this round of funding is available [on the Local Government Association website](#).

An answer to a Parliamentary Question in April 2019 stated that:

By March 2020, partnerships on the programme expect to deliver:

- £615 million in capital receipts
- £158 million savings in running costs
- 44,000 new jobs

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<sup>68</sup> Cabinet Office and the Local Government Association, [One Public Estate: Unlocking the Value in Public Sector Assets](#), January 2016, p10

<sup>69</sup> HM Treasury, [Summer Budget 2015](#), para 2.26

<sup>70</sup> Local Government Association, [One Public Estate](#), 6 June 2016

<sup>71</sup> See Cabinet Office, [‘More local authorities set to sell government assets’](#), 11 December 2015

<sup>72</sup> Cabinet Office and the Local Government Association, [One Public Estate: Unlocking the Value in Public Sector Assets](#), January 2016, p6.

<sup>73</sup> Local Government Association and Cabinet Office, [One Public Estate: Invitation to Apply](#), April 2016, p2

<sup>74</sup> Local Government Association, [Partnership applications have now closed for phase 8 of One Public Estate and Land Release Funding](#), November 2020

- Release land for 25,000 new homes<sup>75</sup>

A debate on the programme took place in Westminster Hall on 14 May 2019.<sup>76</sup>

## Land Release Fund

The Land Release Fund is intended specifically to assist the provision of local authority-owned land for new housing development. It forms a part of the One Public Estate programme. The first allocation took place in 2018.<sup>77</sup>

In September 2020, £20 million further funding was made available for ‘capital projects’, alongside a further £10 million from the One Public Estate programme itself for “collaborative property-based projects”:

**The LRF is offering £20 million** of capital grant funding to unlock and accelerate the release of these sites.

The aims of the Land Release Fund are to:

- release council-owned land by **end of March 2023** for housing development that otherwise would not come forward during that period
- demonstrate a high value return for Government investment into these small sites
- encourage the use of public assets to drive innovative delivery, through SME support, bespoke delivery models, high-quality design and modern methods of construction
- be confident these schemes will deliver within the funding timescale.

We expect LRF funding to target smaller sites (sub-100 units) which require upfront funding to address viability issues relating to abnormal costs of the proposed development. The types of abnormal costs requiring funding may include:

- site levelling, groundworks,
- provision of small-scale infrastructure,
- highways works or other access challenges
- addressing environmental constraints.<sup>78</sup>

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<sup>75</sup> [PQ HC 243499 2017-19](#), 23 April 2019. For additional data made available through answers to Parliamentary Questions, see the Commons Library debate pack [One Public Estate](#).

<sup>76</sup> [HC Deb 14 May 2019](#) c23WH&ff

<sup>77</sup> See MHCLG, [£45 million funding boost to support councils unlock land for thousands of homes](#), 26 Feb 2018.

<sup>78</sup> Cabinet Office / MHCLG, [One Public Estate and Land Release Fund: Invitation to Apply](#), September 2020, p4

## Intended outcomes

One of the aims of the programme has been to allow surplus land to be used as a source of revenue by local authorities.<sup>79</sup> In the debate on 14 May 2019, the Minister, Kevin Foster, said that “partnerships with projects under way expect to generate £615 million in capital receipts and £158 million in running cost savings, create 44,000 jobs, and release land for 25,000 homes by 2020”.<sup>80</sup> Previously, in December 2016, a Written Answer stated that “One Public Estate covers 50% of councils in England and expects to deliver at least £56 million in running cost savings, £138 million in capital receipts, 36,000 jobs, and 16,500 homes by 2020”.<sup>81</sup>

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<sup>79</sup> See, e.g., Cabinet Office, [More local authorities set to sell government assets](#), 11 December 2015

<sup>80</sup> HCDeb 14 May 2019 c46WH

<sup>81</sup> [PQ HC907870](#), 2016-17, 8 December 2016

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