



COMMUNITY RIGHT TO BID: THE IMPLICATIONS FOR SUPPORTERS' TRUSTS





Supporters Direct was formed in 2000, as a result of the Football Taskforce's Third Report. Its goal is to "promote sustainable spectator sports clubs based on supporters' involvement and community ownership".

Supporters Direct aims to create the conditions in which supporters can secure influence and ownership of their clubs, and promotes the value of supporter and community engagement. It believes that sports clubs, competitions and stadia are increasingly being put at risk by short-term vested interests, poor financial management and inadequate standards of governance; and that structured, democratic supporter involvement in decision-making processes can help redress this balance.

Supporters Direct is a Community Benefit Society, registered with the Financial Services Authority and owned by its member supporters' trusts and clubs. Since 2000, Supporters Direct has been responsible for raising over £35 million worth of funding to pump directly back into football and has helped more than 30 sports clubs either reform under or convert to community ownership.

It has a unique position in football working at the coal face of the game and producing cutting edge research informed by its development work with supporters' trusts and clubs throughout the industry.



Locality is the UK's leading network of development trusts, community enterprises, settlements and social action centres. Locality assists people to work together to build stronger communities – giving hands-on support and promoting peer-to-peer exchange.

It is the UK expert on asset transfer, bringing land and buildings into community use through the Asset Transfer Unit and gives guidance on using the Community Rights including Right to Bid which enables community ownership. Find out more about Locality and for advice on using the Community Rights visit My Community Rights.

Author:

Stephen Rolph, Locality

Additional Information

Supporters Direct

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COMMUNITY RIGHT TO BID: THE IMPLICATIONS FOR SUPPORTER'S TRUSTS

The Community Rights are a set of powers which give communities more control over what happens in their neighbourhood and to important local amenities of value to them. Communities can decide what is built in their neighbourhood and how the area should develop. They also have the chance to deliver local services and nominate and bid for community assets and develop them into community enterprises.

The new Rights are contained within the Localism Act (2011), which devolves power from government to communities, local authorities and individuals.

For supporter's trusts, all of the Community Rights offer potential opportunities to secure community benefit in football stadia. However, the Community Right to Bid is mostly likely to be of relevance to the majority of supporter's trusts. Therefore, this guide concentrates on this specific provision.

You can find out more about the remaining Community Rights at:
<http://www.mycommunityrights.org.uk>.

INTRODUCTION

One of the most important types of assets in any community is its land and buildings. Some of these places will be of particular value to local people. In terms of football stadia, it is highly likely that they will hold iconic status as well as community enterprise potential. As a result, the Community Right to Bid may be one of the new ways that supporter's trusts choose to secure the long term future of these treasured assets.

The Community Right to Bid is a new tool designed to help communities safeguard the property assets they value. The Act introduced the Community Right to Bid, and placed a duty upon local authorities in England to maintain a list of assets of community value, based on nominations from the local community. Assets that are deemed to be of community value must be listed by the local authority. Listed assets remain on the list for up to five years, (after which time they must be re-nominated).

The next stage in the process occurs if the owner of a listed asset wants to sell it. At that point he must notify the local authority. Once the local authority has been notified of the owner's intent to sell, they are required to update the list to reflect the owner's intention; inform the nominating community group and publicise these matters in the neighbourhood of the asset in question. Community interest groups then have six weeks to lodge a non-binding expression of interest, in which case a window of opportunity of a further four and a half months - making a total of six months - will come into effect. This will give communities more time to develop a bid and raise the necessary capital for the purchase.

The Community Right to Bid is not designed to force landowners wishing to sell to do so to some person or organisation they do not wish to sell to, nor will it force them to sell at an inferior price. There is no restriction on the freedom of landowners to sell to whomever they choose after the six months have expired and there is no right of first refusal for community interest groups. In fact the owner can sell the asset for less than the community bid if they wish, which is one of the weaknesses of the act.

THE RIGHT TO BID AND OTHER METHODS OF COMMUNITY ASSET ACQUISITION

It is important to understand that the Community Right to Bid is not the same as, and does not replace, other methods available to communities that are keen to own and manage property assets. Community Asset Transfer – that is transferring publicly owned assets to the community at a discount to market value – remains an important and preferable route through which to secure the community ownership of assets.

Other methods available to communities keen to take control of land and buildings in their local area include: Meanwhile Use; the Community Right to Reclaim Land and Compulsory Purchase for Communities, (for more information see: <http://locality.org.uk/assets>).

THE DEFINITION OF AN ASSET OF COMMUNITY VALUE – AND ITS RELEVANCE TO FOOTBALL STADIA

A building or other land is an asset of community value if its main use is, or has recently been, to “further the social wellbeing or social interests of the local community” and it could do so in the future.

Land of community value is dealt within section 88 (1) of the Act:

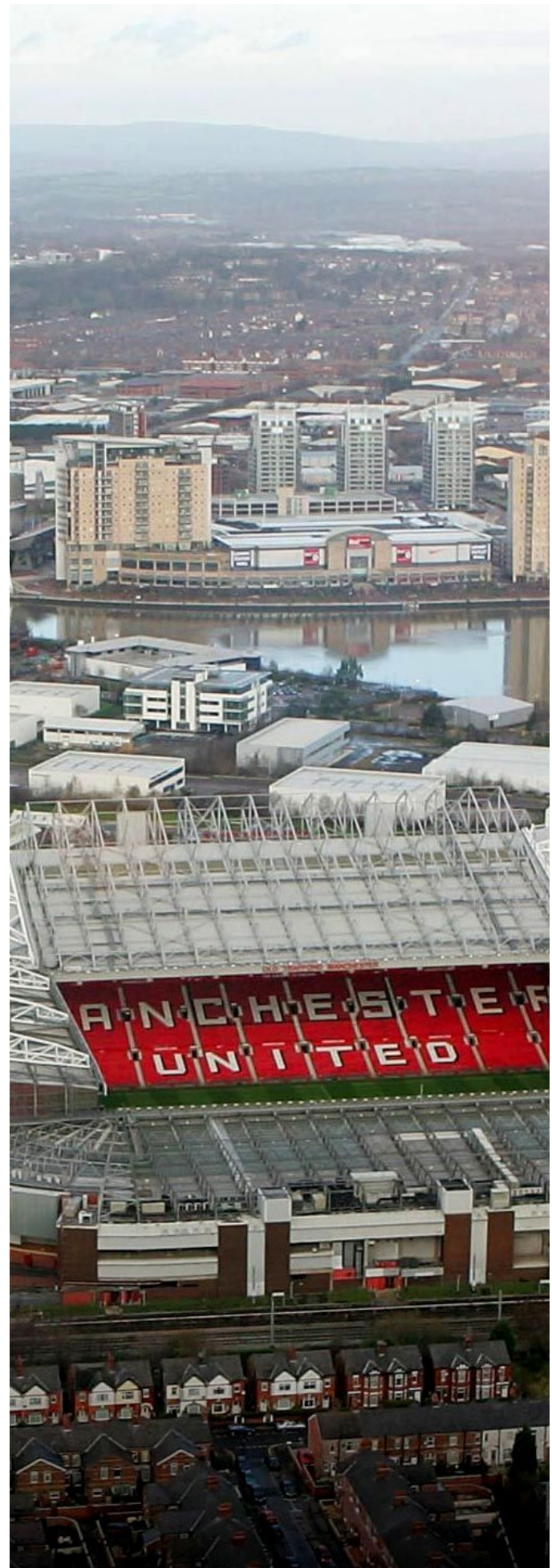
‘...a building or other land in a local authority’s area is land of community value if in the opinion of the authority :-

- a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
- b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.’ Social wellbeing is not defined within the Act, whereas social interests are defined in section 88 (6) of the Act:

“social interests” includes in particular (though, not exclusively) each of the following —

- a) cultural interests.
- b) recreational interests.
- c) sporting interests.

Notwithstanding that the Act gives local authorities significant latitude to determine the meaning of social wellbeing at the local level, the fact that social interests embraces cultural, recreational and sporting components, means that there is considerable scope for football stadia to be considered as assets of community value.



NOMINATING AN ASSET OF COMMUNITY VALUE

WHO CAN MAKE A NOMINATION?

For the purposes of making a nomination, the request must come from a voluntary or community body with a local connection and relate to land in the local authority's area, or in the neighbouring local authority's area.

An eligible voluntary or community body is defined as:

- An unincorporated group of 21 or more people who appear on the local electoral register.
- A community interest group: i.e. a legally constituted organisation such as a charity, a company limited by guarantee that does not distribute profits amongst its members, an Industrial and Provident Society that does not distribute profits amongst its members or a Community Interest Company that does not distribute profits amongst its members.
- A Neighbourhood Forum designated as such by the local planning authority.
- A Parish Council in respect of land in its own area.
- A neighbouring Parish Council - if the parish council borders an unparished area, then they may nominate an asset with that neighbouring local authority.

All supporter's trusts should find that they meet the minimum requirements of being an eligible body in terms of making a nomination.

CONTENTS OF A NOMINATION

The regulations set out what is required in a nomination, as follows:

- A description of the nominated building or land including its proposed boundaries.
- A statement of all the information which the nominator has with regard to the names of the current occupants of the land and the names and current or last known addresses of all those holding a freehold or leasehold stake in the land².
- The nominator's reasons for thinking that the asset is of community value.
- Evidence that the nominator is eligible to make a community nomination.

The nomination process that the local authority operates should be clear and simple. Any form of written nomination submission should be acceptable, whether on-line, by email or a letter.

Supporter's trusts are advised to investigate what sort of process the local authority has established to receive nominations. Some have created standard forms and appointed a single point of contact to manage community nominations.

TIMESCALES

Once a nomination is made, the local authority will have up to eight weeks to decide whether or not to list the asset.

The local authority must give notice that it intends to list the asset to:

- The owner.
- The occupier, (if the occupier is not also the owner).
- A Parish Council if any of the land is in the Parish Council's area.
- The nominating body.

If a nomination is not approved, the local authority must write to the nominator and give the reasons why. There is no right of appeal for the nominator if the local authority declines to list.

There is also an eight week period during which the owner can request a review of the local authority's decision. The review must be carried out within eight weeks of the asset being listed and if the decision is still to list the asset, the owner has a right of appeal to the First-tier Tribunal³.

If listed, the asset will remain on the list for a maximum of five years, at which point it can be re-nominated and re-listed, subject to local interest and continued compliance with the definition of an asset of community value.

THE MORATORIUM

'TRIGGERS' AND TIMESCALES

Once a community asset has been successfully nominated as an asset of community value, the next stage of the Right to Bid is triggered when the owner wishes to dispose of the freehold, or leasehold of at least 25 years.

The owner who wants to sell an asset of community value that appears on the local authority's list must notify the local authority of their intention to do so. Community interest groups will then have six weeks to lodge a non-binding expression of interest, in which case a window of opportunity of a further four and half months, (making six months in total), will come into effect to delay the sale.

The full moratorium period exists to afford community interest groups sufficient time to prepare and raise money to bid for the property, potentially in competition with other interested parties.

Unlike the wider range of bodies that can nominate an asset for listing, any bid for the asset in the initial six week moratorium period can only be submitted by a non-profit distributing community interest group – i.e. a legally constituted organisation such as a charity, a company limited by guarantee, an Industrial and Provident Society, a Community Interest Company (CIC) or a Parish Council.

All supporter's trusts should fit with the requirements of being a community interest group for the purposes of making a bid to purchase a listed asset.

For a protected period of 18 months, (running from the date the owner notified the local authority of their intention to sell), the owner will not again be subject to a further moratorium.

TALKING TO THE OWNER

During the moratorium period, the owner may market and pursue discussions about the sale with whomever they choose, but may not exchange contracts other than with a community interest group, (this may be an incentive in certain circumstances). However, it is important to understand that there is no right of first right of refusal for a community interest group. In fact the asset could be sold to an alternative community group during the activated moratorium period.

At the end of the moratorium period the owner will be free to sell to whomever they wish, at the price they wish.

EXEMPTIONS

There are a number of exemptions to the moratorium, when disposals are permitted to go ahead, and these are outlined in the Act. The most relevant for supporter's trusts are as follows:

- Gifts or disposals to family members.
- Disposal of part of a business sold as a going concern.
- Disposals in fulfilment of a planning obligation, option or pre-emption right made before the asset was listed.
- Disposals under statutory compulsory purchase.
- A relevant disposal to which section 95 (1) of the Act does not apply is a disposal in pursuant to insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986 (b). In these circumstances the moratorium provisions on a listed asset would not apply. Nonetheless, that would not stop a supporter's trust seeking to negotiate with the administrators.

COMPENSATION

Owners may make a claim for compensation from the local authority, for loss and expense incurred through the asset being listed.



BIDDING FOR AN ASSET OF COMMUNITY VALUE

LEGAL POWERS TO ACQUIRE PROPERTY

Having successfully listed your asset of community value and submitted a non-binding expression of interest upon receiving notification of the owner's intention to sell; you will need to be well prepared to make a formal bid.

First and foremost, you should ensure that your supporter's trust has the legal powers to both fund and acquire a leasehold or freehold of the kind you are interested in by checking your governing documents. All supporters' trust model rules should have this power. Registered Charities need to comply with the provisions outlined in the Charities Act (2011) in relation to taking advice from professionally qualified people where acquiring land and buildings is concerned.

TALKING TO THE OWNER

It may be some time before an owner opts to dispose of an asset of community value that you nominate, so you should either update your business case at regular intervals or make plans in advance to undertake this work during the moratorium period at relatively short order. You should have made contact with the owner to see if they have an interest in bringing your project forward in partnership with you as this will make the bidding process less uncertain and risky. It might also lead to more favourable or manageable payment terms.

You should also establish who will take responsibility for submitting or otherwise representing the supporter's trust in the course of any subsequent bidding procedure.

ROUTES TO SALE

There are a number of routes to sale that you should be aware of, and all will require someone from your supporter's trust to engage with the various stages and participants in the process:

- Via a local or other statutory authority advertising their intention to dispose of a stadium, and inviting expressions of interest or offers for it. This may be done in-house within a local authority, but might otherwise be undertaken by Property/Estate Agents that they have employed to oversee the process;
- Via a private owner, (an individual or company), advertising a stadium via a Property/Estate Agent, inviting offers or offering it for a specific price;
- Via an Auction – where an agent runs an auction of properties on a specific date on behalf of owners.

These can only take place after the moratorium period has run its full term. Ordinarily, a guide price will be advertised in an auction catalogue, and it may be possible to forge an agreement with an owner before an auction if the catalogue says so. If you contact an owner in advance, you should ask whether this is the case.

Bidding for stadia simply means making an offer to the seller, or his agent, within or at the end of the moratorium period. The seller is not obligated to accept your offer, and will generally

weigh it against any other offer that may have been received during the moratorium period. The fact that you are given a period to present your offer does not guarantee it will be accepted. It will therefore be important to make the offer attractive both in terms of its value and its security. However, you also have obligations to your Board, relevant regulatory bodies and, of course, those beneficiaries whom you intend to serve. This further highlights the importance of having solicited as much information about the stadium as you possibly can, preparing a robust business case, and securing investment in principle prior to it coming to market.

Supporters Direct will provide support and advise to our members. In addition we may be able to secure grant aid to enhance the level of support and if required bring in additional skills/specialists.

DUE DILIGENCE

You should ensure that a due diligence process has been completed by your legal advisor and other property professionals as required, (e.g. surveyors, engineers, etc.) before moving to submit a formal and binding bid. You may have to obtain a valuation before any sale takes place, in keeping with relevant terms and conditions.

THE 'COMMUNITY ASSETS' GRANTS PROGRAMME

The Social Investment Business has £10m in grants as part of the **Community assets and services grants** programme to help community based organisations with pre-feasibility capacity building tasks and feasibility studies. Grants are available to those using the Community Right to Bid and pursuing Community Asset Transfer. Please contact Supporters Direct for further advice.

PRE-FEASIBILITY GRANTS

These are grants of £5,000 to £10,000 which are designed to help organisations build their internal capacity to take on ownership of buildings and land. Some of the ways organisations might use these grants include:

- To undertake work to assess and address the capacity of the organisation.
- Improve governance and leadership.
- Coaching and mentoring for existing staff to build their skills for asset management.

FEASIBILITY GRANTS

These grants of up to £100,000 are to help organisations carry out detailed feasibility work and developing project and business plans for asset development and ownership. This might include:

- Development of comprehensive business plans.
- Professional fees related to building related activities, e.g. architects, drawings, ground/building surveys, planning consent and lease negotiations.

More detail on the criteria and how to apply can be found at the Social Investment Business website:

<http://www.sibgroup.org.uk/communityrights/>



REFERENCES

1. The Right to Build gives communities the power to build new shops, housing or community facilities without going through the normal planning process; the Right to Bid gives communities the opportunity to bid to buy and run valued local amenities if they come onto the open market; the Right to Challenge gives local groups the opportunity to express their interest in taking over a local service where they think they can do it differently and better and Neighbourhood Planning powers give people the chance to decide how their local area should develop and what should be built.
2. Many properties are registered at the Land Registry. For a small fee you can look at the register and see who the owner is. The HM Land Registry website for England and Wales is:
<http://www.landregistry.gov.uk/>
However, about a third of the land in England and Wales currently remains unregistered.
3. The First-tier Tribunal is a judicial body that decides on disputes with the decisions from government departments and other public bodies.

WEBSITES

Supporters Direct | www.supporters-direct.coop

Community Rights | www.mycommunityrights.org.uk

Community Assets | <http://locality.org.uk/assets>

Land Registry | <http://www.landregistry.gov.uk/>







**FOR MORE DETAILS ON THE IMPLICATIONS OF
COMMUNITY RIGHT TO BID, INCLUDING HOW
AND WHEN TO MAKE THE BEST USE OF IT AT
YOUR CLUB PLEASE CONTACT:**

SUPPORTERS DIRECT

3rd Floor, Victoria House
Bloomsbury Square
London
WC1B 4SE

t 020 7273 1592

e enquiries@supporters-direct.coop

w www.supporters-direct.coop