



Environment and Customer Services Policy and Scrutiny Committee

Date:	14 September 2016
Classification:	General Release
Title:	Assets of Community Value
Report of:	Director Policy, Performance and Communications
Cabinet Member Portfolio	Cllr Robert Davis MBE DL Cabinet Member for the Built Environment
Wards Involved:	All
Policy Context:	City for Heritage
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1. Executive Summary

This report provides a summary of the legislation and guidance surrounding Assets of Community Value, and an explanation of the process by which nominated assets are adjudicated by the local authority. The report also provides an example of the process and reasoning by which an asset was successfully nominated in the City of Westminster, and provides a summary of the views and experience of the Council to date in responding to and assessing nominations.

2. Key Matters for the Committee's Consideration

The Committee is requested to:

- Comment on the process which the Council uses to adjudicate Assets of Community Value nominations;
- Suggest communications channels that might support an increased understanding of Asset of Community Value and the nomination process amongst neighbourhood and community groups;

- Comment on the appropriateness of the legislation in supporting communities to achieve their aspirations for maintaining social assets in their localities for the Council to submit alongside the report to the Department for Communities and Local Government review of this scheme (currently on-going).

3. Background

- 3.1 Part 5 Chapter 3 of the Localism Act 2011 provides for the scheme known sometimes as “assets of community value” or the “community right to bid”¹.

The scheme allows local parish or community councils, or community organisations, to identify and nominate assets within their locality that they believe to be of intrinsic value to the community and the social wellbeing of their locality, to request that they are provided with sufficient notice and opportunity to bid to purchase the asset should it be proposed for sale.

- 3.2 The Government has indicated that the legislation was introduced to address the following concerns:

“Over the past decade communities have been losing local amenities and buildings of great importance to them – the village or housing estate shop or pub or community centre or village hall. On average nearly 300 pubs and 400 village shops have closed each year. Over the same period community asset ownership has been growing, delivering real benefits for many communities...

All too often community organisations find themselves without the time to prepare a bid before an asset is sold. We know that many communities, both urban and rural, have lost the use of buildings or land that were important to them because they were sold privately or without an interested community group having time to raise the necessary funds”².

- 3.3 The provisions of the Localism Act 2011 provide that parish and community councils, and community organisations (with sufficient local standing) can nominate an asset. Individuals cannot make a nomination. In addition to parish and community councils, neighbourhood forums, charities, community groups without a formal constitution but which have at least 21 local members (individuals registered to vote within the local authority boundary) can make a nomination. This means that local groups established to support a specific local asset are not prevented from nominating this asset provided they have sufficient local support.
- 3.4 When submitting a nomination form, the nominator has to set out the reasons for thinking that the local authority should conclude that the land is of

¹ [Localism Act 2011, Part 5, Chapter 3, “Assets of Community Value”](#)

² [Assets of Community Value Policy Statement, Department for Communities and Local Government, September 2011](#)

community value as defined by section 88 of the Localism Act 2011. The nominator ought to include as much information as possible to justify the nomination. If the reasons are not sufficient that may result in the authority deciding not to list the asset.

- 3.5 Subject to a number of exceptions, virtually any land or building can be nominated, whether in private or public ownership. The nomination can be based on either the current use of the land or building or on the use of the land or building in the recent past. An asset cannot be listed on the basis that it might be used for community use in the future if there is no existing community use and hasn't been such use in the recent past.
- 3.6 The "current user" test is that land is of community value if, in the opinion of the local authority, an actual current use of the building or land that is not an ancillary use furthers the social well-being or the social interests of the local community and it is realistic to think that there can continue to be non-ancillary use of the building or land which will further community benefit. This future use is not limited to the current use which means that an entirely different community use can be proposed provided it will further the social well-being or social interests of the local community. "Social interests" include cultural, recreational and sporting interests.
- 3.7 If there is no current use of the nominated property which can justify the listing of the land or building as an ACV, the process moves on to a second stage so as to consider use in the recent past. Section 88(2) of the 2011 Act provides that a building or land may be of community value if, in the opinion of the local authority, its use (which was not an ancillary use) has furthered the social well-being or social interests of the local community in the recent past and it is realistic to think that there is a time in the next five years when there could be non-ancillary use that would further community benefit. Once again, this future use is not limited to the current use provided it will further the social well-being or social interests of the local community. There is little guidance on the meaning of "recent past". It will depend on the specific circumstances of each case. Relevant factors include the length of community use to date, whether that was continuous use and the type of asset involved.
- 3.8 The legislation and guidance is sufficiently broad to include a large proportion of non-residential property. However, land which is used in the provision and/or delivery of public utilities by an organisation identified as a "statutory undertaker" cannot be nominated. This includes, for example, land used to provide railway, light railway, tramway, road transport, sewerage, water, and natural gas³. Residential premises cannot be nominated (though integral residential accommodation associated with an asset that could otherwise be listed, such as a pub, might be included within that listing).
- 3.9 If the nomination of an asset of community value is successful, the listing of the asset will require a moratorium period to be applied should the asset be

³ Town and Country Planning Act 1990, Part XI Statutory Undertakers, [Section 262 "Meaning of statutory undertakers"](#), and [Section 263 "Meaning of operational land"](#)

proposed for sale. During the moratorium period, the community group has an opportunity to raise funds to purchase the property. Should the community group identify and raise sufficient funds to bid for the purchase of the asset, the landowner has no obligation to accept the bid. Once the 6 month moratorium period has expired and no successful community bid for the asset has been received or accepted, the landowner is free to sell the land in the normal manner.

- 3.10 A summary of the nomination process and sale process and the associated timescales is included in Appendix 1 and Appendix 2 in flowchart form, with commentary included alongside.

4. Assets of Community Value in Westminster

- 4.1 Nationally, the asset of community value legislation has most commonly been used to list public houses. According to the Department of Communities and Local Government, since the right came into operation in September 2012, more than 1800 assets have been listed as ACVs, 122 groups have shown an intention to bid triggering the 6-month moratoriums. Research has identified that 11 assets of community value have been purchased by nominating organisations.

- 4.2 A breakdown of listed ACVs supplied to the House of Commons Communities and Local Government Committee is included below (correct as of 2015):

Type of asset	Proportion of total listed	WCC Comparison
Public House	31%	57%
Other	12%	29% (hotel, higher education college)
Community centre	8%	14%
Playing field	5%	0%
Church	4%	0%
Community shop, library, car park, allotment, school, sports ground, park	3% each	0%
Post office, other public space, land, village green	1% each	0%

- 4.3 Westminster City Council currently has 7 assets of community value listed, and 4 of these are public houses. A list of the assets of community value is included as Appendix 3, and a list of the assets which have been unsuccessfully nominated is included as Appendix 4.

- 4.4 Westminster City Council has received a similar number of ACV nominations, and has similarly adjudicated as successful and unsuccessful, as neighbouring authorities such as the Royal Borough of Kensington and Chelsea, Barnet and Ealing. Some local authorities have received significantly more ACV nominations, such as Camden, which has received 39 nominations and adjudicated 35 as successful nominations. It is not clear what the

contributory factors might be for an increased local use of the ACV mechanism, Westminster's communities have evidenced a strong and continuing interest in having a say in planning matters in their community, as demonstrated through the popularity of developing local neighbourhood forums.

5. Case Study

- 5.1 One of the successful nominations for an asset of community value has been the nomination of Queen's Park Hall/All Stars Boxing Gym by Queen's Park Community Council.

A nomination form was submitted on 31 December 2015. The Council verified that the nomination was valid as the nomination was made by an organisation which for the purposes of the Localism Act 2011 is a Parish Council (Queen's Park Community Council).

- 5.2 A summary of the material considerations that contributed to the decision to list the asset are included below:
- The Hall is used by scouts and as a youth club and can and has been hired out by community groups for events.
 - The Hall has a covenant on it that indicates it should be used as a Community Hall for the benefit of the people of Queen's Park.
 - The current occupiers of the building are the All Star's Boxing Club whose operator indicated they may be in a position to purchase the Hall should it be for sale, and who would continue to make the building available for the social wellbeing and social interests of the community. This provides evidence that there is a realistic belief that the building will continue to be used to further the social wellbeing of the community for a significant period.

The Hall was listed as an asset of community value on 8 January 2016.

6. Experience of Westminster City Council

- 6.1 Since the introduction of the asset of community value scheme, Westminster has received 12 applications, and 7 of these have been successful (58%). Where a nomination has been refused, it has either been because:
- the land has been within the definition of "operational land" and therefore not within the scope of the scheme; or
 - the nominating organisation has failed to provide sufficient evidence that the property is of community value currently or could be, or continue to be, of community value in the future.
- 6.2 As Westminster City Council is both the administrative and adjudicating body for nominations of assets of community value, it can only provide impartial assistance to organisations seeking to make a nomination. It cannot actively support a nomination that it has to determine as that would give rise to a conflict of interest. The owner of the asset also has appeal rights and may be able to seek compensation if an asset is listed. There is currently no right for a

nominator to appeal if the authority refuses to list an asset, though a further nomination can be submitted.

- 6.3 The House of Commons Communities and Local Government committee has stated that, in its opinion, one of the reasons for the popularity of the assets of community value scheme has been due to the listing process not being particularly onerous, with no specific evidence or support required beyond that provided by the existence of a community organisation with sufficient interest in nominating the asset. However, this low barrier to entry, and lack of clarity around criteria, can create additional work and cost to the adjudicating authority, as complex or unclear nominations can require a significant amount of consideration and communication with the nominating organisation.
- 6.4 However, the experience of Westminster City Council has been that the advantage of a simplified process for nominating organisations has complicated the adjudication of nominations for local authorities. Officers administering the nomination process are often required to communicate with nominating organisations to clarify the details provided so as to enable the authority to process the application. This is particularly the case when validating the application to ensure it provides sufficient evidence of a community organisations standing (whether it is a neighbourhood forum, community council or unincorporated association with at least 21 local residents).
- 6.5 Equally the broad definition of “social wellbeing and interests” of a community can contribute to confusion, misinterpretation and occasionally conflicting views between local authorities and community groups in nominating and evidencing assets of community value. Westminster City Council supports the underlying aims of the asset of community value scheme of localism and community self-determination, and this is evidenced by the strong support the Council has made available to the development of neighbourhood forums and community Councils. However the decision maker as to an ACV nomination has to be satisfied that there is sufficient evidence to list the property as an ACV, because if a property is listed and subsequently de-listed following a review, the owner can seek compensation from the Council. Local authorities are liable for up to £20,000 per year in compensation payments, with the Government meeting any liabilities exceeding this amount.
- 6.6 The Council may be liable to pay compensation if the owner of land that has been listed as an asset of community value incurs any loss or expense that it is likely they would not have incurred had the land not been listed. That can include reasonable legal expenses in successfully appealing to the First-tier Tribunal against the listing. The qualifying statutory criteria are formulated in very general terms so as to accord a great deal of discretion to the local authority but this also means that there is a much greater chance that an owner will challenge a decision that is adverse to their interests.

7. Work undertaken to improve administration of Assets of Community Value at the Council

- 7.1 The Council has undertaken a process, based on the experience of administrating officers, to amend and clarify its guidance online to ensure that potential nominating organisations are aware of the following:
- Whilst a useful tool, the asset of community value scheme does not determine the outcome of a planning application, does not prevent the sale of land and does not give community groups the right of first refusal in the event of a sale of a property. A listing of an asset of community value is not automatically taken into account as a material consideration when determining a planning application, though the planning authority may choose to regard it as a material consideration in any individual case. However, listing does remove certain permitted development rights in the case of drinking establishments (such as change of use and demolition). The government has indicated that it has no intention to disapply the permitted development rights in the case of other assets of community value. A listing of an asset does also not prevent other transfers of property interest such as the grant of a lease for less than 25 years or change of management.
 - A nominating organisation must seek to provide as much information as possible about its standing in the community and the property it seeks to nominate. Failure to provide adequate information for either of these can delay adjudication of the nomination.
 - Statements as to the value of a property to the community should be supported by evidence such as letters of support, details of events held for the benefit of the local community such as sports events and quizzes, social events such as weddings and receptions, use of facilities for meetings for local community groups, support for local businesses, use by local charities, awards for food or drink provided and the extent to which it may be the main or only provider of such facilities in the community etc.
 - The Council does not regard heritage or architectural value as supporting a community's social wellbeing or interests, and regards these elements of property as adequately protected by existing planning schemes and regulations.
- 7.2 The Council has also amended the online guidance and form to support nominating organisations to seek additional advice from organisations such as Locality⁴ and the Campaign for Real Ale (CAMRA)⁵ who provide specialist information to community groups seeking to make a nomination.
- 7.3 The Council does not receive any additional funding from government to support the administration and adjudication of these nominations; therefore it is seeking to provide sufficient impartial assistance to nominating organisations at the earliest possible stage with a view to making the nomination process as efficient as possible. From 1 April 2015 to date, the cost of legal advice and support in validating and adjudicating ACV nominations is £65,340. This figure does not account for the cost of non-legal officer time, including that of the decision makers.

⁴ [Campaign for Real Ale \(CAMRA\) List Your Local](#)

⁵ [Locality Asset of Community Right to Bid Presentation](#)

- 7.4 The Council currently does not promote the asset of community value scheme to local organisations. Rather, as indicated previously, it is seeking to provide sufficiently comprehensive and impartial information and guidance at the earliest stage. The Council is seeking however to improve awareness of the scheme amongst elected members and neighbourhood forums.
- 7.5 Due to their local connection and expertise, the Council regards neighbourhood forums as an ideal organisation to support community groups considering nominating a property as an asset of community value. Submitting a nomination via a neighbourhood forum would mean that the validation process would be significantly shortened, and the forum could provide an important critical friend to the application. In addition to this their endorsement would itself provide evidence of existing or potential local community benefit and interest.
- 7.6 It is also suggested that local neighbourhood forums, due to their planning expertise, would be best placed to advise local community groups of the limitations of the asset of community value scheme to delay or terminate an existing planning application or sale process. However, the Council could and would not require local groups to organise or agree their nominations through local neighbourhood forums, but we would advocate this as a beneficial route for both applicant and the Council.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact Phoebe Morris-Jones x2127
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APPENDICES:

Appendix 1 – Assets of Community Value Process Flowchart

Appendix 2 – Sale of a Listed Asset of Community Value Process Flowchart

Appendix 3 - List of successfully nominated Assets of Community Value in Westminster

Appendix 4 – List of unsuccessfully nominated Assets of Community Value in Westminster

BACKGROUND PAPERS

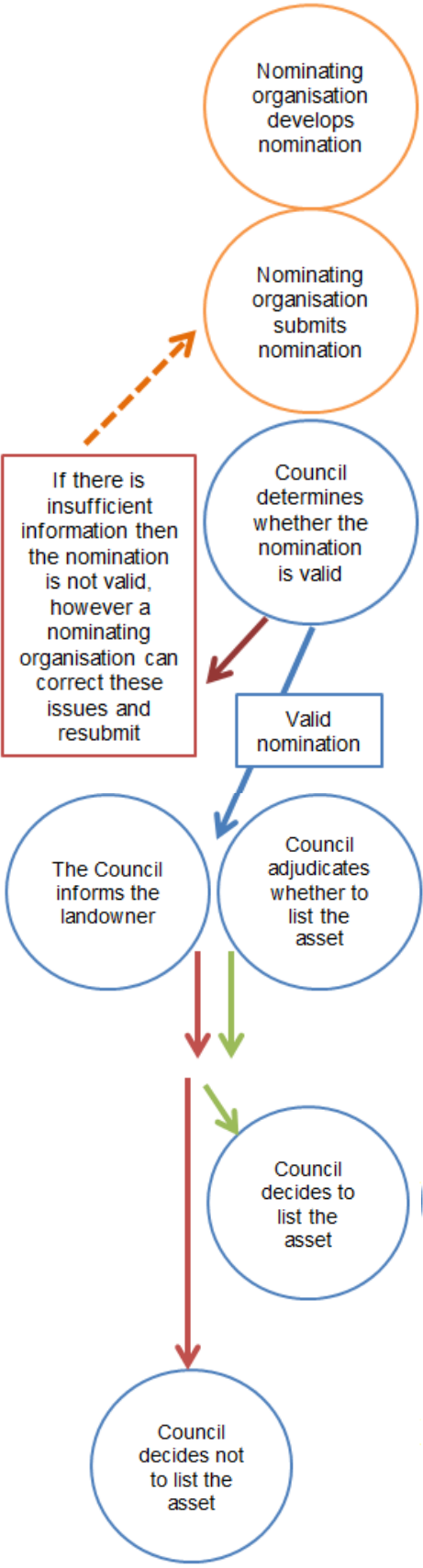
[Localism Act 2011](#)

[A Plain English Guide to the Localism Act 2011, Department for Communities and Local Government, September 2011](#)

[Community Right to Bid: Non-statutory advice note for local authorities, Department for Communities and Local Government, October 2012](#)

Communities and Local Government Select Committee Inquiry into the Community Rights, January 2015

Appendix 1 – Assets of Community Value Nominating Process Flowchart



Once a valid organisation (community organisation, neighbourhood forum or parish or community council) has identified an asset they wish to nominate as an asset of community value, they can access our nomination form and basic guidance on the City Council website

Once the local authority receives the nomination, it is required to first determine whether the nomination is valid. This includes determining whether:

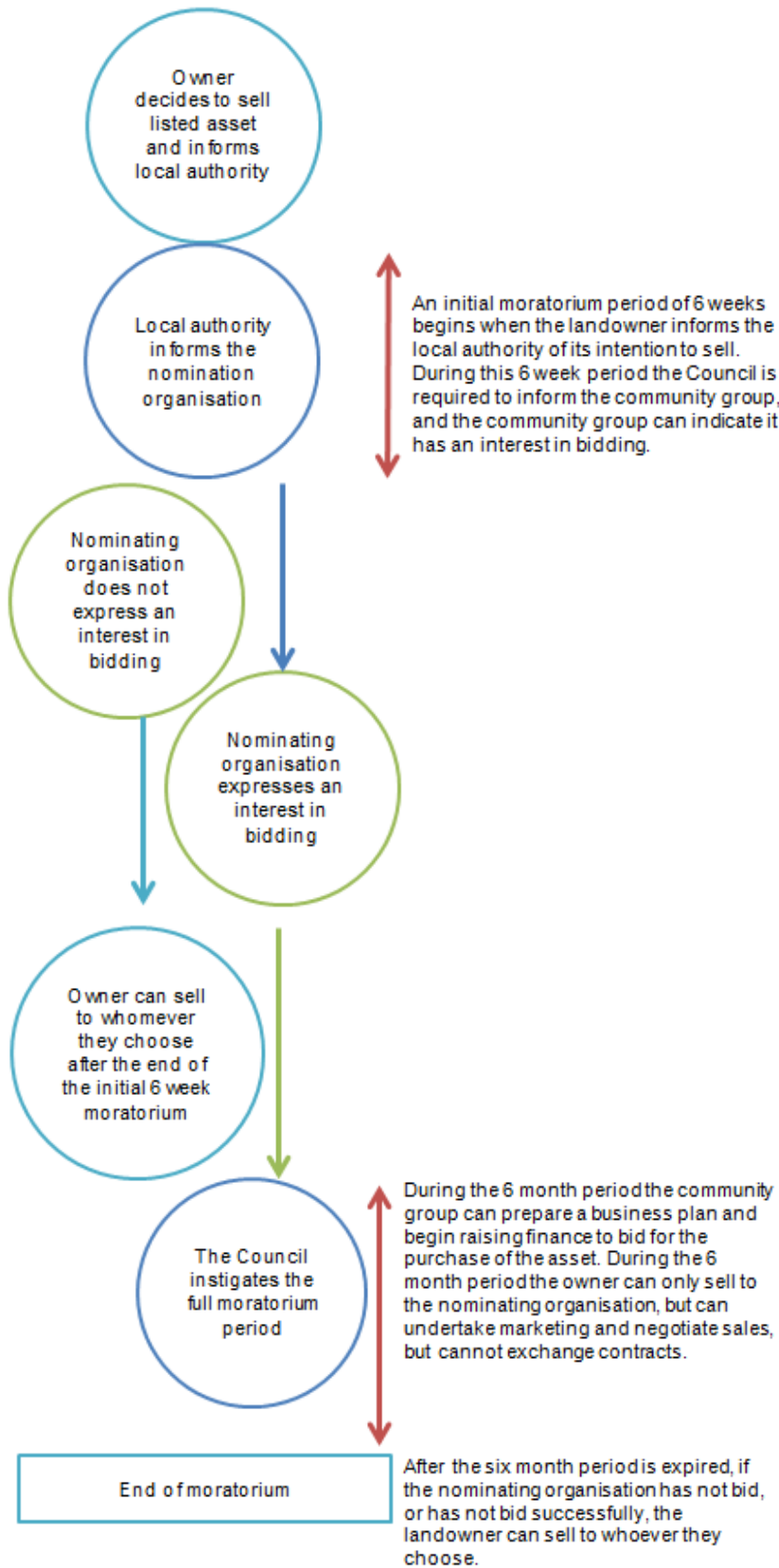
- The nominating organisation has provided evidence of their standing to do so (including for community groups whether they have 21 members registered to vote locally); and
- Sufficient information has been provided about the nominated asset that the Council can identify it with confidence.

The Council has **8 weeks** to adjudicate whether to list the asset once it has accepted the nomination as valid. Upon notification of the nomination a landowner can object, this preserves their right to request an internal review should the asset be listed.

If the Council decides to list the asset it is added to the publically maintained list of assets of community value. The asset is maintained on this list for 5 years. If the landowner has objected they are able to instruct an internal review of the decision, and are ultimately able to appeal to an independent body, the First Tier Tribunal. The local authority can be financially responsible for compensation due to financial loss arising from an asset being listed.

The Council is required to provide written reasons why it has decided not to nominate an asset. However the community organisation does not have a right to an internal review of the decision, and can only appeal to the courts for a judicial review of the decision.

Appendix 2 – Assets of Community Value Sale of an Asset of Community Value Process Flowchart



Appendix 3 – Westminster City Council List of Successful Assets of Community Value Nominations

Successful Nominations				
Reference Number	Name of Property	Property Address	Nominating Community	Date added to list
WCC/ACV/01	The Clifton Hotel	96 Clifton Hotel, London, NW8 OJT	St John's Wood Society	11/02/2015
WCC/ACV/02	The Star Public House	38 St John's Wood Terrace, NW8 6LS	St John's Wood Society	13/02/2015
WCC/ACV/03	The Swan and Edgar Public House	Linhope Street, London, NW1 6LH	Save the Linhope Street Local Group	06/05/2015
WCC/ACV/06	Westminster Kingsway College	15 Peter Street, Soho, London, W1F0HS	Bewick Street Community Group	23/10/2015
WCC/ACV/09	The Truscott Arms	55 Shirland Road, London, W9 2LD	Truscott Arms Supporters Group	27/11/2015
WCC/ACV/11	Queen's Park Hall/All Star's Boxing Gym	576 Harrow Road, London, W10 4NJ	Queen's Park Community Council	08/01/2016
WCC/ACV/13	The Carlton Tavern	Carlton Vale, London, NW6 5EU	The Carlton Vale Phoenix Association Community Organisation	02/02/2016

Appendix 4 – Westminster City Council List of Unsuccessful Assets of Community Value Nominations

Unsuccessful Nominations				
Reference Number	Name of Property	Property Address	Nominating Community	Reason for refusal
WCC/ACV/04	The Westminster Fire Station	Greycoat Place, London, SW1 1SB	Friends of Westminster Fire Station	Failure to provide any information as to how the public could have a community use of the building in the future
WCC/ACV/07	Balmoral Castle Public House	Churchill Gardens Estate, London, SW1V 3AJ	The Churchill Gardens Residents Association	The property has been vacant for at least 9 years
WCC/ACV/08	The Temple Gardens	The Temple Gardens Roof Terrace, London, WC2R 2PH	The Westminster Society	The land occupied by the roof terrace is operational land, which is one of the classes of land exempt from being listed as an ACV.
WCC/ACV/12	Brazen Head Public House	69 Lisson Street, London, NW1 5DA	Church Street Ward Community Forum	The nomination contains no explanation as to how an existing or previous use of the land furthers a community use.
WCC/ACV/10	The Prince of Wales Public House	351 Harrow Road, London, W9 3RS	Westbourne Neighbourhood Forum	The property was originally listed on 27/11/2015. However, following a review, the listing was removed on 6 June 2016 from the ACV list because it was decided that there was insufficient evidence to demonstrate that there was insufficient evidence to demonstrate that there had been actual use of the property in the recent past of that within the next 5 years the property would further the social wellbeing or social interests of the local community, particularly in relation to the upper floors of the property.

