

Procedure for Internal Review of an Asset of Community Value (ACV) Listing



Reviewing a decision to list land/building as an Asset of Community Value

PURPOSE OF REVIEW:

The Council will hold a review on the request of a landowner who objects to a listing. It is the task of the Reviewing Officer to consider the representations made and decide whether the asset should remain on the List or be removed.

WHO CARRIES OUT THE REVIEW?

An officer of appropriate seniority who did not take any part in making the original decision, shall carry out the review. This will usually be the Head of New Communities. The Reviewing Officer must make a decision by the end of a period of eight weeks from the date the request for a review was received and within five working days of the review meeting.

WHO IS PRESENT AT THE REVIEW?

The Council will invite both the owner of the asset (or a representative) and the nominator of the asset (or a representative) to attend the review on a mutually convenient date. Both invited parties will be invited to bring a legal or other expert advisor. The Council must be notified of who will be attending at least five working days before the review takes place.

A. PROCEDURE

On receiving a request for a listing review, the Council will ascertain whether the request has been made in the required timescale. This is before the end of a period of eight weeks, beginning with the day on which notice of inclusion of the land in the list was given by the Council.

Three questions must be answered in the affirmative if an asset is to remain on the List, otherwise it must be removed.

1. Is the nomination valid?
2. Is the asset in the Authority's area?
3. Does the asset meet the statutory definition?

A1. Is the nomination valid?

Section 4 of the DCLG Guidance under "Who may nominate" lists the voluntary or community bodies who may make community nominations. For a local group to be able to nominate land it will have to demonstrate that its activities are wholly or partly concerned with the local authority area where the asset sits, or with a neighbouring authority (an authority which shares a boundary with the authority in which the asset is located).

Section 5 of the DCLG Guidance under "Contents of a nomination" sets out what must be included in the nomination. In summary these are:

- A description of the land
- Information about the owners and occupiers of the land

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- Reasons for the nomination and a statement as to why the nominator meets the definition of the Act
- The nominator's eligibility to make the nomination

A2. Is the asset within the authority's area?

This is a question of fact.

A3. Does the asset meet the statutory definition?

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 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 interest of the local community (section 88(1) Localism Act 2011).

Section 88(2) extends this definition to land which has furthered the social wellbeing or social interests of the local community in the recent past, and which it is realistic to consider will do so again during the next five years.

The Act does not define "social wellbeing" but it does define "social interests" as including cultural interests, recreational interests and sporting interests.

An ACV could potentially include:

- A community building, such as a village hall
- A building or land of local historical value
- A public house
- A sports ground
- A local park

Excluded land may not be listed as an ACV e.g.: residential land, licensed caravan sites and "operational land" (as defined in section 263 Town & Country Planning Act 1990) of statutory undertakers.

B. PROCEDURE AT THE REVIEW

General

Either the Council or the owner can elect to have an oral hearing. If no such request is received the review shall be held on the basis of written representations. The owner and the local authority each bear their own costs of the review. The review hearing will be held at a mutually convenient time to the Council, owner and nominator at the council offices and timings determined on a case by case basis.

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Where an oral hearing is held, all written representations and comments will need to be submitted five working days before the hearing takes place. No new evidence will be considered after the deadline.

Procedure at an oral hearing

1. The Reviewing Officer will introduce themselves and any other officers present, and explain the procedure to be followed. A council legal adviser will be present to advise on any legal issues. The panel will determine the time to be allocated to representations.
2. If the Owner has informed the Reviewing Officer that s/he doesn't intend to attend or be represented the review may proceed in their absence.
3. If the Owner has not so indicated and fails to attend or be represented at the review, the Reviewing Officer may:
 - a. Where s/he considers it to be necessary in the public interest, adjourn the review to a specific date, or
 - b. Hold the review in the owner/representative's absence
4. The Owner/representative will be asked to present their representations as to why they do not agree with the listing.
5. The Nominator/ representative will be asked to make their representations as to why the listing should remain.
6. The officers involved in the decision to list may be called upon to explain their reasons for listing the land/buildings under review.
7. The party who has requested the review will be given a final opportunity to comment.
8. The Reviewing Officer will bring the hearing to a close.

OUTCOME:

If the Reviewing Officer finds that the decision to list should be upheld, all the parties will be notified of this decision within five working days, along with the reasons for this decision. In addition the owner must be informed of their right to appeal.

OR

If the Reviewing Officer finds that the decision to list should not be upheld, all the parties will be notified of this decision within five working days, along with the reasons for this decision. The land and/or building(s) will be removed from the List of Assets of Community Value immediately.

C. OWNER'S RIGHT OF APPEAL

If the owner of the listed land is not satisfied with the outcome of the review, they may appeal against the reviewer's decision to the General Regulatory Chamber of the First-Tier Tribunal.

The deadline for appealing is within 28 days from the date on which notice of the decision was sent. Appeals may be both on points of law and on findings of fact.

The land and/or building in question will remain listed during the appeal process.

Notice of appeal should be made in writing to:

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

Or by email to: GRC.CommunityRights@hmcts.gsi.gov.uk

D. OWNER’S RIGHT TO CLAIM COMPENSATION FOR LOSS ARISING FROM ACV LISTING

If an owner or former owner of land listed or previously listed as an ACV incurred loss or expense that is likely they would not have incurred had the land not been listed as an ACV, that owner or former owner may be able to claim compensation from the local authority. Costs of meeting compensation requirements have been factored within the new burdens funding made available by Central Government to local authorities from 15 October 2012.

Background Papers:

DCLG Guidance 2011

Section 88(1) definition of “Land of community value” –Localism Act 2011

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