

Delegated Decision

18th December 2020

Formalise Community Right to Bid Listing and Compensation Claim Review Process



Report of Regeneration, Economy and Growth

Susan Robinson, Head of Corporate Property and Land

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To formalise the Durham County Council process for reviewing Community Right to Bid listings and compensation claims.

Recommendation(s)

- 2 Under the Councils Scheme of Delegations the Head of Corporate Property and Land has responsibility to authorise and maintain a list of assets of community value and to make adjudications and decisions in relation thereto. The Corporate Director of Regeneration, Economy and growth has responsibility for reviewing these decisions.
- 3 It is recommended that the process for reviewing listings and compensation claims is formally adopted (see Appendix 2).

Background

- 4 The Localism Act was enacted in November 2011 and the Assets of Community Value (England) Regulations, which together embodies the Community Right to Bid, were commenced at the same time as the Regulations came into force, both on 21st September 2012.
- 5 If an asset is properly nominated, is in the local authority's area, meets the definition, and is not excluded, the local authority must list it and inform all affected parties (and the parish council). They must also place the asset on the local land charges register and, if the land is registered, apply for a restriction on the Land Register.
- 6 If the owner objects to their property being placed on the List, they will have a right to an internal review by the council of the decision to list.

- 7 If the listing review request meets the requirements for review and is made in accordance with the time limits, outlined in the regulations, the authority must review its decision.
- 8 If the decision of the listing review is that the land should not have been included in the authority's list of assets of community value then the authority must remove the entry for the land from the list and the give a written copy of the reasons to the person who made the nomination.
- 9 If the listing is upheld and the owner remains in disagreement with the listing, after the internal review, they have a right of appeal to an independent Tribunal.
- 10 The scheme recognises that these provisions may have a financial impact on owners and provides a compensation scheme for private property owners. This will not be available to public bodies.
- 11 The local authority will be responsible for administering the compensation scheme, including assessing and determining compensation awards. Owners and former owners will have rights of review and appeal regarding the authority's compensation decisions.
- 12 If a compensation claim review is requested, the reviewer must decide within 8 weeks of receipt of the request (unless otherwise agreed with the other party in writing).
- 13 An oral hearing must be held at the owner's written request and all written representations and comments must be submitted 5 working days prior to the hearing date.
- 14 If the reviewer finds that the decision to list, or as to the Compensation payable, should be upheld, the owner should be notified of this decision within 5 working days, along with the reasons for this decision. In addition, the owner must be informed of their right to appeal.
- 15 If the reviewer finds that the decision to list, or as to the Compensation payable, should not be upheld, all relevant parties must be notified of this decision within 5 working days, along with the reasons for this decision. Furthermore, the land and/or building(s) will be removed from the List of Assets of Community Value immediately, and local land charges and restriction removed.

Background papers

- None

Other useful documents

- None

Author(s)

Catherine Todd

Tel: 03000 267 254

Appendix 1: Implications

Legal Implications

Compliance with Localism Act 2011 and Assets of Community Value (England) Regulations 2012. Potential for reviews to proceed to First-tier Tribunal.

Finance

Cost associated with potential payment of compensation claims and resources allocated to preparing for and undertaking reviews.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

None.

Crime and Disorder

Text.

Staffing

Resources associated with preparing for and performing reviews.

Accommodation

None.

Risk

None.

Procurement

None.

Asset of Community Value / Community Right to Bid



1. Procedure for Listing and Compensation Reviews:

- 1.1 Note these rules supplement the Assets of Community Value Regulations 2012 and are not intended to prevail over any rule stipulated in the regulations. The Corporate Director for Regeneration, Economy and Growth may amend or supplement these rules.
- 1.2 If the request for a review is accepted as within eight-weeks from the local authority's written decision regarding the listing/compensation claim, the Council will notify the relevant parties:
- (a) Owner (freeholder, leaseholder & other lawful occupants)
 - (b) Parish Council (where applicable)
 - (c) Original nominators of the asset (Listing Reviews only)

OR

If the request for a review is not accepted, notify the owner that their request was not submitted within the required time frame.

- 1.3 The Corporate Director for Regeneration, Economy and Growth shall carry out the review. The reviewer must make a decision by the end of a period of 8 weeks from the date the request for a review was received (or such longer period as is agreed with the owner in writing).
- 1.4 The owner (and appointed representative) is contacted to:
- a) explain how the review will be conducted
 - b) notify them of key dates
 - c) request their reasons for objecting to the listing (if these have not been received already) or their reasons and evidence for objecting to the Council's Compensation decision.

The owner may appoint any representative to act on his or her behalf in connection with the review. Both the owner and the owner's representative may make representations to the reviewer orally, or in writing, or both orally and in writing.

NB: An oral hearing must be held at the owner's written request. Where no written request for an oral hearing is made by the owner, the Council may decide not to include an oral hearing in the review process.

- 1.5 For Listing Reviews, the party who nominated the land and/or building is sent any written representation provided by the owners and given the opportunity to comment within 5 working days.

- 1.6 For Listing Reviews, if any comments are put forward by the party who nominated the land and/or building, they will be passed on to the owners (and appointed representative), who will have 5 working days to respond.
- 1.7 The reviewer will then consider the written representations put forward by the owners and the party who nominated the land and/or building and make a decision.
- 1.8 For Compensation Reviews, where no oral hearing requested, written representations must be provided by the owners according to the timescales set out in paragraph 1.2.

NB: In the event that there is an oral Hearing, all written representations and comments will need to be submitted 5 working days before the Hearing takes place. No new evidence will be considered after the deadline. The guidelines for an oral hearing can be found on the next page.

- 1.9 If the reviewer finds that the decision to list, or as to the Compensation payable, should be upheld, all the parties listed in paragraph 1.4 (a-c) as applicable will be notified of this decision within 5 working days, along with the reasons for this decision. In addition, the owner must be informed of their right to appeal.

OR

If the reviewer finds that the decision to list, or as to the Compensation payable, should not be upheld, all the parties listed in paragraph 1.4 (a-c) as applicable will be notified of this decision within 5 working days, along with the reasons for this decision. Furthermore, the land and/or building(s) will be removed from the List of Assets of Community Value immediately, and local land charges and restriction removed.

- 1.10 Update the publicly available List of Assets of Community Value as appropriate.

2. Guidelines for Oral Hearings

- 2.1 All Review Hearings will be held at a location to be notified by the Council
- 2.2 The reviewer will introduce themselves and any other officers present and explain the procedure to be followed.
- 2.3 If a party has informed the reviewer that s/he does not intend to attend or be represented the Hearing may proceed in their absence.
- 2.4 If a party who has not so indicated fails to attend or be represented at a Hearing the reviewer may:
 - a) where he/she considers it to be necessary in the public interest, adjourn the Hearing to a specified date, or
 - b) hold the Hearing in the party's absence.

2.5 The Hearing will facilitate a discussion between the reviewer and the parties present.

(a) Firstly, the party who has requested the review will be asked to present their representations as to why they do not agree with the Listing, or the Compensation decision.

(b) Secondly, while an asset remains listed any representative of the relevant party/ies who nominated the asset for listing will be asked to make their representations as to why the listing should remain.

(c) In the case of a Compensation decision, the Head of Corporate Property and Land (or one of their team) will be asked to make their representations as to why the original compensation decision should be upheld.

(d) In the case of a Listing Review, the reviewer may also call upon one or more of the original officers who made the decision to explain their reasons for listing the land.

2.6 Parties will be allowed equal allotted time in which to make their representation. The reviewer may exercise his/her discretion to allow additional time if necessary, taking into account the requirement to allow all parties equal maximum time.

2.7 The reviewer may ask questions of either party throughout the process.

2.8 The party who has requested the review will be given a final opportunity to comment.

2.9 The reviewer will bring the Hearing to a close.

Note: Following on from the hearing, the reviewer will make a decision within 5 working days. Confirmation of this review decision and the reasons for the decision will be made in writing to all parties involved.

3. Procedure for Appeal against a Listing Review:

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:

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