

Assets of Community Value: Procedure for when a Review is requested by a Landowner

Background

This document sets out the council's internal procedure for conducting a review of an Asset of Community Value listing requested by the landowner ("the Owner"). The Owner for these purposes means a tenant of a lease for at least 25 years, or if there is none, the owner of the freehold - as covered in the Localism Act 2011. Following the decision made at Community Leadership Committee and subsequent notification to the Owner of the outcome, the Owner has eight weeks (from the date written notice is given, of the decision to list) in which to request a review. The council can agree to extend this period.

The council has a statutory deadline of eight weeks to conduct a review and notify the Owner of the outcome. This eight weeks starts on the date the council receives the request for a review (requests must be made in writing to community.rights@barnet.gov.uk). The council may negotiate an extension to this deadline with the Owner, but the Owner is not obliged to agree this extension. Any extensions must be agreed in writing. If the Owner does not agree then the statutory deadline holds.

The Owner may appoint any representative (whether legally qualified or not) to act on their behalf in respect to the review. If this is the case, all correspondence and documentation can be sent to the representative, it does not need to be duplicated to the Owner. Throughout this document, 'the Owner' will be used to refer to the landowner or their representative.

Notes on Procedure

Scope of the Review

Unless otherwise specified, the review will set out to ascertain: (1) whether the nominating body was eligible to make the nomination, and (2) whether the asset meets the statutory criteria for listing

The Reviewing Officer

An officer of appropriate seniority of Barnet Council (referred to in this procedure as 'the Reviewing Officer') who did not take any part in making the decision to be reviewed will carry out an independent review of the listing. The Reviewing Officer must not conduct the review if they feel there are any factors which may affect their independence of judgment or bias the outcome of the review. The Reviewing Officer must be able to independently assess the nomination and reach a decision on whether the asset was correctly listed.

Oral hearing versus written review

An oral hearing must be held at the Owner's written request. As a default, the council will propose to hold an oral hearing unless specified otherwise but may subsequently decide to hold a written review if the Owner so requests in sufficient time.

The Written Review

In the case of a written review, the Reviewing Officer will seek to take written representation from the Owner. It is at the Reviewing Officer's discretion to ensure that if the Owner is intending to provide written representation, a suitable timeframe is identified to allow enough time to assess the representation. This may be achieved through agreeing a deadline for submission of written representation with the Owner, agreeing a set period of working days that will be required to assess any nomination, or negotiating an extension to the statutory deadline with the Owner after receiving the written representation if it is felt that further time is required to fully assess the representation. The council reserves the right to disregard any representations received so close to the end of the eight week period for conduct of the review that it is not practicable to review them, unless the Owner agrees to extend the review period by a reasonable period.

The output of the written review will be a report that sets out the context of the nomination, listing, and review; an assessment on whether the nominating body was eligible, whether the statutory criteria for listing the asset as an ACV were met, and an overview of the Owner's written representation if provided. The report will conclude with an independent judgment on whether the council was right to list the asset in question and identify next steps.

If the outcome is that the council wrongly listed the asset then the asset will be removed from the Register effective immediately, the restriction on the Land Registry will be lifted and the local land charge cancelled. The nominating group, the Owner and Chair of Community Leadership Committee will be informed of the decision and the reasons for the decision. In addition, the Council will advise the following persons of the decision and the reasons for it, if they are not the Owner: freehold owner, any tenant and any occupier of the property and any parish council

If the decision is upheld the Owner must be advised, and it will be communicated to the Owner that if they are in disagreement with this decision they may appeal to a First Tier Tribunal.

The Oral Hearing

The Parties to the Hearing shall be a representative from the Strategy Team who made the recommendation to Committee ('the Officer') and the Owner of the ACV concerned and/or their representative. The Officer will be supported by representation from HB Public Law or another suitable legal representative and administrative support will usually be drawn from the Executive Assistant Team.

The Reviewing Officer will select a date at an appropriate point within the statutory eight week period and communicate this to parties concerned as soon as possible.

If a party is intending to make written representations these are to be provided to the Reviewing Officer at least 10 working days prior to the review date – this will be communicated in writing to all parties once the statutory deadline has been confirmed.

Written representations will be exchanged with any other parties attending the Hearing

At the Hearing, the parties will also have the opportunity to make oral representations to the Reviewing Officer.

The format of the Hearing will run as follows:

1. The Reviewing Officer will introduce the parties present, and explain the procedure to be followed.
2. The Reviewing Officer will confirm that all parties have received copies of any relevant documentation to be considered as part of the review. New documentation will only be admitted with the consent of all parties, or where the Reviewing Officer considers that it should be admitted in the interests of justice. Where late documentation is admitted, the Reviewing Officer will take this into account in determining the evidential weight to be given to it.
3. If a party has informed the Reviewing Officer that s/he does not intend to attend or be represented the Hearing may proceed in their absence. Representation from the council will always be present.
4. If a party who has not so indicated fails to attend or be represented at a hearing the Reviewing Officer 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.
5. The Reviewing Officer will invite the Officer to present his/her representations as to why the property was listed as an asset of community value.
6. The Reviewing Officer may allow the Owner to ask questions of the Officer.
7. The Reviewing Officer and / or the council's legal advisor may then ask questions of the Officer.
8. The Reviewing Officer will invite the party who has requested the review to present their representations as to why they do not agree with the listing.
9. The Reviewing Officer may allow the Officer to ask questions of the Owner.
10. The Reviewing Officer and / or the council's legal advisor may then ask questions of the Owner.
11. Both parties will be given an opportunity to sum up their case, if appropriate. No new information can be presented at this stage.
12. The above procedure may be varied by the Reviewing Officer where he/she considers it necessary to ensure that a fair hearing takes place.
13. The Reviewing Officer may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may:-
 - a. Refuse to permit that person to return
 - b. Permit him/her to return only on such conditions as he/she may specifybut such a person may, before the end of the hearing, submit to the Reviewing Officer in

writing any information which they would have been entitled to give orally had they not been required to leave.

14. The Reviewing Officer will withdraw with the council's legal advisor to consider the submissions and to make his / her deliberations.
15. The Reviewing Officer and, the council's legal advisor will return to the hearing and the Reviewing Officer will announce the decision. Alternatively, the Reviewing Officer may indicate at the end of the hearing that a written decision will be provided.
16. Confirmation of the review decision and reasons for the decision will be made in writing within 5 working days of the decision to the Owner, together with details of the next steps to be taken and rights of appeal if appropriate.
17. The output of the Hearing will be a report that sets out the context of the nomination, listing, and review; an assessment on whether the nominating body was eligible, whether the statutory criteria for listing the asset as an ACV were met, and an overview of the Hearing. The report will conclude with an independent judgment on whether the council was right to list the asset in question and identify next steps.
18. If the outcome is that the council wrongly listed the asset then the asset will be removed from the Register effective immediately, the restriction on the Land Registry will be lifted and the local land charge cancelled. The nominating group, the Owner and Chair of Community Leadership Committee will be informed of the decision and the reasons for the decision. In addition, the Council will advise the following persons of the decision and the reasons for it, if they are not the Owner: freehold owner, any tenant and any occupier of the property and any parish council
19. If the decision is upheld the Owner must be advised, and it will be communicated to the Owner that if they are in disagreement with this decision they may appeal to a First Tier Tribunal.

General

The council may revise this procedure at any time. In the event of any conflict between this procedure and subsequent changes to the relevant legislation, the council will observe the relevant legislation and will revise the procedure as appropriate.