

Assets of Community Value - Listing Review Procedure

1. Who will determine the Review?

- 1.1 The Review will be considered and determined by an officer of appropriate seniority who did not take any part in the making of the decision to be reviewed ('the Reviewing Officer'). The Reviewing Officer will normally be a Director, appointed by the Council's Chief Executive.
- 1.2 The Reviewing officer will review the local authority's decision to include the land in the list ('the listed land') and will take into account all relevant considerations including the following:-
- The original nomination of the asset to be listed and any supporting documentation.
 - Any representations made prior to listing
 - The original decision to list the asset and the reasons given
 - The representations made by the owner of the property in seeking the review and any representation made by the nominating group.
- 1.3 'Interested parties' means:
- i. The owner of the listed asset who has asked for the review ('the Owner');
 - ii. the nominating group;
 - iii. the parish council (if any) for the area within which the listed asset is situated (for information purposes only) unless such council is the nominating group and thus falls to be notified in accordance with ii. above.
 - iv. the freeholder of the listed asset (if not the Owner) , and any leaseholder or lawful occupier(s) of the listed land.

2. Notification of Listing Review

- 2.1 The Council will notify the relevant interested parties that a request for a listing review has been received. The notification will include confirmation of the statutory date by which the review decision should be made.
- 2.2 The review will be determined within eight weeks beginning with the date the Council receives the written request for the review (or such longer period as is agreed in writing with the Owner).
- 2.3 The Owner has the right to require that the review include an oral hearing . Unless the Owner has requested in writing an oral hearing the Council will proceed on the basis that the review is to be determined solely on the basis of the written representations received unless the Council on its own initiative considers that an

oral hearing is appropriate. (In general, the Council takes the view that most reviews can be adequately determined on the basis of written representations alone, unless there are facts in dispute or certain nuances requiring clarification where the holding of an oral hearing may assist in clarifying the position.) Paragraph 3 of this Procedure (see below) governs the conduct of oral hearings.

2.4 Acknowledgment of request for review and written representations

As soon as practicable following the receipt of a request for a review, the Council will send an acknowledgement of the request to the Owner, together with the details of the procedure (i.e. this document) to be followed in connection with the review.

The Owner will be given a specified timescale (minimum 10 days) from the date of the acknowledgment in which to submit written representations (if they so wish) in support of their request for a review or (if the request itself already contains written representation) any additional written representation which they may wish to make. (See Note below.)

Written representations should be sent by email addressed to committees@chelmsford.gov.uk or by first class post addressed for the attention of Mr Daniel Bird (Democracy Team Manager) at Chelmsford City Council, Legal & Democratic Services, Civic Centre, Duke Street, Chelmsford, CM1 1JE. If written representations are sent by post the Owner should ensure that the deemed delivery date (the second working day after posting) is before the expiry of the given timescale.

Note:

If the Owner's written request for a review includes representations in support of such review, then the Council will assume (unless advised to the contrary) that the Owner wishes these to be treated by the Reviewing Officer as formal written representations for the purposes of determining the review.

2.5 **The nominating group will be provided with a copy of all written representations (including accompanying documentation) sent to the Council by the Owner in connection with their request for a listing review unless the Owner provides a valid and compelling reason why certain specified information contained within any of the documentation should not be shared. (The Council may, on its own initiative or at the request of the Owner, if it considers such request to be justified, withhold disclosure, or redact the whole or part, of any document).**

Note:

Unlike the Owner, the nominating group does not have a statutory right to make representations on a review. However, the Council considers it fair and reasonable and good practice to give the nominating group the opportunity to participate in the review process. (This approach is followed by other Councils.)

2.6 Nominating group's written representations

The nominating group will be permitted to submit their own written representations (if any) up to the expiry of the date given to the Owner for submitting written representations or additional representations or such later date as the Council may, in all the circumstances, consider to be fair and reasonable (see Note below). Any such written representations must be emailed or sent by first class post to Mr Daniel Bird (Democracy Team Manager) at the same address as given in 2.4 above.

Note:

If the Owner's written representations or additional written representations (if any) are received by the Council close to or just before expiry of the deadline for submitting such representations then the Council will, in the interests of fairness, allow the nominating group a specified and reasonable period of time in which to consider and comment on such written representations.

The nominating group should note that any written representations (including accompanying documentation) submitted by them will be shared with the Owner unless the Council considers there is a valid and compelling reason for withholding disclosure or redacting the whole or part of a document.

Note:

*Unlike the Owner, the nominating group does not have a statutory right to make representations on a review. **However**, the Council considers it **fair and reasonable and good practice** to give the nominating group the opportunity to participate in the review process.*

2.7 Discretion to accept further written representations

Any further written representations/supporting documents may be received at the discretion of the Reviewing Officer (to be sent to Mr Daniel Bird at the above-mentioned address) and in any event, no later than 2 clear working days before the date of the review (be that oral hearing or written representations only). Any further representations (whether from the owner or the nominating group) received after this date may not be considered by the Reviewing Officer.

2.8 Withdrawal of application for Review

If the Owner subsequently decides to withdraw their application for a listing review they should notify Mr Daniel Bird (Democracy Team Manager) in writing of this fact at the address given in paragraph 2.4 above as soon as possible.

2.9 Irrelevant material

When carrying out a listing review, the Reviewing Officer must direct their mind to (and apply) the relevant law and correct legal test for determining whether the listed land is of community value and cannot take into account irrelevant material. To this end, any material contained within written representations which is irrelevant to the issues may be excluded or redacted by the Council before the representations are sent to the other party or referred to the Reviewing Officer.

3. The Conduct of Oral Hearings

If an oral hearing is to be held, the conduct of such hearing shall be governed by the procedure set out in the Appendix to this Procedure.

4. The Reviewing Officer's Decision

4.1 The decision of the reviewing officer will be made within eight weeks from the date the request to review was received, (unless the Council and the Owner have agreed in writing to an extension of time) and will be made available as soon as reasonably practicable. (Nb it is not open to the nominating group to request/agree an extension).

4.2 The decision, with reasons, will be issued in writing and delivered by post or e-mail, (together with details of the right of appeal in the event that the review is unsuccessful).

4.3 Deviation from Procedure

The Legal and Democratic Services Manager or the Legal Team Leader may, in any given case, authorise deviation from this Procedure if they are of the opinion that there is a compelling reason for doing so and that such deviation would not unduly prejudice the Owner or amount to unfairness.

5. General and Appeal Information

5.1 Each party will meet their own costs of the listing review.

5.2 The property will remain listed whilst the review is being carried out.

5.3 This listing review procedure may be reviewed and amended from time to time by the Legal and Democratic Services Manager as they consider fit.

- 5.4 The decision in any given case whether to -
- i) hold an oral hearing where the Owner has not requested such (see paragraph 2.3);
 - ii) stipulate a longer period than 10 days for the Owner to submit written representations (see paragraph 2.4);
 - iii) withhold disclosure of, or redact, a document (see paragraph 2.5);
 - iv) allow the nominating group a longer period in which to comment on the Owner's written (or additional) representations (see paragraph 2.5)
 - v) exclude irrelevant material (see paragraph 2.8)

will be taken by the Legal and Democratic Services Manager (unless they took part in the making of the decision to be reviewed) or the Legal Team Manager or Democracy Team Manager.

- 5.5 If the Owner is aggrieved by the review decision, they have the right to appeal to the First Tier Tribunal against the decision. The owner lodging the appeal can either be the same owner who requested the listing review or, if the property has been sold in the meantime, the new owner.

- 5.6 An owner's appeal against a local authority listing review decision must be made to the General Regulatory Chamber of the First Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 28 days from the date on which notice of the decision appealed against was sent to the Owner. Appeals may be both on points of law and on findings of fact. The property will remain listed during the appeal process.

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

Or email: grc@justice.gov.uk

Information and external links in respect of the relevant legislation are available on the Council's website www.chelmsford.gov.uk/communityassets

Appendix

Oral Hearing Procedure

1. If an oral hearing is to be held, the Owner and nominating group will be informed of the date time and venue of the hearing at least 7 days in advance.

In the event that the Owner is not available to attend the oral hearing on the date specified, an extension of time may need to be agreed (to go beyond the statutory eight -week deadline) to accommodate the Owner's attendance.

The venue of the hearing will be at the Council's choice but will normally be at the Civic Centre offices. The Reviewing Officer may, however, at the Owner's request or on their own initiative decide that the hearing should take place virtually, using MS Teams or such other video conferencing facility as the Reviewing Officer may approve.

2. If the Owner and/or nominating group intends to be represented at the oral hearing they must notify the Mr Daniel Bird (Democracy Team Manager) at least 2 clear working days before the date of the hearing and provide the name of their representative. (Nb the nominating group is under no obligation to attend the oral hearing).
3. In addition to the Reviewing Officer, the Owner/representative, and the nominating group, the following persons may be present at the hearing;
 - i) A Representative of the original decision maker (normally a Panel member who made the decision under review).
 - ii) The Democracy Team Manager or their appointed representative – whose role will be to take a record of the hearing and deal with any procedural points.
 - iii) A legal advisor (from the Council's Legal Service) whose role is to provide assistance to the Reviewing Officer on any legal issues.
4. The hearing shall take the form of a structured discussion (as informal as possible) led by the Reviewing Officer. Cross examination shall not be permitted unless (exceptionally) the Reviewing Officer considers that cross examination is required. The procedure set out in paragraph 5 below is designed to facilitate such a discussion but may be varied or departed from at the discretion of the Reviewing Officer where they consider it is appropriate and fair to do so.
5. The Reviewing Officer will have already read and familiarised themselves with the documentation.
 - i) The Owner or their representative will be asked to summarise the reasons that they consider the listed land should not be listed as an asset of community value.
 - ii) The representative of the original decision maker (if present) will be given the opportunity to

make representations.

- iii) The Owner, the nominating group representative (if present) and the representative of the original decision maker may be asked questions by the Reviewing Officer at any time during the review hearing.
- iv) If a party considers it essential to the hearing that clarification is required on an issue from others present, they should raise this with the Reviewing Officer and ask that this is addressed.
- v) The Reviewing Officer will invite the Owner or their representative to make closing statements and to make any points they consider have not been adequately covered.
- vi) The Reviewing Officer will conclude the review hearing and notify those present of the date by which the decision will be published.