



East
Northamptonshire
Council

Policy and Resources Committee – 19 January 2015

Community Right to Bid Policy – Oral Hearings Procedure

Purpose of report

To present for councillors' approval a draft oral hearing procedure which it is intended will be added to the Community Right to Bid policy as an appendix.

Attachment(s)

Appendix 1 – Oral Hearing Procedure - proposed Appendix C to adopted Policy
Appendix 2 – Template Oral Hearings Agenda

1.0 Background

- 1.1 The Community Right to Bid (CRtB) was introduced as part of the Localism Act 2011 (the Act) and came into force on 21 September 2012. The CRtB gives local groups the right to nominate a building or land for listing by the local planning authority as an Asset of Community Value (ACV). When a listed asset is to be sold, local community groups will have a chance to make a bid to buy it on the open market, as a six month moratorium would be in place which prevents the disposal taking place to other buyers during this period.
- 1.2 This council adopted a CRtB policy which sets out the way in which the Council will deal with any nominations it receives and the subsequent disposal of assets. The adopted policy can be found at http://www.east-northamptonshire.gov.uk/site/scripts/download_info.php?downloadID=1865&fileID=5230. This policy was subsequently amended in September 2014 to recognise the exceptional circumstances in which the Executive Director or Chief Executive may have a conflict of interest in a nomination.
- 1.3 The Localism Act gives to the owner of an ACV property the right to a review by this council. Usually this will be by way of written representations, and under the adopted policy the review is normally carried out by the Chief Executive. However the regulations that link to the Act (Schedule 2 of the Assets of Community Value (England) Regulations 2012) provides that an Oral Hearing may be requested instead and such a request has now been received. At present the adopted policy is silent on how such a Oral Hearing should be carried out. It is therefore considered prudent to include provision for such events within the Policy.

2.0 Oral Hearings

- 2.1 The Act also contains relatively little detail on how such an Oral Hearing should be conducted. However the outcome can be challenged in the First Tribunal, a route that has been taken by owners in respect of listings at other councils. Research has highlighted that at least three other councils have published formal procedure. These have been reviewed, and advice sought from LGSS, the council's legal advisers, in drafting the proposed procedure.
- 2.2 It is intended that either a written or Oral Hearing should be an inquisitorial process rather than an adversarial process, allowing the applicant to present the information and answer questions as necessary. For this reason it is proposed that the owner should be invited to submit any written representations in advance of the hearing. Any such written representations will be placed on the council's website.

- 2.3 The legislation is silent on the role of the nominating community group, often a Town or Parish Council, at such Oral Hearings. In the interests of transparency it is proposed that up to three members of the nominating group can attend the Oral Hearing in an observer capacity only.
- 2.4 The Officer who made the original decision will also be invited to the Oral Hearing to present their reasons for the initial listing of the asset.
- 2.5 It is proposed to communicate this procedure to the owner of the ACV and nominating group at the time the date for the Oral Hearing is agreed. Minutes from the Hearing will form the background to the officer decision notice, both of which will be published on the council's website.

3.0 Equality and Diversity Implications

- 3.1 Whilst there are no equality and diversity implications arising from this policy as it is largely governed by legislation, arrangements for the holding of Oral Hearings will need to take into account any specific requirements of people attending. These will be ascertained when the date and venue for any hearing are set.

4.0 Legal Implications

- 4.1 The Localism Act ("the Act") was enacted on 15 November 2011 and the Assets of Community Value provisions in Part 5 Chapter 3 were commenced for England at the same time as the Regulations made under those provisions came into force, on 21 September 2012. The legislation places requirements on local authorities in England, including district councils. Decisions on whether to list a building or land as an asset of community value will need to be taken using the criteria set out in the legislation.
- 4.2 The draft procedure has been considered by LGSS, the council's legal advisors.

5.0 Risk Management

- 5.1 Adoption of the proposed procedure for Oral Hearings reduces the risk of the council being challenged for having inappropriate or inadequate arrangements.
- 5.2 The requirement for a legal adviser, who will usually be from LGSS, to attend reduces the risk of inappropriate decisions as a result of the Oral Hearing.

6.0 Financial Implications

- 6.1 It is anticipated that the number of Oral Hearings requested will remain low and that the marginal additional costs of have a LGSS representative present can be absorbed within existing budgets.
- 6.2 Clarification that legal costs will not be paid should reduce the risk of increased compensation claims for listed assets
- 6.3 There is no provision under the Community Right to Bid legal provisions to charge for listings or appeals.

7.0 Constitutional Implications

- 7.1 There are no constitutional implications arising from the proposed Oral Hearing Procedure


8.0 Corporate Outcomes

- 8.1 The adoption of the Procedure for Oral Hearings would contribute to the Corporate Outcome of Effective Management.

10.0 Recommendation

- 10.1 The Committee is recommended to approve the Oral Hearings Procedure (Appendix 1) as an Appendix to the approved Community Right to Bid Policy

(Reason – To guide the council in its discharge of its responsibilities under the Localism Act Community Right to Bid provisions.)

Legal	Power: Localism Act 2011					
	Other considerations: Community Right to Bid: Non-statutory advice note for local authorities					
Background Papers: Community Right to Bid Policy – papers to Policy and Resources Committee December 2012 and September 2014 Adopted Community Right to Bid Policy						
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Date: 23 December 2014						
CFO 09.01.2015			MO		CX	

Draft Oral Hearings Procedure

(To form Appendix C of the Community Right to Bid Policy)

General arrangements.

1. The Oral Hearing will be chaired by a Senior Officer of the Council in line with the provisions in section 4 of this policy. This will usually be the Chief Executive and will always be an officer who has not taken part in making the decision to be reviewed.
2. A legal adviser will be present to advise the Chair. Minutes will be taken by a member of Democratic Services.
3. All Oral Hearings will be held at the East Northamptonshire Council offices at Cedar Drive Thrapston, NN14 4LZ unless otherwise notified.
4. It is intended that the Hearing will be an inquisitorial process rather than adversarial in nature, allowing the owner of the listed asset to present the information and answer questions as necessary.
5. The parties entitled to take part at the oral hearing are the owner and/or their representative; and the original decision making officer and/or their representative]
6. The owner may appoint any representative (legally qualified or not) to act on his/her behalf in connection with the review. However, it should be noted that East Northamptonshire Council will not reimburse any costs even if the review decision is to overturn the original decision to list the asset. (as per para 7.4 of DCLG Guidance).
7. Up to three members of the nominating community group may be present in an observational role in the interests of transparency. Details of those wishing to attend should be sent in advance to the Council. They will not be permitted to present information or question information provided by others at the oral hearing.
8. The owner will be invited to submit their written representation in advance of the hearing. Any such written representations, must be provided at least 5 working days prior to the oral hearing date and will be posted to the Council's website.
9. The Chair 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 where the Chair considers that it should be admitted in the interests of justice.
10. If the owner fails to attend or be represented at a hearing the Chair may where s/he considers it to be necessary in the public interest either:
 - a) adjourn the hearing to a specified date or
 - b) decide the review on the written representations (if any) received.
11. When notified of the date of the oral hearing, all parties will be asked if there are any special arrangements required to meet Equalities requirements.

Oral hearing Process

12. At the start of hearing the Chair will introduce the Panel Members and other officers present, and explain the procedure to be followed. This will include a description of the asset.

13. The Chair will invite the owner to present their representations as to why they do not agree with the listing. The Chair and/or the Council's legal advisor may then ask questions. If any supporting documents are to be considered, two copies must be provided at the time they are referred to, for the use of the Chair and legal advisor.
14. The original decision maker may then make any oral representation as to why they consider the listing should remain.
15. The owner will then be given a final right of reply
16. The Chair will then close the hearing after providing the date by which the decision will be notified to the owner and nominating group.

The Decision

17. The Chair will consider the information provided at the hearing and will make his decision, with reasons. The decision will be made within 10 working days of the Hearing.
18. The decision, and the minutes of the hearing, will then be communicated to the owner and nominating group as quickly as possible after the hearing, and then placed on the council's website within 10 working days of being made.

Template Agenda for Oral Hearing

**ORAL REVIEW OF DECISION TO LIST *[Asset]* AS AN
ASSET OF COMMUNITY VALUE
(in accordance with Section 92 of the Localism Act 2011)**

Review To Be Heard By *[Name]*

[Date] [Time]

[Location]

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| 1. | Introduction | Chief Executive |
| 2. | Representations from Applicant | Owner |
| 3. | Clarification Questions | Chief Executive |
| 4. | Applicant Summing Up | Owner |
| 5. | Date Decision Due and Close of the Meeting | Chief Executive |