

HAMBLETON
DISTRICT COUNCIL

Community Right to Bid

Policy and Procedure

a place to
grow

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The council is required to be compliant with the requirements placed on local authorities under the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 which together deliver the Community Right to Bid.

Part 5 Chapter 3 of the Localism Act and the Assets of Community Value (England) Regulations which together deliver the Community Right to Bid, aim to encourage community focused, locally-led action by providing an important tool to help communities looking to take over and run local assets.

The purpose of this document is to set out the council's policy position and procedure with regards to Community Right to Bid in relation to Assets of Community Value. The particular focus is to ensure that officers and members are able to effectively support the management of the process.

This document supersedes the previous Community Right to Bid policy and procedure document issued in January 2018.

Policy statement

It is the policy of Hambleton District Council to support local communities to exercise their rights under the Community Right to Bid. The aim of these rights is to empower communities wishing to protect valuable local assets (land and buildings) by requiring the council to maintain a list of assets in its area which are designated as assets of community value. When an owner of a listed asset decides to put their asset up for sale, the community will have a chance to prepare and submit a bid to purchase the asset, by virtue of the six month moratorium period.

The Community Right to Bid does not give the right of first refusal to community organisations to buy an asset that they successfully nominate for inclusion on the council's list. The Right does not restrict in anyway who the owner can sell their property to, or at what price. What it does do is give time for community groups to put together the funding necessary to submit a bid to buy the asset on the open market.

How the Community Right to Bid works is set out in the Localism Act and Regulations. To be compliant the council must keep a 'List of Assets of Community Value'. The legislation sets out in detail the process that must be followed and what information must be kept. The legislation also outlines the definition of an asset of community value, what groups can legitimately nominate, the appeals process for land owners, timescales for groups interested in buying land or property on the list and compensation available to the owners of land or property on the list.



Aims and objectives

The aim of this policy and procedure is to:

- clearly define the council's responsibilities in relation to the Community Right to Bid to ensure best practice is consistently followed at all times throughout the process and when key process points are triggered.

The objective is to:

- ensure that every stage of the Community Right to Bid process is efficiently and correctly dealt with in line with scheme legislation.

Scope

This policy and procedure applies to Hambleton District Council officers, Members and decision makers involved in the administration and decision making of Community Right to Bid. It also covers assets identified as of community value that lie (or at least partly lie) within Hambleton District as well as asset owners, qualifying nominators and applicants according to the requirements of the scheme.

Responsibilities

Chief Executive/Deputy Chief Executive/Directors/Heads of Service are responsible for:

- ensuring that this policy and procedure is implemented effectively across the organisation
- ensuring that any resources needed to support this policy and procedure are available
- ensuring staff are appropriately supported in applying the provision of this policy and procedure and have undertaken the required training
- responding in a timely and appropriate manner to any breaches of this policy and procedure.

Service Manager (Communities) is responsible for:

- providing advice, guidance and support in relation to the application of this policy and procedure
- updating this policy in line with the agreed date or any changes of legislation
- supporting the consistent application of this policy and procedure across the organisation
- arranging training as appropriate
- authorising/rejecting nominations following recommendations of the decisions.



Officers are responsible for:

- administering the Community Right to Bid process
- convening and attending decision making panels
- keeping the lists up to date.

Monitor and review

The Service Manager (Communities) will monitor the implementation of this policy and procedure and its effectiveness in order to ensure that the obligations outlined in this document are being met.

The policy and procedure will be reviewed in line with the date on the front of the document. Where a review is necessary due to legislative change, this will happen immediately.

Equality implications

In line with the requirements of the Public Sector Equality Duty, Hambleton District Council has considered the three aims of the Equality Duty as part of the process of decision making particularly in relation to evaluating and reviewing the policy and procedure. The three aims are to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

Hambleton District Council recognises that everyone, irrespective of their age, disability, gender reassignment, maternity status, race, religion or belief, gender, sexual orientation or marital status have a right to make an application to list a community asset.

The council does not anticipate any adverse equality impacts as a result of applying this policy and procedure.

Resource implications

There are not anticipated to be any substantial financial implications associated with this policy and procedure. Those that do exist are limited to the compensation element of the scheme.

Whilst the Communities Team lead the administration of the scheme there are multi-disciplinary roles across the council that all play a vital part in delivery of the policy. These include but are not limited to, Planning Policy and Development Management, Legal Services, Mapping GIS, and Communications (Web Services).

There are staffing resource implications associated with this policy which may include training, managing issues that arise or dealing with breaches of this policy and procedure.



Legal issues

Due consideration will be given to all applicable aspects of the Localism Act 2011 and Assets of Community Value (England) Regulations 2012 that together form Community Right to Bid to ensure that the council is compliant with legislation throughout any aspect of the application of this policy and procedure.

Detailed below are the key legal considerations that must be taken into account:

- Localism Act 2011
- The Assets of Community Value (England) Regulations 2012
- Neighbourhood planning regulations
- Caravan Sites and Control of Development Act 1960
- Town and Country Planning Act 1990 (as amended)

Enforcement actions for listed assets include the Land Charges Register, Land Registry restriction and for applicable disposals and a requirement for a certificate to be presented to the Land Registry confirming compliance with section 95(1) of the Localism Act (the moratorium scheme).

Throughout the process under no circumstance should legal advice be provided or an interpretation of the law be offered by any Hambleton District Council officer to any third party. Should such a request for legal advice be made this must be refused.

Act or legislation

Part 5 Chapter 3 of the Localism Act 2011 provides for a scheme called 'assets of community value'. This requires district and unitary councils to maintain a list of 'community assets'. It has also become known as the 'community right to bid'.

Community assets can be nominated by parish councils or by groups with a connection with the community. Individuals cannot nominate community assets. If the nomination is accepted, local groups will be given time to raise funds to make a bid to purchase the asset if it is put on the open market.

The right to bid only applies when an asset's owner decides to dispose of it. There is no compulsion on the owner to sell it. The scheme does not give first refusal to the community group, unlike the equivalent scheme in Scotland. It is not a community right to buy the asset, just to bid. This means the local community bid may not be the successful one.

Certain types of land, most notably residential property, are exempt from being placed on the list. Owners of property placed on the list may appeal against its listing and can claim compensation if they can demonstrate its value has been reduced as a direct result of the listing. Also, certain types of transfer of land or assets do not count as 'disposals' for the purposes of the legislation.



Definitions

The Act

the Localism Act 2011 together with The Assets of Community Value (England) Regulations 2012 form the rights for Community Right to Bid.

Asset of Community Value

main use has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future. It also needs to lie at least partly within the local authority's area and not fall within an exempt category.

Social interests

include cultural, recreational and sporting interests.

Exempt assets

include residential buildings and gardens, assets being transferred between kindred businesses and Church of England land holdings.

Policy

Overview of Hambleton District Council's role

It is the council's responsibility to maintain and publish a list of assets of community value and to manage all aspects of Community Right to Bid scheme within Hambleton District. All aspects of the scheme are set out in the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012. The main aspects of the scheme to be managed are as follows:

- Nomination of an Asset of Community Value
- Consideration of the Nomination
- Listing of assets that are placed on the register of community assets
- Maintaining the register of community assets and ensuring this is publicly available
- Maintaining a register of assets that have been nominated but not listed and ensuring this is publicly available
- Enforcement (including Land Registry restrictions)
- Review, Appeals and Compensation
- Interim Moratorium Period (six weeks)
- Full Moratorium Period (six months)
- Protected Period (18 months)
- Removing listed assets after five years (or at any time before the end of five years if it is evident the asset ceases to be an asset of community value)



Procedure

Nomination

For land or buildings to be considered as an asset of community value a nomination request must be made to Hambleton District Council.

Who can submit nominations?

A number of community organisations with a local connection can nominate land and buildings for inclusion on the list as follows:

- Neighbourhood Forums (as defined in neighbourhood planning regulations)
- Parish councils
- Unincorporated bodies of 21 named members (who are registered to vote within the locality in which the asset lies)
- A Charity
- Company Limited by Guarantee
- Industrial or Provident Society
- Community Interest Company

What information must be supplied with a nomination?

Details of the nomination process together with a downloadable form for completion are provided on the council's **website**. The council will also accept a nomination by email or letter that includes all of the following information as requested on the nomination form:

- a description of the land or building being nominated, including its boundaries marked up in red on a Land Registry title document
- as much information that the community group holds about the names of current occupants of the land or building and the names and current or last-known addresses of all those holding a freehold or leasehold interest in the land or building
- the community group's description of the community value delivered by the land or building nominated
- evidence in the form of a constitution or group governing document for unincorporated groups demonstrating that the community group meets the criteria for making a nomination (see 'Who can submit nominations' above).

How is a nomination submitted?

Completed forms, emails or letters together with any attachments can be submitted by email to communities@hambleton.gov.uk or by post to Communities Team at the Civic Centre, Stone Cross, Rotary Way, Northallerton, DL6 2UU.



What happens once a nomination has been received?

Once a nomination has been received, the council has **eight weeks** in which to consider it and reach a decision on whether or not it is valid and a listing should or should not be made. The council will acknowledge receipt of the nomination to the nominating party and notify the owners and occupiers of the property when they receive a nomination. The council will also notify receipt of the nomination to the ward member(s) where the asset lies.

Examples of the types of land or buildings that might be nominated include:

- local shop
- public house
- community centre
- library
- sports facility or playground
- park or allotment

The nomination will be considered against an eligibility **checklist** to review if both the nominator and asset is valid according to the Act. If further information is required, the Communities Team will contact the nominator. Broadly, an asset is of community value if:

- it lies at least partly within the local authority's area
- its main use (i.e. not ancillary) has recently been or presently is to further the social wellbeing or social interests of the local community and could reasonably do so in the future meaning within the next five years
- it does not fall within one of the exemptions specified in Regulations.

and broadly an **exempt** asset would fall into one of the following categories:

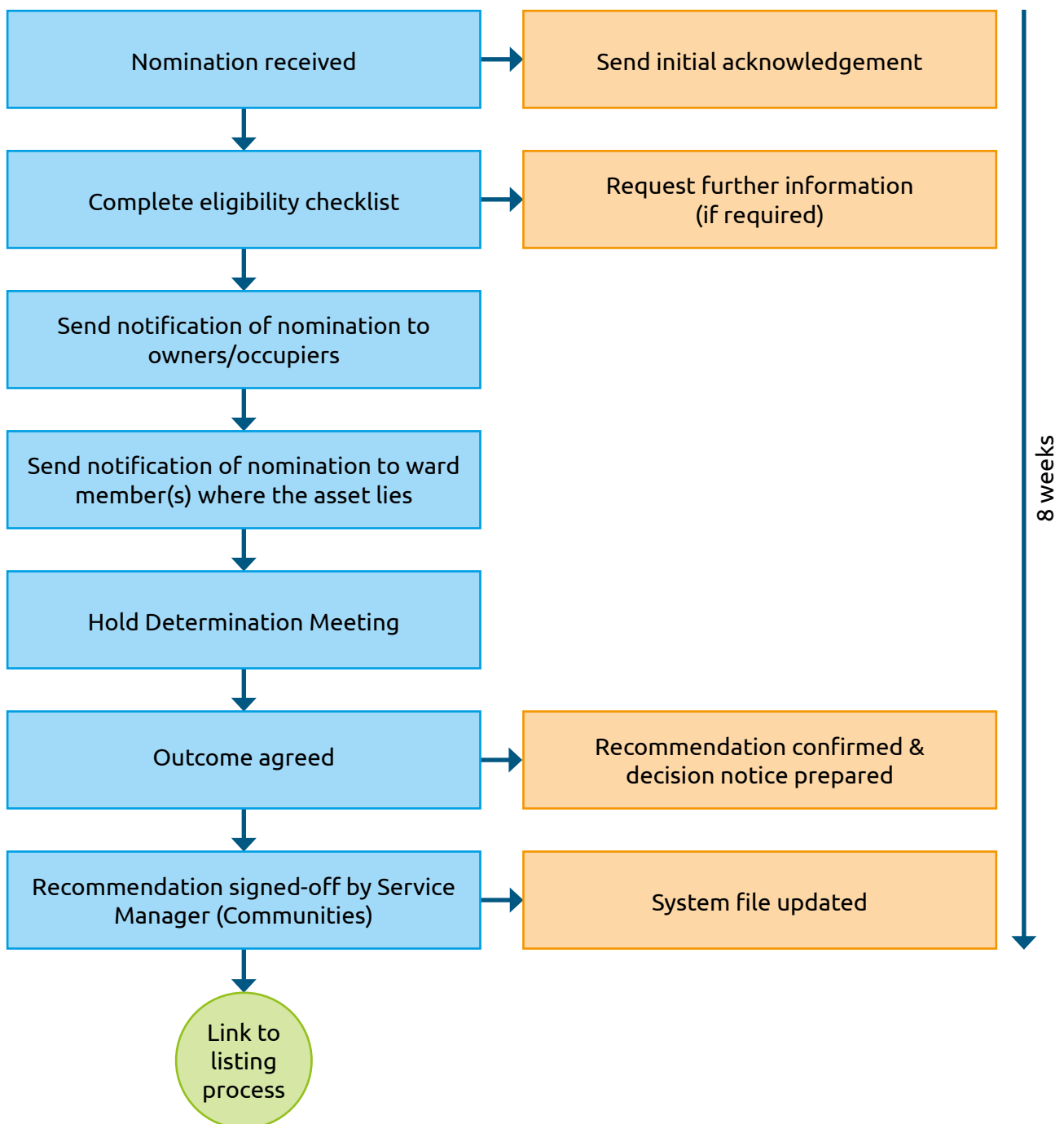
- residential property, normally or partly used as a residence (even if wholly or partly temporarily unoccupied)
- residential property used as a holiday dwelling or hotel where its principal use is to provide accommodation for paying occupants
- residential property that is a house in multiple occupation
- land for which a site licence is required under Part 1 of the Caravan Sites and Control of Development Act 1960
- operational land as defined in Part 11 of the Town and Country Planning Act 1990, used for transport infrastructure and related purposes by bodies with statutory powers e.g. land held by railways or highways authorities.

Consideration

With a completed checklist, the Communities Team will consult with senior officers from the council's Development Management and Planning Policy Department to make a formal recommendation for determination. Following the consultation, a decision notice will be completed highlighting points of the recommendation. The decision notice will be forwarded to the Service Manager (Communities) for authorisation.



Nomination Process Flowchart





Listing

What information is held on the lists and how are they managed?

Under the Act the council is required to keep both a successful and unsuccessful list and to make both lists available for inspection. The council has therefore decided to publish both on the council website. The intention of the unsuccessful list is to discourage repeated nominations for assets that do not qualify as assets of community value. The asset will remain on either of the lists for a period of five years (unless subject to a successful appeal or it becomes evident the asset ceases to be an asset of community value) after which time it will be removed.

The details contained on the successful list are as follows:

- asset details including reference number, name and address
- asset status including date listed and, if applicable, date of internal review of listing and appeal
- notification of intended disposal including date of notification, date of end of interim moratorium* (six weeks) and if applicable date of end of full moratorium (6 months), date of end of protection period (18 months). N.B. all dates shown in brackets are from date of notification of disposal
- details of the community interest group who has triggered the moratorium.

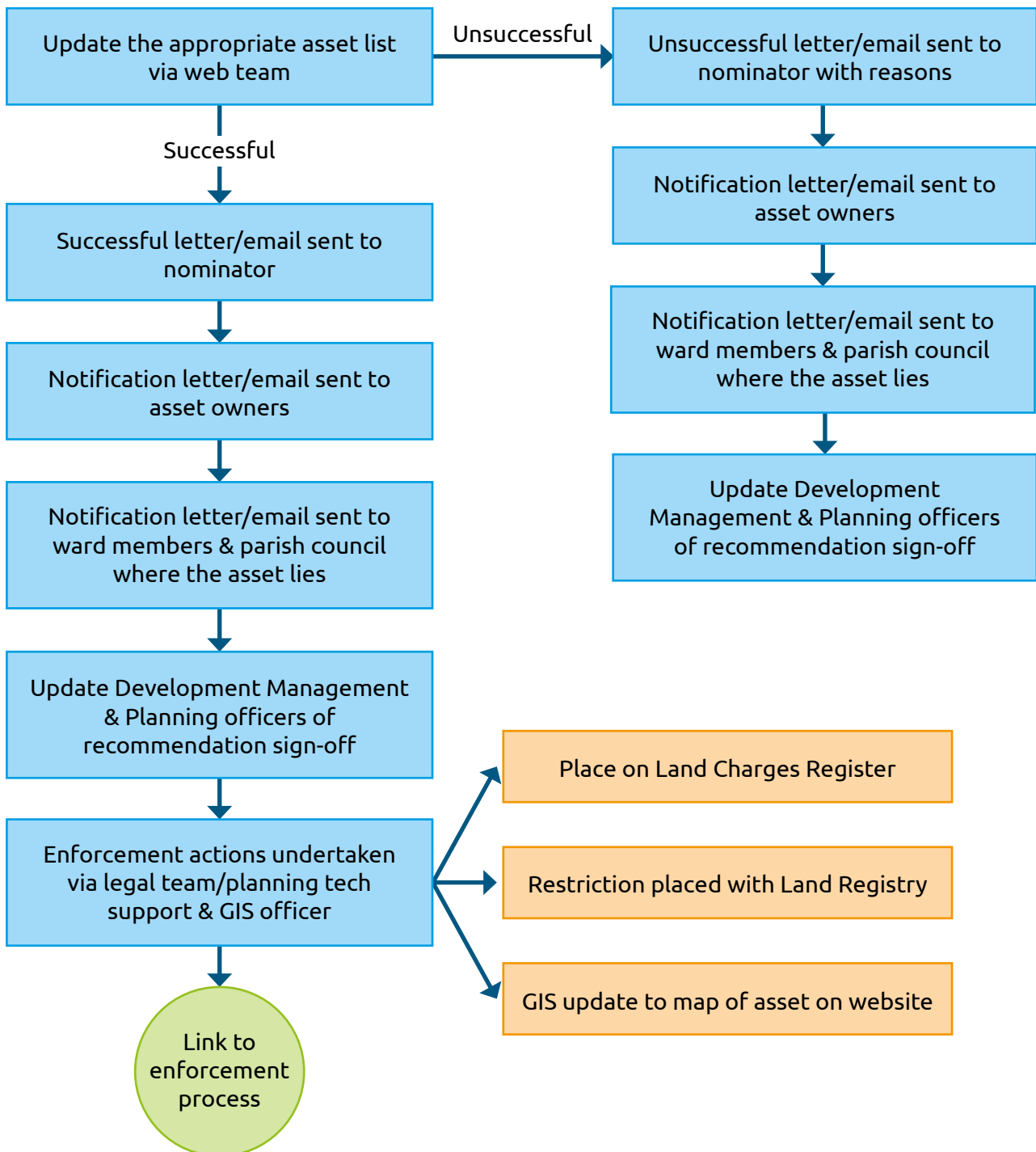
The details contained on the unsuccessful list are as follows:

- asset details including reference number, name and address
- asset appraisal including date of decision and expiry of listing
- asset decision giving reason why the asset listing was unsuccessful.

With the decision notice signed-off, the Communities Team is required to take action to update the council's successful or unsuccessful assets of community value lists as soon as practical following the process overleaf.



Listing Process Flowchart

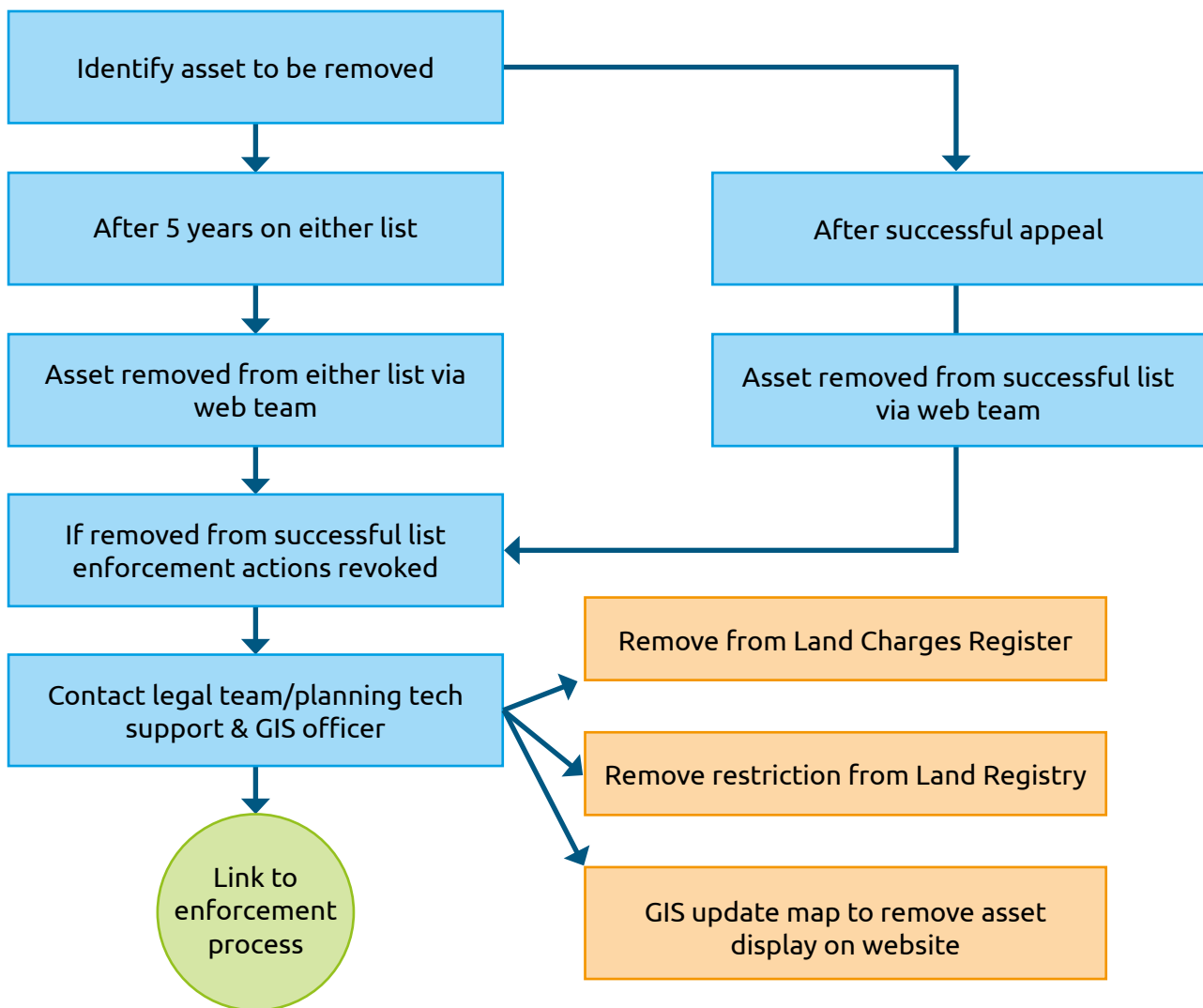




Delisting and Updating the Lists

There are a number of occasions where it may be necessary to remove an asset from either list or update the lists held, these are as follows:

Delisting Process Flowchart



* Full details of the Appeals process is described in the Appeals section on page 14.



Appeals

When and how can an asset owner appeal against listing?

When an asset has been included on the council's list of assets of community value the owner has the right, under section 92 of the Act, to request a review of the decision. The asset owner has eight weeks from the date of listing (or from the date that alternative steps were completed to bring the listing to the owner's attention) in which to lodge an appeal. This is set out in paragraph 1 section 2 of the Regulations. If an appeal is requested by the registered owner a letter informing the owner of the 'Listing Review Process' is sent to the owner. The nominator is also notified in writing that a review is to be undertaken.

The council must complete the listing review within eight weeks. The right of appeal and timescales are covered in the Regulations although the council can allow a longer period which should be confirmed in writing.

When a review is triggered the asset remains on the list and the asset owner and council bear their own costs (if any) that are associated with the appeal.

What is the format for the review?

The appeal is an internal review that is carried out by a Reviewing Officer who will be a senior officer or Director of the council who has not been involved with the listing of the asset to date. Basic procedural rules for the review are set out in Schedule 2 of the Regulations. A letter informing the owner of the date of the review will be sent. The owner may appoint a representative and the council is required to provide all relevant documents to the representative. As part of the review process the owner or their representative may provide reasons why the property should not be listed. This can be done in writing or a meeting can be requested to allow for an oral presentation of the owner's case. To support the case the owner can provide information or documents for the Reviewing Officer to consider.

The review will be carried out on a date as advised in the letter the council has provided. If a meeting is not requested by the owner, the council can still decide to conduct the review at a meeting. If a meeting is held either due to a request by the owner or the council decides this is the best way forward both the owner(s) and the nominator will be invited to make representations and attend the meeting. The Reviewing Officer will chair the review meeting that will also be attended by the council's legal representative and the Service Manager (Communities). The Reviewing Officer can request for other officers of the council to attend as appropriate. Minutes of the review will be taken by an officer of the council.

Determining the outcome of the review

The Reviewing Officer, with support from the council's legal representative, will review all the evidence, recommendations and decisions. The council must complete the review by the end of the period of eight weeks beginning from the date the council received the written request for the review or a longer period if this has been agreed with the owner in writing. The Reviewing Officer will then make a decision to either uphold the decision to list the asset or to withdraw the asset from the list. The decision will be confirmed to the asset owner and nominator in writing.



If the decision is to remove the Asset from the list, the council's list of assets of community value will be updated and the asset will be moved to the unsuccessful list - see the Listing Process section. Any enforcement actions that have been completed will be revoked - see Delisting and Updating the List and the Enforcement Process section.

If the outcome of the review is to uphold the decision to list the asset no further action will be taken and the asset will remain on the council's list of assets of community value.

If the asset owner is not satisfied with the outcome of the internal review they have the right to appeal against the council's review decision to the First Tier Tribunal. The deadline for this appeal 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. The written response following the internal review should inform the owner of their right to an independent appeal including the applicable timescales. The owner making the appeal can be either the same owner who requested the review or, if the property has been sold in the meantime, the new asset owner.

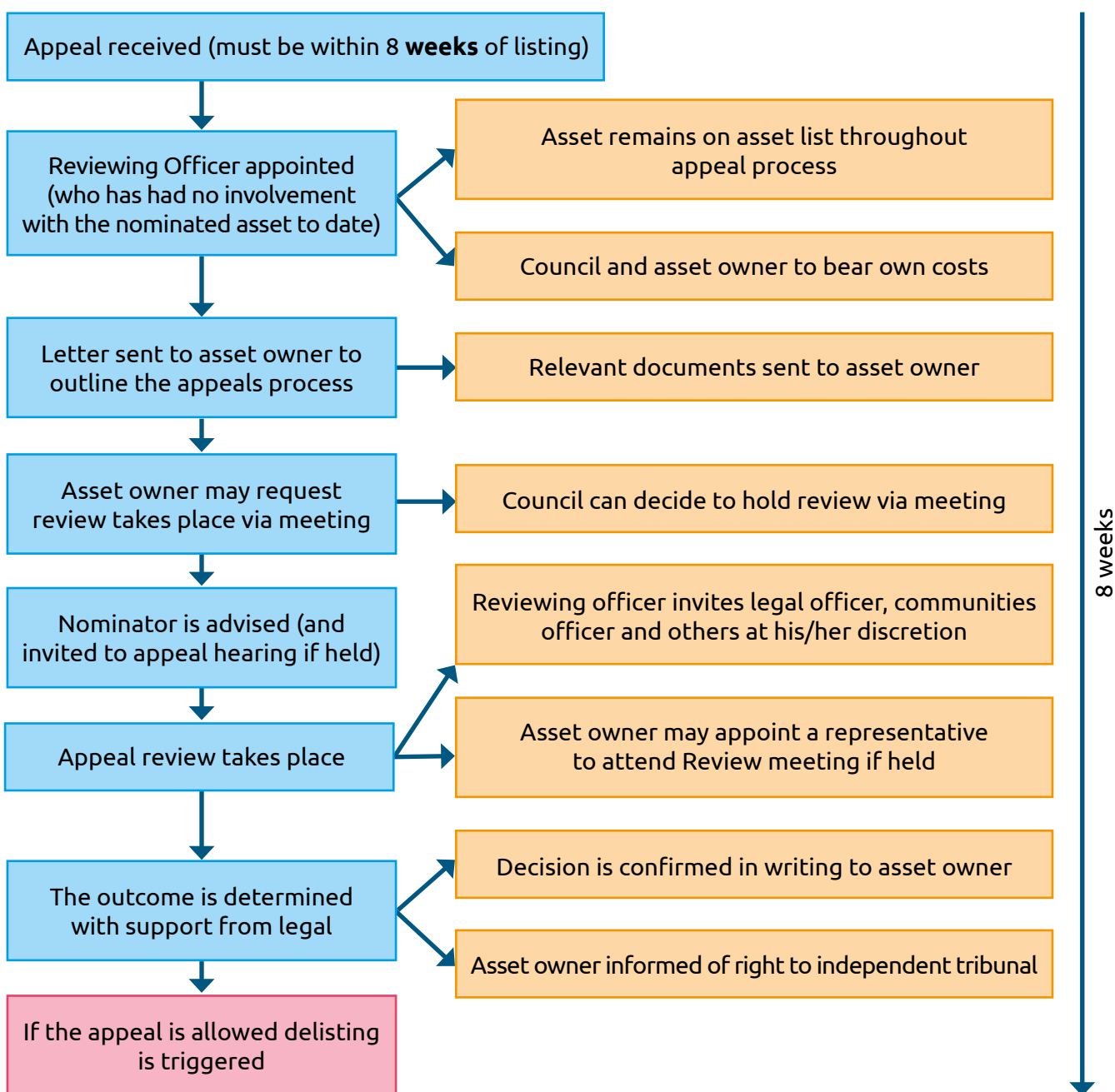
Owners should send the appeal in writing to the First-Tier Tribunal at:

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

Owners may also send an appeal to the First-Tier Tribunal by email at:
GRC.CommunityRights@hmcts.gsi.gov.uk



Appeals Process Flowchart





Moratorium

What is this and when does it apply?

Once an asset has been listed (and if there is no appeal from the owner or an appeal has been unsuccessful) nothing further will happen unless and until the owner decides to dispose of it, either through a freehold sale, or the grant or assignment of a qualifying lease (i.e. originally granted for at least twenty-five years). The only exception being if the council deems the asset is no longer of community value e.g. due to change of use.

Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired, this period is known as the moratorium.

The first part of this window is a six week interim period, which will apply in all cases from the point the owner notifies the council of the intent to dispose of the property. This will allow community interest groups to make a written request to be treated as a potential bidder. If none do so within this period, the owner is free to sell their asset at the end of the 6 weeks.

Examples of exemptions (disposals):

- disposal to a local community interest group which can be made during a moratorium period (interim or full) - under regulation 13(1)
- disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- disposals by personal representatives in accordance with the will of the deceased owner under intestacy rules
- disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- disposals between family members ('family member' is defined in section 95(7) of the Act as the owner's spouse or partner and descendants of grandparents - which includes the owner's own parents but not the grandparents)
- sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)
- transfers made in pursuance of a court order
- transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- disposal of land under bankruptcy or other insolvency proceedings - the wording is 'insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986', which gives a very wide definition of insolvency proceedings.

A full list of exemptions can be found by reference to section 95(5) of the Act and in Schedule 3 of the Regulations. Where an exemption is due to part listed land, this is partly defined in the Act and partly in the Regulations. This is where the sale of a site where only part of it has been listed - where it meets the requirements set out in the Regulations.



When does the full six month moratorium apply?

If a community interest group as defined in regulation 12 of the Regulations (referring to the bodies in paragraph (1) (d) to (g) of regulation 5) does make a request during this interim period, then the full six month moratorium will operate (again from the point the owner notifies the council of their intention to dispose of the asset). During this period, the owner may continue to market and negotiate sales but may not exchange contracts (or enter into a binding contract to do so later). There is one exception - the owner may sell to a community interest group during the moratorium period.

After the moratorium period - either six weeks interim period if there has been no community interest, or the full six months - the owner is free to sell to whomever they choose and at whatever price and no further moratorium will apply for the remainder of a protected period, which lasts 18 months from the same start date of when the owner notified the council that they wished to dispose of the asset. The process and lengths of the moratorium periods are contained in section 95 of the Act.

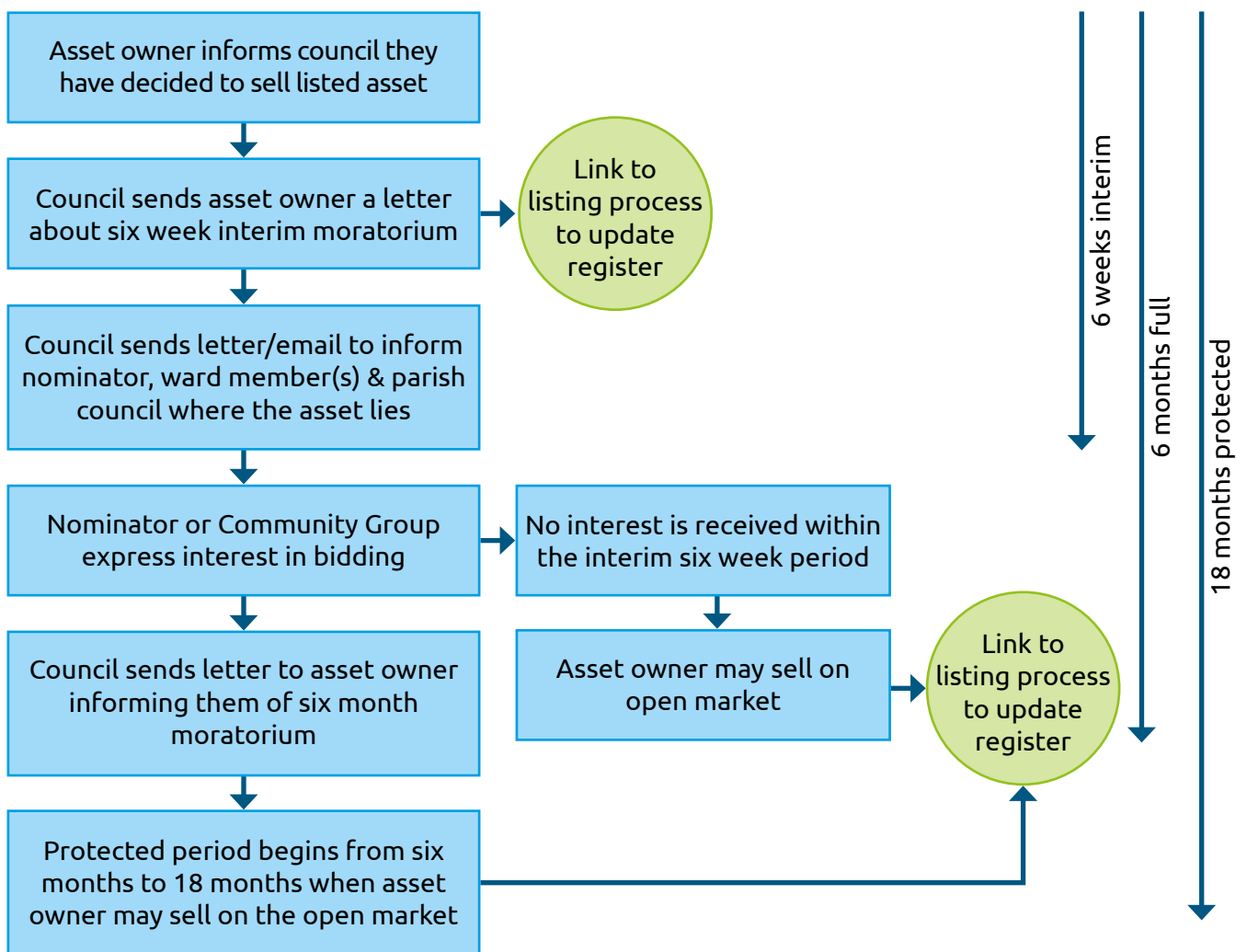
What the provisions under moratorium do not do

Not all proposed sales have to be notified to the council. A range of disposals will be exempted from the provisions as described above. However it would be quite in order for an asset owner to notify the council as a precaution (say in circumstances where it is unclear if the disposal will be exempt) and for the council to request that all disposals, including exempt disposals are notified. The council will include this advice in any explanation sent out to owners about how the moratorium rules work.

The provisions do not place any restriction on what an owner can do with their property, once listed, as long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - it is open to the Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.



Moratorium Process Flowchart





Compensation

Who can claim for compensation and how is this awarded?

Following a successful appeal, a private owner can claim compensation for loss and expense incurred due to the asset being listed or previously listed. Examples of circumstances that might give rise to a claim are as follows:

- legal expenses incurred in a successful appeal
- delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period.

The compensation scheme does not extend to public bodies defined as:

- government departments, authorities and other bodies to which section 6 of the National Audit Act 1983 applies
- bodies that receive most of their funding from public sources which may be examined by the Comptroller and Auditor General under section 7 of the National Audit Act 1983
- local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998.

The time limit for making a compensation claim is specified in Schedule 2 of the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. It is assumed that most claims for compensation will arise from a moratorium period being applied, however, legislation allows for claims for loss or expense arising simply as a result of the land being listed.

Claims must be made in writing, stating the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner. The council will consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the council some time to assemble all the necessary evidence; however, once it has all the facts the council will reach a decision as quickly as is practicable.

What happens if the owner isn't satisfied?

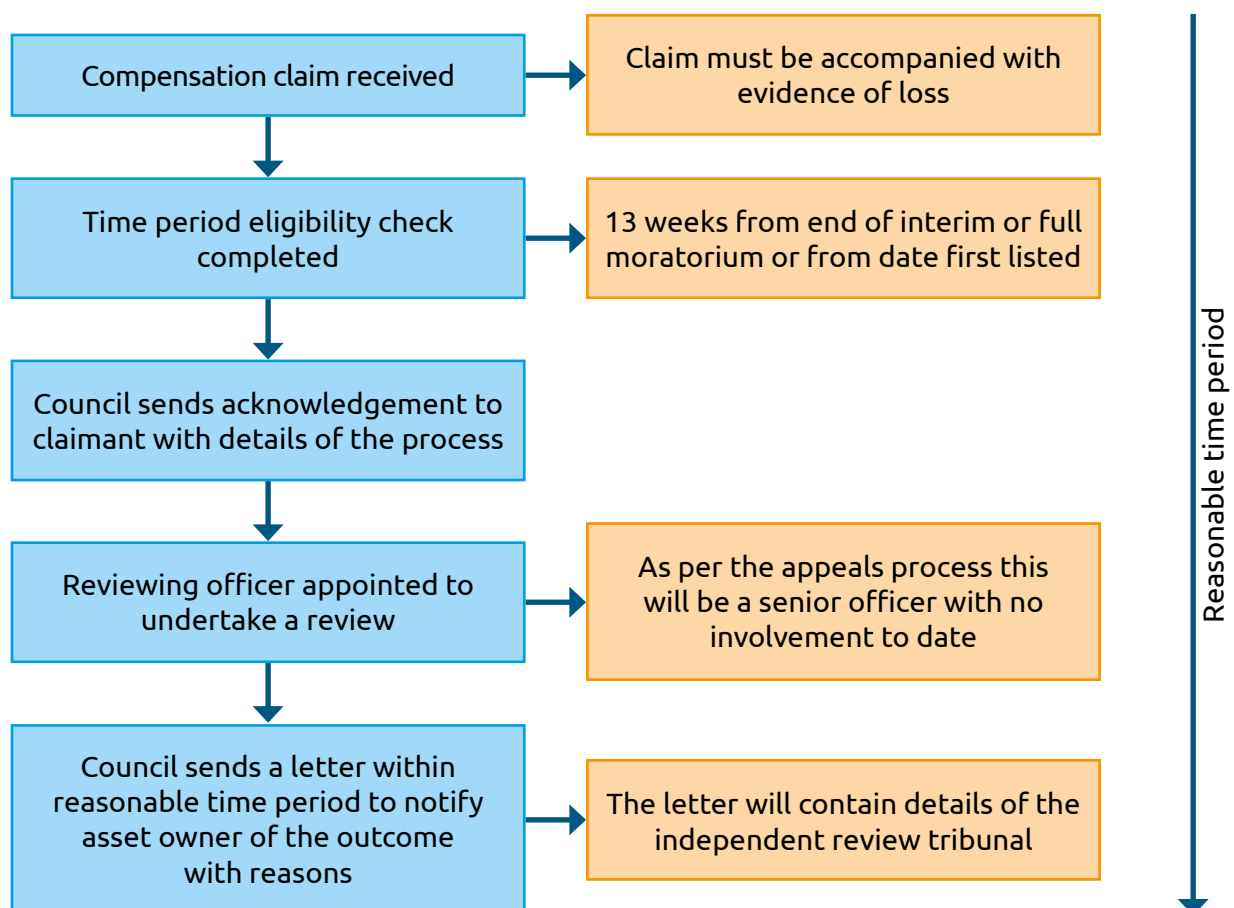
The regulations provide that an owner who is not satisfied with the council's response to the compensation claim may request a review. Schedule 2 of the Regulations provides that the owner must make the request within a period of eight weeks, beginning on the date on which the council provides the owner with written notification of the decision. The council may, at its discretion, extend this period by an agreement in writing.

The council must review their decision and notify the owner of the result within a reasonable period of receiving the request, providing reasons. The procedure for the review is the same as for the review of a listing decision (see Appeals section above).



An owner may appeal to a Tribunal against the council’s review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules - 28 days from receiving the council’s decision on the compensation review. Only the owner - or former owner - who requested the review may appeal against the review decisions (i.e. unlike with listing appeals, a new owner who bought the land following a request for a review may not appeal against the compensation review decision). As with listing appeals, the current position is that the appeal will be to the General Regulatory Chamber of the First-tier Tribunal.

Compensation Process Flowchart





Enforcement

How does the Council ensure that an asset owner complies with the rules?

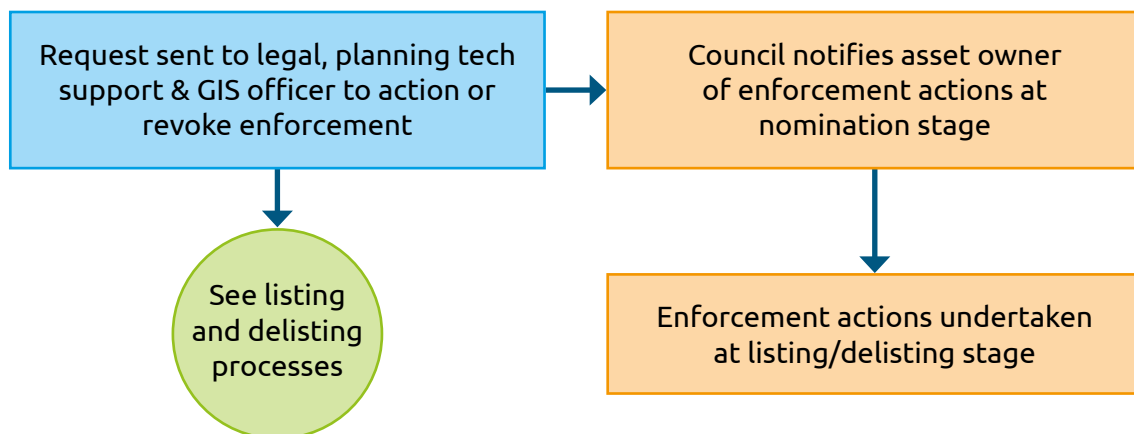
To ensure compliance with the rules of the scheme the council will ensure that an asset listed on its successful list is advised as such to the local land charges register. This will ensure that all prospective new owners will be aware that an asset has been listed since local land charges apply to both registered and unregistered land.

The council is required to notify the owner that their asset has been listed and inform them of the implications. Owners are required to inform the council that the land has been entered on the Land Register as a result of an application for first registrations and they are also required to inform the council if they have become the new owner of listed land (together with giving their name and address details).

The council will apply to the Land Registry for entry of a restriction on the Land Register when they list a building or other land as an Asset of Community Value, or when an owner of the listed asset has changed. This restriction will be in the form of wording added to Schedule 4 to the Rules; "No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011". An owner of previously unregistered listed land who applies to the Land Registry for first registration (or mortgagee who applies for first registration on behalf of the owner), is required at the same time to apply for a restriction against their own title. The council is also required to apply to the Land Registry for cancellation of the restriction when it removes an asset from its list.

When a listed asset is disposed of and a new owner applies to the Land Registry to register a change of ownership of a listed asset, they will need to provide the Land Registry with a certificate from a conveyancer that the disposal (and any previous disposals if this is the first registration) did not contravene section 95(1) of the Localism Act under the moratorium requirements.

Enforcement Process Flowchart





Useful contacts and links

Government guidance on the regulations can be found at:

[gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities](https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities)

The Assets of Community Value (England) Regulations 2012

legislation.gov.uk/uksi/2012/2421/made



a place to
grow

HAMBLETON
DISTRICT COUNCIL

Civic Centre, Stone Cross, Rotary Way, Northallerton, North Yorkshire DL6 2UU

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hambleton.gov.uk



This information is available in alternative formats and languages