

Highland Council –Community Asset Transfer Review Process and Procedure

Reviews

A community transfer body can seek a review if:

- their request is refused;
- the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request; or
- no decision notice is issued within the required period.

Local authority review

If an asset transfer request is made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (excluding Part 4 of the Regulations, which applies to reviews by the Scottish Ministers).

Section 86(10) amends the Local Government (Scotland) Act 1973 so that a review of an asset transfer decision must be carried out by Councillors, it cannot be delegated to officers. This may have an impact on how initial decisions are taken, to ensure there is scope for a review to be carried out by Councillors not involved in the original decision.

Highland Council Review Process

Application for review and acknowledgement

The community transfer body's application for review must be made in writing to the Council within **20 working days from the date of the decision notice**, or if no decision has been made, within 20 working days from the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request).

This application should be made to: cat@highland.gov.uk

The application must include:

- Name and contact address of the community transfer body;
- Details of the land or building to which the asset transfer request relates;
- **A statement setting out the reasons for requiring a review.** This should include:
 - All matters which the community transfer body intends to raise in the review;
 - Any further matters or evidence in response to representations on the application or requested by the Council;
 - The application must be accompanied by a **list of documents and other evidence** supporting the case, and copies of any of those documents or evidence the Council does not already have. These will be published on the Council's website. Any personal details will be redacted.

- The **procedure** which the community transfer body consider should be used to obtain further information. For example, whether there should be a hearing or perhaps a site visit, in addition to written representations.

The final decision on procedure is for the Highland Council.

Under regulation 4, The Council must send an acknowledgement of the application for review to the community transfer body within **10 working days of receiving it**. The acknowledgement must state the date on which the application was made, and tell the community transfer body how the review documents can be inspected.

Notification of interested parties

Also within 10 working days of receiving the application, The Council must give notice of the review to anyone who made representations on the original asset transfer request. These people are described as "interested parties". Notice must be sent by post to any interested party who is a tenant or occupier of the land or building to which the request relates, or an owner if the relevant authority leases it. Other interested parties may be notified by post, or by newspaper advertisement. Every interested party should have given a name and address with their original representation, but newspaper advertisement may be more appropriate if there are large numbers to be notified.

Regulation 16 provides that, if the requirements for notification and publication of the original asset transfer request were not fully met at the time, the local authority must complete this before determining the review.

The notice to interested parties must state the name of the community transfer body and the land to which the asset transfer request relates. It must say that copies of any representations previously made about the asset transfer request will be considered by the local authority when determining the review, and that further representations may be made, giving information about how and by what date they must be made, and that a copy will be sent to the community transfer body for comment. It must also state how documents relating to the review can be inspected. A template notice is provided on the Scottish Government website. The notices must be published online with the other review documents.

Interested parties may make representations to the local authority within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the local authority requests it.

A copy of any representations received must be sent to the community transfer body, and inform them how and by what date they may make comments to the local authority. This must be at least 10 working days from the date of sending the copy to them.

If appropriate, regulation 15 allows The Council to require anyone who has submitted any documents or other material in connection with the review to provide additional copies to the local authority or to any other person. Such material must be made available for inspection until the review is determined.

Further representations

Once the Council has the initial evidence, any representations from interested parties and comments on those representations, the local authority may consider they have enough information to determine the appeal. If not, they may decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body can say in their initial evidence what procedures they think should be used, but the final decision is with the Council. Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

Any request for further information should be proportionate to the transfer request to which the review relates.

If further written submissions are required, The Council must send a notice to the community transfer body and any other person relevant information may be sought from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the local authority. It must also give the name and address of each person the notice is sent to. Any information provided to the local authority in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the relevant authority, again copied to everyone else.

Hearing session rules

The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

If the local authority decides they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. The people invited must confirm within 10 working days if they plan to attend the hearing session. Anyone who does not do so will not be entitled to be involved in the procedures that follow. The people who have confirmed they will attend the hearing session must be informed of the date, time and place when it will be held, giving them as much notice as is considered reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

If they wish, the local authority may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, with supporting documents. These statements will be copied to everyone attending the hearing.

The hearing session is intended to be a discussion, led by the local authority, on the particular matters set out in the notice. The people attending ***will not normally be allowed to question each other on their statements, and the local authority will be able to stop anything being raised if they consider it is not relevant or is repeating previous points.*** Apart from the points set out in the Hearing Session Rules, the local authority can determine the procedure of the hearing.

Additional evidence

If the local authority proposes to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other "relevant parties" an opportunity to comment on that evidence. "Relevant parties" are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

Highland Council Review Panel

Any review submitted to Highland Council will follow the procedures set out above. Any review will be considered by a panel of nine Members drawn from the Corporate Resources Committee and not involved in the original decision-making process. Local ward members will be consulted but excluded from voting on the Review Panel.

Should the Review Panel disagree with the original decision, this will be remitted to the Housing & Property Committee to reconsider the decision in light of the evidence submitted and recommendations of the Review Panel.

Decision

Section 86(8) of the Act states that section 82, subsections (3) to (5) apply to a review as they apply to an original asset transfer request. This means that, in carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

Having carried out the review, the Council:

- May confirm the original decision.
- May modify the decision, any part of it (including the terms and conditions set out in the decision notice), or substitute a different decision.
- Must issue a new decision notice, which replaces the previous decision notice. The new decision notice must be given within 6 months of the date the application for review was made, or a longer period if agreed with the community transfer body.

If the request is agreed following the review, the process continues as set out in [chapter 16 of the guidance](#). If it is refused (or no decision is made within the time limit, or the terms and conditions are not acceptable) the community transfer body can appeal to the Scottish Ministers - see [chapter 19](#).

In addition to sending the decision notice to the community transfer body, it must be published online and every person who made written representations in relation to the review of the decision inform where the notice can be inspected.