

outside 8 week period

In a number of cases there has been a failure by the authority to meet the eight week deadline in regulation 7. In some case the delay can drag on into months. This may result in a challenge from the owner of the asset nominated that the nomination must fail and there cannot be a listing as a result of that nomination. In such circumstances there would be nothing to prevent a fresh nomination in the same form and as a result a listing if appropriate in the circumstances. The failure would not preclude a future listing. Independently from the time limit the authority is under a duty to consider and determine the nomination. If the asset qualifies as an asset of community value then the authority is obliged to add the asset to the list of ACVs and has no discretion in the matter.

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Consequently, I would expect an authority to continue with its consideration of the nomination even if it has not met the deadline. In the event that this results in the listing of the

asset the appropriate route of challenge will be by a review and then an appeal. The availability of this route means that there is an alternative to judicial review proceedings which is a reason for not pursuing judicial review. On a review and then a subsequent appeal it is unlikely that failure to meet the deadline would be a reason for removing the asset as it does not relate to the statutory criteria. This might allow an argument that review and appeal are not a satisfactory alternative route and so permit a challenge by judicial review. However, as an identical fresh nomination would in such circumstances result in a listing this in itself might be a ground for withholding consent to the continuation of the judicial review proceedings. As a practical matter it means that it is not worth the asset owner incurring the costs of the proceedings.

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Such a failure could give rise to a particular issue when the asset nominated is a public house. The nomination will cause the public house to be taken outside the permitted development regime and before there can be development a fresh planning permission would be needed. Does this mean that once the eight week period expires the public house remains outside the permitted development regime or does it fall back into it? I consider that the answer is that it stays outside the permitted development regime because of the definition of "specified period" in the 2015 Regulations¹¹⁹. This is because once nominated it is taken outside the permitted development regime during the specified period which only ends when the nominated asset is entered on either the list of ACVs or the list of unsuccessful nominations. In consequence even if the eight week deadline has expired the specified period will continue and the owner will not be free to proceed with demolition or building works.

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outside 8 week period - effect on planning App.

*pages 86 to 87
Christopher v Cant 2016*