



Government
Advice
Historic England
governmentadvice@HistoricEngland.org.uk

The IHBC National Office
Jubilee House
High Street
Tisbury
Wiltshire
SP3 6HA
Consultations@ihbc.org.uk

17 December 2020

Dear Sir

**IHBC Draft response to Consultation on Historic England Advice
Note: Listed building Consent Advice**

The Institute of Historic Building Conservation is the professional body of the United Kingdom representing conservation specialists and historic environment practitioners in the public and private sectors. The Institute exists to establish the highest standards of conservation practice, to support the effective protection and enhancement of the historic environment, and to promote heritage-led regeneration and access to the historic environment for all.

We are very pleased to have the chance to comment on the consultation document. The Institute's comments are as follows:

General comments on the Advice Note

IHBC welcomes this advice note on whether listed building consent (LBC) is required as part of the process of gaining consent. This advice note should take into account that expert input is needed regarding LBC and any follow ups to approvals. A very real issue in this context is the lack of Local Planning Authority specialist staff. Especially in those large number of Local Authorities which have no specialist conservation advice available from a Conservation Officer or equivalent, to assess an application with the appropriate expertise.

IHBC suggest that the summary should refer to the Designation Guides for context and should refer to Historic England's own technical guidance as for e.g. repointing which should be seeded throughout the text and gathered at the end as an Appendix list.

Legal and policy background

The Advice Note might point out that works to interiors under the 1968 Act only came into force in 1969 (and that for buildings listed between e.g. 1949 and 1969 any such works could be done without consent). This is compounded by the fact that the list description can identify a property but may not describe its special interest in any detail. The NPPF is directed at Local Government whereas PPG15 was intended: *'not only for local authorities, but also for other public authorities, property owners, developers, amenity bodies and all members of the public with an interest in the conservation of the historic environment.'* This Advice Note needs to be clearer about who it is aimed at.

There are currently huge inconsistencies between LPA practices concerning the assessment, processing and decision-making on LBC. This advice highlights the importance of having an understanding from the start of where special interest in a listed building lies. There will always be a grey area over certain issues and be expert input needed regarding assessment of buildings etc for LBC and follow ups to any approvals if necessary. To say the advice is given 'on works which may or may not need listed building consent, depending on how the works are proposed to be carried out' is too vague as the purpose is surely to remove the ambiguity that prompted the advice note in the first place. The relationship of this Advice Note to HEAN2 needs clarification.

Guidance will not enable people to deal with complex problems if they do not have a proper understanding of heritage significance (and what is not significant) and of conservation principles. This can lead to the loss of important historical material but, at the other end of the scale, applications should not be required when not needed. This attempt to make sense of a complex subject is to be welcomed, but most importantly the point must be made that there is still a need to employ people who properly understand significance and conservation. The guidance should be clear it is not a do it yourself manual for LBC.

With regard to finding sources of expert advice Historic England's own 2015 Survey of listed building owners graphically demonstrated that the first port of call for advice was their builder (52%) not the LA Conservation Officer (or indeed anyone else) and the decline in numbers of the latter since then will have made this worse. It is a common complaint in the private sector that LPA heritage staff advice are often unobtainable and we have included observations on the resourcing of the pathways outlined in this Advice Note.

If the AN is concentrating on 'how to get greater certainty as to whether listed building consent (LBC) is likely to be needed or not' then it must concentrate on alteration, extension and demolition. Much of the Appendix deals with 'Repairs'.

The document would benefit from contextualising the volume and type of LBC applications routinely submitted to LPAs in terms of the range of listed building types (primarily commercial\residential) or the types subject to the most forms of alteration (primarily residential) or the nature of works (whether that be window replacement or internal alterations). Most work to residential LBs occurs when they change hands.

The purpose of this advice note is to allow change to listed buildings within the limits of their significance or 'special interest'. The tenor of this advice note stating that 'an inflexible approach without compromise, either by the LPA in refusing change, or by the applicant seeking change, may prevent new life being brought to listed buildings' is appropriate and sits well with the statement that 'a well-informed, reasonable and proportionate approach on both sides – informed by requirements in legislation and policy – is essential'. The Advice Note refers to 'balance' but the question is more about judgement, a word that only appears once in the document (in the Summary). References to 'inflexibility' etc. would benefit from considerable expansion and should be avoided if they imply something critical or derogative.

Historic England have indicated that generally under the statutory notification process they do not wish to offer any comments concerning works to Grade II listed buildings and suggest the need to seek the views of a specialist conservation team. We note in a separate context the Tailored Review of Historic England published in November has critical remarks to make [at paragraph 5.34] about HE's "no comment" letters more generally. Best practice would be to have a single set of guidelines as to types of work likely to impact on special interest, and then to form a judgement as to how that interest is affected in the building concerned, rather than referring by matrix to a grade of listing without engaging professional judgement. Grading might be appropriate for deciding who is consulted on LBC, but not whether LBC is required. It is important to be clear that regardless of the type of listing ascribed to a building the same conservation principles are applied. The listing description may not provide the special interest or significance of the property which is why well informed advice from a person with appropriate conservation accreditations is essential from the earliest possible stage. Grade II buildings are at most risk from losing significant historic fabric. It may be worth considering where cross-referencing to the relevant aspects the Matthew Saunders Review of Listing (due to be published in full in the New Year) might be appropriate.

It is also worth stating that positive change also needs consent if it affects the character but that this should be encouraged. Ultimately the decision will be for a LPA to decide on the potential harm/ impact from a development proposal.

IHBC welcomes the clear pathway described in the Advice Note together with the advice that a successful application for listed building consent firstly identifies what is of special interest/significance, and secondly how the proposal avoids impact on the special interest of the listed building. If there is impact, the application will describe how this impact has been minimised, so that the proposal conserves the special interest. In relation to proposed development the advice suggests that weight given to the assets' conservation should be proportional to its significance. The regrettable removal of the phraseology of paragraph 60 in the 2012 NPPF is worth recalling here, bearing in mind that applicants should be cognizant of the NPPF as a whole: *Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.* This could and does apply equally well to heritage matters.

Stronger emphasis needs to be placed on this sense of proportionality. In works to listed buildings the advice is that *'it is always useful to take appropriate heritage-skilled advice from the beginning of a project'*. This could be articulated with more strength to encourage more owners of listed buildings to seek appropriate professional advice. This can ultimately save them time and money on preventing abortive proposals which do not ultimately receive consent or require significant amendment or even on carrying out illegal works which are subsequently enforced against. The Advice Note indicates that there are certain works where subtle factors may bring changes that may affect the character and the need for listed building consent will be triggered. These include the way in which the works of alteration, extension or partial demolition are carried out or the level, scale or intensity of the work proposed. It suggests seeking certainty that no consent is needed for the works: by an exchange of correspondence with the local planning authority; by pre-application discussions, or by seeking a Certificate of Lawfulness of Proposed Works (CLPW) (10 years)

In principle such a logical staged approach is to be welcomed. A 'staged approach' has to be related to the extent of the work required. This is a strong reason to engage an appropriately qualified expert to advise on what constitutes special interest to ensure this is not in dispute. If the need for consent is triggered by 'subtle factors' as the Advice Note suggests, this should be: [a] more nuanced; and [b] emphasise the

exercise of judgment and discernment. Where the relevant heritage expertise is available (and subject to other resource pressures – including delivering a balance service beyond development management) encouragement should be given to expert staff to assist with validation - this is not the norm.

With regard to the type of communications proposed, in the present climate of extreme resource restrictions it will be challenging for practitioners to achieve desired outcomes through 'exchange of correspondence' (...) 'from a specialist officer' (if there is one) or that 'pre-application discussion' will be productive for minor works especially. It would be useful to know what the volume of Certificates of Lawfulness of Proposed Works (CLPWs) is among English LPAs in a year. The feedback from our membership especially those working as independent consultants is that where they are asked to compile applications for LBC. Pre application advice is a useful way of confirming what is to be carried out especially that which does not need LBC if executed appropriately but most pre-application consultation is now a paid for service. This is not in line with what is proposed above by way of informal discussions and clarification.

IHBC agrees with the retention of as much historic fabric, layout and features as possible, together with the use of appropriate materials and methods of repair. This is likely to fulfil the NPPF policy to conserve heritage assets in a manner appropriate to their special interest. Analysis and recording of those elements that will be lost 'may be made' etc but: [a] such records are rarely deposited in the relevant HER; and [b] might more usefully be emphasised as forming a relevant condition of LBC? Concerning the use of conditions reference could be made to the IHBC advice (2015) which might be beneficial? Standard Conditions, Reasons and Informatives for Listed Building Consent, March 2015. The advice also indicates that any harm to the special interest of a listed building would require clear and convincing justification. It should point out that this justification needs to be made by an appropriate expert.

Given the generally minor nature of many LBCs more emphasis could be given to the following: *"Most of the works which an owner or an applicant wishes to carry out to a listed building will, if they affect special interest at all, affect it only in relatively small ways which can be avoided simply by ensuring that the works are carried out in such a way as not to impact on that special interest. In some cases, works are proposed which would affect special interest but not involve harm to it..."* In this context more clarity is required concerning the terms 'less than substantial harm' and 'harm' – terms not adequately tested in the courts.

One important question which arises is: does 'alteration or extension in any manner' affect the character of the building as one of special architectural interest? Where a suitably qualified and experienced

professional deems LBC not to be necessary that person would normally be able to supply the necessary supporting documentation in any event. Such judgment requires professional assessment and it should not be presumed that there is such expertise within a LPA.

IHBC welcomes the emphasis in the advice that descriptions are only a guide and not a definitive record of heritage significance. This is important. The paragraphs dealing with fixtures and fittings and curtilage is helpful although while case law on fixtures is reasonably clear it is not so on fittings and the AN therefore requires amplification. The IHBC does not entirely agree on the HE's recent interpretation of curtilage acknowledging that this is a complex area of heritage law.

At point 31 it is disappointing that only CifA guidance is mentioned and this LBC advice note does not mention Historic England Understanding Historic Buildings Guide to Good Recording Practice Published 24 May 2016. This HEAG0099 guide has:- Recording levels: a description, preserving the record, making appropriate arrangements for the deposit of the full record in a permanent archive (which would add information to a listed building,) and the where to get advice section includes the IHBC and mentions BS7913. HEAG0099 also states in selecting the level and form of a record as part of the planning process *'Proposed understanding of the fabric at risk within Level 2 to 4 depending an account of the building alterations to the context of the building as a whole, on the significance of (summary for minor alterations, a significant and an assessment of its significance. the fabric at risk, and more detailed for major building This allows proposals to be formulated and evaluated, and loss minimised. Also a record of what is to be lost, where significant. the complexity and current understanding of the building as a whole and of the class to which it belongs intervention, with detailed discussion of affected areas. Measured drawings are more likely to be required for major alterations.'*

Section 4 :Making applications for Listed Building Consent 'Finding expert advice' section has some good links.

Possible resolution mechanisms and general observations:

It makes sense for an appropriately qualified and experienced professional to decide whether LBC is needed or not. In this way the local planning authority will not have to deal with an unnecessary application. However if the foregoing does not occur the fundamental problem of trying to get a prompt and reasonable response from the LPA will remain.

There are well documented 'grey areas' which would benefit from some form of expert mediation service to resolve issues at minimum cost and it would be beneficial to provide examples of good practice.

Finally, there is the whole raft of owners who 'simply do not get it', have no understanding, appreciation of, or interest in 'conservation' values only 'use' values. Owners and their advisers may not be aware of what is affected by regulation and indeed there may be no quality assurance, compliance or enforcement procedures in place by the LPA. It has to be recognised also that there can also be deliberate disregard by advisors (both professionals and others) and, by private owners not to mention inconsistencies between one local authority and another.

Specific comments on the main body text

Para 26 provides guidance concerning curtilage structures:

"Unattached buildings or structures will only be covered by the listing of the principal building if they pre-date 1948 and were in the same ownership as, and ancillary to, the listed building at the date of listing. If the building in question is dated after 1948, or was not in the same ownership at the date of listing, or was not ancillary at that date, it will not be covered by the listing. Everything depends on the relationship of the curtilage structure to the listed building ..."

Comment: Would it be more accurate to state that the decision concerning whether or not a listing covers any or all of the structures within the curtilage is decided based on the facts on a case by case basis?

LBC and archaeology

"any investigation needs to be in proportion to the extent of that interest"

Comment: Paragraph 28 All of this paragraph may be true but it takes considerable knowledge and experience to make an appropriate assessment here

Para 31 Archaeological recording may be required.....

Comment: This paragraph should also address circumstances where the potential outcome of a proposal could result in alteration or partial demolition where building recording and/ or reuse of materials might be appropriate.

Paragraph 33 'There are several established registers that can be used to identify appropriately qualified specialists or organisations, depending on the nature of the project.'

Comment: Why not identify some of these here?

Paragraph 35. Strongly recommended that local validation requirements are checked.

Comment: should this not indicate where these may be found?

The local planning authority must always be satisfied that it has adequate

information to assess the effect of proposed works on the listed building before granting consent: This is important.

Comment: The emphasis on materials is good but also the engagement and use of appropriately skilled crafts workers with appropriate skills in the use and application of materials proposed should be set out in stronger terms.

38 Conditions

Comment: The definitions of "maintenance" and "repair" could be expanded and it could be emphasised that misguided works can lead to permanent damage to fabric of a listed building. Routine maintenance works should always follow conservation principles and best practice. This section should deal with alterations, extensions and partial demolition.

P16: **Comment: Fabric could read 'fabric and form'**

P19: Building a free-standing, single-storey garage within the curtilage of a listed building

Comment: State who would be making that decision about whether special regard to the listed building and its setting could take effect if LBC is not needed?

P21 Works which would not normally require LBC

Comment: This is useful as long as the exceptions are properly understood which may only occur with appropriate advice from a conservation professional

Annex 1 P15 – 56

IHBC believes that the form and structure of the Annex is very clear and comprehensive and it is in a helpful format. We agree with the staged approach but wonder if concerning pre-application discussion the advice could give a steer concerning the appropriate person within a LPA with whom to have that discussion?

While this is supposed to be a document about what requires consent, as a prominent and emphatic caveat the list of works NOT requiring consent should start with a clearer and expanded explanation of like for like repair and all subsequent examples of "works which an owner might more usually encounter in everyday life" should address alteration, extension and demolition and all other headings or text references to repair should be expunged. It does not reflect any realism as currently being practiced. Reversibility is not adequately explained in principle or in practice.

Specific comments on the text:

The advice on glazing mentions blown or crown glass, but perhaps ought to identify cylinder glass as a more common name than blown glass. Windows are one of the most pressing problems in historic buildings and

historic town centres and villages. On the one hand, this advice as read by an owner could come over as pernicky and fuel the underlying concern that most owners have that they are being unduly penalised for having a listed building. On the other hand, and as used by a Conservation Officer, which it invariably will be particularly by those new to the profession, it is not really pragmatic enough, and does not offer enough guidance in the face of the constant demands for energy efficiency, and in such scenarios there is little or no advice. In this regard, PPG15 annex was far better. It is important to be clear about the target audience and then to ensure that the advice reaches the right people.

Illustrations

Many of the examples are about repair not alteration, extension and demolition. Some subjects would much better refer to Historic England guidance e.g. '*Repointing Brick & Stone Walls – Guidance for Best Practice*' (January 2017) [+ using the illustrations].

Yours sincerely

Fiona Newton
IHBC Operations Director