

IHBC GUIDANCE NOTES

IHBC Guidance Note for Local Planning Authorities in England on Consulting the National Amenity Societies

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This is one of a series of occasional Guidance Notes published by The Institute of Historic Building Conservation (IHBC). IHBC Guidance Notes offer current and recent guidance into topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice. The Notes necessarily reflect knowledge and practice at the time they were developed, while the IHBC always welcomes new case examples, feedback and comment to research@ihbc.org.uk for future revisions and updates.

Introduction

1. This guidance note deals with the notification arrangements in England only for consulting the National Amenity Societies [NAS] that came into operation on 31st October 2017. A single email contact address at casework@jcnas.org.uk for all the statutory amenity societies (identified in paragraph 10) enables them to respond more efficiently under the existing statutory notification procedure.
2. This note also offers some procedural good practice guidance and is directed not only at conservation specialists in local planning authorities (where they are in post) but also at development management case officers and staff responsible for the registration of listed building consent applications and will be of interest to agents submitting applications for listed building consent.
3. The note does **not** deal with notifications to the NAS under the Ecclesiastical Exemption.
4. The arrangements for notifying the national amenity societies appear to be tolerably well-understood by most councils, but regular discussions with the NAS indicate that some local planning authorities are still failing to properly meet the statutory requirements regarding consultations on applications for listed building consent. [\[1\]](#)
5. The Institute is aware that there remains some confusion about which organisations should be consulted, when to consult and the appropriate level of information that should accompany the consultation process. This guidance note aims to offer clarification. [\[2\]](#)
6. Government and Historic England both emphasise and endorse the important role played by the national amenity societies in providing specialist expertise and insight to the listed building consent regime. The National Planning Policy

Framework (NPPF) also stresses the importance of taking account of all the available evidence and any necessary expertise (NPPF paragraph 207).

7. The arrangements for formal consultation with Historic England were amended in 2015 although the arrangements for the Societies remained the same. This is also referred to in paragraph 19.

8. The note is presented in two parts. Part One clarifies the basis on which the NAS should be notified and consulted (Paragraphs 10 to 28), while Part Two examines ways in which the performance of the current system could be enhanced (Paragraphs 29 to 68).

Summary conclusions and recommendations

9. Some conclusions and recommendations by IHBC regarding local planning authority good practice are:

- It is a duty to notify **all** the national amenity societies of proposed demolition or partial demolition of listed buildings even though in practice this often appears to have been done selectively, if at all [Paragraph 19];
- Notification is now much simpler using a single email portal at casework@jcnas.org.uk [Paragraph 28];
- The gradual evolution of many historic buildings and alterations over a long period may be part of the building's significance and consequently of interest to more than one national amenity society [Paragraph 27];
- Authorities must ensure at LBC application registration stage that all the relevant information has been submitted. Far too many cases are notified to the NAS with insufficient pertinent information. [Paragraph 30];
- Presenting the statutory consultees with the right information from the outset enables their prompt response and further negotiations with applicants if necessary with the aim of not exceeding the statutory timescale [Paragraph 30];
- Forwarding the relevant extract from the National Heritage List may assist the NAS establish the correct period or significant phases of the building concerned [Paragraph 34];
- Validation of LBC applications should not necessarily rely solely on the date in the listing description and further advice might be needed to ensure the appropriate national amenity societies are consulted [Paragraph 36];
- Authorities are not obliged to consult on minor works of low significance and they should establish the precise nature, scope and significance of the works proposed and determine if it is essential that the statutory consultees should be notified. [Paragraph 37];
- Where a high annual volume of LBC applications involves more than one registering officer it is essential that the statutory consultation requirements are clearly understood as a commensurately high number of notifications to the NAS may be involved [Paragraph 42];
- Authorities should be clear about the way LBC works are described in the planning register. Many applications involve only minor works to parts of buildings that are of low or no significance while others are sometimes described as alterations when they should correctly be described as substantial or partial demolition and therefore should be notified to the statutory consultees. [Paragraph 43];

- Automatic electronic notification to the national amenity societies of the outcomes of cases on which representations had been made would facilitate better policy formulation and analysis by local planning authorities and others in the sector [Paragraph 61-62];
- Authorities should regularly review their development management practices to ensure the appropriate provision of specialist advice, accuracy and rigor in describing and registering only those proposals that have sufficiently informative content to ensure proper understanding [Paragraphs 67]
- Authorities that fail to accord sufficient weight to specialist heritage advice risk censure in planning appeal decisions or reputational damage through Judicial Review or Ombudsman complaints [Paragraph 68].
- Authorities should not simply use the NAS as a substitute for their own informed assessment of listed building consent applications but should form their own opinion and actively engage with consultation comments to achieve a better outcome for the listed building.

PART ONE – The National Amenity Societies

This clarifies the basis on which the NAS should be notified and consulted.

Background

10. The current formal process of statutory consultation commenced in 1976. Eight organisations now have a statutory role in the planning system. [\[3\]](#) [\[4\]](#) Six are defined as comprising the National Amenity Societies (in alphabetical order):

- the Council for British Archaeology;
- the Georgian Group;
- Historic Buildings & Places
- the Society for the Protection of Ancient Buildings;
- the Victorian Society; and,
- the Twentieth Century Society.

11. Two further organisations, the Garden History Society [\[5\]](#) and The Theatres Trust [\[6\]](#) act as statutory consultees with their roles enshrined by other legislation and are not the primary focus of this guidance note.

12. The Theatres Trust's statutory role relates to the planning system, as it is not a consultee for applications for listed building consent. Local planning authorities are required to consult and seek the advice of the Trust before they making a decision on any planning application for development involving land on which there is a theatre or which will have an impact on theatre use. Some of these will be heritage assets but others will not.

13. The Gardens Trust is a statutory consultee in relation to planning proposals affecting historic designed landscapes included on the national Register of Parks and Gardens of Special Historic Interest in England prepared by Historic England.

14. Collectively all eight organisations are mandatory consultees.

15. Notwithstanding the formal statutory requirement (q.v. paragraph 19) regarding consultations, it is open to local planning authorities (and others) to

seek the specialist advice and expertise of the national amenity societies on other heritage assets about which they are concerned including substantive issues such as setting (including for example tall buildings or wind farms); the impact of enabling development; and for support regarding the designation of heritage assets and advice on conservation area and undesignated heritage matters.

16. As well as advising on applications notified to them, the societies also welcome pre-application discussion and other informal contacts from owners, developers, architects, local groups or individuals. The SPAB can also provide helpful technical advice regarding appropriate techniques of repair.

The statutory requirement

17. In 2014 the Department for Communities and Local Government (DCLG) proposed streamlining of the planning consent regime. In its *'Technical consultation on planning'* the Department recognized the value of the input of the national amenity societies, stating that: *"We believe these organisations bring a level of independent expertise to the consideration of applications which is helpful for local planning authorities. We are not aware of concerns being raised by applicants about their input."* [\[7\]](#) [\[8\]](#)

18. Nevertheless, there appears to be a lack of clarity within local planning authorities concerning the remits of the individual National Amenity Societies - consequently the periods of the buildings on which they should be consulted is defined in paragraphs 20 to 25 below. [\[9\]](#)

19. In April 2015 DCLG published a new Direction: *Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England)*. [\[10\]](#) This reaffirmed the National Amenity Societies' role as consultees with this remit being unchanged from earlier Circulars 09/2005 and 08/2009. [\[11\]](#)

The remit of the statutory consultees

Council for British Archaeology

20. The CBA's primary concern is with the archaeological evidence contained in the fabric; appreciating the building as a totality; assessing its wider significance within its neighbourhood and region; and estimating the likelihood of evidence latent within the building or the site it occupies - particularly those buildings of complicated development which straddle the periods of interest of several of the other national amenity societies and where the building's long evolution is itself of significance. The CBA's casework database is openly available online at [CBA Planning Casework Database](#)

The Georgian Group

21. The Group is concerned with listed building cases for applications for works of alteration and demolition for buildings of all kinds containing fabric and fittings dating from between **1700 and 1837** and proposals significantly affecting the setting of buildings or structures constructed or significantly altered/enlarged between those dates.

Historic Buildings & Places

20. This is the former Ancient Monuments Society. The Society is concerned with listed building **cases of all periods and types**. As its remit is not constrained by date *all* relevant listed building application cases under the 2015 Direction should be referred to it.

The Society for the Protection of Ancient Buildings

23. The Society is concerned with listed building cases for applications for works of alteration and demolition for buildings of all kinds containing fabric and fittings, **dating from before 1720** and proposals significantly affecting the setting of buildings or structures built before that date. It should be noted that the SPAB sometimes takes an interest in buildings of later periods where matters of principle are at stake or where there are complex technical issues regarding the use of materials.

The Victorian Society

24. As its name implies, the Society is concerned with listed building cases for applications for works of alteration and demolition of buildings of all kinds containing fabric and fittings, **from 1837 to 1914** thus also encompassing the Edwardian era up to World War 1.

The Twentieth Century Society

25. The Society is concerned with listed building cases for applications for works of alteration and demolition for buildings of all kinds containing fabric and fittings, **from 1914 onwards**. The Society's interest is uniquely open-ended, allowing for the constant extension of the period under which heritage protection may apply under the 'Thirty Year Rule' i.e. as any building begun more than 30 years ago may now be eligible for listing (and in very exceptional cases -10 years ago).

26. Notwithstanding the routing of NAS notifications through the email portal, local planning authorities should note in passing that there are minor overlaps in dates noted between the remit of the SPAB and The Georgian Group. The Victorian Society's interests extend to include the early part of the twentieth century (encompassing the Edwardian era up to the start of the First World War when almost all building work ceased for the duration) with the Twentieth Century Society commencing from 1914. Any overlaps should have no particular implications for these organisations in practice.

27. As the CBA notes above, the construction, alteration or restoration of many buildings may have occurred over long periods. Local authority practitioners should therefore keep such evolution in mind when applications for listed building consent are submitted as this aspect may be of particular significance and consequently of interest or concern to more than one national amenity society.

28. The societies do not work in isolation from each other and may choose to make joint representations in cases of major concern or where fundamental issues of principle are at stake irrespective of the date[s] of the building[s] concerned. As the contact addresses were not included in the 2015 Direction they are given at the end of this Note for ease of reference but statutory

notifications should be directed through the single email portal at casework@jcnas.org.uk

PART TWO – The Local Planning Authorities

This examines ways in which the current local authority good practice could be enhanced.

Crucial information requirements

29. For effective and efficient development management, the appropriate level of notification to the NAS, and for properly informed outcomes, it is essential that local planning authorities ensure that at the application registration stage all the relevant information has been submitted.

30. Far too many cases are notified to the statutory consultees with insufficient or inadequate information raising questions of:

- how the local authority will objectively evaluate the proposal itself;
- how it will meet the statutory timescale for processing the application;
- how it will justify its decision on the application; and,
- how it will ensure subsequent quality control, compliance and if necessary (if not properly or fully implemented) enforcement.

31. The National Planning Policy Framework (paragraph 126) requires the "...applicant to describe the significance of any heritage assets affected, including any contribution made by their setting". Notwithstanding that the "...level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact" paragraph 127 requires the local planning authority to make its assessment by taking into account "...the available evidence and any necessary expertise". This should obviously include the expertise of the statutory national amenity society consultees. Furthermore, as great weight must be given to an asset's conservation (as set out in paragraph 131) this can only be done if it is based on the thorough documentation of the proposals.

32. As part of statutory consultation process the national amenity societies should expect to receive through the e-mail portal at casework@jcnas.org.uk at the very least:

- appropriately scaled before and after drawings and/or photographs;
- a thorough heritage impact assessment;
- a design and access statement (and where necessary a structural survey or economic viability appraisal).

33. Drawings clearly demonstrating the precise proposed changes and forwarding an extract from the online National Heritage List will also greatly assist the evaluation process and expedite the making of a formal decision.

Registration of listed building consent applications

34. The single email portal for the NAS at casework@jcnas.org.uk will obviate

the need for the local planning authority to determine which society or societies it should consult but at the application registration stage the local planning authority should ensure that the relevant extract from the National Heritage List (<https://historicengland.org.uk/listing/the-list/>) is forwarded with the notification as this may help to promptly establish the correct period of the building or whether it comprises a number of different but significant periods of development.

35. While dating information may be quickly established by reference to the National Heritage List entry, many past listing ('legacy') entries can be perfunctory regarding the dates of buildings that may incorporate multiple phases of development or later alterations of significance. Even where there are detailed list descriptions, advantage should be taken of more recent research where this is readily available and may have revised the interpretation of the building since the time of listing

36. If a conservation specialist is not routinely involved in the registration of LBC applications, the person responsible for validating the application should not necessarily rely solely on the date in the listing entry and wherever practicable should seek further advice about the period[s] of significance. This will assist the national amenity societies when the statutory notification is made via the email portal at casework@jcnas.org.uk and enable the consultation to be evaluated promptly.

37. Discussions with the NAS has also highlighted that at LB application registration stage local planning authorities should be much clearer about the precise nature of the works proposed and decide whether or not the works are minor in terms of the likely impact on significance and the necessity of notifying these proposals to the statutory consultees.

38. It is important that such sifting by the local authority is exercised with care, as applications can sometimes be misleading with the full nature of the proposals not becoming apparent until there is a site visit, which may be after the NAS have been consulted. Most of the notifications to the national amenity societies involve alteration and extension proposals that include an element of demolition to listed buildings although applications for total demolition are fortunately now very rare. [\[12\]](#)

39. Some proposals, of course, will be acceptable, but in a proportion of cases the intention would result in a serious and harmful impact (even though the scale of the work might not be great). Examples could include a large extension that would dominate the modest listed building to which it would be attached; the unnecessary replacement of historic doors or windows; re-roofing in an inappropriate material; or conversion detrimental to the character and use of a special interior.

40. The increased incidence of minor proposals being forwarded to the national amenity societies appears to be becoming more prevalent. This may be as a consequence of the decline in the number of experienced conservation officers and/or a lack of professional competence or confident decision-making. [\[13\]](#)

41. The routine involvement of a conservation specialist during the formal registration of LBC applications would (as noted above), be more likely to lend clarity at the start of the development management process and facilitate better consultation with the national amenity societies on those proposals with a potentially significant impact and about which the societies would then be able to respond with maximum effectiveness.

42. With regard to statutory notifications in terms of numbers, some local planning authorities will have relatively few listed buildings (e.g. in the low hundreds) within their administrative area and a correspondingly low number of listed building consent applications per year but best practice and the procedural requirements under the 2015 Direction should not vary.

43. It is equally possible that applications for significant works other than minor alterations are particularly uncommon or that the works are defined and registered as alterations when, in fact, an element of demolition is involved. If the latter is the case the local planning authority should review its practices periodically to ensure that works of demolition are being properly defined.

44. It is possible that conservation specialist officers in the local planning authorities are sufficiently confident of their own judgement not to consider statutory consultation to be necessary, but they are required to do so under the 2015 Direction. This does not satisfactorily explain the perception by the national amenity societies of the low volume of statutory consultations nationally or in many cases the complete failure by a number of local planning authorities to notify any of the national amenity societies on any LBC applications as required by the 2015 Direction.

45. These issues should also be seen in the light of the high number of listed building entries within many individual English local planning authorities. In 2017 twenty-five authorities were responsible for over 3,000 list entries; a further thirty-seven looked after between 2,000 and 3,000 list entries and seventy authorities manage between 1,000 and 2,000. These high concentrations are represented in nearly 40% of all authorities in England but the responsibilities have been amplified since then by mergers of some local authorities including some now operating on a county-wide basis. [\[14\]](#)

46. It might be reasonable to expect that for councils with a higher number of listed buildings they would have a correspondingly higher number of LBC applications per year and a higher concomitant number of statutory notifications made. Where a high annual volume of LBC applications involves more than one registering officer it is essential that the statutory consultation requirements are clearly understood and applied consistently, particularly regarding the notifications to the NAS.

47. Clearly this appears not to be the case and local authorities therefore need to review their statutory procedures and the job descriptions where any involvement with development management casework exists? (from specialist input to registration and administration) to ensure that the 2015 Direction is being complied with.

Nature of local planning authority consultations

48. Notwithstanding the definition of the basis on which the National Amenity Societies must be notified, in practice, some authorities appear not to be complying correctly with the 2015 Direction by being insufficiently rigorous in their definition of partial demolition.

49. While cases where total demolition is proposed should not be in doubt, in practice it is almost impossible to undertake many alterations without an element of demolition and authorities should therefore make an objective initial assessment of the nature of works of alteration that are in fact partial demolition.

50. The Societies are aware that some local planning authorities refer every LBC application they receive however minor the works, while others never forward any applications whatsoever.

51. In some cases the local authority targets consultation at a specific statutory consultee but this is very uncommon, in others cases all the consultees are consulted but not necessarily with all the necessary information on which an expert opinion can be offered. This issue should be resolved with notifications being made via the casework@jcnas.org.uk email portal.

Definition of the works

52. The variability in the approach by local planning authorities to the referral of applications to the statutory consultees may be due in part to interpretation of the phraseology in the 2015 Direction and insufficient clarity by those responsible for registration of LBC applications about the parameters, i.e. demolition or works of alteration comprising or including partial demolition.

53. When some applications are submitted they are not necessarily couched in the terms defined by the 2015 Direction. Furthermore, many proposals that initially appear to involve only relatively minor works or involve parts of the principal building thought to be of low or no significance may turn out on further evaluation to be of greater significance and some proposals are described as alterations when, in fact, substantial partial demolition is intended.

54. Generally, if proposals involve Grade 1 and Grade 2* it should be the norm to refer these to the statutory consultees irrespective of the supposed significance (or otherwise) of the works notwithstanding that (if notification procedures are being correctly followed) Historic England will also be formally consulted. [\[15\]](#)

55. The Societies are also pro-actively working in concert to make the system easier for the local planning authorities to navigate, mainly through the creation of the common 'clearing house' described in this Guidance note and by a better-defined set of their own guidelines.

Timescales

56. On the assumption that sufficient information has been provided at registration to comply with the NPPF and that most LBC applications should be

determined within eight weeks; timely, appropriately documented notifications are essential.

57. Presenting the statutory consultees with the right information from the outset enables a prompt and a carefully considered response, enabling the local planning authority to carry out further negotiations with the applicant if necessary, and incorporation of the society's comments in the officers' report and recommendations without exceeding the statutory timescale.

Interpretation of responses

58. Reference has already been made to infelicities with regard to development management. These include:

- the diminishing levels (or absence) of specialist expertise and lack of suitable practical experience within local authority planning departments;
- inaccurately or incorrectly described proposals;
- insufficient rigour when assessing if applications should be registered (as having sufficient information); and,
- the poor calibre of the content of many live LBC applications (that perhaps should not have been registered in the first place).

59. To this might be added insufficient appreciation that some buildings may comprise several different periods of significance. Such issues do not help to facilitate the development management process or ensure the most appropriate outcome.

60. Issues of imprecision and insufficiently authoritative local authority advice makes prompt and efficient response more difficult for the statutory consultees and presents potential difficulties for the local authority in ensuring that consultation responses are captured fully and correctly in the process leading to a decision. All four factors in paragraph 58 need to be the subject of regular review by the local planning authority to ensure that the system is working correctly and is in accordance with the 2015 Direction.

Outputs from national amenity society representations

61. The statutory consultees aim to offer either support and or endorsement of specific proposals or constructive criticism and for the consideration of alternatives, but as noted elsewhere in the Institute's Guidance Note on Negotiating Skills [link?] a refusal or the withdrawal of damaging proposals may be considered a positive outcome if it maintains good standards of conservation management. [\[16\]](#)

62. The impact of the advice offered in a Society's response can sometimes be difficult to quantify if this is not properly interpreted (or communicated to the planning committee) or if done at all by the local authority's case officer (see paragraph 69 below). This will make general evaluation of casework outcomes more difficult for the societies.

63. A study in 2015 by Hyder Consulting [\[17\]](#) into *inter alia* the quality and effectiveness of statutory consultee activity confirmed that the monitoring of

outcomes can be problematic and obtaining them can be fairly laborious requiring either direct contact with the relevant local authority case officer or a search for the decision notice online. Furthermore, the extent to which a decision made by a LPA has been influenced by a particular consultation response can be somewhat subjective.

Casework outcomes

64. As the Hyder report also noted, the 2015 Direction requires the National Amenity Societies be **notified of the decisions taken** by local planning authorities on individual LBC applications but this rarely happens in practice and the majority of Councils do not do so.

65. It would appear that councils consider either that it is sufficient that such information is publicly accessed from the authority's website, or will notify the statutory consultee of the outcome of an application only when specifically asked to do so. However, as much of the development management process is now undertaken electronically, where a NAS representation on a particular case has been made, automatic notification of the outcome by the local planning authority would be good practice and once set up would be simple to introduce and operate.

66. The Institute considers that this would also assist the analysis of outcomes and formulation of future heritage policy and facilitate more effective future development management.

Implications for specialist expertise

67. The loss of many conservation professionals in local planning authorities as a consequence of public spending cuts has been well documented by successive surveys by IHBC since 2003. In many cases the most senior staff have left the public sector because of the downgrading, deletion or amalgamation of posts and the reassignment or redeployment of roles.

68. There is some anecdotal evidence from Judicial Review and Ombudsman cases to suggest that development management case officers in some authorities do not accord appropriately compelling weight to the views of their conservation specialists (where in post) nor to the advice of the national amenity societies (and other expert organisations of the type anticipated by NPPF paragraph 127). [\[18\]](#)

69. Local planning authorities should be cognisant of the fact that failure to accord sufficient weight to specialist heritage advice is not without legal risk and considerable potential reputational damage to the authority. This has been highlighted recently, for example, in Judicial Reviews such as by the cases brought against Bradford City Council by the Campaign for Real Ale [\[19\]](#) and against Stratford upon Avon District Council and a relatively recent Ombudsman complaint upheld against Northampton Borough Council. [\[20\]](#)

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Acknowledgements

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Endnotes

- [1] Although this Guidance Note is concerned with the relationship with the National Amenity Societies, evidence continues to emerge via Planning Appeals and Ombudsman cases of procedural failures to consult Historic England, formerly English Heritage.
- [2] Reported to the periodic liaison meetings between the IHBC and the NAS Casework Secretaries. This issue may reflect the culture in the LPA with the former AMS (now HB&P) and SPAB noting this pattern applies to the same LPAs over many years.
- [3] Originally derived from the 1968 Town and Country Planning Act
- [4] Government Circular 09/2005 (issued by the then Office of the Deputy Prime Minister (ODPM))
- [5] Direction under Article 10(3) of the GPDO 1995 set out in Appendix C to DOE Circular 9/95) replaced by the Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015
- [6] Schedule 4 of the Town and Country (Development Management Procedure) Order 2015)
- [7] Technical Consultation on planning, Department for Communities and local Government (DCLG) July 2014 pp.67-8
- [8] During the consultations on revisions to the wording of Circular 09/2005 it was proposed to limit consultations only to those where 'substantial' demolition was proposed. This amendment was omitted in the Direction because of concerns about interpretation, the likely substantial curtailment of the involvement of the statutory consultees and the additional administrative complexity for local planning authorities. It was considered that this amendment would have been to the detriment of the historic environment since the national amenity society's observations aim to ensure that special interest is retained in compliance with national planning policy as outlined in the NPPF. DCLG concluded that the current arrangements should remain unaltered.
- [9] *ibid* (Endnote 2)
- [10] Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015
<https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015>

- [11] The basis of consultation being alterations defined as comprising or including:
- the demolition of a principal external wall (retaining less than 50 per cent of the surface area of that part of a principal building represented on any elevation (ascertained by external measurement on a vertical plane, including the vertical plane of any roof); or,
 - alteration comprising or including the demolition of all or a substantial part of the interior including any principal internal element of the structure defined as any staircase, load-bearing wall, floor structure or roof structure.
- [12] 'Demolition' is a key trigger word when assessing the need to notify the Societies.
- [13] Or it may be done for administrative simplicity i.e. "hitting the 'send to all' button".
- [14] In practice the number of individual listed buildings would be greater than the number of list entries, i.e. e.g. fifteen dwellings in a terrace might be one list entry.
- [15] It should not be automatically assumed that the formal notification procedures to Historic England are being correctly followed - See Ombudsman findings concerning Northampton BC November 2015 No.14 019 741.
- [16] See IHBC Guidance Note 2014/1 – Negotiating Skills paragraphs 20 & 21.
- [17] Evaluation of National Capacity Building Programme - Final Report January 2016 Hyder Consulting (UK) Limited for Historic England with support from the Heritage Lottery Fund reviewed Historic England's National Capacity Building Programme (NCBP) The study identified future challenges, opportunities, priorities and infrastructure needs in the light of, for example, the contraction in the number of conservation specialists within local planning authorities; restraints in public expenditure and the changing role and resources of Historic England.
- [18] A summary of heritage related Local Government Ombudsman decisions is accessible on the IHBC website at: <http://ihbconline.co.uk/toolbox/>
- [19] In March 2013 applications for planning permission and listed building consent at the 'Cock & Bottle', 93 Barkerend Road, Bradford BD3 9AA were approved by Bradford City Council [Ref: 13/01129/FUL & 13/01169/LBC] but the High Court found that the Council had failed to give the appropriate weight to the heritage considerations set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the NPPF were fundamentally flawed and were therefore quashed. In July 2014 a development was quashed in the High Court (for development at Tysoe, Stratford on Avon) because the District Council had failed to adequately take into account as a material consideration, the expert statement from its conservation specialist relating to the harm to heritage assets when considering a planning application. (The authority had also failed to take into account the concerns of English Heritage).

[20] Summary of Local Government Ombudsman cases accessible at:
https://www.ihbc.org.uk/resources_head/index.html

Statutory Consultee Contact Details

Council for British Archaeology, St Mary's House, 66 Bootham, York
YO30 7BZ Telephone 01904 671417
Web: <https://www.archaeologyuk.org>

The Georgian Group, 6 Fitzroy Square London W1T 5DX Telephone 020
75298920, Northern Casework – 01773 828122
Web <https://www.georgiangroup.org.uk>

Historic Buildings & Places, The Courtyard, 37 Spital Square, London, E1 6DY
Telephone 0207 236 3934
Web: <https://hbap.org.uk>

The Society for the Protection of Ancient Buildings, SPAB, 37 Spital Square,
London, E1 6DY Telephone 020 7377 1644
Web: <https://www.spab.org.uk>

The Victorian Society, 1 Priory Gardens, London W4 1TT Telephone
020 8994 1019
Web <https://www.victoriansociety.org.uk>

The Twentieth Century Society, 70 Cowcross Street, London EC1M 6EJ
Telephone Tel 020 7250 3857
Web: <https://www.c20society.org.uk>

Garden History Society
Web: <http://www.gardenhistorysociety.org>

The Theatres Trust, 22 Charing Cross Road, London WC2H 0QL
Telephone 020 7836 8591
Web: <https://www.theatretrust.org.uk>

1. This guidance note has been prepared in response to questions about the status of emergency works, undertaken to listed buildings, as follows:

- can they remain indefinitely if the owner chooses, rather than being re-built, if appropriate, providing they have complied with the statutory criteria;
- can a Local Planning Authority (LPA) require a subsequent Listed Building Consent, to retrospectively approve the emergency works and, where appropriate, ensure subsequent reinstatement to regularise the works;
- could enforcement measures be taken by the LPA to require reinstatement?

Legislation

2. Section 9 of the Planning (Listed Buildings and Conservation Areas Act) 1990, establishes that unauthorised works to a listed building or failing to comply with any conditions attached to a Listed Building Consent when executing authorised works are criminal offences.

3. S.9(3) and of the English Act and the commensurate provisions within Scotland, Wales and Northern Ireland identifies defences to prosecution where emergency works are carried out in the interests of health and safety or the preservation of the building. This Guidance Note focuses on issues around these sections with respect to legitimising the works undertaken, and whether a retrospective Listed Building consent can be sought to regularise the works, after the event, and possibly cover any reinstatement.

4. S.9 (3) of P(LBCA) Act 1990 provides:

'S.9 Offences

S.9 (3) In proceedings for an offence under this section it shall be a defence to prove the following matters:

- a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;*
- b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;*
- c) that the works carried out were limited to the minimum measures immediately necessary; and*
- d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.*

Near identical provisions are provided by s.8 (3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.117 (4) of the Historic Environment (Wales) Act 2023 and s.85 (7) of Planning Act (Northern Ireland) 2011.'

5. In many cases harm to health and safety can often be prevented simply by preventing access to the site, therefore, it should be very rare that undertaking significant works without consent relying on these grounds and Local authorities should be consulted even in urgent cases.

Establishing the defence

6. To benefit from the defence in respect of emergency works to a listed building it is necessary to meet all four tests, as follows:

- the works are essential to the preservation of the building or in the interests of health and safety;
- it is not possible to secure the building by temporary support measures;
- the works undertaken are the minimum immediately necessary; and
- that the local planning authority have been notified of the detail of the works and the justification for undertaking them.

7. These provisions provide a defence to criminal charges, where brought under, under s.9 (1) of Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), s.8 (1) the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.117 (1) of the Historic Environment (Wales) Act 2023 and s.85 (1) of the Planning Act (Northern Ireland) 2011. However, even if an owner successfully invokes a statutory defence, it does not provide authorisation of the works by effectively granting retrospective Listed Building Consent, nor does it necessarily indicate that the Local Planning Authority considers the works acceptable. Furthermore, paragraph 196 of the National Planning Policy Framework in England provides that 'where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision'. If all the four tests were not met the defence cannot be relied on and the perpetrator remains potentially liable to a criminal prosecution.

Subsequent Approval

8. The works, even if they fall within s.9(3) et al, still need authorisation. Section 8 of English Act (as amended) and similar provisions in the other acts are clear that works of alteration to a listed building can only be authorised by 'written consent' by means of a Listed Building Consent granted by the LPA or Secretary of State. Therefore, the owner needs to apply for Listed Building Consent if he wishes to regularise the works. Conditions can be imposed in the usual way. Alternatively, the LPA can issue a listed building enforcement notice under s.38 of the English Act and similar sections in the other Acts.

9. There is no power in the legislation that enables a local planning authority to insist on an application for listed building consent. If the owner chooses not to make an application and the LPA does not consider it expedient to serve an enforcement notice, then the works remain unauthorised. It may be helpful for a LPA to point out to an owner that failure to obtain listed building consent in such a situation may well result in problems in a subsequent sale of the property, should the lack of consent be revealed in the legal search process.

Subsequent Enforcement Action

10. The defence against proceedings for an offence under Section 9(3) also does not provide immunity from a listed building enforcement action should the owner fail to regularise them through a subsequent Listed Building Consent. Should a local planning authority consider the urgent works carried out to be unacceptable and harmful to the special interest of the listed building in question, the authority retains the option to serve a listed building enforcement notice under section 38 of the English Act and the corresponding home nations legislation.

11. In cases where it has not been possible to negotiate a solution to regularise the works undertaken, it may be expedient for a LPA to issue a Listed Building Enforcement Notice (LBEN) to provide a clear route to regularisation as consent can be secured by means of a successful appeal against the LBEN.

Preventative measures

12. It is also important to note that while there is no statutory duty to maintain a listed building in good repair Local Authorities have powers to intervene where the condition of a building is allowed to deteriorate under Ss 47 (compulsory Purchase, 48 (Repairs Notices) and 54 (Urgent Works), for information on these powers see IHBC Guidance Note [Urgent works in advance of a Listed Building Consent](#).