

LIVING WITH A LISTED BUILDING

Many of us dream of living in an old country cottage or elegant Georgian town house and for a large number of people, such dreams are a reality. However, obligations come with the joys of living in a listed building or a conservation area and if you are thinking of buying a listed building, these are issues that you should consider before you purchase.

What is a Listed Building?

“Listing” means that the building is included on the List of Buildings of Special Architectural or Historic Interest¹ as a property of architectural or historic importance or interest. This means that its style and substance give it exceptional character. It also means the owner has a duty to keep it in good repair and to maintain the buildings character. The term “listed building” includes both the interior and the exterior of a particular building. In addition, any object or structure fixed to the building, and any object or structure within the curtilage of the building, which although not fixed to the building, forms part of the land and has done so since before 1 July 1948, are treated as part of the listed building. The area around the building is protected.

Demolition, alteration or extension of a Listed Building

Many buyers may plan to alter or extend a building once they have purchased it. You should not assume that you will be able to do so. Responsibility for dealing with applications for listed building consent and planning permission rests with the local planning authority, which

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- ¹ Grade I a building of ‘exceptional interest’
 - Grade II* ‘particularly important, of more than special interest’
 - Grade II (92%)- ‘nationally important and of special interest’
 - All pre-1700 buildings in anything like their original condition are listed, as are most of those built in 1700-1840. Post-1945 buildings have to be exceptionally important to be listed.

may have a Historic Buildings, Heritage or Conservation Officer who will be able to offer guidance.

As a general rule, both listed building consent and planning permission will be required where proposals which affect a listed building constitute development for which planning permission is necessary. This is intended to prevent the unrestricted demolition, alteration or extension of a listed building without the express consent of the local planning authority or the Secretary of State. Listed building status can also result in a requirement for planning permission where it might not normally be required eg for the erection of fencing.

The requirements apply to any works for the demolition of a listed building, or for its alteration or extension, in any manner which is likely to affect its character as a building of special architectural or historical interest. It is irrelevant whether the proposed activity constitutes development under Section 55 of the Town & Country Planning Act 1990.

It is a criminal offence to carry out work which needs listed building consent without obtaining it beforehand.

The local planning authority must publicise applications for listed building consent, allowing the public 21 days in which to comment. They are obliged to consult specified organisations and take account of any views received when making its decision. English Heritage² is consulted on such applications. It also issues extensive guidance which owners and local planning authorities must adhere to in drawing up or considering proposals which affect a listed building. The process should be completed within 8 weeks, but may take longer. An appeal can be made to the Secretary of State against the refusal of listed building consent.

Conditions imposed on a listed building consent can include

- requirement for the preservation of particular features of the building, either as part of it or after it is removed
- making good of any damage caused to the building by the works after work is completed

² English Heritage is the Government's statutory adviser on the historic environment. It advises government on heritage protection (including the listing of buildings) and local authorities on managing changes to the most important parts of our heritage

- reconstruction of the building or any parts of it following the proposed works, using original materials as far as possible, and any alterations within the building as laid the conditions

Listed building consent for demolition of a listed building can include a condition that the building shall not be demolished before agreement outlining how the site will be redeveloped is made, and planning permission for such a redevelopment, has been granted.

An application for listed building consent can be made after work to a listed building has been carried. It is not advisable to start work before getting the consent as there is no guarantee it will be granted, and as work is authorised from the date a consent is issued, anyone who carried out the demolition of a listed building, or altered or extended it in a way which would affect its character prior to this could be prosecuted!

National Planning Policy Framework (NPPF)

The NPPF came into force on 28 March 2012. It promotes a unified approach to the protection and management of the historic environment, promoting sustainable development, best practice and public involvement. Although the NPPF replaced Planning Policy Statement 5: Planning for the Historic Environment (PPS5) as Government Policy on the management of change to the historic environment in England, the PPS 5 “Practice Guide” remains a government endorsed document (pending the review of guidance supporting the NPPF). The references in the document to PPS5 policies are redundant, but the policies in the NPPF are very similar and the intent is the same, so it is accepted that the Practice Guide remains almost entirely relevant in the application of the NPPF.

Unauthorised work by previous owners

Unauthorised work by previous owners can present new owners with a problem. Not everyone complies and it will be the current owner-not the previous owner who carried out the work, who will be liable to correct or undo work that was not carried out in accordance with required standards or conditions or was carried out without listed building consent. Whilst you may be able to take out indemnity insurance against undiscovered unauthorised works carried out by previous owners this will not be the case where there are known unapproved works. You could for example be required to undo unlawful work to the main building or on a converted outbuilding that provides additional accommodation or to remove a swimming pool) you would lose the use and value of the facility. Mortgage lenders

invariably want to know that work carried out on a listed property has the benefit of the right consents.

Unlike planning breaches (provided they are not concealed) there is no time limit on listed building enforcement. As the new owner you will inherit these problems. Before purchasing a listed property, we recommend that you thoroughly investigate its planning history.

Building Regulations

District councils have discretionary powers to relax Building Regulations requirements where strict application would be detrimental to the character of a listed building.

Obligation to repair and maintain

If an owner fails to keep a listed building in a reasonable state of repair, the local planning authority may serve a Repairs Notice specifying work that should be carried out within a stated time limit to ensure the preservation of the building. Failure to comply with a repairs notice may mean that the council will compulsorily purchase the building at a price which reflects its condition. Alternatively, a council may execute urgent basic repairs without purchasing the building, and re-charge the costs to the owner.

Conservation Areas

A Conservation Area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. Conservation areas can comprise anything from a small group of buildings to a whole town centre. Buildings within a conservation area may not all be listed. Notice of designation of a new conservation area must be published in the local press, but owners and occupiers of buildings in a proposed conservation area do not have to be notified and have no right to object. In practice, most local planning authorities do publicise proposals to create conservation areas and do notify local residents. If a building is within a conservation area, it will show up on searches when your solicitor purchases the property.

Local authorities often prepare Supplementary Planning Documents for their conservation areas to assist residents and developers, so it is worth finding out if one exists for the conservation area in question.

Conservation area consent must be obtained before the demolition of all or part of an unlisted building in a conservation area.

Limited permitted development rights usually apply to buildings in conservation areas but may be removed by a direction made by the council -this can include certain types of cladding, inserting dormer windows, and putting up satellite dishes that are visible from the street.

Anyone proposing to cut down, top or lop a tree in a conservation area, whether or not it is covered by a Tree Preservation Order, has to give notice to the local authority before undertaking any work. The authority can then consider the contribution the tree makes to the character of the area and if necessary make a Tree Preservation Order to protect it.

Carrying out works that require Conservation Area Consent, without having first obtained a Consent, is a criminal offence and might result in prosecution. A planning authority can insist that all work undertaken without consent is reversed. Consent can be applied for retrospectively but there is no guarantee that this will be given and prosecution may still take place.

The future

The government has given English Heritage the task of making recommendations on heritage reform. In addition to working towards new more coherent primary legislation English Heritage are looking at reform of secondary legislation and increasing control over partial demolition in conservation areas. They are also considering reform of permitted development rights in conservation areas to allow control over other damaging alterations. Requirements may become more rather than less onerous. The Penfold Review of Non-Planning Consents (2011) moved the reform process on and a number of proposals are being taken forward through the current Enterprise and Regulatory Reform Bill.

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This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.