



## Draft Historic England advice note: *Climate change and historic building adaptation*

### Historic England consultation

Date: 22 December 2023

### Preface

This consultation concerns draft new Historic England (HE) advice *Climate change and historic building adaptation*, aimed primarily at local authorities and at consultants, but also at building owners and occupiers. It focuses mainly on residential buildings. It will be a Historic England Advice Note (HEAN). HEANs sit below HE's four over-arching Good Practice Advice Notes, which in turn sit underneath national planning policy in the Planning Practice Guidance (PPG), the National Planning Policy Framework (NPPF), and ultimately the relevant legislation, here mainly the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act').

This consultation and the consultation draft can be found at or from [Guidance Open for Consultation | Historic England](#).

### 1. Are you responding on behalf of an organisation?

The CLA (Country Land & Business Association).

### 2. What is your role/interest in heritage and/or planning?

1. The CLA's 27,000 members (individuals, businesses, and third sector organisations) manage or own over half of rural England, and at least a quarter of all heritage. **The CLA is thus by far the largest stakeholder organisation of those who look after heritage.**
2. CLA members are extensively involved in the repair of and change to heritage assets of all types, and paying the costs of this, and make many thousands of heritage-relevant planning applications and listed building consent (LBC) applications each year.
3. Our members believe strongly in heritage protection, but are concerned that it works effectively and proportionately, and safeguards the future of heritage assets by allowing them to be changed in sympathetic ways to ensure that, as far as possible, they are financially viable and relevant in the future. This is very similar to Historic England's (HE's) 'Constructive Conservation' policy.
4. To illustrate this, the 2022 CLA/Historic Houses heritage owner survey ([A192 Historic Houses and CLA Survey - Final Report 011222](#)) showed that **98% of respondents thought**

that protecting heritage is ‘important’ or ‘very important’. It also however showed that 48% thought the actual heritage protection system in practice is ‘poor’ or ‘very poor’. This roughly corresponds to the 44% who gave an equivalent answer in HE’s 2022 owner survey ([2022 Listed Building and Conservation Area Owner/Occupier Survey \(historicengland.org.uk\)](https://www.historicengland.org.uk), Q25).

5. The 2022 **CLA/Historic Houses survey** showed overwhelming enthusiasm for decarbonisation: **a very high 86% were keen to decarbonise their historic buildings.**
6. It also, however, showed that **an even higher 87% thought that planning and listed building consents were a barrier to that.**

### **3. Does the draft HEAN provide clear advice on [decarbonising] historic buildings...? In particular, certainty on when consents and permissions are required and what interventions are likely to be acceptable? If not, what is needed to ensure it does?**

7. No/not sufficiently. There are a number of points on this:

#### **HEANs will inevitably have a limited impact**

8. Firstly, **there are limits to the extent to which even the best HEAN can have a substantive impact on the – to date – very slow pace of heritage decarbonisation.**
9. HEANs seem to have only a limited impact on most users of the heritage protection system. Users may read the NPPF as (at least in theory) a determinant of whether consent will be granted, or specific practical advice, although even HE’s generally-excellent and extensive advice on decarbonisation seems to have led to relatively little decarbonisation work. Adding a HEAN seems unlikely to change this. For comparison, the CLA hoped that the most comparable existing HEAN, the 2021 HEAN16 on listed building consent (LBC), would be effective in encouraging owners to carry out desirable work to listed buildings, by overcoming the fear of enforcement and prosecution in cases where LBC is not required, and by encouraging LPAs to grant consent for sympathetic works where it is. This was a longstanding CLA policy objective, and we publicise it to members, but disappointingly it appears, including from CLA heritage casework, to have had little impact.
10. **This HEAN could however be more effective and useful if revised on the lines set out below**, though substantial or transformational change will require further parallel actions on the lines set out in paragraphs 29-33 below.

#### **Uncertainty over consent requirements is a great problem this HEAN does not yet reduce**

11. Secondly, **the key problem, which the draft HEAN acknowledges to an extent but does not solve, is that consents are (see the 87% statistic in paragraph 6 above) a massive hurdle to decarbonisation work.** They are not the only problem – the other main hurdle is not knowing what to do, which this HEAN could help to reduce (see 18-24 below) – but consents are a very serious obstacle. It is clear from the 87% statistic, and from much CLA

member casework, that the fear of enforcement and prosecution and the poor reputation of the consent system very strongly discourage most owners from doing work. The reasons this is a major barrier appear to be:

- (i) great uncertainty as to whether consent(s) are needed;
  - (ii) the draconian potential penalties if you do not make application(s): failure to get LBC if it was required is immediately a criminal offence, which can lead to prosecution; and failure to get LBC and/or planning permission if it was required can lead to enforcement costing many thousands of pounds.
  - (iii) the costs, delays, and risks if you do decide to make consent application(s), and the very poor reputation of the consent system (cf the 44%-48% statistic in Q2 above);
12. Some owners therefore make 'precautionary principle' applications, loading under-resourced LPAs with more applications. Others try (often unsuccessfully) to get an answer from the LPA, loading LPAs with hard-to-answer questions. Others go ahead without consent, but then live with a fear that the LPA may later threaten or take enforcement action, or that allegedly-"illegal work" could be reported to the LPA by a neighbour with a grudge, or that a purchaser will later allege that "illegal work" justifies a price reduction. Others – perhaps most – abandon their proposals. This problem seems particularly acute for types of work which – like much decarbonisation – are desirable, but financially unremunerative; and for those with less LBC experience, like most householders. It is also particularly true in cases where no planning application is needed, and where there are no existing drawings or planning statements, so the marginal costs of a LBC application are high. All this also obviously strengthens the adverse perceptions of the consent system.
  13. This HEAN could help to clarify – at least to some extent – what does or does not require consents, but as yet it does not. Saying that "xxx generally does not need LBC" might appear helpful in theory, but in practice is of little help to users: "generally" is not at all the same as "never", given the draconian penalties as above.
  14. The vagueness of the current wording in some areas could make the position worse, like paragraph 82 second bullet, which is (perhaps inadvertently) saying that secondary glazing needs LBC "in most cases". These create situations in which LPAs might say that although they do not think LBC is required, they are forced to require an application because this HEAN says it is. This is presumably not what the HEAN is intended to achieve.
  15. **Part of the solution is more precise and explicit wording**, wherever possible, including the use of two formulae already used in HEAN16. The first formula is "xxx [*eg secondary glazing, cf paragraph 82*] is very unlikely to affect special interest, and will thus not need LBC, except in specific cases where [*insert specific exceptions, if any*]".
  16. The second formula is "xxx [*eg the non-like-for-like replacement of windows, cf paragraph 81*] would usually affect special interest and thus require LBC, unless in a clearly non-significant part of the building (for example, in a Jacobean front elevation it almost certainly affects special interest and thus needs LBC; the same change in an ugly 1950s rear extension would be unlikely to affect special interest, and not need LBC)".

17. Having increased the precision of the advice in this way, it is important then to further reduce uncertainty by adding overall wording on these lines: “Using this HEAN carefully should make prosecution or enforcement unlikely, in that an applicant who has understood and used it properly, and decided reasonably that LBC is not required, should feel confident that the LPA will not prosecute or take enforcement action (or even if it did there would be a sufficient defence). **Enforcement or prosecution should only happen in cases where there has been clear harm to the public interest; and the LPA should where possible find a solution with the owner on the ground, rather than enforce or prosecute...**”. This approach of course accords with policy, which discourages enforcement or prosecution unless there has been clear harm to public interest – see for example PPG paragraphs 003, 008, 010, 011, 018; the 2020 *Planning Enforcement Handbook for England* (eg “negotiation is a key skill of any enforcement officer and in the majority of cases breaches can be resolved through this process”); the ‘evidence’ and ‘public interest’ tests in the CPS prosecution guidance; and HE’s *Heritage crime: Interventions: Prosecution and Alternative Disposals* (2018).

**This HEAN is not yet structured to help users decide what to do**

18. Thirdly, alongside planning and heritage consents, as above, the main hurdle to heritage decarbonisation is not knowing what to do. In the HE 2022 owner survey, 66% of listed building owners thought it ‘difficult’ or ‘very difficult’ to know what to do, or did not know ([2022 Listed Building and Conservation Area Owner/Occupier Survey \(historicengland.org.uk\)](https://historicengland.org.uk), Q20a1).
19. This is unsurprising, given the large range of possible decarbonisation interventions. Moreover, only some of these are effective in carbon (including embodied carbon) terms; others are not. Only some are cost-effective; others are not. Some physically threaten the building and/or its occupants; others do not. Some cause unjustified harm to heritage significance; others do not. Some are heavily promoted by manufacturers or installers, or in EPC recommendations; others are not.
20. It is hardly surprising therefore that this uncertainty is a hurdle to decarbonisation.
21. **This is however a far-from-insoluble problem, and this HEAN could (at least to some extent) help to solve it.** In practice, fortunately, these different effectiveness and risk variables are mostly well-correlated. In particular, there are a number of ‘low-hanging fruit’ works – especially heating controls, draughtproofing, loft insurance, and secondary glazing – which are very likely to be carbon-effective, and cost-effective, and if carried out sensibly are unlikely to harm the building or its heritage significance, and which can be applied, sensibly, to most heritage buildings. It is clearly very desirable that this happens, and this HEAN should set out these works, with relevant caveats, and encourage and help users to adopt them. There is an embryo of this in paragraph 74’s list of some ‘low-hanging fruit’ works, but these obviously apply to all buildings not just unlisted buildings, and should be advocated throughout (but of course without giving LPAs the impression that they must be carried out before any consent can be sought for any other works).
22. Conversely, there are other works at the other end of the scale which (however much they may be recommended in EPCs and/or promoted by installers or manufacturers) should be treated with caution. Solid wall insulation for example, though recommended in most traditional building EPCs, is likely to have limited (or negative) overall carbon benefits given

its substantial upfront carbon cost, and may have a financial payback period longer than its lifespan, and may cause serious physical damage to the building, and is likely to harm heritage significance. The HEAN should not of course condemn these lower-effectiveness/higher-risk measures in all cases, since there are some situations in which they may be beneficial, but it should suggest that they are at the bottom of the list, explain why, and suggest caution, and precautions (like the use of PAS 2030/2035) that ought to be taken if they are adopted.

23. **This HEAN would therefore be much more useful if reordered so that (like CLA guidance) it sets out potential interventions in approximate order of effectiveness and risk, with the most effective and least risky first; and then for each intervention shows how effectiveness can be maximised and any risks minimised.**
24. **This HEAN should also say why EPCs for historic buildings should be treated with caution**, ie that (i) they can give inaccurate ratings, often suggesting that traditional buildings are less cost-efficient than they actually are; (ii) EPC recommendations may be less cost-effective than EPCs suggest; (iii) EPC recommendations may be much less carbon-effective than EPCs claim, or ineffective, especially because they take no account of the carbon costs of interventions, or of their lifespans; and (iv) some EPC recommendations may damage the building and/or occupant health.

### **Risks and technical inaccuracies**

25. There are a number of technical inaccuracies in the draft, mainly as to whether LBC is required. Paragraph 78 correctly says (1990 Act, section 7) that works to a listed building will only require LBC “where they impact on the special architectural or historic interest of the building”, and that works which do not impact special interest “can be undertaken without LBC”.
26. The statement in paragraph 45 that “LBC will be required for work to a listed building” is obviously therefore insufficient, needing a reference to ‘special interest’.
27. Other paragraphs where the effect on special interest and need for LBC need further consideration include paragraphs 80-83, 87-92, 96-105 (the detail obviously varies in each case).
28. There are some places where the draft does not place enough weight on potential risks of intervention, like cold bridging and under-ventilation.

### **The wider solution**

29. There is at least one solution to these problems which follows from the points made above and which the CLA has already put in a paper to DCMS, DLUHC, and HE, which should lead to a rapid and cumulative increase in decarbonisation work to heritage buildings.
30. Briefly, this is firstly (as above) to divide decarbonisation works into two categories, (i) ‘low-hanging fruit’ works which are effective, cost-effective, and unlikely to harm heritage significance or buildings, like loft insulation, secondary glazing, and heating controls; and (ii) other works with more complex implications, like wall insulation or window replacement, which do need consideration as part of the planning and/or LBC process.



31. Then **guidance and advice (including but not only this HEAN) would encourage users to implement the ‘low-hanging fruit’ works, and – very importantly, because there would be little impact without this – these low-hanging fruit works (only) would be granted consent, using a combination of conventional permitted development (PD), and listed building consent orders (LBCOs) under the 1990 Act, carefully scoped and conditioned.** For loft insulation, to give one example, the LBCO conditions would include ventilation and the insulation of exposed pipes, and could limit the LBCO to ‘cold roof’ situations. There is more detail in the CLA paper.
32. This, well-packaged and communicated, gives certainty, and should make decarbonisation happen on a rapidly-increasing scale: once this begins to generate demand, contractors will start to train heritage-skilled staff, other contractors will move in, and the longstanding supply-chain problems can be overcome. The effectiveness of this carefully-packaged approach would be dozens of times greater than simply publishing the current draft HEAN.
33. This could not be achieved just with advice. Advice is usually caveated, and it does not prevent a local authority from prosecuting or taking enforcement action, so it does not deal with the problem set out in 11 above, that the draconian penalties for getting it wrong very strongly deter action. It might be “unlikely” that the LPA would take action, but LPAs do take “unlikely” action, and “unlikely” is very different to “impossible”. Owners are unlikely to be reassured or motivated by advice alone. Contractors, similarly, will act if there is an authoritative list of measures which clearly have consent: they can then suggest work; carry out work, following the formal conditions; and gear up their operations and train staff. They would not do that on the basis of advice, so advice could never drive action on the scale described in 32 above.

### **The weight to be given to climate change mitigation and adaptation in the decision process**

34. Whenever planning permission and/or LBC are needed for any climate-change-related intervention to heritage, it is vital that appropriate weightings are given both to heritage significance and to the need to address climate change. If an intervention leads to any ‘harm’ (or arguable ‘harm’) to heritage significance, the NPPF (December 2023 paragraphs 207-208) requires that harm to be balanced by ‘public benefit’. In addition, importantly, the 1990 Act requires ‘great weight’ and ‘special regard’ to be given to the protection of heritage.
35. Before December 2023, as the 2022 NPPF consultation acknowledged, there was little in the NPPF climate change chapter which showed climate change mitigation or adaptation work to existing buildings to be of ‘public benefit’. It has therefore been hard to justify climate change interventions to heritage, and indeed quite hard for LPAs to grant consents even if they wished to. The resulting problem has been not only that decarbonisation applications are refused – though quite a lot are – but more particularly that this is again one of the many reasons why applications are not made at all, or made but withdrawn.
36. The December 2023 NPPF includes the new paragraph 164 which, at least up to a point, redresses this balance.
37. **It is important obviously that (as HE presumably intends) the final version of this HEAN refers to NPPF paragraph 164 in detail,** and explains the significant weight it gives to decarbonisation works to all existing buildings in planning decisions, including where

there are no permitted development rights. It also obviously needs to add that this policy explicitly does apply to “conservation areas, listed buildings, and other relevant designated heritage assets”, alongside the policies in NPPF chapter 16 (historic environment).

## **Conclusion**

38. Although the repeated use of the term ‘climate action’ in the chapter headings of this draft HEAN might give the superficial impression of a document drafted by Extinction Rebellion, the text largely reflects the pre-December 2023 NPPF situation in which (see 35 above) climate change prevention or adaptation has been given a much lower weight than is given to heritage significance.
39. We assume, as above, that the final HEAN will be adjusted and rebalanced so that it reflects the new paragraph 164 of the December 2023 NPPF.
40. That however will not be enough: growing perceptions of “heritage obstruction of the climate agenda”, and especially the inability to demonstrate that growing numbers of owners are decarbonising heritage, would be likely to lead to strong or irresistible pressure for automatic consents for measures like wholesale replacement of historic windows, and solid wall insulation. It is not hard to find people who want radical change:
- “Conservation officers are stuck in a previous era”  
 [quote in *Times* article, 20 June 2021].
- “If we are going to take the climate agenda seriously, it might have to outweigh the desire of Historic England to protect parts of the historic fabric” [ditto].
- “We must slaughter sacred cows like rules in conservation areas”  
 [quote in *Times* article, 27 September 2021].
41. In contrast, if we take carefully-considered and effective action now, on the lines set out in 29-33 above, this should reduce that pressure, not least because we should relatively quickly be able to show evidence of growing numbers of owners decarbonising heritage, and of that not causing substantive harm to heritage:
- “Just think of the potential for political pressure to... make it easier to apply external insulation and other retrofit measures, as Government targets bite. The heritage and traditional buildings sectors have to get their act together quickly”.  
 [John Preston, STBA Heritage Chair, in *IHBC Context* magazine, June 2021].
- “Historic buildings have always adapted. 10 to 15 years ago there was the same debate about disability access. People said we can't possibly put in ramps. But when the disability Act came in, the heritage sector responded fast. They introduced well-designed... innovations. The buildings are now fit for the future. We need them to do the same thing now with climate change”.  
 [Matt Bell, Grosvenor Estate].
42. **This HEAN should therefore be revised along the lines suggested above, but in addition – vitally – it also needs to be accompanied by very careful, but very effective, changes to the consents system, as in 29-33 above.**

**4. Does the draft HEAN provide clear advice to help local planning authorities determine applications relating to historic building adaptations to decarbonise and improve energy efficiency? (If not, what is needed to ensure it does?)**

43. No/not sufficiently. See Q3 above.

**5. Does the draft HEAN provide clear advice to help local planning authorities deliver a positive strategy that encourages and supports opportunities for building adaptations that decarbonise and improve energy efficiency? (If not, what is needed to ensure it does?)**

44. Broadly yes. Much of this however will presumably fall into the national policy in the National Development Management Policies, assuming Government takes that forward.

**6. Is there any relevant advice missing from the HEAN?**

45. See Q3 above.

**7. Are there any improvements that could be made to the HEAN in terms of structure?**

46. See Q3 above. The draft does feel quite long in relation to the information provided, and repetitive (for example overlaps between chapter 2 and the first part of chapter 3). If it was shorter it would be more user-friendly and more likely to be used.

**8. Are there any improvements that could be made to the HEAN in terms of language and clarity/phrasing?**

47. We very much welcome the use of the term 'decarbonisation'; the helpful explanations of embodied, operational, and whole-life carbon in chapter 1; the emphasis (in the box) that carbon reduction is not the same as 'energy efficiency'; and the warning that 'energy efficiency' measures may increase, not reduce, overall carbon impacts.

48. We hope HE is adopting 'decarbonisation' as the umbrella term across all its advice as it is updated, in place of the term 'energy efficiency', which tends to promote the



**use of higher-carbon, shorter-life interventions like PVCu windows and solid wall insulation.**

49. As in Q3, some of the language in the more technical parts of the document would benefit from greater precision.

## **9. Do you have any other feedback or comments on the draft HEAN you would like to share?**

We would be happy to comment further on anything in this response, or to be involved (directly or via the Historic Environment Protection Reform Group) in helping to finalise the HEAN.

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