



Consultation Response

Listed Building Consent Order for the Canal & River Trust

MHCLG consultation (Planning reform: supporting the High Street...)

and

Historic England consultation

Date: 14 January 2019

Preface

1. This is a consultation on a proposed listed building consent order (LBCO) allowing the Canal & River Trust (C&RT) to carry out defined types of works to defined types of listed buildings without having to make individual listed building consent (LBC) applications. There are two consultation documents, the MHCLG “Planning reform: supporting the High Street...” consultation and a Historic England consultation. This response addresses both.
2. There is a separate CLA response which covers all other aspects of the MHCLG “Planning reform: supporting the High Street...” consultation.
3. The two consultations can be found at or from:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752222/Planning_reform_-_supporting_the_high_street_and_increasing_the_delivery_of_new_homes.pdf
and <https://www.historicengland.org.uk/about/what-we-do/consultations/guidance-open-for-consultation>.

The CLA

4. CLA members manage at least a quarter of all heritage, including perhaps a similar proportion of listed buildings. The CLA is by far the largest stakeholder body of heritage managers and owners. CLA members are extensively involved in change to heritage assets of all types, making thousands of LBC and heritage-relevant planning applications each year.
5. The CLA is one of the bodies which can nominate a C&RT Board member.

MHCLG consultation Part 3 – Canal & River Trust: draft listed building consent order

Responses to the specific consultation questions

Question 3.1 Do you agree that the types of work set out in paragraph 3.8 should be granted a general listed building consent? Please give your reasons.

Yes. The approach appears risk-based, proportionate, and transparent, and should bring efficiency savings as suggested without substantive risk to the significance of the heritage assets involved.

Question 3.2 Do you agree that the safeguards included in the order are appropriate? Please give your reasons.

Yes, but see the answer to the following question.

Question 3.3 Do you consider that any additional safeguards are required? Please provide details

Although this may be unlikely in practice, it is obviously important that the Order could and would be revoked if it ever became apparent that it was no longer appropriate. The Order itself contains no specific provision for revocation, but we assume that revocation is possible at any time (or that clauses 4 and 5 could be used to bring it to an end).

Although this is not mentioned in the Order, it is important that the C&RT has the heritage-skilled staff needed to operate the procedures effectively. We think therefore that MHCLG and Historic England should ask the C&RT to provide in its annual report (or on specific request at any time) a list of the C&RT staff (and any others, like the C&RT's Heritage Advisory Group) involved in works consented by the Order, including their experience and qualifications, or demonstrate that the skills needed are provided in other ways (for example by appropriate external consultants).

Question 3.4 Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equality Act 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impact identified?

We would not expect any significant impacts.

General comments

In general terms, we support the proposed Listed Building Consent Order (LBCO). As stated, it should reduce the burden on the C&RT of having to make LBC applications for mainly-routine work unlikely to affect special interest, and the related burden on local authorities of having to determine them. Not having to make the predicted 200 LBC applications each year will be of significant benefit to the C&RT, and not having to process these applications will be of benefit to

the local planning authorities (LPAs) who currently receive them. There is also some scope to extend the procedure where appropriate to further bodies carrying out similar repetitive work to listed buildings.

The need to use LBCOs in much more effective ways

The main significance of this proposal, however, is the opportunity to follow it with the creation of LBCOs to cover other situations. The c200 applications a year saved by this Order are much less than 1 per cent of all LBC applications, and (given the costs and constraints involved) we doubt that there will be many other bodies wishing to go through this process, so it seems unlikely that LBCOs like this for single bodies can reduce total LBC application workload by more than a few per cent at most.

There is potential to use LBCOs in much more effective ways which should have profoundly positive impacts on listed building protection, as well as reducing LPA workload perhaps 20 or 40 times more effectively than this C&RT LBCO. A proposal for LBCOs of this kind already exists, in proposal D8 of the Historic Environment Forum's Historic Environment Protection Reform Group (HEPRG) consultation in 2016 (see Chapter 8 of the summer consultation paper at www.theheritagealliance.org.uk/historic-environment-forum/).

In summary, this D8 proposal suggests making a series of individual LBCOs for each of several or many categories of routine work, like rewiring, repointing, or installing new kitchens or bathrooms, open to any owner of a listed building. In principle, most of this routine work does not require LBC, because it does not affect the building's special interest, but in practice the position is often unclear. Failing to get LBC for works which require it is a criminal offence. This creates uncertainty for owners, and a considerable enquiry workload for LPAs, a workload which is difficult for under-resourced LPAs to handle because there is often no clear answer. Each of these new LBCOs would grant any LBC required, subject to conditions specific to that LBCO, and users would then tender the work on the basis that the contractor would comply with the LBCO conditions and accompanying informatives. These LBCOs would substantially improve listed building protection, not only by reducing LPA enquiry caseloads, reducing the number of LBC applications, and thus freeing up LPA staff for other activities like (importantly) targeted enforcement, but also by discouraging harmful work, and by creating a steady workload for contractors who would have an incentive to maintain the skills needed to comply with the conditions in each LBCO. These LBCOs would be a highly efficient use of resources because each only has to be drawn up once using appropriate expertise. They would also encourage owners and developers to see heritage protection as something which works seamlessly and effectively, rather than as an uncertain, difficult, and unpredictable obstacle.

This proposal was consulted on in 2015 and 2016, with the support of MHCLG and DCMS, but has been on hold pending this C&RT LBCO consultation. MHCLG has been committed since the Penfold Review and the Enterprise and Regulatory Reform Act 2013 to investigating, with other stakeholders, the wider use of LBCOs. On the completion of this C&RT consultation, HEPRG, Historic England, MHCLG, and DCMS should therefore pick this up again as quickly as possible, and develop and consult on a pilot proposal of perhaps 1-3 LBCOs of the kind proposed by HEPRG.

Historic England consultation: the draft C&RT LBCO conservation management methodology and principles

These appear in general to be well-considered and effective.

The Methodology and Principles, Scoping Table, and Process chart are a key component of the overall arrangement, but their separation from the Order is sensible for the reasons given, and they appear to be adequately tied to the Order.

It would be a good idea to tie the headings in the Draft Conservation Management Methodology and Principles more closely to the headings and content of the Scoping Table, so that it is clear which principles apply to each category of work.

It is important, as with all work to heritage assets, that the C&RT follows the staged approach under which (i) significance is considered first, before any works are designed, then (ii) works are designed, then (iii) their impacts on significance are considered, and then (iv) any harm is identified and eliminated, mitigated, or justified in terms of public benefit. That approach is explained in general terms in paragraphs 7-8, but point 1 there needs to be broken into two parts, so that it is clear that significance is analysed before design work begins. The Process chart would benefit from expansion to briefly outline the staged approach, which currently is conflated into just one box ('Heritage considerations identified'). This is probably less of an issue for the routine work which will be most of the work in the scope of the Order, and the same analysis can probably be reused in a template document each time the same work is proposed to the same type of lock gate, but the principle is nevertheless important.

As noted in the MHCLG consultation response above, we think that MHCLG and Historic England should ask the C&RT to provide annually in its report (or on specific request at any time) a list of the C&RT staff involved in works consented by the Order and their skills and qualifications, or to demonstrate that the skills needed are being provided in other ways.

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CLA reference (for internal use only): A1903075
