



PROPERTY MANAGEMENT

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LISTED BUILDINGS: WHEN DO I NEED CONSENT? (ENGLAND AND WALES)



(This guidance note replaces GN01-20 which should be deleted from your files)

PREFACE

When this Guidance Note was first written, there was almost no published advice on the need for listed building consent (LBC), and it was designed to fill that gap.

After more than a decade of CLA lobbying for effective advice, and then dozens of hours of CLA input into the detail, **Historic England (HE) has now published advice *Historic England Advice Note 16: Listed building consent***. This is available [here](#). It obviously extends only to England, but it may well be used in Wales to answer questions where (as in many cases) Welsh guidance does not give an answer.

The rest of this Guidance Note has not yet been revised to reflect this, but will be revised in detail in due course. In the meantime it is suggested that members:

- (i) firstly look at sections 1 to 3 of this Guidance Note
- (ii) refer to the HE advice note, as above, especially the long table at the back. When using this **it is important to read its introductory section on pages 18-19, particularly point 6** which stresses that LBC may not be needed in lower-significance parts of buildings.
- (iii) especially if still unclear, read the rest of this Guidance Note as required.

1. INTRODUCTION

The purpose of this Guidance Note is to explain when **listed building consent (LBC)** and/or **planning permission** are needed for works to **listed buildings**.

LBC is covered in Sections 2-6 below. **Planning permission** is covered in section 7 below. It is important to note immediately that **planning permission and LBC are separate regimes**. Having LBC does not grant planning permission, or vice versa. Depending on the circumstances **you may need both, or one of the two, or neither**.

Some work to listed buildings (like extensive alteration) will very obviously require LBC, in which case you may not need this Guidance Note. But much work (like much or most repair) does not need LBC. Unfortunately what does or does not need LBC is not at all well explained in law and guidance, and this Guidance Note focuses on what members can do in cases of doubt.

This Guidance Note needs to be read with other related CLA Guidance Notes, including:

- *Getting heritage consents and heritage-relevant planning consents*
- *Listed buildings: what listing includes*

These can be found (with others) on the CLA website www.cla.org.uk, under Advice, Advice Library, then searching for 'heritage'.

This Guidance Note does not cover **other consents** which may be required, like building regulations, bat licences, trees, or environmental impact assessment.

There is a **summary table** in Section 8, to be read alongside the rest of this Guidance Note.

2. LISTED BUILDING CONSENT - BACKGROUND

2.1 The purpose of LBC

The purpose of the **LBC system** is not supposed to be to put owners and developers through bureaucratic hoops; it is meant to ensure that special regard is given in the planning process to conserving the 'special interest' of listed buildings. Briefly, the law:

- if proposed work affects special interest, requires LBC as a separate specific consent (rather than simply being one of many potential 'material considerations' in a planning decision).
- criminalises breaches of listed building law.
- includes a statutory duty in planning¹ and LBC² decisions to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

¹ Planning (Listed Buildings and Conservation Areas) Act 1990, s66 (1).

² 1990 Act, s16 (2).

2.2 Summary: the problem

In summary, the core problem with LBC is that:

- (i) Sensibly, the law (see section 3) does not require LBC for all work to listed buildings, but only for alteration or extension works which affect the special interest of the building as a whole, or demolition of the whole. On any intelligent interpretation, much (perhaps most) work to listed buildings does not affect special interest and so does not need LBC.
- (ii) However, guidance and advice (see section 4) shed remarkably little light on what needs LBC. That may have been deliberate, because the traditional approach to heritage protection took the view that (irrespective of the law) virtually any work to listed buildings should be examined in advance by the local planning authority (LPA), and that any substantive guidance was undesirable because it might cast doubt on the need for that, and fetter the LPA's discretion. Since 2010 national planning policy and guidance has been moved away from that traditional approach, and more heritage guidance and advice has been developed, but not yet on LBC. Historic England has promised and is working on a new Advice Note on LBC (the CLA is involved in this), but the timescale of this is uncertain.
- (iii) In the meantime, guidance and advice maximise the problem, by not explaining the issues, and by insisting that where there is "any" doubt, the owner must apply for LBC, or at least discuss the work with the LPA. This 'any doubt whatsoever' test is of course almost impossible to 'pass' unequivocally – in almost any case there can be some doubt, however small. This is highly unsatisfactory because it creates a substantial flow of LBC applications and difficult-to-answer enquiries which under-resourced LPAs have to handle, much of this for works which do not need LBC. Worse, this pervasive uncertainty discourages change, including (perhaps especially) change which is desirable in conservation terms but financially-unprofitable, and discourages people from owning listed buildings at all. The system also, especially given widespread lack of enforcement against malign owners/developers, often fails to stop undesirable change.
- (iv) In practice, some cases will be clear (see 5.1-5.4 below). In other cases, you need to understand the background (see sections 3-4, and especially 5) and the options (see section 6), and then take a decision. In practice this will depend largely on your attitude to risk. You could (see section 6) decide simply to go ahead without seeking LBC; or to discuss the need for LBC with the LPA, though that carries significant risks (see 6.2); or to take advice; or to seek a Certificate of Lawfulness.

3. LISTED BUILDING CONSENT – THE LAW

3.1 The statutory requirement for LBC

Some – but far from all – work to listed buildings requires **LBC**. The statutory basis for this is the **Planning (Listed Buildings and Conservation Areas) Act 1990** ("the 1990 Act")³, **Section 7**, which says:

³ See <http://www.legislation.gov.uk/ukpga/1990/9/contents>.

“no person shall execute or cause to be executed **any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised**” (CLA emphases).

There are a number of important points on this as below:

3.2 You need LBC for work which would affect ‘special... interest’

In general terms, as above, **you need LBC for any alteration or extension works to a listed building which would affect (negatively or positively) its special interest, but not for works which would not**. But in practice it may often seem unclear whether work affects special interest, and thus whether it requires LBC. This is the main focus of this Guidance Note, covered in more detail in sections 4-6 below.

Note that the “in a manner which would...affect special... interest” qualification probably does not apply ⁴ to demolition of the whole, ie this is presumed always to affect special interest, so **the demolition of the whole of a listed building will almost always need LBC** ⁵. Demolition of part however is usually an ‘alteration’.

3.3 Not all work to listed buildings requires LBC

It is important to note that the statute is clear: work which does not affect special interest does not need LBC, however much an LPA might claim (or wish) that it did. In *Hobson* ⁶, Keene LJ said:

“...Parliament has deliberately chosen not to criminalise all works of alteration to a listed building. It has qualified the position... so that only works of alteration which affect, or would affect, the character of the listed building are caught [by LBC]....”

3.4 A listed building can extend beyond its list description

It is also important to realise that under the 1990 Act and later case law, listing covers:

- **the listed building itself**, as described for identification in the list description. **Listing covers all parts of the building, inside and out, and any fixtures and fittings**, whether specifically mentioned or not, and whether they are themselves of special interest or not; and
- any **attached buildings ancillary to the use of the listed building at the time of listing**, again whether specifically mentioned or not, and whether of special interest or not; and
- any **unattached pre-1948 structures whose use at the date of listing was ancillary to the use of the listed building**, and which were on land ancillary to it, again whether specifically mentioned or not, and whether they are themselves of special interest or not.

⁴ See *East Riding of Yorkshire Council v Hobson* [2009] PTSR 561, and (see section 4.5 below) Mynors p357.

⁵ An exception might be the demolition of a curtilage structure (see 3.4) away from the main listed building and of no special interest itself; see Mynors p357.

⁶ *East Riding of Yorkshire Council v Hobson* [2009] PTSR 561. See Mynors p372.

Work to any structure covered by listing can potentially need LBC. Usually it should be fairly easy to work out from the above what is covered by listing, but published advice in this area is often unclear or inaccurate, and you may find LPAs claiming that listing covers many structures it probably does not, for example that agricultural buildings are automatically listed by the listing of a farmhouse. For more detail see the CLA Guidance Note *Listed buildings: what listing covers*.

The **list description** is there mainly to identify the listed building. The absence of some feature from the description does not mean that that element is not of special interest (though, at least in the case of more recent and lengthy list descriptions, it may be an indicator).

3.5 There is no permitted development in the LBC system

In the **planning system** permission is automatically granted, via **permitted development**, for much development which would otherwise need a planning application (see section 7). This removes perhaps half of all potential planning applications from the system. But there is no equivalent for LBC: every application which affects special interest requires an LBC application. This generates some 30,000 LBC applications a year in England (and there would probably be many more if every proposal which affected special interest actually became an application).

3.6 Breaches can be a criminal offence with potentially-Draconian penalties

If you carry out works listed in section 7 without LBC (or breach the conditions in a consent), section 9 of the Act makes that a **criminal offence**, for which the owner and/or others directly involved may be **prosecuted**, and **imprisoned** and/or **fined** if convicted⁷. Imprisonment happens only in extreme cases, but fines can be very substantial, set to eradicate any financial benefit from the offence⁸. The local authority can also, or instead, take **enforcement action**, which could require the owner (or a subsequent owner) to put right any harm done or allegedly done, at his/her cost, which again could be substantial. A CLA heritage Guidance Note on *Enforcement and Prosecution* gives more detail.

In practice prosecution and enforcement are unusual, but certainly do happen; and it is important to be aware of the 'paradox of enforcement', ie that LPA enforcement staff often ignore people – like difficult individuals, or malign developers based in foreign jurisdictions – who have committed serious breaches but are difficult to deal with, and instead focus enforcement on those who have made minor technical breaches (or no breach), because they are easier to deal with and give a good 'clear-up rate'.

There are **no time limits on enforcement or prosecution** (the CLA is aware of threatened enforcement 40+ years after allegedly-unlawful work). If there is a clear breach, you (or your successors in title) could therefore worry about any LPA visit, and it becomes risky to apply for LBC or any other planning or building or other consent in case the LPA sees the earlier breach and takes action, or uses it as a bargaining tool in discussions about the future proposal.

⁷ genuinely urgent works may be carried out without prior LBC but under strict limitations, especially that you must do the minimum, and inform the LPA very quickly (think hours, not weeks). For more detail, see the Act.

⁸ There is a list of fines and sentences at

<https://www.ihbc.org.uk/prosecutionsDB/Prosecution%20Table%201%20Size%20of%20Fines.pdf>, though this is incomplete and out of date (fines have tended to rise in recent years).

3.7 Further implications beyond prosecution and enforcement

A later owner becomes liable for previous unlawful work, and can be enforced against (but not prosecuted)⁹. If you try to sell a property, the purchaser's solicitor is therefore likely to check for potentially-unlawful work, and **if any is found – or even just alleged – this can greatly complicate or delay a sale**, or lead to last-minute demands for large price reductions.

3.8 Unlawful work already carried out

If you (or a previous owner) have already carried out work which was unlawful, you face similar sanctions. It is possible to make a retrospective application for LBC, which would – if granted – authorise the work. You would need to follow a decision process similar to that set out in sections 5-6 below.

4. LISTED BUILDING CONSENT – POLICY AND GUIDANCE

4.1 Introduction

If having read the statute (as above) you are unsure whether proposed works require LBC, the logical next step would be to read the guidance and advice. Unfortunately, even though LBC has existed in essentially its present form for over 50 years, this is remarkably limited.

4.2 National planning guidance

The core planning policy document in England, the National Planning Policy Framework (**NPPF**), does not cover LBC. Its accompanying **Planning Practice Guidance (PPG)**¹⁰ reiterates section 7 etc of the Act in different words in paragraph 044, and then adds in paragraph 054:

“Where a person is satisfied that the works they want to carry out do not require listed building consent they can, if they wish, proceed with those works without obtaining any confirmation from the local planning authority.

“In order to avoid unnecessary applications, if there is any doubt about whether listed building consent is required, we would encourage owners and developers to discuss the matter with the local planning authority before submitting any application”.

Obviously, this “any doubt” formula in the second paragraph tends to erode the first, given that there is often the potential for some doubt. If all owners saw and acted on this, that would greatly increase the number of enquiries received by always-under-resourced LPAs.

4.3 Historic England guidance and advice

The next level of guidance is Historic England's high-level guidance ***Managing significance in decision-taking in the historic environment (GPA2)***. This (paragraph 29) claims that LBC is “a simple mechanism”, but then acknowledges (with some understatement) that “it is not always

⁹ Mynors pp 416-7.

¹⁰ See the Planning Practice Guidance, Historic Environment chapter www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment

clear which kinds of works would require consent". It then refers users to **Historic England Advice Note 2 (HEAN 2) *Making changes to heritage assets***.

HEAN 2 however says little about the need for LBC. Paragraph 9 says that "minor repairs are unlikely to require planning permission or LBC (where relevant) if the works are carried out using the same materials and techniques and they do not affect the significance of the asset". Paragraph 52 says that "some works of up-grading, such as new kitchens and bathroom units, are unlikely to need consent", though it adds that "new services... can have a considerable... impact...". Paragraph 9 refers to Certificates of Lawfulness (see 6.7 below). HEAN 2 does look at carrying out work without adversely affecting significance (see also 5.6-5.7 below).

Other HE advice¹¹ mentions LBC sporadically and not always accurately or helpfully. For example, the HE advice *Repointing brick and stone walls* says that LBC "will usually be needed" for repointing, though following HE advice should almost always mean that it is not needed.

4.4 Guidance in Wales

The main Welsh guidance is **TAN24: the historic environment**. Section 5.9 reiterates the 1990 Act, adds that "**consent is not normally required for repairs unless they involve changes that would affect the character...**", but then (as usual) adds that if there is "any doubt" the LPA should be consulted. The Cadw guidance ***Managing listed buildings in Wales*** adds little, though does look at how to carry out work without harming significance (see 5.6-5.7 below).

4.5 Other advice

The two main textbooks on historic environment law are **Harwood**¹² and **Mynors**¹³. Given the dearth of 'official' guidance as above, it can be worth consulting and quoting these. While (presumably for self-protection) both also ultimately fall back on the "any doubt" approach in the 'official' guidance, they do include a degree of practical advice.

Mynors for example says (p375) "If the details of the work are appropriate, then... LBC may not be needed at all, since a repair using materials virtually identical... and carried out to the same design can scarcely be said to affect its character".

Harwood says "The effect of alterations will vary from case to case. For example, the removal of original [CLA emphasis] kitchen cabinets might affect the special interest of the building, but the replacement of a ten-year-old kitchen in a 200-year-old building is less likely to need consent unless the historic fabric of the building is affected in a more than trivial way" (p69). He adds that "...if a building is listed for group value or because of the interest of its exterior, sizable internal alterations might not affect special interest. [Listings of] housing estates [like] Park Hill in Sheffield... do not mean that every single piece of handiwork or DIY on the estate requires LBC".

Local authority advice, where it exists, should not be assumed to be correct or up to date.

¹¹ For a (probably not definitive) list of such advice, see <https://historicengland.org.uk/advice/technical-advice/buildings/technical-conservation-guidance/>.

¹² Harwood, *Historic environment law*, Institute of Art and Law, 2012, mainly pp 67-70.

¹³ Mynors and Hewitson, *Listed buildings and other heritage assets*, Sweet & Maxwell, 2016 (£190) has a detailed discussion of these issues in Chapter 12 and elsewhere.

5. IS LISTED BUILDING CONSENT NEEDED?

Given all the above, how do you decide this in practice? The main potential questions include:

5.1 Do your works affect a listed building?

It is clear that **LBC is only needed for works to listed buildings**, so the first step is to check whether the structure or object is covered by listing (see 3.4 above). If not, LBC is not required.

5.2 Is the proposal for physical work to the listed building?

LBC is only needed for **physical works**. LBC is not needed for change of use. Nor is it needed for a new shed (or indeed skyscraper) near a listed building, even if only inches away, provided there is no physical effect on the listed structure(s)¹⁴. (These might of course need planning permission, and any impact on the listed building might be a material consideration in the planning decision, but that is a different question; see section 7 below).

5.3 Does the work obviously need consent?

Of course, some physical work to listed buildings clearly will affect special interest (even if entirely positively), and obviously needs LBC. In such cases clearly you should make an LBC application; see 6.1 below and the advice in the CLA Guidance Note *Getting heritage consents*.

5.4 Does the work obviously not need consent?

Conversely, some work clearly does not need consent, either because it falls under the general legal principle of *de minimis*, like changing a 1990s Yale lock to another Yale lock, or because it clearly will not affect special interest, like regular repainting of windows in the same manner and materials. If that is the case, you do not need LBC (but check against 5.6 *et seq* below).

The rest of this section and section 6 are concerned with cases where there is doubt. Of course a key practical issue is that what the special interest is, and how it might be affected may, to an extent, be a matter of judgment. What you decide may depend largely on your own attitude to risk, but there is no risk-free option (including asking the LPA – see 6.2 below). It is important to judge risk on a logical basis, as suggested below.

5.5 Will the work affect special interest?

This obviously is – or at least should be – the core question. Guidance and advice (see section 4 above) will often not help. The key issues are the (overlapping) questions in 5.6 and 5.7 below.

5.6 Will the work affect anything of real heritage significance (whether obvious or not)?

This question relates to the nature of the work rather than its quality. Replacing a B&Q fitted kitchen with another B&Q fitted kitchen will clearly not in itself affect special interest, but driving the pipes through a Jacobean cornice clearly would. Repainting a wall in a modern extension of little or no heritage significance is very unlikely to affect special interest; but painting over an original Adam decorative scheme, or stripping off important Arts & Crafts wallpaper or panelling,

¹⁴ It is well established that listing does not cover the ground around a listed building; see for example *Cotswold DC v SoS* [1985] JPL 407, and *Mynors* p381.

obviously would. This “if something is being changed, does it actually matter?” question is mainly commonsense, but it is worth getting intelligent second opinion(s) before deciding, and there are some cases where an issue may not be obvious - see the points in 5.7 to 5.17 below, and HE advice (see 4.3 above) can alert you to issues of this kind.

5.7 Are you (where necessary) using professional(s) and craftsmen who know what they are doing, and understand heritage building conservation?

This question relates to the quality of the work rather than its nature. Using skilled advisers and craftsmen is not a legal requirement (and in some cases, like replacing a PVCu door with another PVCu door, it may be unimportant), but where the work could affect elements of real heritage significance this is usually an important factor. For example, if you get your decayed lead roof replaced essentially like-for-like by an accredited lead roofer with extensive listed building experience, the result is very unlikely to affect special interest, LBC would not be required, and no sensible LPA would take any action (and the clear public interest in the work should make it a laughing-stock if it did). If on the other hand you use a builder who has never worked with lead, or on a heritage building, or you sweep away important plumbers’ marks, that may cause harm which would have required LBC, and leave you open to enforcement or prosecution. Similarly, recreating a lath and plaster wall in a medieval vernacular building should not affect special interest if the work recreated the essential character of what was there before, but certainly would if (as often happens when non-heritage plasterers work on vernacular buildings) it replaced irregularity with straight lines and 90-degree corners.

You can minimise risk by only carrying work which is actually necessary (eg if you don’t have to replace plaster, don’t replace it), by careful selection of professionals and craftsmen, site supervision, and using an appropriate specification (or manual where available, like the Lead Sheet Training Association Manual).

5.8 “Alteration needs LBC; like-for-like repair does not”

In this context it is often said that alteration needs LBC, but like-for-like repair does not. While usually correct, both elements need some qualification. Firstly, some alterations to clearly non-significant elements (like changing a door in a 1970s PVCu conservatory) are unlikely to need LBC. Secondly, while most essentially like-for-like repair should not need LBC if carried out in a conservation-friendly way as above, there may be occasional exceptions, mainly very-high-significance historic fabric (for example replacing substantial parts of an important Grade I listed C18 wrought-iron gatescreen arguably could affect special interest even if carried out by the very best craftsmen).

While it might be helpful to set out here whether each possible type of work does or does not need consent, such a list in CLA guidance would have limited weight. Forthcoming HE advice (see 2.2 above) is intended to do this.

5.9 Does the work affect the character of the listed building as a whole?

The definition of ‘listed building’ in section 1(5) in the 1990 Act makes it clear that it is the special interest of the listed building **as a whole** that matters¹⁵, so a change should be assessed in the context of the whole building, not just a small part of it (though a LPA may try to do that).

¹⁵ Mynors, p372 “what is at issue is the character of the... whole of the building listed in its own right, plus... curtilage, and not just that of either the main building by itself or of the particular structure or building to be altered”.

5.10 How old are the parts of the structure which will be affected?

What matters is significance, not age *per se*, and recent work can, sometimes, be of high significance. But in practice **age** is likely to be a factor: medieval or Georgian fabric is (other things being equal) likely to be seen as considerably more significant and sensitive to change than C20 (especially late C20) fabric.

5.11 What is the context of the work?

Context can sometimes be important: for example changing a front door from yellow to green is very unlikely to affect special interest in a street of differently-coloured doors, but perhaps might if all the doors in the street (or the house) were yellow, or the yellow has historic significance (like the estate colours used by some historic estates).

5.12 What is the scale of the work?

The **scale** of the work is not, or at least should not be, a major factor: it is **impact**, not scale, that matters. Scraping off an important medieval wall painting, even though it might involve only a cupful of historic fabric, would undoubtedly need LBC (and be a serious offence without it). Conversely, removing 18 skipfuls of 1980s demountable partitioning from a listed office block should probably not require LBC provided any effect on the historic fabric is minor and made good appropriately. Similarly, there is little difference (other things being equal) between reroofing a small section of roof and reroofing a large section of roof. In practice, however, there may be a tendency for LPAs to see large-scale work as more likely to need LBC than small-scale work.

5.13 How visible is the work?

Visibility and visibility to the public are not usually key questions, and invisibility of work to the public does **not** mean that you do not need LBC (as prosecutions demonstrate).

However, there is a practical point. If you carry out work in the view of the public, or neighbour(s), it is surprisingly likely that somebody will report it to the LPA as “a breach”. That may lead to a visit from the LPA. It can in principle only take action if there actually is a breach, but if you are not ready with a convincing response it might threaten to stop the work pending investigation. That might cause problems for you, the contractor, and the building, so you need to mitigate this risk by being ready to show that there is no breach.

Owners should be wary of thinking that action by the LPA is impossible because there is no record of the property before the work. There may be unexpected records (like a survey by a local history group), and action may be possible (or at least threatened) without much or any record.

5.14 Will there be an intermediate stage in which the building could appear to have been damaged?

Much work will involve an intermediate stage at which material has been removed, like removing a roof covering before replacing it, a stage at which it might appear that the building has been seriously damaged. You do not need LBC simply because there is that intermediate stage¹⁶, but if the LPA sees the work at that point it might jump to the conclusion that harm has been done

¹⁶ See *East Riding of Yorkshire Council v Hobson* [2009] PTSR 561; and Mynors pp372, 715; Harwood p70.

without LBC, and threaten to halt work and enforce or prosecute. You can mitigate this risk by (i) being prepared for this; (ii) having a building contract in place with a demonstrably-suitable contractor covering the whole job, and briefing that contractor; (iii) keeping removed material (like slates) secure, preferably on site; and (iv) finishing part of the work quickly so that the quality of the finished work can be seen from an early stage.

5.15 Could the work on site be different to the work you envisage?

There is a possibility that, although you intended work to be carried out to high conservation standards (see 5.7), your contractor fails to do that. That of course could happen even if you do obtain LBC, but not having LBC may put you on the back foot to some extent. You can mitigate this risk by (i) choosing the right contractor; (ii) making sure that the work is adequately specified, and (iii) supervising it carefully and/or employing an architect or surveyor, preferably conservation-accredited, to supervise it.

5.16 Is the work reversible?

Some work can be reversible, in the sense that it could be removed and made good without significant harm to what was there before. If you were facing action, reversibility potentially might be important, especially in that reversible work is more likely to be met with enforcement, and irreversible work with prosecution.

5.17 How likely is enforcement or prosecution?

LPAs are not obliged to enforce or prosecute even where there is a clear or admitted breach, and should be less inclined to do so where there is doubt as to whether LBC was necessary. The law in this area is complex, but in essence the LPA should apply a public interest test, and only act where there is a clear breach which has caused clear harm. In most cases the LPA negotiates some solution with the owner. That might mean written confirmation that LBC was not needed, a request for a LBC application “to regularise the position”, or agreed works. However, as noted in 3.6 above, LPAs often focus enforcement on arguable or minor breaches rather than major breaches, and threats of enforcement and especially prosecution can be intimidating.

6. LISTED BUILDING CONSENT – POTENTIAL OPTIONS

The potential courses of action include:

6.1 Make a LBC application

As noted in 5.3 above, some cases will be obvious: if you are carrying out physical works which will clearly affect special interest, the answer obviously is to make a LBC application.

If you already have drawings and other supporting material, the additional cost of making an LBC application should not be great, and if you are making a planning application which already addresses heritage issues, the extra cost of making an LBC application alongside it is likely to be small. Otherwise, the costs may be considerable.

If you are making an LBC application, it makes sense to include in the plans and other supporting material everything you are proposing to do, even where the work does not need LBC, so as to avoid any subsequent argument on this question.

6.2 Ask the LPA to confirm that LBC is not required

The conventional advice is to “ask the LPA”, but this is not compulsory¹⁷, and is not a risk-free option. In some cases this may be the best answer, and some individual LPA officers are very helpful, giving specific and quick answers by email. But that is far from universal, and before approaching the LPA, you need to bear in mind that:

- (i) LPAs are very under-resourced, and often find it difficult to answer questions, especially potentially-difficult questions on which there is little guidance like the need for LBC. The LPA therefore may not respond substantively, or at all (though by contacting it, you have put it on notice, and it might intervene later).
- (ii) some LPAs may demand an application without answering the question (“make a full LBC application and we will then decide whether LBC is needed”).
- (iii) the LPA may refuse to respond in any way unless you agree to pay for pre-application advice (sometimes a fixed package at £500 or more) which you may not want to pay for, and/or may not actually answer your question. If you do not use its pre-application advice, again you have put it on notice. (You could ‘game’ the system by making a LBC application, which is free, rather than paying for pre-application advice, but see (x) below).
- (iv) even if the LPA has an experienced officer willing to provide helpful answers, your case may be passed to someone else with less knowledge and/or a very different approach.
- (v) any opinion expressed by the LPA will almost certainly be caveated and will not bind it (though it should be, to some extent, a defence to enforcement action).
- (vi) there is a danger of changes of personnel: one officer may say something which is then disclaimed by another.
- (vii) the LPA will need information on your proposals. To an extent obviously this is essential, but it may go far beyond that and make requests for drawings, specifications, or other information which exceed what is genuinely required. If you already have these that may not be a problem, but much repair work can be done without drawings, and if you are called on to create drawings or reports for the LPA that may have a substantial cost.
- (viii) LPA officers sometimes have strong views on methods and materials, and may demand changes to your proposals which are subjective and not justified in conservation terms and greatly increase costs or risks or timescales.
- (ix) the LPA may well (especially if it is unsure) tell you LBC is needed when it isn't. It is then difficult not to make a LBC application, even if you feel sure that LBC is not required.
- (x) as in (i) above, LPAs are under-resourced, and difficult-to-answer enquiries of this kind place a burden on them. Going to your LPA with a question you could have answered

¹⁷ See PPG paragraph 054, quoted in 4.2 above.

yourself or by using a professional is like taking your cold to an NHS doctor, getting in the way of others who are more ill. However, while some officers are happy not to get such questions, others – however burdened – think every proposal for any work, however trivial, to any listed building should always be brought to them, and get upset if it isn't.

6.3 Take professional advice

You can take professional advice from an architect and/or planning consultant, preferably one with demonstrable heritage experience. Some will give helpful practical answers, but others, in the absence of substantive guidance, and concerned about potential liability, will advise you in almost all cases to make an application or talk to the LPA.

6.4 Ask a court

You could ask a court for a declaration that work does not need LBC, but it is likely to refuse to take a decision on the basis that this is a matter for the planning system and its appeal process¹⁸.

6.5 Go ahead with the work without LBC and without contacting the LPA

If you feel, having reviewed the circumstances, law, and guidance (see sections 3-5 above) and the discussion above, that your work does not require LBC, you may decide simply to go ahead without LBC. It would be wise to minimise risk in the ways discussed in this Guidance Note.

If the LPA later threatens any action, you should be ready with a robust response, ie that the work has not affected special interest, has (where relevant) been carried out to conservation standards, and has benefited the building (and be able and willing to show all this on site).

If the LPA threatens enforcement, you can say that you would resist this strongly. If it serves an enforcement notice, you can appeal - one of the grounds of appeal is that the work did not require LBC. You could make a retrospective application for LBC (and appeal this if LBC is not granted).

6.6 Going ahead without LBC in a case where LBC is required (not recommended)

An owner could decide, even where it is clear that LBC is needed, to go ahead without it, perhaps intending to make a retrospective application or appeal as above if a problem arises. However, going ahead without LBC in a case in which it clearly is required is a criminal offence, with potentially-problematic outcomes (see 3.6-3.7), so this Guidance Note cannot recommend that.

6.7 Apply for a Certificate of Lawfulness of Proposed Works to a Listed Building (England)

Since 2016, it has been possible (in England only) to apply to the LPA for a **Certificate of Lawfulness of Proposed Works to a Listed Building (CLWLB)**¹⁹. If granted, this confirms that the works you described do not require LBC. Its effect lasts for 10 years. There is no fee. A decision has to be taken in six weeks (as opposed to eight for LBC). A refusal can be appealed. A CLWLB cannot be used for work which has already been carried out, or for demolition.

This (it followed lobbying by the CLA) is meant to be a light-touch procedure. In practice, however, LPAs may make the same information demands they would for a LBC application (the Planning

¹⁸ See *Chambers v Guildford BC* [2008] EWHC 826 (QB), and Mynors p 418.

¹⁹ 1990 Act section 26H. See the [Planning Portal advice](#) (there is no substantive HE advice on CLWLBs).

Portal advice even suggests pre-application discussions with the LPA!), so the work involved may be as great as for a LBC application. There is also potential for delay: some LPAs handle CLWLBs quickly, but it may take six weeks and then refuse the application, in which case you would then have to appeal the CLWLB refusal, or make a LBC application, or make a CLWLB application for different works.

In a CLWLB application the onus is on you to show that LBC is not needed for the works described. You need to check the application thoroughly, and not leave out anything material, because (unlike LBC applications!) making a misleading statement in a CLWLB application is an offence, and also could lead to revocation of the CLWLB.

6.8 Apply for LBC on a ‘without prejudice’ basis

This is a normal LBC application, but annotated “without prejudice to our belief that LBC is not required for these works”. This probably makes little difference in legal terms, but might encourage the LPA to decide that LBC is not required, or at least allows you to continue to maintain that LBC was not needed while (if LBC is granted) enabling you to carry out the work.

6.9 Defer the issue

Many people probably decide to defer the work to a point at which they will be making a LBC application for other work (this kind of retreat from hard-to-navigate bureaucracy may lead to a great deal of desirable work to listed buildings not happening at all).

7. PLANNING PERMISSION

As noted in the Introduction, some works require planning permission, some LBC, some both, some neither. This section is only a brief summary, because much work to listed buildings does not need planning permission, and because planning breaches are not generally criminal.

Planning permission is needed²⁰ for ‘development’, defined as ‘building or engineering operations’ or ‘a material change of use’. The scope of ‘building or engineering operations’ is wide, but importantly:

- they are **defined to exclude internal work, and external work which is not ‘material’**
- **much external work is ‘permitted development’**, a long list of specific works (like house extensions, porches, access roads, external painting) in the **General Permitted Development Order** (GDPO; different versions in England and Wales) for which the Order grants planning permission. Where this applies, planning permission already exists, and you do not need to make a planning application (though some forms of permitted development require an application for ‘prior approval’). You can seek a **Certificate of Lawful Use or Development**²¹ which confirms that planning permission already exists; that is optional but probably wise in many circumstances. Note that the GDPO excludes some, but by no means all, permitted development rights where work is to a listed building and/or in its curtilage. They can also be specifically withdrawn by conditions in a previous planning permission, or (less

²⁰ Town & Country Planning Act 1990, especially s57.

²¹ CLEUD, Town & Country Planning Act 1990 s191-3. There is a CLA Guidance Note on CLEUDs.

usually) by the LPA in an **Article 4 Direction**. Where permitted development grants planning permission, it does not of course grant LBC.

- demolition is 'development', but is usually permitted development, though this can be a complex question. Again, permitted development does not grant LBC.

In practice, you are likely to need to make a planning application (in addition to LBC where applicable as above) only when you are proposing:

- a change to the external appearance of a building which is 'material', and not covered by permitted development as above, and/or
- other development like new buildings or walls or fences, unless covered by permitted development, and/or
- a material change of use, unless covered by permitted development.

Purely internal physical changes will not need a planning application.

In practical terms, if you do make both a planning application and a LBC application these are usually submitted simultaneously, using the same drawings and supporting material, so with one exception the additional cost of submitting a planning application as well as a LBC application is usually low. The exception is that **planning applications are subject to a fee**, likely to be at least £200 (even where the actual work costs less than that!), and sometimes considerably more.

8. SUMMARY TABLE

This table summarises whether LBC or planning permission are needed in specific cases, but **it is merely a summary and must be read in conjunction with the rest of this Guidance Note.**

Proposed work	Need for planning permission or LBC
Demolition of the <u>whole</u> of a listed building	Almost always needs LBC (see 3.2). Generally total demolition is permitted development (PD) not needing a planning application (but this can be a complex legal question, and in any case there are potential notification requirements).
Demolition of <u>part</u> of a listed building	Likely to be treated as an alteration, not as demolition. Needs LBC if it affects special interest of the building. Needs planning permission if it is a 'material' external change (unless it is PD).
Material alteration to <u>exterior</u> of a listed building	Needs LBC if it affects special interest (which it probably would if 'material' in planning terms). Needs planning permission (unless it is PD).
<u>Internal</u> physical works to a listed building	Needs LBC if it affects special interest. Does not need planning permission .
Change of <u>use</u> of a listed building without any physical work	Does not need LBC . Needs planning permission if a material change of use not covered by PD.
Alteration or extension work to a ' <u>curtilage structure</u> ' ²²	Generally as for a principal listed building as above, but much work may not need consent if it does not affect the special interest of the listed building as a whole.
Building a new building <u>near</u> (or in the curtilage of) a listed building	Does <u>not</u> need LBC if physically separate. Needs planning permission (unless PD).
Alteration or extension work which is <u>permitted development</u> (note that permitted development may be different where a building is listed – check for each category of PD)	Needs LBC (irrespective of PD) if it affects special interest. Does not need a planning application if it is PD.

²² See 3.4 above and CLA Guidance Note *What listing includes*.

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