Consultation Response

Draft Historic England advice note: *Listed building consent*

Historic England consultation

Date: 21 December 2020

A. Preface

1. This is draft new Historic England (HE) advice on listed building consent (LBC), aimed primarily at owners of listed buildings, especially residential listed buildings, and at consultants, local authorities, and others. It will be a Historic England Advice Note (HEAN). These sit beneath HE's three over-arching Good Practice Advice Notes, which in turn sit underneath the Planning Practice Guidance (PPG), the National Planning Policy Framework (NPPF), and the relevant legislation.

2. This consultation can be found at or from https://www.historicengland.org.uk/about/what-we-do/consultations/guidance-open-for-consultation.

B. The CLA and listed buildings

3. The CLA's 28,000 members manage and/or own at least a quarter of all heritage, including a probably-similar proportion of listed buildings and structures covered by listing. The CLA is thus by far the largest stakeholder organisation of managers and owners of heritage.

4. Our members believe strongly in heritage protection, but are concerned that it works effectively and proportionately, and safeguards heritage by allowing it to be changed in sympathetic ways to ensure that, as far as possible, it is financially viable and relevant in the future. This approach is of course the same as Historic England's 'Constructive Conservation' policy.

5. CLA members are extensively involved in the repair of and change to heritage assets of all types, and paying the costs of all this. They make many thousands of listed building consent (LBC) applications and heritage-relevant planning applications each year.

C. General comments

6. It is hard to overstate the importance of this advice. Although the current LBC system has been in place since 1968 - more than 50 years - there has been an astonishing absence of any substantive advice explaining how it is supposed to work, or when LBC is or is not

required. Given the Draconian penalties - enforcement, criminal prosecution - for getting this wrong, this is obviously a serious problem for listed building owners, who at best feel uncertain, and at worst are threatened with prosecution and/or enforcement following work which they did not think broke the law. But the harm is much greater than that. Artificial uncertainty over the need for LBC loads under-resourced LPAs with more enquiries, enquiries which - especially in the absence of advice - are difficult to answer. Claims by many LPAs that almost any work to listed buildings requires LBC feed perceptions that the heritage protection system is wholly arbitrary and disproportionate. The practical problems (see point 19 below), the lack of clear advice over five decades, the widespread perception of uncertainty, and the resulting waste of scarce resource in LPAs and elsewhere ramp up risks and costs, and negative perceptions of the heritage protection system. This - especially damagingly - discourages change, change needed if listed buildings are to survive; and discourages people from buying and owning listed buildings at all. Confusion about the need for LBC is notorious, a constant criticism from those who strongly support heritage protection, and a stick with which the whole heritage protection system is beaten by those who want to undermine it. The system also often fails to stop undesirable change.

7. Subject to the points below, all concerned with heritage should thus welcome this draft Historic England advice. It has the potential, if carefully completed, to be excellent advice which can, alongside other changes, greatly improve the LBC system and heritage protection as a whole.

8. On the other hand, **if not carefully completed it could fail to achieve that, or indeed be harmful, increasing uncertainty, and especially by triggering many more LBC applications** in cases where the legislation does not in fact require LBC.

9. We have comments, **the most important shown in bold**, as follows:

D. Specific comments on the draft document

Summary

10. This Summary is excellent, especially in emphasising from the beginning the helpfulness and importance of the staged approach, and of expert advice.

11. We would suggest tweaking the wording of the final sentence slightly to read "…information aimed primarily at owners of listed residential properties…", so that it covers flats.

12. It would be useful also to add that "it may have relevance, where appropriate, to non-residential property", or words to that effect. Much of it of course will be relevant: work to the roof of a listed shop may raise identical issues to the roof of the listed house next door. There is a lot of non-residential listed property, like small shops, and a carefully-worded indication like this may forestall accusations that "HE is ignoring non-residential property", and resource-wasting arguments about whether or not this advice can be applied.

1. Introduction

13. The Introduction is mostly excellent, setting out the background and outlining the conservation process, especially the need to understand significance and the need for proportionate expert advice. **Particularly important is the text early in paragraph 3 about change, and in paragraph 4 about understanding of significance, proportionality, and balance** ("An inflexible approach… either by the LPA… or the applicant… may prevent new life being brought to listed buildings. A well-informed, reasonable and proportionate approach on both sides… is essential").

14. The Introduction would however benefit from two changes. Firstly, **in paragraph 3, it should be made clear (as it is elsewhere) that significance/special interest needs to be understood by the owner before any proposals are drawn up** - this is not something to be done at the last moment before an application is submitted to the LPA. So this could read "The special interest of the building needs to be analysed and understood before any proposals are drawn up, and both special interest and the impact of the proposals on that special interest must be analysed proportionately in the application to the LPA…". Without that analysis right from the start, understanding is likely to be limited, the proposals may well erode significance, and the application may well be waffle, or post-hoc justification.

15. Secondly, **the word "may" in the last sentence of paragraph 3 is inconsistent with the NPPF and PPG**. If the public benefits (as defined in PPG paragraph 020) of the proposal outweigh minimised harm, then under the NPPF the LPA clearly should grant consent: this does not depend on whether the sun is shining or a planning officer feels in a good mood.

2. Legal and policy background

16. The extracts from the legislation, NPPF, and PPG are helpful and important.

Do I need listed building consent?

17. **The text in the bullet "Works which definitely require LBC" requires amendment**. While it will usually be true that reconfiguring a staircase or changing a roof structure need LBC, there are cases - where the structures involved are (say) postwar alterations manifestly of no (or negative) significance - where the special interest of the listed building will not be affected, and the legislation therefore does not require an LBC application. The underlying point here is covered further below (see especially point 67), but the best way to handle it here would simply be to give examples which would always need LBC, like "reconfiguring a Jacobean main staircase, or a prominent C18th roof".

18. The draft sensibly says in paragraph 6 that the s7 wording will be abbreviated in this document to "affect special interest", so **for consistency line 2 in the bullet "Works where LBC might be required" should be amended so it reads "affect special interest"**, not the vaguer-sounding "affect the character".

Achieving certainty as to the appropriate consent

19. Much - perhaps most - work to listed buildings is of course repair or routine updating, which if carried out appropriately does not affect special interest, and thus under the 1990 Act does not require consent. One of the major problems in the current system is the absence of any substantive advice on this, exacerbated by repeated statements that "if in any doubt whatsoever, it is essential to apply for LBC/consult the LPA". In the absence of advice, there is always the potential for some doubt, and this has several very malign outcomes. Some owners do attempt to consult the LPA, often (see 22 to 25 below) with little success, loading under-resourced LPAs with hard-to-answer enquiries. Others make 'precautionary principle' applications: even if they are 99 per cent sure that LBC is not necessary, they apply for LBC anyway, because there is a 1 per cent chance of being wrong and the penalties are Draconian; this adds significantly to the number of applications in the system. Others decide that 99 per cent confidence is enough and do not apply, but then have to live with a fear that the LPA may later threaten enforcement action, that allegedly-"illegal work" could be reported to the LPA by any neighbour with a grudge, or that a potential purchaser will claim that "illegal work" has taken place and demand a price reduction. As noted in point 6 above, all this strengthens adverse perceptions of the LBC system. One of the key roles of this HEAN should obviously be to reduce these malign outcomes as far as possible.

20. The final sentence in paragraph 7 ("Using this advice note carefully should make that unlikely…") at least begins to reduce these problems. To some extent, an owner who has followed this HEAN could have a little more confidence that the LPA would not prosecute or take enforcement action.

21. **It would however be much better to amend the wording of the final sentence of paragraph 7 to read** "Using this advice note carefully should make that unlikely, in that an applicant who has understood and used this HEAN properly, and decided reasonably that LBC is not required, should feel sufficiently confident that the LPA will not prosecute or take enforcement action (or that if it did there would be a sufficient defence). Enforcement and prosecution should only happen in cases where there has been clear harm to the public interest, and the LPA should where possible seek a solution with the owner on the ground, rather than enforce or prosecute…". That of course accords with policy, which discourages enforcement or prosecution unless there has been clear harm to public interest [1]. It would also be better to add ", if required" at the end of paragraph 7.

22. Paragraph 8, unfortunately, is not a good description of the real options on the ground.

23. Firstly, the 'Exchange of correspondence' option is in practice often not available, and therefore as drafted would create unrealistic expectations. Most LPAs are short of staff with the skills needed to answer questions like "do I need LBC to refit my kitchen?", not least because there is often no easy yes/no answer: LBC might be required if it were done incompetently, but not if it were done well, and explaining the difference takes time, a very scarce resource. In practice (with some exceptions), it is often difficult even to make any

[1] See for example PPG paragraph 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).

substantive contact, let alone get a substantive answer, and many responses simply refer the owner to the LPA's paid-for pre-application advice package (see next point).

24. Pre-application advice has numerous problems in practice: it can sometimes be excellent, but often is slow or even unavailable, does not provide certainty, or conflicts with the LPA's later view; and in particular of course a £500-£1,000 pre-application advice package is a wholly disproportionate response to a question like "do I need LBC to rewire my house?" This is not a general solution to the problem.

25. Certificates of Lawfulness are little used, presumably because they involve almost as much work and cost as a LBC application, and/or because of a perception that the LPA will, after six weeks' delay, require a full LBC application. Again they are not a general solution.

26. The problems with paragraph 8 can be greatly reduced in two ways. **Firstly, this HEAN, if carefully completed, would help greatly by providing sound answers which will help both owners and LPAs** - a compelling reason for completing it carefully. **Secondly, the list in paragraph 8 should give a further option which should come first: seeking expert advice**. Professionals do often now refuse to advise on this, because the current "if in any doubt whatsoever…" (see point 19 above) approach leaves them very exposed, but if this HEAN is carefully completed, including text like that suggested in point 21 above, it becomes much easier for professionals armed with this advice to advise owners confidently that LBC is not needed in cases where it is not.

27. Finally, in paragraph 8, third bullet, lines 2 and again in line 5, "affect character" should read "affect special interest" (see 18 above).

3. Making successful applications for LBC

28. This section is again generally excellent, especially in setting out the staged approach, and stressing the need for "analysis", not waffle. Several areas need further development:

<u>The staged approach to decision-making</u>

29. It would seem sensible to include setting in the second bullet point, to ensure that it is not (where relevant) forgotten.

<u>Analysing special interest</u>

30. Paragraph 12 repeats the NPPF requirement for proportionality, but that is too vague to be of real practical use. **Specific advice is needed, essentially that "in simple cases in which impact on significance is limited a few paragraphs may be enough, but more detailed analysis will be needed in more complex cases where impacts are greater"**.

<u>List descriptions box</u>

31. In line 6, suggest inserting "necessarily" before "a comprehensive or…".

32. Similarly in second paragraph suggest inserting "necessarily" before "indicate that…"; and **removing "any" before "doubt"** - "doubt" is enough without ramping this up.

Listed building consent and planning permission

33. In paragraph 18, replace "character" with "special interest" (see point 18 above).

Development permitted under the GPDO

34. This may belong under planning permission rather than a separate heading, and needs brief explanation. It should probably be called 'permitted development', a term with which more readers will be familiar.

Listed buildings and their setting

35. This would be clearer and simpler if it said something like "A proposal may impact not only on a building itself but also on that building's setting, including other heritage assets. That may potentially include heritage in different ownership, area heritage designations like CAs/WHSs…, and heritage assets which have not been formally designated. Setting can sometimes stretch beyond the immediate area, in some cases well beyond. Following the staged approach should make clear what (if any) settings issues arise; in many cases these may be limited or, especially for purely internal works, nil. If a proposal appears to have significant impacts on setting, there is further guidance in GPA3…"

Fixtures and fittings, and curtilage

36. "What is covered by listing" is the main purpose of this section, and would be a clearer title.

37. Generally this section covers this subject accurately. **The first sentence of paragraph 24 however is misleading** (or at least incomplete)**. It should be made more accurate by inserting "pre-1948 and ancillary" before "structures in its curtilage", and adding "ancillary" before "structures fixed to the building"**. It is well-established in all case law from *Debenhams* onwards that attached and curtilage buildings are only covered by listing if they were ancillary at the date of listing.

38. Similarly, in paragraph 25 line 2 **it is important to add the word "ancillary" before "connected buildings"**.

39. The last sentence of paragraph 25 might better begin "There can sometimes be grey areas…" because these are relatively unusual. The footnote could usefully refer specifically to *Berkeley v Poulett* [1977], which remains the key case on this and set out/clarified these two 'tests': that case is easily available online, and otherwise there is very little reliable freely-available guidance on this.

40. The first two sentences of Paragraph 26 are the best explanation of statute and case law on the listing of non-attached structures in any HE guidance so far, and should lead owners and LPAs to accurate conclusions. This is not in fact very complicated (it would be better to tone down the beginning of the final sentence, to "This may depend on…").

41. **A vital element is missing from this section**. **It is essential to add that, as GPA 2 paragraph 15 says, structures or fixtures covered by listing in these ways are covered simply by operation of law, and do not necessarily have special (or any) interest**, referring to GPA 2. Their interest may be special, or less-than-special, or nil, or negative. This is important, because many LPAs do not seem to understand this, and (for example) insist on the "preservation" of collapsing sheds plainly of no interest whatsoever, on the basis that they "are listed buildings" and therefore must have special interest. This contributes considerably to the widespread perception (see 6 above) that the LBC system is an arbitrary nightmare - a perception this HEAN is presumably trying to get away from!

Listed building consent and archaeology

42. The draft text implies that all LBC applications will involve a high degree of archaeological interest, and that an archaeological investigation probably needs to be carried out, as a separate exercise, by archaeologists. The implication is that (say) a minor internal change to a terraced house, or the replacement of a garden gate, require a separate archaeological survey, in addition to a historic building heritage analysis, and carried out by a separate professional. Given that few applicants currently are using even one genuinely-heritage-skilled professional, this looks distinctly unrealistic. Even if it happened, in nearly all cases it would be unrewarding work, resented by the client, which would add little to what a competent historic buildings professional, reminded by the guidance that he/she needs to include archaeological interest, would say about (for example) the significance of a wall that has been added or removed. Such advice would increase the already-worrying number of LPAs which routinely demand an "archaeological assessment" with every LBC application when there is no reason to think that anything of substantive archaeological interest will be found, which greatly annoys applicants and – being so obviously disproportionate – significantly damages the reputation of the heritage protection system. It would seem much better to clarify the small but important minority of cases in which archaeological interest does require an archaeologist, and thus to maximise the chance that archaeologists will be employed where there is a real and publicly-valuable job for them to do.

43. Secondly, although the draft does (like the NPPF) use the word "proportionate", it does not give this (mainly lay) audience any idea of what that means in practice. Submitting a paragraph of waffle, or a 100-page report, could both be argued to be "proportionate" in the same case. Is this saying that a £750 archaeological study is enough, rather than a £1,500 study, when in most cases neither would add sufficient value to a competent historic building heritage analysis? **Specific text is needed on proportionality (see point 30 above)**.

44. **This section therefore needs to explain archaeological interest briefly, to say that most listed buildings will, at least to some extent, hold archaeological interest, and that archaeological interest always needs to be taken into account in the analysis of significance. In most cases that can be done simply as a brief part of that analysis of significance by a suitable historic environment professional, rather than separately by an archaeologist. In a small minority of cases where archaeological interest is unusually great - for example where buildings have been altered over time in ways that each have substantial heritage significance and might be affected by potential proposals, and/or where there are significant below-ground archaeological features (whether related to the current building or not) on which the proposals could have significant impact, a specific and proportionate archaeological analysis will be**

needed, following HE's *Understanding Historic Buildings: Guide to Good Recording Practice* (2016), and/or CIfA's published standards.

4. Making applications for listed building consent

Chapter titles

45. The titles of chapters 3 and 4 are almost identical. It might be less confusing if chapter 4 were renamed "The listed building consent application process", or similar.

Finding expert advice

46. If an expert is being employed it is much more effective and cost-effective to do that from the start, so as to arrive at the best proposal, and not just to write a "statement" long after proposals have been developed, proposals which might be sub-optimal if they have not taken account of significance. **Paragraph 32, line 6, therefore ought to read "…helpful in analysing and understanding significance, and then helping to develop proposals which respect that significance, to develop a written analysis of significance and impact, and to identify the level of information…"**.

The use of conditions

47. **This cannot be good advice on conditions unless and until it refers to NPPF paragraph 55 and the Government guidance on the use of planning conditions**[2].

Annex 1 - Advice on works for which listed building consent may not usually be required (pages 15 to 56)

General notes (page 15)

48. Paragraph 2 is excellent, except that the central part is confusing because it repeats the wording about obtaining certainty. In lines 3 to 4 it would be better to delete the part that begins "through an exchange…", because this is repeated below.

49. The second half of paragraph 2, especially from "If an owner follows the staged approach…" to the end, is useful in helping to solve the serious problems discussed in point 19 above.

50. Paragraph 5 would benefit from some re-writing, so that it reads "…the absence of a particular type of work from the list does not suggest that it does (or does not) need LBC."

51. It would be very useful to add a further point here, that it is important to distinguish the question "does this work need LBC?" from the question "should LBC for this work be

[2] See here.

granted?" These are separate questions, and if work does need LBC that does not mean that LBC should - or should not - be granted. This may sound obvious to experts, but it causes misunderstanding in practice.

52. **Further text is probably needed here, to address the crucial issues set out in points 65 to 69 below, and in particular to prevent this advice generating yet more, rather than fewer, unnecessary LBC applications**.

53. **It would also be desirable to stress the importance of using appropriately-skilled craftsmen for all work for which that is appropriate**, not only because that is likely to lead to better physical outcomes, but because it may often impact directly on the need for LBC: if you follow the staged approach, and employ a skilled craftsman to replace your roof, that should not affect special interest (even if not 100 per cent identical), and should not need LBC; but if you employed a 'cowboy' builder the result probably would affect special interest and thus would require LBC.

Definitions (page 16)

54. **The notion that "small scale and localised" work does not need LBC, but that larger-scale work always does, is very problematic - see point 66 below**. The "small scale and localised" definition is therefore probably not necessary here.

Maintenance and repair box (page 17)

55. Whether work is maintenance as opposed to repair does not necessarily impact on whether it needs LBC, and **the wording is confusing in parts, and not consistent with the rest of the document. It would seem better simply to remove this box**. If it were retained, the text would need further work.

Illustrations (pages 17 to 20)

56. It is obviously important that this section is wholly consistent with the Table.

57. In illustration 1, at the end, "obtaining expert advice" should be added, in front of the other certainty options, all of which involve extra work for the LPA (see 68 below).

58. In illustration 2, the sentence "However, a change of more than…" conflicts with Table item 1(iii), where (a) explains where greater changes of colour would not affect special interest. **The more detailed treatment given in the Table is surely correct on this**.

59. Illustration 5 does not cover the frequent situation in which some parts of a building are of less or no interest, and need less stringent treatment accordingly (see point 67 below; this **can be solved here using the "unless…" formula suggested there**).

60. In illustration 7, **the words "small-scale and localised" should definitely be deleted from line 1**, to avoid the implication that larger scale rewiring, even with no impact whatsoever on special interest, must always need LBC (see points 66 and 92 below).

61. **Illustration 9 would benefit from reordering**. It would be much clearer if the sentence "The removal and replacement…" were moved up to line 1, before "Kitchens may retain…", so that the general point precedes the exceptions, as in the Table.

62. In illustration 10, suggest **truncating sentence 3 after "…about redecoration"**, because as drafted it has the inconsistency problem in 58 above.

The table "Advice on works for which LBC may not usually be required" (pages 21 to 56)

General comments on the table

63. **The overall approach taken in the table, including its columnar approach, is excellent**, as is much of the content.

64. There are however some generic problems, and some more specific issues, noted below.

65. **The generic problems if not addressed are likely to burden LPAs with many more LBC applications** in situations in which most experts now assume that LBC is not required, including risible situations in which LPAs would say that while they do not think LBC is needed, they are forced to require an application because this HEAN says that it is. **This is presumably not what this HEAN is intended to achieve!**

66. The first generic problem is the assumption in many places that small-scale work does not affect special interest or thus need LBC, but larger-scale work must. The legislation of course makes no reference to scale, only to 'special interest'. It is not self-evident that larger-scale works inevitably affect special interest where small works do not, and indeed of course the opposite is often the case: a 'cowboy' builder can harm special interest by working incompetently even on a small area, but a craftsman carefully replacing a whole roof or repointing a whole wall is unlikely to affect special interest. **The assumption that larger-scale works must automatically affect special interest and therefore must require LBC should be removed** (except in any specific instances in which there is compelling evidence). If it remained, that would generate large numbers of extra LBC applications, substantial extra costs for both LPAs and owners, and no obvious benefit, given that these are by definition cases least likely to cause harm, cases in which experts and many LPAs would currently say LBC is not required. It seems unlikely that Government would be impressed by this. Specific instances of this problem are set out in the comments below on individual items in the table.

67. The second generic problem is the (perhaps unintended) presumption in some places that all parts of a listed building are of special interest, combined with frequent use of the word 'always'. Examples of this are set out below. Changing a Jacobean front elevation almost certainly affects special interest and would thus need LBC; changing an ugly 1950s rear

extension would probably not affect special interest and thus does not "always" need LBC. **This can and should be solved with careful language**, including the use of two formulae already used in the Table: either "LBC is not required for xx, except where yy is of particular interest" (see item 36, col 3); or "zz would usually affect special interest, unless in a clearly non-significant part of the building" (see item 37, col 3). Otherwise, again, this would generate significant numbers of additional LBC applications.

68. A third generic problem is the frequently-repeated advice to consult the LPA or apply for a CLWLB, which would burden LPAs with hard-to answer enquiries and raise unrealistic expectations of LPA resourcing. This HEAN should (and in many places does) reduce the problems, by reducing uncertainty, but **it should also suggest that the owner takes appropriate professional advice before suggesting he/she approaches the LPA**. Again, specific instances of this are set out below.

69. A fourth generic (though more editorial) problem is the frequent use of "this may affect special interest and therefore needs LBC", in which it is not obvious that the second element depends on the first. **This would be clearer and more accurate if changed to wording like "xx may affect special interest, in which case it would need LBC"**. **This occurs quite frequently in the draft and not all cases have been listed below**.

70. Finally, the table does not (with minor exceptions like the replacement of wired glass with more appropriate glass) deal with works which are clearly desirable, like removing an ugly and inappropriate postwar window and replacing it with a historically-appropriate window. This is a major problem, because the need for LBC is a huge hurdle in these cases, greatly increasing the cost and complexity of carrying out such work. In many or most cases, given that the work is often inherently very expensive, this is a 'killer' hurdle which stops the work being carried out at all. It also intensifies poor perceptions of the LBC system by giving the impression that it deliberately discourages these works: that it is fine to replace a PVCu window with another PVCu window, but if an owner wants to do something better, maximum obstacles should be put in the way. **If these categories of work cannot be addressed in this HEAN, it is vital to address them in a different way, by creating Listed Building Consent Orders which allow the work to take place without LBC** (see the Historic Environment Forum/HEPRG proposal D8 [3]).

<u>Table item 2 Preparatory work etc</u>

71. Item 2 exception (ii) is an example of the scale problem referred to in 66 above: **it needs to be amended**, or it would generate significant numbers of additional LBC applications in cases where like-for-like wholesale replacement by a craftsman is unlikely to impact on special interest, and is currently seen as like-for-like repair not requiring LBC.

<u>6 Draught-proofing of doors</u>

72. Exception (i) is dangerously excessive in effectively requiring LBC in all cases in which channels/grooves are cut into doors or frames. This point applies even more to windows, which are also considered here (see points 77 and 99 below). Historic doors and windows are widely (and often rightly) perceived as very draughty and "energy-inefficient", and most

[3] See here, the 2016 Summer consultation paper, proposal D8.

channels/grooves (especially in windows) are invisible or non-obvious. Exception (i) as drafted is therefore dangerous to the reputation of the LBC and heritage protection systems, easily presented as "idiotic nit-picking bureaucrats wrecking the planet for reasons which are not even visible", to yet more pressure for wholesale replacement of doors and windows, and as a strong reason for governments to relax LBC requirements (see the August 2020 Planning White Paper, Principle 18). Draughtproofing has saved huge numbers of historic doors and windows from the tidal wave of (high-carbon) PVCu, and HE should think very carefully before taking any action that makes draughtproofing more difficult. In addition to this reputational damage, this draft wording would lead to more LBC applications; to owners deciding not to draughtproof (which would be very prejudicial to the reputation of listed buildings and the LBC system, quite apart from the planet); and to owners deciding that this advice is self-evidently wrong and ignoring it. **This needs to be amended by removing the reference to channels/grooves above, and amending exception (i)** to something like "(i) the cutting of channels or grooves in cases where these would be visible and would affect historic fabric of real significance, or would harmfully weaken the structure of the window/door". This could also reference the HE advice on draughtproofing[4].

7 Blocking a doorway

73. At end of third column, add "unless in a clearly non-significant part of the building" (see 67 above).

8 Repairs to windows

74. In col 3, second paragraph, add reference to expert advice (see 68 above).

75. Exception (i) strongly implies that complete replacement of a window always needs LBC. That raises the issues in 66 and 67 above: this might perhaps be true in a main elevation at Longleat, but surely cannot be true of all like-for-like window replacement in ordinary listed buildings, especially in lower-significance or no-significance elevations or extensions. **This wording would generate large numbers of extra LBC applications and surely needs modification**.

76. The carefully-caveated wording in (iii) col 3 about replacing lost glazing bars is welcome.

10 Draught-proofing of windows

77. See point 72 above - these points apply (even more) to windows.

13 Re-pointing

78. While this item probably does need to refer to the HE advice on re-pointing, the statement in that advice that re-pointing almost always needs LBC is clearly incorrect - it only needs LBC where it affects special interest - so **the advice in this table needs to be as clear as possible**. This is a further instance of point 66 above: the draft appears to require LBC - or at least taking up resource in the LPA - for all re-pointing other than of "small areas",

[4] See here.

even if undertaken like-for-like by craftsmen. **The text needs amendment to place much more emphasis on special interest rather than just scale**.

79. In that context the notes in col 3 are helpful in principle but would benefit from re-ordering: earth and bird's-beak pointing are not frequent and probably better dealt with at the end. The text about certainty should mention expert advice (see 68 above).

14 External plaster and stucco

80. Exception (ii) is a further example of the scale issue in 66 above, though it does at least use the word "may". "May" should be inserted before "need LBC" (see 69 above).

16 Repairs to slate etc roofs

81. Col 3 and exceptions (i) to (iv) provide several examples of the problem in 66 above, especially the repeated use of the words "always require LBC". **Much more nuanced wording is essential**, perhaps incorporating the "unless in a clearly non-significant part of the building" formula.

17 Thatch

82. The initial paragraph about minor works appears ambiguous: presumably it means that these minor works, being unlikely to affect special interest, do not need LBC.

83. Exception (i) is a further example of the scale problem in 66 above: it appears to be saying that all non-minor work, including like-for-like replacement by skilled thatchers (even the same thatcher), always needs LBC. That is not current practice, and would thus generate many more LBC applications, and significant extra work for LPAs, in addition to the additional burden and delays for owners and thatchers (who already face serious and longstanding problems with availability and quality of thatching materials). This is surely not what this HEAN is intended to do. Again, **this should be amended**.

18 Lead and other metal roof coverings

84. Column 3 in this section needs significant changes if it is not to do significant harm. The problems here are again the scale problem (see 66 above), and again the assumption that all fabric and every roof is of special interest, and the use of the word "always" (see 67 above). The approach set out here - essentially that anything other than minor repair always needs LBC - is not correct in law: the re-roofing of even a whole roof like-for-like by a skilled leadworker will not necessarily affect special interest, especially where the roof is not that of (say) Longleat, but a low-significance 1930s extension to an altered subsidiary frontage in an everyday building. Replacing lead is extremely expensive, and **it is vital that HE does not put obstacles in the way**, or owners will just continue to put out buckets under leaks, threatening the fabric of the building, or some (not CLA members, of course) will surreptitiously replace lead with asphalt or GRP.

85. Moreover, the initial paragraph implies that changing lead code is always harmful, which is incorrect, and explicitly says that any such change always needs LBC, which is incorrect: a change from (say) Code 5 to Code 6 is by itself unlikely to affect special interest, and in

most cases is unlikely to affect special interest even if there are consequent changes as suggested: is a change in bay width of a few centimetres, or in the number of steps in a valley gutter, really going to affect the special interest of the listed building in all cases? The increase in lead code might be very desirable, considerably increasing quality and lifespan. Does HE really want to strongly disincentivise this by creating further bureaucratic hurdles? An owner in this situation, told that increasing the lead thickness will not only add thousands of pounds to the cost of materials, but also will need LBC, requiring expensive detailed drawings, a heritage analysis, and a delay of at least three months (possibly much more if winter is approaching), might well decide to stay with Code 5 lead where Code 6 would be better, which is surely not in the interest of the building.

86. **This section needs a more considered approach, moving away from "always" wording: what matters is the quality of the work, not just lead codes or bay sizes or step numbers or preserving the status quo** (which may be mid-C20th work, not always of the highest quality) as if that must, by definition, always be best. The text should encourage the use of skilled leadworkers, and using the right codes of lead.

20 Works to chimneys

87. Col 3 should probably read "Rebuilding a chimney… would need LBC if the change affected special interest"; and a similar point applies to exception (i).

21 Rainwater goods

88. **The "unless…" formula should be added to exception (i)** (see 67 above); and the "would need LBC" wording there and in col 3 should be clarified (see 69 above).

23 Gates and railings

89. The text in col 3 about new gates and railings probably needs clarification: these may need planning permission, but not LBC unless they physically affect structures covered by listing.

27 Television aerials

90. The text is fine on replacement aerials, but would be more helpful if it added circumstances in which new aerials would not need LBC, ie again when inconspicuously placed.

33 and 34

91. The references to consulting the local authority should also suggest professional advice (see 68 above).

35 Electrical installations

92. **The opening paragraph would be better if put in the same format as others**, ie if it said that rewiring carefully carried out should not affect special interest and thus should not need LBC (ie without the rather confusing references to "wire ways in good condition"). In the second paragraph, alterations to buried cables would hardly ever affect special interest.

93. Exception (i) should probably read "…LBC may be needed if this would involve harm to sensitive historic plasterwork in significant parts of the building…" or similar; otherwise this might trigger LBC applications in cases where there is no effect on special interest.

38 Internal plaster

94. **Exception (ii) should be amended** (see the scale issue in 66 above), or it would be likely to generate significant numbers of new LBC applications (or to be widely ignored).

95. Col 3 - at end, add "unless in a clearly non-significant part of the building" (see 67 above).

41 Wall panelling etc

96. In exception (ii), add "unless in a clearly non-significant part of the building" (see 67 above).

97. Exception (iii) should read "…may in some cases affect special interest, in which case it would need LBC".

98. The work described in exception (iv) and in col 3 adjacent is surely like-for-like repair which would not affect special interest and not need LBC.

48 Draught-proofing

99. In the second paragraph, change to "…features, may affect special interest, in which case they would need LBC".

100. Exceptions (i) and (ii) should be clarified, perhaps referencing to the specific HE advice on draught-proofing. See also points 72 and 77 above.

We would be happy to comment further on anything in this response.

For further information please contact:

Jonathan Thompson
Heritage adviser
CLA, 16 Belgrave Square
London SW1X 8PQ

Tel: 020 7235 0511
Fax: 020 7235 4696
Email: jonathan.thompson@cla.org.uk
www.cla.org.uk

CLA reference (for internal use only): A1903077
