

# Improving Listed Building Consent A Consultation July/August 2012

Consultation response from Rotherham Metropolitan Borough Council

For information: This is an officer opinion only which has not been ratified by the Council due to the consultation taking place during the summer recess.

**Question 1: Do you agree with the proposal to introduce a system of prior notification of works to a listed building, leading to deemed Listed Building Consent if the local planning authority does not request a full application within 28 days? If not, please clearly state your reasons and your views on the approach you consider the Government should take.**

In principle this could be supported.

Subject to: the standards for supporting information being clearly spelt out. The “formal note” confirming the outcome of notification would also benefit from having a national standardised format. In effect this would formalise what happens in practice already. A lot of deemed consent is currently being captured in Pre-Application advice, which is encouraged by the NPPF and which many LPA’s are now charging for.

There are reservations, however.

- In the consultation document the argument for a form of deemed consent is partially made by stating that 90% of applications are small schemes. However, just because a scheme is small (less than £100K) does not mean that it will not have a significant impact upon a listed building.
- The ‘simple prior notification’ suggested is likely to provide insufficient information for an informed decision to be made, works may well slip through which would be much more damaging than anticipated and works which under the present consent regime would be subject to conditions requiring the approval of fine detail would not be subject to such a condition.
- Moreover the burden is likely to be increased upon both the LPA and the property owner/developer due to the fact that this suggestion is likely to lead to a two stage process – i.e. a prior notification resulting in a request that a formal application be submitted especially where there are areas of uncertainty. In practice applicants are probably also going to need a steer from the LPA as to whether a notification is likely to give rise to an application or not and this in itself may be time consuming.
- Deemed consent could potentially slow down the process for borderline cases – basically adding 28 days to LBC.
- There is an assumption in the document that there are a lot of unnecessary LBC’s made. This is disputed - the fact that 9 out of 10 LBC’s are approved does not mean, therefore, that LBC is an unnecessary layer of bureaucracy.
- The default position of deemed consent being granted if the LPA does not respond within 28 days is particularly dangerous. It actually increases the pressure and hence the burden on the LPA and delays beyond the LPA’s control could result in harmful works being carried out by default
- What about council owned buildings – how would they get deemed consent?

- Any system of deemed consent potentially alienates both the general public and specific interest groups from the decision making process as inevitably, there would be no possibility of consultation within the 28 day period. Therefore a high probability of conflict/criticism.

**Question 2: If you are commenting from a Local Planning Authority, are you able to comment on the proportion of your LBC applications which require amendment or the application of non-standard conditions prior to consent? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.**

We place a strong emphasis on pre-application discussions on proposals affecting listed buildings. Experience shows that when this is carried out constructively, there is a greatly reduced need for amendments once a LBC application is submitted. There is significant usage of non-standard conditions largely because works proposed are individual to the specific building concerned.

**Question 3: Do you agree with the proposal to introduce a voluntary system of local and national class consents? If not, please clearly state your reasons and your views on the approach you consider the Government should take.**

This approach would be difficult to support. It is difficult to see how this could reduce the burden on either developers or the LPA. At the present time, if a class of work 'can be confidently identified as not harmful' the LPA can already make the judgement that these works do not need a formal consent. In addition, there is likely to be a huge burden on the LPA in putting a class consent system in place. We would have, for example, to identify the 'known unaltered survivals (which) could be specifically exempted from the class consent'. In effect this would require a listed building resurvey of the whole Borough, including internal inspections. There are over 520 Listed Buildings in the Borough. Essentially, a good evidence base would be vital to the success of these consents. It is doubted that the evidence base is strong enough at either a national or local level.

There is no indication as to whether class consent could be conditional on a range of requirements or subject to codes of practice. It is doubtful whether class consents, without such conditions, would meet the Government's stated aim in several places in the Consultation Document of ensuring that levels of protection of listed buildings are maintained.

On the positive, Class consents could relate to specific bodies with generic assets and specific works which might cover more than one LPA boundary (e.g. Network Rail or the Canals and Rivers Trust). This could be achieved by way of national Heritage Partnership Agreements as an alternative.

**Question 4: If you are commenting from a Local Planning Authority, are you able to comment on the likely applicability of this option (2) within your area, in terms of the kinds of listed building and type of works to which it might be applied? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.**

It is considered that a major problem with this proposal is the wide range of architectural types in the Borough ranging from former industrial buildings to nationally significant country houses. It may be possible to write class consents for one type of asset nationally, similar to what is already done with some Scheduled Monuments. However, this could prove extremely challenging due to the variation between types of building and the features which create an important part of their significance already highlighted.

**Question 5: Which of the options set out in this consultation to reduce the number of LBC applications for works with limited or justifiable harm to special interest (Options 1 and 2) do you prefer? Please state the reasons for your preference.**

Given a choice, there is a preference for Option 1. In many respects, this is what happens already in this Authority.

**Question 6: Do you agree with the proposal to introduce;**

**a) a Certificate of Lawful Works to Listed Buildings for proposed works;**

**b) a Certificate of Lawful Works to Listed Buildings for works already undertaken?**

**If not, please clearly state your reasons and your views on the approach you consider the Government should take.**

This option could in theory be supported. Proposed or retrospective lawful works certificates already exist in the planning system but not for LBC. This option would deal with the perennial nervousness about whether something needs LBC or not. A definitive answer would finally be possible and if the process efficiencies suggested for Option 1 were applied (ie. a 28 day turn-around) it could be nice and quick – making applicants happy. It may be useful in determining the exact extent of what has been agreed by an officer as not needing an application and avoid subsequent debate about the extent of agreed works.

Again with this option the level and kind of information required will be crucial. If the LPA were not able to establish the impact or harm from a CLW application, then they should be entitled to ask for LBC and more detail in order to be able to make their decision. There is a wider discussion to be had about the quality of information currently submitted under LBC and the need to improve this i.e. the quality of Heritage Statement can leave a lot to be desired yet this is not enough to prevent validation.

**Question 7: If you are involved in the Listed Building Consent system either in a Local Planning Authority or any other capacity, can you provide further information on the following;**

**a) possible numbers of LBC applications currently made due to the lack of a formal mechanism for LPAs to confirm whether or not consent is needed;**

**b) the numbers of informal requests received or made every year concerning the need for LBC;**

**c) how such queries are handled?**

a) Extremely rare.

b) and c) No detailed record of the numbers of informal requests made concerning the need for LBC is kept. However, we take pride in offering an 'open door' service when it comes to both Development Management and Conservation enquiries. Informal research suggests that owner/development satisfaction with the current system is high.

**Question 8: Do you agree with the proposal to introduce a system whereby accredited independent agents provide expert reports on LBC applications directly to the LPA? If not, please clearly state your reasons and your views on the approach you consider the Government should take.**

No.

The Planning system, including the operation of the Listed Building legislation, has always operated impartially in the public interest and despite the suggestion that controls and accreditation could be put in place the proposed approach would blur the demarcation between the regulatory function and development Interests. This is critical in terms of public perception in how the system operates. Because of this blurring of distinction, either actual or perceived, it could actually make the process more rather than less expeditious since distrust in such a process could result in additional, rather than fewer applications being referred to Planning Committee/Boards, thus introducing delay and increasing costs.

The Government acknowledges that nationally, the number of specialist conservation staff has reduced by over 20% over the last ten years (a period over which documents such as PPS5 and the NPPF have strongly suggested that there should be increased specialist input).

**Question 9: If you are commenting from a one of the professional institutes listed, are you able to comment on the likely impact on your institute of establishing, monitoring and administering such an accreditation system to support this option? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.**

Not applicable.

**Question 10: How should the existing heritage accreditation scheme be modified or replaced to accommodate this proposal? What professional standards and enforcement would be needed to cope with the potential conflict of interest, and should agent's scope be constrained through national government?**

If you disagree with the basic premise, this is difficult to answer.

**Question 11: Should the proposal for advice be extended further, as some stakeholders have suggested, for example allowing accredited agents to certify LBC directly themselves?**

No.

**Question 12: If you are commenting from an authority which is able to take action under Enforcement and Compulsory Purchase powers, can you give any examples of where you have done so, or can you comment on the reasons why you have chosen not to?**

**Question 13: Do you consider that amending the legal powers relating to Urgent Works Notices, Repairs Notices and Compulsory Purchase could be effective in encouraging authorities to pursue cases of neglect to listed buildings? If so, please clearly state your reasons.**

**Question 14: Can you propose any further changes or amendments, including non-statutory changes, beyond those suggested here, which would provide additional benefits or improvements to protect Buildings at Risk? If not, please clearly state your reasons and your views on the approach you consider the Government should take.**

Dealing with the issues surrounding Buildings at Risk takes up a significant proportion of officer time. The Council endeavour to follow the best practice guidance in the English

Heritage publication, 'Stopping the Rot'. This involves a combination of pro-actively working with building owners backed up with the implied threat of legal action. This approach has proved moderately successful and the Authority's record on Buildings at Risk is good. As an Authority, we are not averse to taking enforcement action and the serving of both Urgent Works Notices and Repairs Notices, however, the risks are high and we have had a recent example where the Authority was left with a substantial bill following repairs to a Grade 2 listed building when the (overseas based) owner went into liquidation.

A principal lesson to have been drawn from this exercise has, in the first instance, been to underline the need for significant funding to render statutory powers effective beyond the mere threat of action.

All of this illustrates that any remotely ambitious building at risk programme, i.e. one which seeks to implement multiple urgent works notices at any one time, requires a reliable source of public funds to underwrite it. Perhaps there is a role for a Regional Property Board or an Asset Board who could underwrite or own the asset?

The bottom line, certainly in terms of the difficult cases concerning everyday Grade II Listed Buildings, if LA's don't intervene then nobody will.