



ENGLISH HERITAGE

GUIDANCE NOTE FOR CROWN BODIES ON THE REMOVAL OF CROWN IMMUNITY AND THEIR HISTORIC ESTATE

Issued By:	Government Historic Estates Unit (GHEU)
Date Issued:	23/7/07
Author:	Michael Turner
Revision Number:	
Reviewed By:	Michael Harlow (EH Legal Director)

1.0 Introduction

- 1.1 Crown compliance with the planning acts was introduced on 7 June 2006 as part of the planning reforms covered by the Planning and Compulsory Purchase Act 2004. This note aims to provide general guidance on applications for planning permission, listed building consent and conservation area consent, by central government bodies and agencies, and other public bodies in England. It also re-states the requirements for obtaining scheduled monument clearance which is subject to different legislation.
- 1.2 The Department for Culture, Media and Sport (DCMS) has overall responsibility for heritage policy in England. DCMS is responsible for the listing of historic buildings and the scheduling of ancient monuments, as well as for scheduled monument casework. The Department for Communities and Local Government (CLG) is responsible for planning policy and casework, including listed building and conservation area consent.
- 1.3 English Heritage is sponsored by DCMS and is the government's statutory adviser on the protection of England's historic environment. This paper is written by English Heritage's Government Historic Estates Unit (GHEU) which is a team dedicated to advising central government departments, their agents and other public bodies on the management of their historic estates or sites in all parts of England. GHEU helps them to set a good example in caring for their historic estates by providing a central source of informal conservation advice and by giving formal statutory advice to local planning authorities as required. GHEU is willing to give repair or pre-application advice, bringing in other English Heritage specialists if appropriate, but departments should normally liaise with their own in-house conservation officers or advisers before approaching GHEU. For a select number of crown buildings and sites, GHEU also has a statutory role in processing formal casework, by giving advice to the local planning authority on listed buildings or planning applications, or to DCMS for scheduled monuments.

2.0 The Government Estate

- 2.1 There are eighteen government departments and agencies with historic estates in England, including over 1,100 listed buildings of special architectural or historic interest, and over 1,500 scheduled ancient monuments. Government is committed to ensuring that this historic estate is treated in an exemplary fashion. To assist in this in 2003 DCMS published the *Protocol for the Care of the Government Historic Estate* ([click to view](#)) which all government departments and agencies are required to adopt.

3.0 Crown Compliance

- 3.1 Prior to 7 June 2006, the Crown was exempt from planning legislation, but followed a quasi-statutory procedure for applying for planning and listed building clearance under DoE Circular 18/84 *Crown Land and Crown Development*. On 7 June 2006 the provisions relating to the Crown in the Planning and Compulsory Purchase Act 2004 came into force. These fully integrate the Crown into the planning system by making the Crown compliant with the following acts:

GUIDANCE NOTE FOR CROWN BODIES ON THE REMOVAL OF CROWN IMMUNITY

- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning (Hazardous Substances) Act 1990

3.2 Crown bodies or agents acting on their behalf now require planning permission, listed building consent or conservation area consent from local planning authorities according to the nature of the work or property. The necessary amendments to existing legislation are set out in detail in three Statutory Instruments:

- Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 (SI 2006 No. 1282)
- Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006; (SI 2006 No. 1283)
- Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 (SI 2006 No. 1284)

3.3 CLG Circular 02/06, *Crown Application of the Planning Acts* ([click to view](#)) gives guidance on the content of the Statutory Instruments and explains to local planning authorities and Crown bodies how applications from the Crown should be handled. The new circular revokes DoE Circular 18/84. It is not anticipated that the new arrangements will incur any appreciable increase in workload for departments as the previous quasi-statutory procedure under DoE Circular 18/84 was designed to mirror the statutory development control system.

4.0 Planning Permission

4.1 Planning permission will be required from the local planning authority for all development covered by the Town and Country Planning Act 1990. Currently, planning application forms are available from the local planning authority concerned. The application generally needs to be accompanied by a design and access statement, details of which are in Statutory Instrument 2006 No. 1063 *The Planning (Applications for Planning Permission, Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2006*. ([click to view](#)) Local authorities are committed to implementing e-planning, and many authorities now have a dedicated planning portal for the receipt of planning and listed building applications on line. CLG is also working to create a standard planning application form which is expected to become available later in 2007.

4.2 The new arrangements also provide permitted development rights for Crown bodies concerning matters such as aviation development, Crown railways and dockyards (Circular 02/06, paras 57-81). Permitted development rights obviate the need for planning permission, but do not disturb the requirements for Listed Building Consent, Conservation Area Consent or Scheduled Monument Consent (the latter is still only required by the Crown on a quasi-statutory basis – see section 7 below).

4.3 There are also special provisions for emergencies and development which has national security implications. Where a Crown body does not disclose full

details of a development on the grounds of national security, and it believes that the local planning authority would turn down the application down due to lack of information, it would normally ask the Secretary of State for CLG to call in the proposal. In these circumstances the Secretary of State can restrict disclosure of sensitive information to certain parties during the inquiry. Those not allowed access to certain material will have a special advocate to represent their interests. Full details are given in Circular 02/06 paras 6-23.

- 4.4 Applications are advertised by the local planning authority and the submitted plans made publicly available. However, Crown bodies submitting applications involving physical security measures can ask local planning authorities not to publicise such information on the planning websites, and to keep sensitive information separately from the main register (Circular 02/06 paras 24-25).
- 4.5 In very rare circumstances where a Crown body can make a case that a development is both of national importance and needed urgently, it will be able to apply directly to the Secretary of State for Communities and Local Government and the public inquiry can be fast-tracked. Further details of this procedure and the fees required are given in Circular 02/06 paras 26-37.

5.0 Listed Building Consent

- 5.1 Government guidance on work to listed buildings is given in Planning Policy Guidance 15 *Planning and the Historic Environment* (1994) (PPG15). ([click to view](#)) Some amendments to PPG15, and revised consultation arrangements on heritage applications are given in Circular 01/01 *Arrangements for handling heritage applications - notification and directions by the Secretary of State* (2001). ([click to view](#))
- 5.2 Listed building consent will be required from the local planning authority for the demolition of a listed building or for its alteration or extension in a way which affects its character as a building of special architectural or historic interest (PPG 15 paras 3.1-3.29, and Annex C). The listed building includes fixtures attached to the building and potentially other structures and buildings that are physically linked with it. Buildings and structures within the curtilage of a listed building may also be treated as part of the listed building providing they were in place before 1 July 1948, and listed building consent is required for works affecting their special interest. The local planning authority can offer guidance on whether or not a subsidiary structure or object is likely to be protected. Guidance on this subject can be found in PPG 15 paras 3.30-3.36.
- 5.3 Pre-application discussion with departmental conservation officers/advisers and GHEU for buildings in Appendix I is to be encouraged, as GHEU can advise on the likely need for listed building consent. However, a formal application for listed building consent must be made to the relevant local planning authority. Applications generally need to be accompanied by a design and access statement, details of which are in Statutory Instrument 2006 No. 1063. ([click to view](#)) The local authority will advertise the application publicly and in some cases consult with national amenity societies. Safeguards for applications involving national security are set out in DCLG Circular 02/06 paras 6-25 (see para 4.3 above).

5.4 Repairs would not normally require listed building consent providing they are like-for-like in detail and materials, as these would not affect the special character of the building. GHEU or the local authority can advise.

5.5 Where a building is both a scheduled monument and a listed building, scheduled monument clearance (rather than listed building consent) would apply (see section 7 below).

6.0 Conservation Area Consent

6.1 Conservation Area Consent, in addition to any planning permission which may be needed, will be required from the local planning authority for the demolition of an unlisted building in a conservation area (PPG 15 paras 4.1-4.38). Where a building is both a scheduled ancient monument and an unlisted building in a conservation area, then scheduled monument clearance (rather than conservation area consent) would apply (see section 7 below).

6.2 The 2007 DCMS white paper *Heritage Protection for the 21st Century* is consulting on the possible merging of conservation area consent with planning permission. This would be an opportunity to raise levels of protection back to pre-Shimizu levels so that full or partial demolition of an unlisted building in a conservation area would require planning permission (the 1997 Shimizu judgement means that partial demolition of an unlisted building in a conservation area no longer requires Conservation Area Consent). Any legislation resulting from the consultation is not expected to be adopted for several years; further advice will follow in due course.

7.0 Scheduled Monument Clearance

7.1 The Planning and Compulsory Purchase Act 2004 only removes Crown immunity from the planning acts. For the time being, therefore, the Crown continues to remain immune from the provisions of the Ancient Monuments and Archaeological Areas Act 1979. However, all works to a scheduled monument, including repair and excavation, require scheduled monument clearance from the Secretary of State for DCMS. In practice, this covers anything that disturbs the ground or the fabric of an upstanding building.

7.2 Under the provisions of CLG Circular 02/06, paras 92-93, clearance will also be required for works affecting any known archaeological remains, regardless of whether or not the site is scheduled. The government's policy on archaeological remains (scheduled or not) is set out in Planning Policy Guidance 16 *Archaeology and Planning* (1990) (PPG 16). ([click to view](#))

7.3 The developing Crown body should continue to follow the existing arrangement for pre-application liaison with the relevant regional office of English Heritage (or GHEU for the scheduled sites in the GHEU list) before applying for scheduled monument clearance from the DCMS. English Heritage prefers to discuss scheduled monument proposals at an early stage to ensure that the works are likely to be broadly acceptable to the Secretary of State. The application should take the form of a letter enclosing a site plan indicating

GUIDANCE NOTE FOR CROWN BODIES ON THE REMOVAL OF CROWN IMMUNITY

the location of the works, together with justification for the proposals, and any relevant specifications or drawings. Applications should be addressed to:

Architecture and Historic Environment Division 2
Department for Culture, Media & Sport
c/o 2-4 Cockspur Street
London SW1Y 1DH

- 7.4 The Secretary of State will determine the application following advice from English Heritage. CLG Circular 02/06 para 93 emphasises that works should not start before clearance has been granted. It normally takes two months to grant scheduled monument clearance. However, when a formal application is made to DCMS, it would expedite GHEU's advice, and consequently reduce the time taken to process the application, if a copy was also sent direct to GHEU. The resultant clearance letter normally includes conditions which are generally monitored by English Heritage on behalf of the Secretary of State.
- 7.5 'Works urgently necessary for safety or health' are covered by Class 5 consent under Statutory Instrument 1994 No. 1381 *The Ancient Monuments (Class Consents) Order 1994*. ([click to view](#)) In such cases, notice in writing justifying in detail the need for urgent works should be given to the Secretary of State for DCMS as soon as is reasonably practicable. But the work must be limited to the minimum measures immediately necessary. For example, a fractured section of string course that is in imminent danger of falling could be removed under class 5 consent, but its reinstatement or replacement would require a separate scheduled monument clearance application.
- 7.6 Scheduled monument legislation takes precedence where a building is both a scheduled monument and a listed building.
- 7.7 The 2007 DCMS white paper *Heritage Protection for the 21st Century* anticipates the future removal of the current distinction between scheduled monuments and listed buildings. As a consequence, the Ancient Monuments and Archaeological Areas Act 1979 would be repealed and Crown immunity from that legislation would no longer apply. The new legislation, details of which are still under discussion, is not expected to be adopted for several years; further advice will follow in due course.

23 July 2007