



ENGLISH HERITAGE

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

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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 restates the requirements for obtaining scheduled monument clearance which is subject to different legislation, and has been revised to outline the new procedures for applying for Scheduled Monument Clearance which will come into effect in November 2009 (see section 7).

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, although much of the administration for this now lies with English Heritage. 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/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 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* 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:

- 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* 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. This circular revokes DoE Circular 18/84.

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*. Local authorities are committed to implementing e-planning, there is now a dedicated planning portal for the receipt of planning and listed building applications on line using a standard planning application form.

4.2 Circular 02/06 provides 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 and 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). 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). It is anticipated that PPG15 will be replaced by a new PPS15 and by additional guidance in 2010.

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. More 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 1 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. 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 occupied by a Crown body 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 (PPG15 paras 4.1-4.38). Where a building is both a scheduled 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* consulted on the possible merging of conservation area consent with planning permission and this has been carried forward in the 2008 Heritage Protection Bill. 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). There is currently no date set for the enactment of the bill.

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.

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). It is anticipated that PPG16 will be replaced by the proposed PPS15 and by additional guidance in 2010.

7.3 The developing Crown body is encouraged to engage in pre-application discussion with the relevant regional office of English Heritage (or GHEU for the scheduled sites on the GHEU list) before applying formally to English Heritage for scheduled monument clearance. English Heritage prefers to discuss scheduled monument proposals at an early stage to ensure that the works are likely to be broadly acceptable.

7.4 A letter requesting Scheduled Monument Clearance must be sent to the relevant English Heritage regional office as appropriate or GHEU for sites on the GHEU list. The letter should describe the proposed works in sufficient detail to

enable their impact on the monument to be assessed; list the plans and drawings accompanying the application, including a plan identifying the monument to which the works relate, the exact location where the works would take place and such other plans, drawings or documents as are necessary to assist in clearly describing the proposed works; include the name and email (or postal) address of any co-owners or occupiers of the monument affected by the proposals and confirm that they have been notified of the proposed works; and any other information relevant to the application. Where it is proposed to involve a professional archaeologist, their full contact details should be given.

7.5 In the great majority of cases, Scheduled Monument Clearance applications are successful. You are strongly advised to contact GHEU or the appropriate English Heritage regional office to discuss your plans at an early stage and certainly before sending in an application. This will help to identify whether a proposed scheme is likely to be acceptable in principle before any detailed design is undertaken. It is usually possible, following discussion with English Heritage, to agree on a scheme that both preserves the significance of the monument and meets your needs.

7.6 DCMS, *Scheduled Monuments. Investigating, preserving and recording nationally important archaeological sites and landscapes under the Ancient Monuments and Archaeological Areas Act 1979* (October 2009) paras 21 and 22 emphasise that works should not start before clearance has been granted. It may take up to two months to grant scheduled monument clearance. The resultant clearance letter normally includes conditions which are monitored by English Heritage.

7.7 "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*. In such cases, notice in writing justifying in detail the need for urgent works should be given to English Heritage 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.

7.8 Scheduled monument legislation takes precedence where a building is both a scheduled monument and a listed building.

7.9 The 2008 Heritage Protection Bill envisages, amongst other things, the unification of various designatory regimes including listing and scheduling. As a consequence, the Ancient Monuments and Archaeological Areas Act 1979 would be repealed and Crown immunity from that legislation would no longer apply. There is currently no date set for the enactment of the bill.

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