

Listed Buildings – Legal Obligations

Introduction

Looking after a building of a historic nature goes well beyond normal maintenance. Some buildings are so special that the public interest is affected and the protection of such buildings is provided under the *Planning (Listed Building and Conservation Areas) Act 1990*. Being “listed” means a building is subject to statutory control because it is of special architectural or historic interest. The listing is graded as I, II* or II, depending on the building’s deemed importance, with Grade I and II* applying to the most important properties. Those entrusted with responsibility for listed buildings will require specialist advice for both day-to-day repairs, maintenance, and when alterations – of any nature – are contemplated.

Scope of the Listing

Listed Building Control covers *everything* within the site, not just the architectural features noted as being of special importance in the list description. This includes fixtures, fittings and environs, such as boundary walls and gates. Nothing can be altered without consent. Even if the listing only refers to the exterior of the building, works to an object or structure *within* the building is also subject to Listed Building Control. In the context of chapels this includes pews, pulpits, platforms, light fittings and organs.

The protection and restrictions also extend to some structures within the “curtilage”. This is defined as the enclosed area of land around a listed building, within a wall or barrier of some sort. It is typically treated as being legally coupled with the principal building it surrounds. In general any pre-1948 structure that formed part of the land, and was in the curtilage of the principal listed building at the date of listing, and is ancillary to the principal building, is considered to be part of the listing.

Defining the extent of the curtilage will be important. For some buildings, the extent will be clear (such as boundary walls) but for others assessing the curtilage may be difficult. The key considerations are the physical layout of the buildings, the ownership past and present, and the function of the buildings and spaces past and present. Equally important is confirming if any of the objects or structures within the curtilage (aside from the principal building) were extant on or before 1st July 1948.

However, as from 26th June 2013 some new list entries or list entries amended after that date may expressly exclude such curtilage buildings from protection. It is also now legally possible, where appropriate, for a list description to exclude parts of the building, or any curtilage structure which are not of special interest, and for anyone to apply for a Certificate of Immunity from Listing, provided they are able to supply sufficient information to support the assessment (<https://historicengland.org.uk/listing/apply-for-listing/>).

Special Consent

Work intended to be carried out to any part of a listed building which will *affect the character or appearance of the building* requires Listed Building Consent from the local planning authority. The work does not have to be structural. The removal of pews, the dismantling of the organ or the installation of ramps to improve access are all work which might affect the character or appearance of the building.

If the church officers are not sure whether consent is required, they should seek the advice of the local planning authority’s conservation officer, or from an architect or building surveyor experienced in working with listed buildings. The organisation **Historic England** (previously **English Heritage**) may also be contacted for advice (www.historicengland.org.uk).

Planning permission is needed for any building projects, other than those affecting just the interior of a building. However, for schemes which impact the “historic environment”, permission may be granted by the General Permitted Development Order (<http://www.legislation.gov.uk/uksi/1995/418/contents/made>). Furthermore, Conservation Area Consent is needed for the demolition of all or the significant bulk of a building in a conservation area. In addition, most works will of course require approval under the Building Regulations.

Criminal Offence

It is a criminal offence to demolish or alter the character of a Listed Building, or buildings within the curtilage, without Listed Building Consent. There is no time limit. Any change which will affect the structure, appearance or historic character of a listed building is restricted.

Failure to obtain Listed Building or Conservation Area Consent, or to comply with the attached conditions, is a criminal offence; and the local planning authority is entitled to prosecute the contractors who actually carried out the works, and the professionals who inspired them, as well as or in preference to the church officers – all of whom will be equally liable to conviction, either for the principal offence or for ‘aiding and abetting’.

Any change to a listed building must be sensitively handled and will need to take into consideration the impact on the historic record provided by the building itself, the aesthetic effect of the works, and any technical implications. Repairs can be undertaken only on a ‘like for like’ basis using techniques and materials that are suitable and appropriate to the historic fabric. Wherever possible the original historic fabric should be conserved and repaired.

Church officers should be aware that they can be compelled to carry out works as considered urgently necessary for the preservation of the buildings on site. If they fail to carry out such work, the local planning authority may undertake the work, with costs recoverable from the church. Considering the risk, churches are urged to comply with such requirements.

Listed Building Consent will therefore be required for any of the following works undertaken at a church building since it was listed:

- Any alteration to the fabric to alter/incorporate Services;
- Any alteration to the character of the building or its setting (this includes works within the curtilage boundaries, or alteration to internal or external fixtures, such as window frames, drains etc.);
- Introduction of fittings;
- Demolition or reconstruction of any element of the building, including temporary removal. There is a general presumption against demolition.

In addition, any alterations to Services may require compliance with Building Regulations. Along with Listed Building Consent, Building Regulation approval will be required for any material alterations, such as underpinning, strengthening, damp proofing & timber treatment works. For further information, see the Guidance from Historic England on “Listed Building Consents & Planning Permission” (<https://historicengland.org.uk/advice/hpg/consent/>).

Spot Listing

A church building which is not listed may, without warning, be spot listed if it is thought that development proposals are under consideration. The church’s professional advisors should be asked to consider the possibility of spot listing before committing the church to substantial fees for a redevelopment scheme or feasibility study. In certain circumstances application for a Certificate of Immunity from Listing may be advisable.

Emergencies

In urgent cases where properties have been damaged by flood, lightning, arson or another unexpected event, churches should act as quickly as possible to make the building safe and water tight. As soon as possible they should seek guidance from a suitably qualified surveyor or architect with conservation experience about the best ways to conserve the historic fabric and repair the damage. The fact that an emergency has occurred is not an excuse for using inappropriate materials for a permanent repair, but obviously the best possible practical arrangements need to be made to ensure further damage is avoided.

Historical Records

It is important that photographs of the church building – internally and externally – are taken before and at regular intervals throughout the project. It is necessary for these to be either properly printed or stored electronically. Churches should maintain a Log Book or record of work done. They should also retain copies of the photographs, and forward copies to the local planning authority's archive department. A copy of all the records related to the church building and the changes that have been made must also be provided to the Historic Environment Records. (Use the following site to locate the respective area representative: www.heritagegateway.org.uk/Gateway/CHR/).

Listed Places of Worship – Grant Scheme

If the chapel is a listed building, it is possible to reclaim VAT paid on certain repairs, maintenance and alterations to the chapel. Further information may be obtained at: www.lpwscheme.org.uk

Insurance

It is essential that all those appointed to advise on work on a church building, whether it is listed or not, should carry Professional Indemnity Insurance. This cover should be appropriate to the value of the building and of the proposed work.

Occupiers Liability

Under the *Occupiers Liability Act 1984* those responsible for a building have a duty to see that visitors are reasonably safe – and even trespassers to some extent. This implies an onus to carry out basic repairs; particularly relevant in the case of buildings at risk. However, the obligation is only to take '*such care as in all the circumstances is reasonable*'. Therefore both the *nature* of the building and the *means* of the church will be relevant in considering what repair and maintenance to undertake. So if a listed building is merely in a state of disrepair, and not deemed to be dangerous, this obligation is unlikely to cause a problem.

In Conclusion

The following principles should be kept in mind when carrying out any work on a listed church building:

- Meticulous recording before the work is carried out, and during the process;
- Minimum intervention to the historic fabric to secure the future of the building i.e. the original fabric should be retained where possible;
- Recognition of the sanctity of historic fabric, and the need to keep the historic plant. Equally, recognition that the buildings on site represent a useful resource and asset, capable of serving a modern function or purpose. Replacement of degraded or defective fabric may be influenced by Health & Safety standards, including the possibility of land contaminants on site, structural stability, and unacceptable deterioration;
- Honesty in repair or restoration. Any alterations or repairs should not attempt to hide their presence;
- Respect for past alterations that contain any conceivable historic interest (usually pre-1948);
- Abstinence from any and all speculative restoration or reconstruction. No attempt should be made to reconstruct or reinstate any demolished or altered buildings, unless accurate and detailed records are available;
- Where possible, all work should be reversible.

Useful Contacts

- **Historic England** is an organisation with responsibilities to help preserve important heritage buildings. They offer guidance about maintenance and also have an important role in commenting formally when changes are proposed to a listed building. Their website (www.historicengland.org.uk) is a good source of information and all aspects of good maintenance practice.
- **The British Institute of Organ Studies** (www.bios.org.uk/resources/npor.php). If the proposed works will affect an organ advice should be sought from the British Institute of Organ Studies (BIOS).
- For further general advice on '**Heritage Matters**', please see <http://heritagehelp.org.uk/> which also provides links to other sites.

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