'This good practice guide aims to assist councils achieve a consistent approach when considering serving a Building Preservation Notice on an unlisted building. Its correct application will help councils to identify and satisfy legislative requirements with regard to Building Preservation Notices, where the building appears to be of architectural and historic importance and is in danger of demolition or of alteration in such a way as to affect its character.

This guide does not attempt to provide a detailed account of the legislation and policy that underpin Building Preservation Notices in Northern Ireland, and is not intended to be a source of definitive legal advice. This guide is not intended to replace the need for council judgement in their decision making. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between this guide and legislation, the provisions of the legislation will prevail.

Further information can be obtained from the website www.doeni.gov.uk/niea.'
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Overview

From 1st April 2015, councils may serve a ‘Building Preservation Notice’ (BPN), where it appears to a council that a building is of architectural or historic merit and is at risk of demolition or significant alteration.¹ This discretionary power has been transferred from the Department of the Environment, (DOE) to councils, under the Review of Public Administration transfer of functions agreement.

To assist councils undertake this new function, this good practice guide has been developed as a series of questions and accompanying answers to explain how and when councils may consider serving a BPN.

¹ Sections 81 & 82 of The Planning Act (NI) 2011

Front cover image & above: Lidells Mill, Donaghcloney, Grade B2 listed building, initially protected by a BPN © DOE
1. Introduction

1.1 The historic environment is an asset of immense cultural, social, economic and environmental value, which contributes to our sense of history, place and our quality of life. Councils and the Department have responsibility under the Planning Act (Northern Ireland) 2011, to protect and conserve the historic environment for the benefit of our present and future generations.

1.2 Councils can actively contribute to the protection and conservation of the built heritage through the appropriate application of Building Preservation Notices (BPN) where there is concern that an unprotected historic building of special interest is in danger of demolition or significant alteration.

1.3 ‘Historic Buildings’ can be understood to be any feature or structure built by man. The more recent the date of a structure the less historic it will be. This implies that a recent structure will need to have high architectural interest if it is to be protected in this way.

2. What is a Building Preservation Notice?

2.1 A BPN is a form of temporary listing which provides statutory protection to an unlisted building, for a period of 6 months, as if it were listed. The Planning Act gives councils the discretionary power to serve a BPN on the owner and occupier of a non-listed building that they consider meets the following test:

- It is of special architectural or historic interest; and
- It is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

2.2 These powers are detailed in Section 81 – 83 of the Planning Act. For the 6 month period of the BPN, the building is protected as though it were a listed building and all relevant planning controls apply. This includes the need to apply for listed building consent for changes that might affect its architectural or historic interest, and enforcement powers relating to unapproved works.

2.3 Prior to the Review of Public Administration, BPN’s were available to the Department under the Planning (Northern Ireland) Order 1991 and were implemented by the DOE Historic Environment Division (DOE:HED). The Department no longer has this power.
3. What is the process for serving a BPN?

3.1 If a council considers that a building meets the statutory tests then it can issue a BPN. A standard form, *(see Appendix A1&A2)* can either be served on the owner and occupier by registered delivery, or in urgent cases it can be affixed to the building. It is important that an owner knows of this legal change as soon as possible. Where there is any doubt in regard to ownership, it is recommended that a notice is also affixed to the building. This approach, using the same form, is provided for by Section 82 of the Planning Act.

3.2 At the same time the council should forward a listing request to DOE:HED, who on behalf of the Department, will consider listing the building. This will allow the maximum time to examine the case, as DOE:HED needs a minimum of five months to consider such a request. A copy of the information used by the council in arriving at this decision would be very helpful to DOE:HED as it commences its appraisal. This should be enclosed with the request.

3.3 From notification, DOE:HED will commence a process to: record the structure; consider the building against the Listing Criteria; undertake statutory (and non statutory) consultations; and make a final decision. The council will be consulted as part of the process and informed of the final outcome.

3.4 It is not anticipated that the number of BPN’s served will be large. From introduction in 2003 to the end of 2013, only 43 BPN’s were issued. Public requests and Departmental use of the power rose in line with development activity during the 2000’s and declined in more recent years in line with the economic downturn.

4. How can councils be made aware of such buildings?

4.1 Councils can be made aware of such buildings through a number of different ways:

- A planning application may be submitted that involves the demolition of a historic building. A council planning officer or a member of the public may then raise a request that this building be considered for protection.

- DOE:HED may separately ask a council to consider taking action. The consideration process to list a building, requires detailed research and advance consultation and DOE:HED may consider there is a high risk of loss during this period.

- It is also possible that a member of the public may make a request without a current planning application being in place - in this case they would need to supply other evidence that the building is in risk of demolition or substantial alteration.

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2 The Listing Criteria was published in a revised and updated Annex C of Planning Policy Statement 6 in March 2011.
3 Historic Buildings Council and local councils
4 Building owners, building occupiers and DOE Planning
5. When should councils consider using the power?

5.1 Before a BPN can be served there are two tests that need to be met:

**Test 1: Does it appear to the council that the building is of special architectural or historic interest?**

Annex C of Planning Policy Statement 6 (March 2011) sets out the criteria that the Department follows when considering this test. The BPN legislation is, however, carefully written to make clear that its test is one of initial assessment. Detailed research and assessment can be carried out later. This lower test allows for swift action.

5.2 A report along the lines of a standard listing query report (see Appendix B) is recommended. This may be compiled by a Conservation Officer or appointed consultant with reference to the published criteria. DOE:HED’s listing team will be happy to liaise with councils at this early stage in regard to advice on standards.

5.3 Listing Queries involve a site visit, initial historical research and an assessment of the record taken. While assessment by the Conservation Officer or appointed consultant is likely to be sufficient, approval by the wider local council planning team is recommended to provide a more robust corporate decision. If, following this stage, council officers consider that the building appears to be a building of special architectural or historic interest, they can then consider the other BPN test.

5.4 **Test 2: Is the building is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest?**

This test is normally met if there is a current planning application involving the demolition or alteration of the building to affect its architectural or historic interest, or if the building is being advertised for sale as a cleared site/development opportunity. Unconfirmed rumours from the public are less clear cut, but may on occasion justify action if officers conclude that the risk is high. Unoccupied buildings can be considered to be of higher risk of sudden removal than those which are occupied.

5.5 It is good practice, to issue a letter to the person who made the initial request, to inform them of the outcome of the investigation.

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5 This is normally a qualified planner or architect who has responsibility for providing advice to decision makers on the designation and management of heritage assets, such as Conservation Areas, within a Council area.

6 Appointed consultants should have appropriate architectural and historical expertise to make an initial assessment and recommendation.
6. When is compensation payable to affected owners?

6.1 Revocation of existing planning permission

A BPN can be served on a building even if there is an existing planning permission for its demolition or alteration. Should the building be subsequently listed, Listed Building Consent (LBC) will also be required for any proposed works of alteration. If LBC is not granted for works approved under a current planning permission, this may require the current planning permission to be revoked. Under Section 179 of the Planning Act, applicants may seek compensation for losses associated with a revoked planning permission.\(^7\)

To avoid major disruption to the smooth working of the planning system, together with consideration of the significant financial implications, and damage to the reputation of the heritage protection system, the Department has adopted the following policy:

‘A building will not normally be considered for listing by the Department once planning permission which will affect its special architectural or historic interest has been granted and is still valid, or while works which have received such planning permission are under way.’\(^8\)

If a council is actively considering serving a BPN in this circumstance, then the exceptional nature of the case should be highlighted in the request for listing submitted to DOE:HED.

6.2 Building fails to merit statutory listing

Compensation may also be claimed from the council for losses incurred due to the service of a BPN if, after consideration, the structure is not protected by the Department as a listed building. Section 186 of the Planning Act 2011 makes clear that such compensation would be in respect of ‘any loss or damage directly attributable to the effect of the notice.’ This includes ‘a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.’ (Section 186 (3))

6.3 It is therefore important for councils to have due regard to the potential for compensation claims when considering serving a BPN.

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\(^7\) Refer to Section 179 of the Planning (Northern Ireland) Act 2011 ‘Compensation where planning permission is revoked or modified’.

\(^8\) Paragraph C26 of Annex C of Planning Policy Statement 6
7. If the building is not listed, can an alternative means of protection be applied?

7.1 Councils may wish to bring forward bespoke local policies for buildings which do not have sufficient architectural or historic interest to warrant statutory protection as listed buildings, but may be important to local communities. Councils may deploy Article 4 Directions\(^9\) to such buildings to suspend permitted development rights, including demolition, for such buildings.

7.2 In some cases, it may be more appropriate for a council to protect a historic building by this route. To justify protection, and swift action, a council should have clear procedures governing the selection and designation of such structures. These should include the waiving of standard consultation procedures in urgent cases. It is also recommended that these procedures are published to aid clarity and public understanding.

8. What other heritage designations offer protection?

8.1 The temporary protection of historic buildings and structures though the service of a BPN is only one tool in a suite of controls aimed at managing the Historic Environment. Other features may be more appropriately protected as Monuments in State Care; Scheduled Historic Monuments; as part of Conservation Areas, or though area plan designations such as Areas of Townscape Character and Local Landscape Policy Areas\(^10\).

8.2 Service of a notice on a structure which is already protected as a Listed Building, a Scheduled Historic Monument or a Monument in State care is not appropriate. Research to ensure that a structure is not already protected should form part of initial review of a case. Where a structure is located within an area designation, the merits of increasing protection via the BPN versus reliance on the existing planning controls should be considered.

\(^9\) Article 4 of The Planning (General Permitted Development) Order (NI) 2015

\(^10\) Planning Policy Statement 6: Planning Archaeology and the Built Heritage provides definitions for heritage designations noted above.
9. Can councils seek support from DOE?

9.1 Yes. As the Government’s expert advisor on the Historic Environment in Northern Ireland, DOE:HED can provide further advice to councils as they decide how best to deploy this power. DOE:HED has 40 year’s experience of carrying out historic building surveys across Northern Ireland and 10 years experience in the service of BPN’s. Engagement with councils who want to set up appropriate procedures in regard to this facet of heritage protection is welcomed by DOE:HED.
Appendix A  Typical Building Preservation Notice.

Appendix A (1) Notice for service on owner/ occupier
Appendix A (2) Notice to be served on the building
Appendix A (1)

NOTICE FOR SERVICE TO OWNER/ OCCUPIER

PLANNING ACT (NORTHERN IRELAND) 2011 SECTIONS 81-83

BUILDING PRESERVATION NOTICE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

SERVED BY: XX COUNCIL

(Serving Officers Details: Name, Grade, and Telephone Number)

TO: Owners Name and address (if Known)

This Building Preservation Notice, (the ‘Notice’) is served by XX Council for the purposes of Sections 81-82 of the Planning Act (NI) 2011 (“the Act”) because it appears to XX Council that the building described in the Schedule to this Notice which is not a listed building, is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

XX COUNCILS GIVES NOTICE THAT:

1. The building described in the Schedule (“the Building”) appears to XX Council to be of special architectural or historic interest and the Department is considering including the Building in a list of buildings of special architectural or historic interest compiled under Section 80 of the Act.

2. By Section 81(3) of the Act, the Notice shall come into force as soon as it has been served on both the owner and occupier of the Building and shall remain in force for 6 months from the date when it was served or last served.

3. By Section 81(4) of the Act the Notice shall cease to be in force if, before the expiration of that 6 months, the Department either includes the Building in a list compiled under Section 80 of the Act or notifies the owner and occupier of the Building in writing that it does not intend to do so.

4. By Section 81(5) of the Act while the Notice is in force, the provisions of the Act (other than Section 103) shall have effect in relation to the Building as if it were a listed building; and by Section 83 of the Act, if the Notice ceases to be in force by virtue of the expiry of the 6 month period or service of notification, in writing by the Department
that it does not intend to list the Building, then the provisions of Section 83 shall have effect with respect to things done or occurring under the Notice or with reference to the Building. Under Section 83:

(a) the fact that the Notice has ceased to be in force shall not affect liability for offences committed under the Act with respect to the Building while it was in force;
(b) any proceedings on or arising out of an application for listed building consent with respect to the Building made while the Notice was in force and any such consent granted while it was in force shall lapse;
(c) any listed building enforcement notice served under the Act while the Notice was in force shall cease to have effect and any proceedings, including appeal proceedings, relating to the listed building enforcement notice, shall lapse;
(d) Section 186 (as applied by Section (186 (2)) of the Act shall continue to have effect as respects any expenses incurred by the owner or occupier as mentioned in that Section and with respect to any sums paid on account of such expenses.

NOTE: This Notice does not call for any action on your part unless you propose at any time to demolish the Building or execute or cause to be executed any works (either to the exterior or interior) for the demolition of the building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historical interest. If you wish to carry out such works you will need to obtain listed building consent, in writing from XX Council Planning Authority before commencing the works.

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE OF SERVICE. THERE IS NO RIGHT OF APPEAL TO THE PLANNING APPEALS COMMISSION AGAINST THIS NOTICE.

Any person who carries out unauthorised works to the Building will be guilty of an offence under Section 85 of the Act and liable:

A) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;
B) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;

and in determining the amount of any fine imposed on a person convicted of an offence under Section 85 (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.

If you need independent advice about the Notice, you are advised to contact a lawyer, planning consultant or other professional advisor specialising in planning matters. If you wish to contest the validity of the Notice, you may only do so by an application to the High Court for judicial review.
SCHEDULE

Insert address of building being served.

Dated this (insert date) day of (insert month) 20XX

Signed: (signature)

Authorised Officer on behalf of XX Council.
NOTICE TO BE AFFIXED TO STRUCTURE

PLANNING ACT (NORTHERN IRELAND) 2011 SECTIONS 81-83

BUILDING PRESERVATION NOTICE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

SERVED BY: XX COUNCIL

(Serving Officers Details: Name, Grade, and Telephone Number)

TO: Owners Name and address (if Known)

This Building Preservation Notice, (the ‘Notice’) is served by XX Council for the purposes of Sections 81-82 of the Planning Act (NI) 2011 ("the Act") because it appears to XX Council that the building described in the Schedule to this Notice which is not a listed building, is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

XX COUNCILS GIVES NOTICE THAT:

1. The building described in the Schedule (“the Building”) appears to XX Council to be of special architectural or historic interest and the Department is considering including the Building in a list of buildings of special architectural or historic interest compiled under Section 80 of the Act.

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4. By Section 81(5) of the Act while the Notice is in force, the provisions of the Act (other than Section 103) shall have effect in relation to the Building as if it were a listed building; and by Article 83 of the Act, if the Notice ceases to be in force by virtue of the expiry of the 6 month period or service of notification, in writing by the Department that it does not intend to list the Building, then the provisions of Section 83 shall have effect.
with respect to things done or occurring under the Notice or with reference to the Building. Under Section 83:

(a) the fact that the Notice has ceased to be in force shall not affect liability for offences committed under the Act with respect to the Building while it was in force;

(b) any proceedings on or arising out of an application for listed building consent with respect to the Building made while the Notice was in force and any such consent granted while it was in force shall lapse;

(c) any listed building enforcement notice served under the Act while the Notice was in force shall cease to have effect and any proceedings, including appeal proceedings, relating to the listed building enforcement notice, shall lapse;

(d) Section 186 (as applied by Section (186 (2)) of the Act shall continue to have effect as respects any expenses incurred by the XX Council, owner or occupier as mentioned in that Section and with respect to any sums paid on account of such expenses.

5. By Section 82 of the Act:

(1) If it appears to a council to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.

(2) The affixing of a notice under subsection (1) shall be treated for all the purposes of Section 81, this section, Section 83 and sections 86 to 101 as service of the notice.

The notice has been so affixed and by virtue of it being so affixed it is treated as being served for those purposes described in Section 82 (1) and (2) of the Act.

NOTE: This Notice does not call for any action on your part unless you propose at any time to demolish the Building or execute or cause to be executed any works (either to the exterior or interior) for the demolition of the building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historical interest. If you wish to carry out such works you will need to obtain listed building consent, in writing from XX Council Planning Authority before commencing the works.

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE OF SERVICE. THERE IS NO RIGHT OF APPEAL TO THE PLANNING APPEALS COMMISSION AGAINST THIS NOTICE.

Any person who carries out unauthorised works to the Building will be guilty of an offence under Section 85 of the Act and liable:

A) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;
B) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;
and in determining the amount of any fine imposed on a person convicted of an offence under Section 85 (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.

If you need independent advice about the Notice, you are advised to contact a lawyer, planning consultant or other professional advisor specialising in planning matters. If you wish to contest the validity of the Notice, you may only do so by an application to the High Court for judicial review.

SCHEDULE

Insert address of building being served.

Dated this (insert date) day of (insert month) 20XX

Signed: (signature)

Authorised Officer on behalf of XX Council.
## Appendix B Listing Query Report Form

<table>
<thead>
<tr>
<th>Building Name:</th>
<th></th>
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</thead>
<tbody>
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<td>OS Map No:</td>
<td>IG Ref:</td>
</tr>
<tr>
<td>Apparent Current Use:</td>
<td></td>
</tr>
<tr>
<td>No. of pictures taken:</td>
<td>Type: Digital/ Slides</td>
</tr>
<tr>
<td>Date of Inspection:</td>
<td></td>
</tr>
<tr>
<td>Exterior Description (not more than 100 words)</td>
<td></td>
</tr>
</tbody>
</table>

### Considered by council planning authority on:

<table>
<thead>
<tr>
<th>Checklist</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building appears to satisfy the listing criteria</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building has permission to demolish or significantly alter the building</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Decision

Signed: ...........................................................................................................  
Date ..............................  
Name & Title of authorising officer
Case Study: Navigation House, Lisburn

Navigation House is a detached three-bay, two-storey, polychromatic brick house, built c. 1866 for the Canal Manager of The Lagan Navigation Company. It is a well proportioned Victorian villa with its original ornate door surround, retaining most of its original external features and its interior. The building was occupied by successive superintendent/managers of the canal, the last of whom was in post from 1928-1954. It is the only canal manager’s house on the waterway and is a well preserved remnant of a period when the Lagan Navigation was probably the most commercially successful of all the waterway enterprises in Ulster. Set in its original secluded, landscaped site, with enclosed yard and outbuildings, Navigation House has group value with the listed Lock Keeper’s house (HB19/08/005) and Union Lock canal structures (DOW 009:500) directly adjacent.

Navigation House was brought to the attention of the Department by Lisburn City Council’s Planning Committee, who asked for a planning application involving the demolition of the building to be deferred pending consideration of its historic interest.

A BPN was applied to the building in June 2012, to give the Department time to carry out detailed research and consultation to determine if the house should be the subject of permanent listing as an historic building. Following consideration of a detailed survey and research, evaluation against the listing criteria and consultation with the Historic Building Council and Lisburn City Council, the building was listed in December 2012, as a Grade B1.

Hearth Revolving Fund and Lagan Canal Trust have since been working in partnership to conserve the heritage significance of the building and its group value with the associated canal structures. In 2014, Hearth Revolving Fund negotiated a temporary loan from Ulster Garden Villages to acquire Navigation House, and have carried out essential holding repairs. The Lagan Canal Trust are planning to relocate their offices to the building, with the future ambition of acquiring the property and reusing the existing outbuildings as a visitor centre as part of the ‘Discover Waterway Lisburn’ project, subject to planning permission, listed building consent and scheduled monument consent.

Above: Navigation House, 134 Hillsborough Road, Lisburn® DOE
NIEA Historic Environment Division
Sixth Floor
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Email: bh@doeni.gov.uk