

# Development Management

## Practice Note

PRACTICE NOTE

5

### Historic Environment

September 2017

Version 1



Department for

**Infrastructure**

An Roinn

**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

## Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users through the legislative provisions for the additional controls and considerations related to the historic environment and deals primarily with procedures as well as good practice. It forms part of a series of practice notes stemming from **the Planning Act (Northern Ireland) 2011** [referred to hereafter as “the 2011 Act”] and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law.

This guidance is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail<sup>1</sup>.

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<sup>1</sup> Please ensure you are viewing the most up to date version of Practice Note 5.

## 1.0 Introduction

- 1.1 This practice note addresses the procedural and practice issues associated with development proposals affecting listed buildings, conservation areas and areas of townscape / village character, Historic Monuments, Archaeological Sites and Historic Parks, Gardens & Demesnes.

## 2.0 Listed Buildings

### *Legislative Context*

- 2.1 The primary provisions for listed buildings are contained in the 2011 Act as well as the responsibilities of the district councils. However, **The Departments (Transfer of Functions) Order (Northern Ireland) 2016 Schedule 5 Part 1** denotes which functions are now the responsibility of the Department for Communities (DfC) and Part 2 denotes which functions are covered by the Department for Infrastructure (DfI) following the restructuring of government departments. Amendments to the subordinate legislation, **The Planning (Listed Buildings) Regulations (Northern Ireland) 2015**, referred to hereafter as the Listed Buildings Regulations, are contained in **The Planning (Listed Building) (Amendments) Regulations (Northern Ireland) 2016**.
- 2.2 **Part 4** of the 2011 Act deals with additional planning controls over and above **Part 3** of the 2011 Act. **Sections 80 – 103** deal specifically with *'Buildings of special architectural or historic interest'*.
- 2.3 **Part 5 Sections 157-161** of the 2011 Act deal with enforcement powers in relation to listed buildings and Section 161 provides the powers to carry out urgent works. **Part 8 Sections 198 - 202** provides further provisions in relation to historic buildings.

*Listing*

2.4 **Section 80** of the 2011 Act requires the compiling and maintaining of a list of buildings of special architectural or historic interest. This is the responsibility of the Department for Communities (DfC) Historic Environment Division (HED). The list includes a wide variety of structures from castles and cathedrals, vernacular buildings, to war memorials and water pumps.

2.5 **When a building is listed it is listed in its entirety**, with all the interior and exterior protected. This also includes protection for:

- Any object or structure within the curtilage of the building and fixed to the building;
- Any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st October 1973.

2.6 The listing therefore includes structures fixed to the listed building including walls, railings, gates and outbuildings and/or structures within the curtilage of the building, but not attached, such as ancillary related buildings such as stable blocks or gate lodges.

2.7 Any building on the published list is subject to the additional planning control in Sections 85 – 103.

*Certificate of intention not to list*

2.8 Under **Section 84** of the 2011 Act DfC can issue a certificate precluding the listing of a building for a period of five years and precluding a council from issuing a Building Preservation Notice (BPN). The certificate is a time limited guarantee that a building will not be listed. This can be issued in circumstances where an application has been made for planning permission for development involving the alteration, extension or demolition of a building or any such planning

permission has been granted. Before issuing a certificate DfC must consult with the Historic Buildings Council<sup>2</sup> (HBC) and with the district council in which the building is situated.

#### *Listed Building Consent (LBC)*

2.9 **Section 85** of the 2011 Act provides for the control of any works for demolition, alteration (exterior and interior) or extension of listed buildings in any manner which would affect its character as a building of special architectural or historic interest. Such works require written consent i.e. **Listed Building Consent (LBC)**. This is in addition to the normal controls set out in Part 3 of the 2011 Act. If a proposal falls within the meaning of development<sup>3</sup> and requires planning permission to be sought then a normal planning application for operational development or change of use is also required. **Permitted development<sup>4</sup> rights do not remove the requirement to seek and obtain LBC for works to a listed building.**

Some examples of when LBC is required are set out below:

#### Exterior:

- Extensions of any kind;
- Alterations e.g. adding, removing or replacing outbuildings, skylights, window openings etc;
- Demolition, full or partial (including ancillary structures);
- Rebuilding part or all of the building e.g. chimneys, roofs, walls;
- Removal or addition of features e.g. railings, gates, gardens walls, driveways;
- Stone removal or replacement;

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<sup>2</sup> HBC is an advisory body to DfC constituted under Section 198 of the 2011 Planning Act made up of appointed volunteers serving three year terms. Its role is to advise on listing and de listing, Listed Building Consent, Building Preservation Notices, Urgent Works Notices, Conservation Areas and matters of industrial and defence heritage.

<sup>3</sup> Further guidance can be found in Development Management Practice Note 3 Meaning of Development and the Requirement for Planning Permission.

<sup>4</sup> Permitted development rights are contained in the Schedule attached to The Planning (General Permitted Development) Order (Northern Ireland) 2015.

- Stone cleaning;
- Removal or addition of render;
- Changes to shop fronts, erection of signs and other advertising;
- Changes to window materials, detailing and design including proposals for double glazing.

Interior:

- Alterations to layout, including floor levels and internal partitions including changes of use;
- Alterations to features which may be of interest and add value to the listed building such as stairs, fireplaces, panelling, plasterwork, doors, tile work, light fittings and window furniture;
- Removal of historic fabric i.e. floors, roof trusses etc.

2.10 Like for like repairs and maintenance do not require LBC. However, if there is uncertainty regarding whether or not proposed repair and maintenance work requires LBC, HED can be contacted for further guidance. Individuals can also seek a determination from a district council under **Section 102** of the 2011 Act as to whether listed building consent is required for proposed works i.e. would the works involve the alteration or extension of the building in a manner which would affect the character as a building of special architectural or historic interest?

2.11 **Section 85(2) (b)** of the 2011 Act requires the recording of the listed building in cases where demolition is proposed. Recording must be undertaken by those authorised by DfC and they should be afforded reasonable access to the building for at least one month following the grant of listed building consent and before the commencement of works. It may be necessary to condition this requirement for access. The works should only proceed when DFC has stated in writing that it has completed recording or that it does not wish to do so.

*Mandatory Consultation*

- 2.12 **Regulation 6** of the Listed Buildings Regulations places a duty on a council to consult with DfC<sup>5</sup> on applications for LBC, prior to determining the application. Where DfC is consulted it must respond within 21 days or such other time that is agreed in writing. **Regulation 6(1)** requires any representation made by DfC to be taken into account by the council.

*Call in and Notification*

- 2.13 **Section 88** of the 2011 Act allows DfI to issue a direction requiring either an individual consent application or for applications for listed buildings specified in the direction to be referred to it. To facilitate the potential call in of applications, councils are required to notify DfI when they intend to grant an LBC<sup>6</sup> against the advice of the statutory consultee (DfC).

*Appeals*

- 2.14 **Sections 96 and 97** of the 2011 Act deal with appeals against the refusal of listed building consent or a condition of consent and appeals in default of a decision by the council<sup>7</sup>.

*Publicity*

- 2.15 On receipt of an LBC application the council must under **Regulation 7** of the Listed Buildings Regulations publish a notice in at least one newspaper circulating in its locality and where a website is maintained for the purposes of advertisement publish a notice on that website.

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<sup>5</sup> Regulation 2(2) of The Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016 transfers the consultation obligation to the Department for Communities.

<sup>6</sup> The Listed Buildings (Removal of Duty to Notify) (Northern Ireland) Direction 2017 removed the requirement of Section 89 of the 2011 Act to notify the Department for Infrastructure when a District Council intended to approve an LBC application. This direction does not apply to conservation area consent and the duty to notify the Department applies (see paragraph 3.16).

<sup>7</sup> There is no right of appeal for those listed building consents determined by the Department. Section 88 of the 2011 Act allows for a hearing to be sought after the Department has issued a Notice of Opinion.

*Supporting Information*

2.16 **Section 86** of the 2011 Act requires LBC applications to be made in accordance with regulations. **Regulation 2** of the Listed Buildings Regulations stipulates the information to be provided for all LBC applications as:

- Description of the works to which it relates;
- Postal address of building to which works relate;
- Name and address of applicant;
- A plan to identify building;
- A plan denoting the location;
- Plans necessary to describe the works.

Under **regulation 2(4)** a council may also give directions either generally or in relation to a particular case specifying the kinds of particulars, plans or information to be contained in the application.

2.17 As well as the requirements of regulation 2, **regulation 4** of the Listed Buildings Regulations places a mandatory requirement for an applicant to submit a **Design and Access Statement** with all applications for LBC<sup>8</sup>.

2.18 HED has also produced guidance on information to accompany an application for LBC<sup>9</sup>. This advice may vary depending on the scale and nature of the proposals. This advice states the following:

- Existing & proposed elevations, floor plans and section drawings (at a sufficient scale – usually 1:50) including levels, clearly indicating areas proposed for alteration or demolition, accompanied by a key indicating the:
  - a) historic fabric to be retained,

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<sup>8</sup> Further information on Design and Access Statements can be found in Development Management Practice Note 12 Design and Access Statements.

<sup>9</sup> Consultation Guide, A guide to consulting HED on development management applications' May 2016 Part 2.

- b) historic fabric to be removed,
- c) new interventions and construction,
- Schedule of proposed works
- Schedule of materials and finishes
- Door and window schedules (where works involve repairs or alterations)
- Stone schedule (as appropriate, where works involve repairs or alterations)
- Internal & external photographs dated, numbered and cross-referenced to floor plans
- Perspectives & photomontages, models or computer visualisations to show the impact of the new works on the listed building and its setting where applicable
- Landscape proposals 1:500 including a planting plan and schedule detailing suitable tree and shrub species, size at time of planting, presentation (i.e. container grown, bare root), planting positions, planting distances/densities, numbers and planting preparation e.g. planting pit size, soil ameliorants.
- Design & Access Statement.<sup>10</sup>

*The Curtilage and Setting of a Listed Building*

2.19 **Section 91(2)** of the 2011 Act requires that in determining planning applications (including LBC applications) that affect a listed building or its setting, special regard is paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. LBC can be refused or granted unconditionally or subject to conditions

2.20 **Paragraph 1(b) of Part 1 of Schedule 3 to The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016**, requires a consultation to be undertaken where a development

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<sup>10</sup> Further information can be found in Development Management Practice Note 12 Design and Access Statements. This practice note also includes information involving partial demolition or structural alterations.

proposal is likely to affect the setting of a listed building. New development within the curtilage of a listed building will generally require planning permission and in certain circumstances will also need listed building consent.

- 2.21 There is no legal definition of the curtilage of a listed building and determining the extent of the curtilage can in certain instances be a complex task. The extent will depend on the facts of the individual case and the circumstances of the individual site.

**Case Law**

In the 'Calderdale' case the court of appeal considered the concept of curtilage in relation to a listed building and concluded:

*'The curtilage of a listed building is an area of land which includes any related objects or structures which naturally form or formed, with the listed building, an integral whole. The boundaries of the area are to be determined by such factors as may be relevant to the circumstances of the particular case and the manner in which the listed building, any related objects or structures and the land have been, or are being used'.*

***Planning & Compensation Report 399 (1983) JPL 310 paragraph 14.20***

- 2.22 In the context of the relevant case law it is helpful to consider three factors in determining whether a structure is within the curtilage of a listed building:

- The physical layout of the listed building and the structure;
- Its ownership, past and present;
- Its use or function, past and present.

- 2.23 Applications for development can potentially affect the setting of a listed building when:

- The proposal is within the pink wash<sup>11</sup> of the listed building as indicated on the listed building map.
- Within sight of a listed building and it is considered that the proposed development may affect the setting of the listed building.
- Within the curtilage of the listed building even when out of sight of the principal listed building<sup>12</sup>.

### **Case Law**

*The issue of a visual connection when determining the extent of the setting of a listed building has been considered by the courts.*

*The court found that whilst the inspector had noted the historical, social and economic connections between the appeal site and the listed building, they had “adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative.”*

*A Planning Inspector’s decision to grant planning permission for housing on the appeal site located 1km away was therefore overturned.*

***Steer v SSCLG (2017) EWHC 1456***

2.24 LBC is not required for development within the curtilage of a listed building, which is not attached to the listed building or any existing object or structure within the curtilage<sup>13</sup>. Whilst listed building consent is not required for such new ‘stand alone’ development, the impact on the setting of the listed building is a key issue.

<sup>11</sup> Please see Paragraph 2.25 for further guidance.

<sup>12</sup> Extracted from, “Consultation Guide, A guide to consulting HED on development management applications, May 2016 Page 6”.

<sup>13</sup> LBC is required for demolition/alteration of listed structures – see Paragraph 2.5.

2.25 In the process of determining whether a building should be listed as per **Section 80** of the 2011 Act, 'pink wash' surrounding listed buildings is identified by DfC and subsequently denoted on their records. These pink areas do not necessarily equate to the curtilage and have no legal status. They do, however, give an indication where the impact on the setting of a listed building is a potentially important planning factor to be considered in dealing with a development proposal. In determining new development proposals, whether within the curtilage or in proximity to a listed building, the impact on the setting of the listed building is an important material consideration.

*Non compliance with conditions*

2.26 **Section 95** of the 2011 Act relates to applications to execute works to listed buildings without compliance with conditions previously attached to a listed building consent. In these circumstances the application should consider only the question of the conditions to which listed building consent should be granted. Conditions can be amended or the grant of listed building consent can be unconditional. If it is decided listed building consent should be granted subject to the same conditions as previously imposed the application should be refused. **Regulations 10 and 11** of the Listed Buildings Regulations denotes the required content to be submitted to either the council or Department. Regulation 10 and Regulation 11 also require consultation with the relevant statutory consultee<sup>14</sup>. **Section 95(4)** prohibits applications for non compliance when the listed building consent is time expired.

*Revocation or Modification*

2.27 The power to revoke or modify listed building consent is set out in **Sections 98 and 99**<sup>15</sup> of the 2011 Act. Any order revoking or modifying

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<sup>14</sup> Regulation 6 of The Planning (Listing Buildings) Regulations (Northern Ireland) 2015 as amended under Regulation 2(2) of the Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016 places a mandatory requirement to consult with the Department of Communities on all LBC.

<sup>15</sup> Section 101 of The Planning Act (Northern Ireland) 2011 covers revocation or modification of an LBC by DFI.

consent must be confirmed by DfI. When a council submits a request it must serve notice on the owner of the building, the occupier/s and any other person who in the opinion of the council will be affected by the order. The notice must allow at least 28 days after service within which a notice party may request, via DfI, an opportunity to be heard before the Planning Appeals Commission. **Section 99(5)** allows DfI to confirm the council request without modification or subject to modifications as it considers necessary. A claim for compensation where listed building consent is revoked is covered by **regulation 12** of the Listed Buildings Regulations. It must be made to the council within 6 months from the date of the order or within such a period as the council may allow.

#### *Commencement*

- 2.28 **Section 94(1)(a)** of the 2011 Act prescribes that LBC is conditional on the works approved being started within 5 years of the date of the consent. **Section 94(1)(b)** does give the appropriate authority discretion to amend this time scale (shorter or longer). However, the timescale should only be amended if it is considered that there are specific material reasons for doing so.

#### *Ecclesiastical Exemption*

- 2.29 **Section 85(8)** of the 2011 Act removes the requirement under **Section 85(1)** to apply for listed building consent to works for the demolition, alteration or extension of an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works. This exemption relates solely to LBC and does not negate the need for planning approval where works proposed constitute development. LBC in accordance with Section 85(8)(b) does not apply to a Scheduled Monument designated under the **Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995**<sup>16</sup>, referred to hereafter as the 1995 Order.

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<sup>16</sup> Historic Monuments Consent is administered by Department for Communities, Historic Environment Division.

- 2.30 **In a situation where the total demolition of a listed ecclesiastical building is proposed it should be noted the exemption for not requiring listed building consent does not apply. Section 85(8)(a) of the 2011 Act states that the exemption applies to an ecclesiastical building which is for the time being used for ecclesiastical purposes. Total demolition would prevent the building from being used for ecclesiastical purposes and therefore LBC is required for total demolition.**

**Case Law**

*The interpretation of Section 85(8)(a) has been clarified by the courts. It has been held in relation to the interpretation of “used for the time being for ecclesiastical purposes” that a building is not being used for ecclesiastical purposes when it is being demolished. Consequently listed building consent is necessary for the total demolition of an ecclesiastical building.*

***Attorney General, ex rel. Bedfordshire County Council v. Trustees of the Howard United Reform Church Bedford [1976] A.C. 36***

- 2.31 Under **section 85(8)** there is **no ecclesiastical exemption** for a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform his duties of office. Therefore, if such a building is listed, LBC will be required for demolition, alteration or extension.

*Building Preservation Notices*

- 2.32 **Sections 81, 82 and 83** of the 2011 Act relate to Temporary Listing (Building Preservation Notices) and Temporary Listing in urgent cases<sup>17</sup>. These sections allow a district council to serve a notice on the owner and occupier of an unlisted building which is considered to be of special architectural or historic interest and is in danger of demolition or

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<sup>17</sup> Sometimes referred to as “Spot Listing”.

alteration that would affect its character. The notice will effectively deem the building as if it is listed<sup>18</sup>.

### *Changes of Use*

2.33 Applications for full planning permission for a change of use of a listed building may be submitted without further details where they relate solely to the use of the building. If works to a listed building are required, all details of intended internal operations should be included on the submitted LBC. If a change of use cannot be implemented without significant internal alterations which are not considered acceptable, both applications should be refused as the change of use cannot be implemented without the proposed alteration. It would however be good practice to resolve any possible conflict prior to the submission of an application through formal or informal pre- application negotiation.

2.34 In the rare situation where change of use alone (without any internal works) is proposed to a listed building, LBC is not required. It would be prudent for planning authorities to ensure that this is clearly stated in the description of development.

### *Processing Planning Applications and Listed Building Consent*

2.35 The following paragraphs provide procedural advice and best practice on the processing of applications involving listed buildings. The policy provisions and objectives of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS 6) have been carried forward and reflected in a strategic way in the Department's Strategic Planning Policy Statement (SPPS): Planning for Sustainable Development. The SPPS sets out transitional arrangements<sup>19</sup> whereby existing planning policy documents, including PPS 6 will be retained until such times as

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<sup>18</sup> Further guidance on how to undertake this process is available within DfC HED publication 'Building Preservation Notices – A good practice guide for District Councils'.

<sup>19</sup> Chapter 1.10 – 1.15 Transitional Arrangements of the Strategic Planning Policy Statement for Northern Ireland (SPPS) September 2015.

the Plan Strategy element of a council's Local Development Plan has been adopted. Under the transitional arrangements any policy conflict between the SPPS and any retained policy must be resolved in the favour of the provisions of the SPPS. Policies BH 7 – BH 11 of PPS 6 relate to the listed status of the building.

#### *Scenario 1*

*If an application for listed building consent is submitted an associated planning application may be required if the works constitute development requiring planning permission. If this is not submitted the applicant should be asked to do so as quickly as possible.*

#### *Scenario 2*

*If a planning application involving works to a listed building is submitted an associated listed building consent application is required. If this is not submitted with the planning application the applicant should be requested to submit the listed building consent application as quickly as possible. The planning application can be made valid and processing begun but final consideration of the acceptability of the proposal is linked to the listed building consent.*

On all applications related to a listed building it is good practice to ensure that the portions of the original structure (the structure at the time of consent is being sought) to be removed are denoted clearly. This should also be included on the planning application where appropriate.

2.36 In both scenarios the applications should ideally be processed in tandem and the appropriate consultation undertaken<sup>20</sup>.

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<sup>20</sup> For LBC Regulation 6 of The Planning (Listed Buildings) Regulations (Northern Ireland) 2015, as amended by Regulation 2 (2) of The Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016, requires consultation with the Department for Communities HED and for an application

- 2.37 The use of outline applications is not considered to be good practice as the detailed impact of the proposal on the listed building cannot be adequately assessed without detailed information.
- 2.38 It is advised that detailed drawings are carefully checked to ensure that identical drawings are submitted and for determination stamped and issued for both applications. When partial demolition and rebuilding is proposed, there must be no ambiguity and drawings should clearly indicate what is proposed.
- 2.39 Consideration may also be necessary on how to stabilise and preserve the portions of the historic structure remaining. It is advised and considered good practice that details and / or a structural engineers report indicating how the remaining parts of the building are to be secured during construction are sought and an agreed method of works established. Such method statements may be conditioned or form the basis of a condition attached to a consent.
- 2.40 Approvals (if appropriate) should be issued at the same time. Specific conditions relating to the listed building should be attached to the listed building consent where appropriate. These should be repeated on the planning permission and an informative added cross referencing the listed building consent.

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The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016 Schedule 3 Part 1 1(a) requires consultation to take place for demolition in whole or part, or involving material alteration.

### 3.0 Conservation Areas

#### *Legislative Context*

3.1 **Part 4** of the 2011 Act deals with additional planning control and Sections 104 -106 relate to '*Areas of special architectural or historic interest*'. This is supported by subordinate legislation contained in **The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015**, referred to hereafter as the Conservation Area Demolition Regulations.

3.2 **Section 104**<sup>21</sup> of the 2011 Act provides a council or DfC with the power to designate areas of special architectural or historic interest as Conservation Areas where it is desirable to preserve or enhance the character or appearance of such areas. In designating an area the council or DfC must consult with the HBC. A designation may be varied or cancelled by the authority that made the designation. However, before doing so they must consult HBC. **The Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015** requires a district council or DfC to consult with each other depending on who is the body undertaking the designation, the DfI<sup>22</sup> and any water or sewage undertaker.

3.3 **Section 104(11)** of the 2011 Act places a requirement that where any area is designated a conservation area special regard must be paid to the desirability of:

- Preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise;

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<sup>21</sup> The Departments (Transfer of Functions) Order (Northern Ireland) 2016 Article 8 Schedule 5 Functions Transferred from Department of the Environment Part 1, transfers Section 104 of the Planning Act 2011 to Department for Communities.

<sup>22</sup> The Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015 make reference to the former Department of Regional Development, however, their functions have been subsumed into the Department for Infrastructure. The requirement is to seek opinion of DfI Transport Northern Ireland (TNI).

- Enhancing the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does arise.

In relation to the determination of planning applications it is the character or appearance of the conservation area as a whole, and not the individual components of it, that should be considered. The legislative provisions within section 104 require special regard in considering proposals for demolition. The current policy retained by the SPPS also places a presumption in favour of retaining appropriate structures within a conservation area.

#### **Case Law**

*The Ulster Architectural Heritage Society successfully challenged a decision to approve a DCA to facilitate the redevelopment of the Athletic Stores, Belfast. The court found against the Department of the Environment as it concluded the Department had not applied the conservation policy lawfully or fairly as it failed to properly take account of the presumption in favour of retaining the building. The Department had sought to approve the demolition and redevelopment of the site after giving determining weight to proposals for retention or repair not being economically viable.*

**Ulster Architectural Heritage Society v Department of Environment (NI) NIQB 21 2014.**

- 3.4 Under the provisions of the repealed Planning (Northern Ireland) Order 1991 Article 50(5) the legislative consideration allowed a proposed redevelopment to be of equal or better contribution to the conservation area, commonly referred to as the no harm test. The provisions within the 2011 Act are designed to create a higher legislative test for proposals in a conservation area to meet. Section 104 of the 2011 Act places a statutory duty on decision makers to pay special attention to the desirability of preserving and enhancing the character or

appearance of conservation areas. Due consideration must therefore be given to both preservation of the conservation area character and the opportunity to enhance it and not merely to consider if no harm will be done.

*Consent is required for full or part demolition*

- 3.5 **Section 105** of the 2011 Act controls the demolition of buildings in conservation area other than certain identified buildings. The section outlines that demolition includes demolition of any part of that building<sup>23</sup>. It also denotes, dependent on the applicant, who should be the determining authority and that the provisions as applied to listed buildings in Section 85 – 102, 107, 157 to 160, 181 and 191 of the 2011 Act will apply to conservation areas.

*New Development in Conservation Areas*

- 3.6 In dealing with planning applications for new development in conservation areas case officers must be aware of the statutory duty as noted above to consider the impact of the proposal on the character and appearance of the conservation area as a whole. The policy context is clearly set out in the SPPS and **PPS 6 Policy BH 12 New Development in a Conservation Area**, which is retained under the transitional arrangements of the SPPS.

*Demolition of Buildings in Conservation Areas*

- 3.7 **Section 105(8)** of the 2011 Act defines what is meant by demolition<sup>24</sup> in a conservation area. Section 105 provides that consent of the appropriate authority is required to demolish any unlisted building in a conservation area. This is referred to as **Conservation Area Consent**. Control of demolition under Section 105 applies to all buildings in conservation areas other than those specified in **section 105(1)**, namely:

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<sup>23</sup> Section 105(8) states any reference to demolition "includes a reference to any structural alteration of that building where the alteration consists of demolishing part of the building".

<sup>24</sup> Refer to paragraph 3.5.

- (i) listed buildings;
- (ii) buildings of a class listed in Section 85 (8) (historic monuments or buildings used for ecclesiastical purposes);
- (iii) such buildings as may be specified by the Department, to which a direction is for the time being in force.

3.8 There are further exceptions to the requirement to seek conservation area consent. **Section 105(4)** of the 2011 Act allows the Department to direct that Section 105 shall not apply to a description of buildings specified in a direction order and this direction may be varied or revoked by a further direction. The **Planning (Control of Demolition in Conservation Areas) Direction 2015** sets out the exemptions that apply.

3.9 The policy provisions of PPS 6 will continue to apply for a specified period under the transitional arrangements of the SPPS, and therefore all applications for demolition should have regard to **Policy BH14 Demolition in a Conservation Area**<sup>25</sup> as well as the SPPS. Policy BH14 states that planning consent will normally only be permitted for the demolition of an unlisted building in a conservation area where the building makes no material contribution to the character or appearance of the area. The extent to which a building makes a material contribution to the character of an area is a key consideration in the assessment of any application.

#### *Consultation Process*

3.10 There is no statutory consultee regarding the determination of development proposals within a Conservation Area. However, it is good practice to seek advice and guidance from a conservation area officer employed by the council. In cases where demolition of the building is proposed, it is considered to be good practice for the

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<sup>25</sup>[https://www.planningni.gov.uk/index/policy/planning\\_statements\\_and\\_supplementary\\_planning\\_guidance/pps06/pps06\\_contents.htm](https://www.planningni.gov.uk/index/policy/planning_statements_and_supplementary_planning_guidance/pps06/pps06_contents.htm)

conservation area officer to provide an assessment of whether the building makes a positive contribution to the conservation area. It is also considered to be good practice for a structural engineer's condition report and a report on the cost of repairs to be submitted by an applicant with their demolition consent application and where this information is missing it should be sought. If it is concluded that it does not make a positive contribution, then under the requirements of Policy BH12 New Development in a Conservation Area a replacement scheme should be considered and again the specialist advice available to the council should be sought.

- 3.11 While there is no obligation for a statutory consultation to take place, a council should ensure that the correct input into the decision making process is obtained or it could be difficult to demonstrate that all parts of **Section 104(11)** of the 2011 Act and current policy requirements have been fully assessed during the decision making process. A council may use their suitably qualified expertise. The aim of any specialist input will be to provide a critical assessment of the adequacy of the structural and costing information submitted by the applicant, plus an assessment of the condition of the building and the cost of all necessary structural works required to maintain its structural integrity. It is acknowledged that in certain circumstances, the demolition of some unlisted buildings in a conservation area will be unavoidable. This should however be by exception as good practice will be to afford special regard to the desirability of enhancing the character or appearance of the conservation area where an opportunity to do so exists, or to preserve its character or appearance where an opportunity to enhance does not present itself.

#### *Conditions*

- 3.12 Policy BH 14 Demolition in a Conservation Area normally requires prior agreement for the redevelopment of the site. Councils should therefore seek to avoid a negative visual impact on the whole of the Conservation Area through the creation of an undeveloped site within a

conservation area and ensure that any replacement structure is also to the required standard for a conservation area. It is advised that where conservation area consent for demolition is granted this will normally be conditional on prior agreement for the redevelopment of the site. A condition should seek to secure no demolition taking place until a contract for the carrying out of works of redevelopment has been made and planning permission granted for the redevelopment. District councils should seek evidence from an applicant of an agreed contract to construct a new approved scheme with a timetable for commencing/completion of construction for the new works. A signed contract and conditions stipulating commencement/completion can help to ensure that an undeveloped gap site does not occur<sup>26</sup>.

#### *Trees in Conservation Areas*

- 3.13 **Section 127** of the 2011 Act provides that trees within a Conservation Area are afforded the same protection as those which are the subject of a Tree Preservation Order. It is an offence to cut down, uproot, top, lop, wilfully damage or wilfully destroy trees to which this section applies.

#### *Conservation Area Consent applications by Council*

- 3.14 **Section 105(3)(a)** of the 2011 Act requires applications for conservation area consent by a district council to be processed by the Department. **Regulation 11(4)** of the Conservation Area Demolition Regulations stipulates that before submission to the Department, the council must publish a notice in at least one newspaper circulating in the locality in which the building to which the application relates is situated and place a notice on the council website. The necessity to

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<sup>26</sup> Demolition as a separate project that is likely to give rise to significant environmental affects must be subject to an EIA determination by either the council or where the case may be the Department In *Save Britain's Heritage vs. Secretary of State for Communities and Local Government* (2011) EWCA Civ. 334, the court of appeal held that demolition is a "project" for the purposes of the EIA Directive and was capable of having significant effect on the environment.

seek consent from the Department applies when a council is the applicant or interested party as set out in **Section 107(6)** of the 2011 Act. An interested party means any council that exercises any functions set out by the 2011 Act in relation to the land in which a council has any estate in it.

- 3.15 **Section 88** by virtue of **Section 105(6)** of the 2011 Act requires that conservation area consent applications processed by the Department must be processed by way of a Notice of Opinion or the convening of a Public Local Inquiry.

*Notification and call in*

- 3.16 **Section 89** by virtue of **Section 105 of the 2011 Act** places a statutory requirement to notify the Department (DFI) if it is the intention of the council to grant approval for demolition in a conservation area<sup>27</sup>. **Section 88** by virtue of **Section 105 of the 2011 Act** allows DfI to issue a direction requiring either an individual consent or for listed buildings specified in the direction to be referred to it.

#### 4.0 **Appealing refusal of / conditions on Listed Building Consents and Conservation Area Consents**

- 4.1 Under **Section 96** of the 2011 Act an applicant can appeal to the Planning Appeals Commission (PAC) where an application to a council for listed building consent is refused or where the applicant objects to any conditions that have been imposed. The appeal must be lodged with the Commission within 4 months of the date of refusal or approval with conditions, respectively.

- 4.2 The provisions of the 2011 Act for appealing a refusal or conditions attached to a LBC are applicable to applications for consents for

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<sup>27</sup> The Listed Buildings (Removal of Duty to Notify) (Northern Ireland) Direction 2017 does not apply to Conservation Area Consents.

demolition in a conservation area (DCA). **Section 105(6)** applies **Section 96** of the 2011 Act as if it were a demolition in a conservation area being determined. The appeal must be lodged with the PAC within 4 months of the date of refusal or approval with conditions, respectively.

## 5.0 Enforcement for Listed Buildings and Conservation Areas

### *Unauthorised Development and Damage to Listed Buildings*

- 5.1 Unauthorised works to a listed building or works carried out that do not comply with conditions of a previous LBC are offences under **Sections 85(1) and 85(5)** of the 2011 Act and may be the subject of enforcement action and subsequent court action. **Under Section 85(6)** a person guilty of an offence on summary conviction can be imprisoned for up to 6 months or fined an amount not exceeding £100,000, or both. A fine or imprisonment for up to two years, or both, can also be imposed on conviction on indictment.
- 5.2 **Section 103** of the 2011 Act covers actions by an individual or individuals that cause or are likely to result in damage to a listed building. This section covers deliberate acts which cause damage to a listed building for which consent has not been granted.<sup>28</sup>
- 5.3 **Section 157** of the 2011 Act allows a council to issue a 'Listed Building Enforcement Notice' where it appears that works have been or are being executed to a listed building and it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest. There is no statutory time limit for enforcement action against unauthorised works to a listed building.

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<sup>28</sup> Further information on enforcement powers relating to listed buildings can be found in Enforcement Guidance Note No 2 Legislative Framework and Enforcement Guidance Note No 4 Enforcement Procedures.

- 5.4 **Section 157(1) (a)** of the 2011 Act requires that the notice specifies the alleged contravention and under **Section 157(1)(b)** specify steps requiring restoration of the building to its former state or if not feasible then works to alleviate the effect of the unauthorised works or for bringing the building into a state that would have been permitted under a listed building consent. **Section 157(4)** requires the date on which the notice takes effect and specify the period within which any steps required to be taken should be completed. This may involve multiple time frames being denoted to cover each step undertaken and its completion.
- 5.5 In dealing with an issue related to a listed building enforcement it will be necessary to involve the HED to gain the necessary expert advice.<sup>29</sup>

#### *Unauthorised Demolition in a Conservation Area*

- 5.6 The provisions of Section 157 of the 2011 Act can also be used to enforce against unauthorised demolition in a conservation area. **Section 105(6)** applies the provisions of Section 157 as if they apply to buildings in a conservation area that are not listed. **Regulation 15** of the Conservation Areas Demolition Regulations substitutes the term 'listed building' for 'building in a conservation area'; 'listed building enforcement notice' for 'conservation area enforcement notice'; and, 'listed building consent' for 'conservation area consent'. **Schedule 2** of the Conservation Area Demolition Regulations further modifies Section 157 by substituting the character of the building as one of historic or architectural interest with the character or appearance of the conservation area in which it is situated.

#### *Urgent Works Notice*

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<sup>29</sup> Further advice on enforcement issues related to listed buildings can be found in Chapter 9 of the Historic Environment Divisions Services and Standards Framework:  
<https://www.communities-ni.gov.uk/sites/default/files/publications/communities/our-planning-services-and-standards-framework.pdf>

- 5.7 Keeping historic buildings in good repair, and where possible in use, is key to their preservation. Where a building has fallen in to a state of disrepair a District Council can take action when it becomes evident that a building is being allowed to deteriorate.
- 5.8 **Section 161** of the 2011 Act allows a council to serve an Urgent Works Notice (UWN) where it, *'appears to the council that works are urgently necessary for the preservation of:*
- *A listed building in its district or*
  - *A building in respect of which a direction has been given by the Department that this section apply*<sup>30</sup>.
- 5.9 Where a district council wishes to take action on an unlisted building, it must request DfC to apply Section 161 through direction. **Section 161 (2)** of the 2011 Act allows DfC to direct that the provisions of Section 161 can apply where it appears its preservation is important for maintaining the character or appearance of a conservation area.<sup>31</sup>
- 5.10 If a notice is not complied with, the council under Section 161 of the 2011 Act can execute works, which may include temporary support or shelter to the building and seek to recover the costs for undertaking the works.

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<sup>30</sup> Article 8 Schedule 5 of The Departments (Transfer of Functions) Order (Northern Ireland) transferred Section 161 of the 2011 Act to Department for Communities.

<sup>31</sup> Further information on urgent works can be found in HED guidance, "Urgent Works Notices – A Guide for District Councils, May 2017". <https://www.communities-ni.gov.uk/publications/guidance-councils-urgent-works-notices>

## 6.0 Areas of Townscape Character (ATCs)

- 6.1 Areas of Townscape Character (ATCs) are normally defined through the development plan process. References in legislation and guidance to ATCs also include Areas of Village Character (AVCs) which are also designated through the plan process.
- 6.2 In recognition of a buildings potential importance to an ATC or AVC, planning permission is required for the demolition of an unlisted building in an ATC. **Section 23** of the 2011 Act sets out the meaning of development, including the means of carrying out building, engineering, mining or other operations in, on, over or under land, or a material change of use of land or any buildings. In particular, **Section 23(2)** clarifies that for the purposes of this Act building operations includes demolition. As per **Class A1 of Part 33 of the Schedule to The Planning (General Permitted Development) Order (Northern Ireland) 2015**, referred to hereafter as the Permitted Development Order, permitted development rights for demolition are excluded for buildings in an ATC and AVC. This can only be set aside if it has statutory provision; a planning agreement is in place; or, subject to vesting provisions in the **Housing (Northern Ireland) Order 1981**.
- 6.3 Partial demolition is also restricted under the provisions of the Planning (Demolition – Description of Buildings) Direction 2015. This direction made under the powers contained in **Section 23(3)(f) and (g)** of the 2011 Act prohibits, without consent, the demolition or a structural alteration consisting of partial demolition to buildings in an area of townscape character or village character. It includes character areas designated in a departmental plan<sup>32</sup>, a local development plan or a draft of such a plan. It also covers designations denoted within the schedule of the direction. Exceptions are allowed in the following circumstances:

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<sup>32</sup> Departmental plan refers to plans published prior to the transfer of the majority of planning functions to district councils.

- buildings that do not exceed 115 cubic metres;
- the whole or any part of a gate, wall, fence or other means of enclosure less than one metre high which is adjacent to a road or open public space or in other cases less than 2 metres high.

6.4 The relevant policy context is set out in the SPPS and the Addendum to PPS 6: Areas of Townscape Character, which is retained under the transitional arrangements of the SPPS.

## 7.0 Non Designated Heritage Assets

7.1 Policy provision for buildings not designated can be incorporated into the council area strategy.

7.2 Councils can compile 'local lists' for buildings they consider of significance. These will be for structures that are not afforded statutory protection. There is no statutory obligation for a council to create local lists, it is a matter of judgement for the relevant district council. Paragraph 6.24 of the SPPS states, '*Councils may wish to bring forward bespoke local policies for such buildings*'.<sup>33</sup>

7.3 In circumstances where development does not require planning permission councils may need to consider if permitted development rights would undermine the aims of the policies regarding buildings of local historic importance.

7.4 The DfI or a district council can remove or amend the permitted development rights conferred by the Permitted Development Order. **Article 4** of the Permitted Development Order allows a council or the Department to remove permitted development for buildings as laid out in the schedule and require a planning application to be submitted for

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<sup>33</sup> Further advice on non designated heritage assets can be found in DfC HED guidance, 'Historic Buildings of Local Importance – A guide to their identification and protection, May 2017'.

consideration. This can cover all or any development of the part, class or paragraph in the schedule or any development falling within that part, class or paragraph. Under **Article 4(2)** a council must have the approval of the Department. The Department may approve the direction with or without modification. Submissions to the Department should be made in accordance with **Article 4(3)** requiring:

- Two additional copies together with a plan of the area in respect of which the direction applies;
- A statement of its reasons for making the direction.

## 8.0 **Design and Access Statements (D&AS)**

8.1 Design and Access Statements (D&AS) are required when works are proposed in relation to a listed building or are within conservation areas, townscape character areas and village character areas<sup>34</sup>.

8.2 **Article 6(1) (b) of The Planning (General Development Procedure) Order (Northern Ireland) 2015** stipulates a Design & Access Statement (D&AS) must be submitted with applications that are proposed within a designated area where it is proposed to construct one or more dwelling houses and where it is proposed to construct a building or buildings where the floor space created by the development is 100sqm or more. Designated area includes a conservation area, an area of townscape character and area of village character<sup>35</sup>.

8.3 **Regulation 4 of the Listed Buildings Regulations** requires applications for listed building consent to be accompanied by a D&AS. There are no exceptions.

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<sup>34</sup> Further information can be found in Development Management Practice Note 12 Design and Access Statements.

<sup>35</sup> Article 6(5) of The Planning (General Development Procedure) Order (Northern Ireland) 2015 includes conservation area, area of townscape character and area of village character in the definition of designated area as applied in Article 6(1) (b) of the 2015 GDPO.

- 8.4 A D&AS associated with an application for LBC must take account of the design principles and concepts that have been applied to the works and how the design principles and concepts that have been applied to the works take account of:
- (i) the special architectural or historic importance of the building;
  - (ii) the particular physical features of the building that justify its designation as a listed building; and
  - (iii) the building's setting.
- 8.5 The above criteria must also be considered against how issues relating to access to the building have been dealt with. The statement should explain the policy adopted as to access, including what alternative means of access have been considered.
- 8.6 The D&AS must also state what, if any, consultation has been undertaken and what account has been taken of the outcome of any such consultation; and explain how any specific issues which might affect access to the building have been addressed<sup>36</sup>.

## 9.0 Archaeological Sites and Monuments

- 9.1 HED compiles and maintains the Northern Ireland Monuments and Buildings Record, which includes records of known archaeological sites and monuments, and historic landscape designations including: the Northern Ireland Sites and Monuments Record (NISMR), the Register of Historic Parks, Gardens and Demesnes, the Industrial Heritage Record, Defence Heritage Record, Battle Sites Register and Maritime Archaeology. Related designations include Areas of Significant Archaeological Interest (ASAs) and Areas of Archaeological Potential (AAPs), which are identified in local development plans. The protection

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<sup>36</sup> Further information can be found in Development Management Practice Note 12 Design and Access Statements.

of archaeological sites and monuments, related heritage designations and their settings are a material consideration in the determination of planning applications.

9.2 Historic Monuments have been protected in legislation since 1869. The current legislation is the 1995 Order.

9.3 **Article 2** of the 1995 Order defines a historic monument as:

- A scheduled monument;
- Any other monument the protection of which is in the opinion of the DfC of public interest by reason of the archaeological, historical, architectural, traditional or artistic interest attaching to it.

*Regionally Important Archaeological Sites & Monuments*

9.4 These include State Care monuments and scheduled monuments, protected under the provisions of the 1995 Order, as well as other archaeological sites and monuments which would merit scheduling. The compiling of the schedule is undertaken by DfC (Historic Environment Division) and is an ongoing process with additional sites added annually. The relevant planning policy context is set out in the SPPS and the provisions of **PPS 6 Policy BH 1 The Preservation of Archaeological Remains of Regional Importance and their Settings**, which is retained under the transitional arrangements of the SPPS and applies to the protection of regionally important archaeological sites and monuments in the planning process. Development which would adversely affect sites of regional importance or the integrity of their settings will not be permitted unless there are exceptional circumstances.

*Locally Important Archaeological Sites & Monuments*

- 9.5 There are many other recorded archaeological sites, monuments and related heritage assets throughout Northern Ireland that are not statutorily protected by scheduling, but are important in the local context. The relevant planning policy context is set out in the SPPS and the provisions of **PPS 6 Policy BH 2 The Protection of Archaeological Remains of Local Importance and their Settings**, which is retained under the transitional arrangements of the SPPS. Development proposals which would adversely affect archaeological remains of local importance or their settings should only be permitted where the need for the proposed development or other material considerations outweigh the value of the remains and or their settings.

*Archaeological Assessment & Evaluation*

- 9.6 **PPS 6 Policy BH3 Archaeological Assessment and Evaluation** sets out that where the impact of a proposal on important archaeological remains is unclear, or the relative importance of such remains is uncertain, further information in the form of an archaeological assessment or archaeological evaluation should be sought. The need for such an assessment/evaluation will be confirmed through consultation with HED.

*Archaeological Mitigation*

- 9.7 Paragraph 6.11 of SPPS notes that where a planning authority is minded to grant planning permission for development which will affect sites known or likely to contain archaeological remains, it should ensure appropriate measures are taken for the identification and mitigation of the archaeological impacts of development. **PPS 6 Policy BH4 Archaeological Mitigation** provides the current policy basis for attaching conditions for pre-development archaeological mitigation to planning approvals. Through the consultation process HED will advise when appropriate mitigation measures should be included as conditions of consent and on the discharge process. Good practice will also include conditioning access arrangements for nominated persons

required to undertake monitoring of implementation of archaeological requirements.

#### *Mandatory Consultation*

9.8 In determining planning applications councils must consider which of the statutory consultees are applicable under the provisions of The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016<sup>37</sup>. To allow consideration of development proposals affecting historic monuments to be evaluated **Paragraph 1 (b) of Part 1 of Schedule 3** requires a council, before determining an application for planning permission for development, to consult HED if it is likely that a proposal will affect the site or setting of any historic monument as defined under **Article 2** of the 1995 Order, or an area which contains archaeological remains or the setting of a historic park, garden or demesne.

9.9 To aid interpretation of the statutory requirement HED consider they require a consultation when development is within<sup>38</sup>:

- 200m of the boundary of a monument in State Care.
- 200m of the boundary of a Scheduled historic monument.
- 100m of a Scheduled canal.
- 200m of a non-statutorily protected archaeological site or monument, including sites of Industrial and Defence Heritage interest.

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<sup>37</sup> For the Department consultation requirements see Schedule 3 Part 2 of this Order.

<sup>38</sup> Extracted from, "Consultation Guide, A guide to consulting HED on development management applications, May 2016, Page 6". <https://www.communities-ni.gov.uk/publications/guide-consulting-hed-development-management-applications>

- 400m of a recorded archaeological field system.
- 400m of a recorded archaeological ecclesiastical site.
- An Area of Significant Archaeological Interest.
- An area of Archaeological Potential.

#### *Permitted Development*

9.10 There are a number of instances where permitted development rights do not apply if the proposed development is within a 'site of archaeological interest'<sup>39</sup>. The Permitted Development Order provides details of the exceptions in the attached Schedule of Development Permitted under Article 3.

#### *Licensing*

9.11 All excavations, including those required by a planning condition, require a license which is obtained from HED. All excavations must be carried out under the direction of a qualified archaeologist, licensed by HED under the provisions of **Article 41** of the **1995 Order**.<sup>40</sup>

#### *Scheduled Monument Consent*

9.12 Under **Article 4** of the 1995 Order it is an offence to carry out the following works without consent:

- Any works resulting in the demolition, destruction, or disturbance of, or any damage to a scheduled monument.
- Any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto:

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<sup>39</sup> Land which has been scheduled for protection or taken into care under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 or which is within a site registered in the Department of Communities Northern Ireland Sites and Monuments Record.

<sup>40</sup> Further information on exaction licenses can be found at: <https://www.communities-ni.gov.uk/articles/protecting-northern-irelands-archaeology>

- Any flooding or tipping operations on land in, or under which, there is a scheduled monument.

9.13 No works may be undertaken which affect a scheduled monument without first obtaining Scheduled Monument Consent (SMC). This consent is administered by HED under the provisions of the 1995 Order and independently of the planning process. SMC is required for any intrusive works within a scheduled area, regardless of whether planning permission or other permissions have been sought or obtained.

9.14 It is important to note that there is no presumption in favour of SMC being granted. Legislation does not prohibit seeking planning permission before obtaining SMC, however, it is best practice for an applicant to obtain SMC prior to the issuing of a planning decision, as it may not be possible to implement a planning consent if the appropriate SMC is not forthcoming.

#### *Historic Monuments Enforcement*

9.15 Where it is deemed unauthorised development has occurred affecting an archaeological site or monument or a site of archaeological interest, or an archaeological condition attached to a planning permission has not been adhered to, a district council may consider appropriate enforcement action. HED advice should be sought in the enforcement process and in seeking appropriate remedies.

9.16 HED has separate statutory powers under the provisions of the 1995 Order with regard to unauthorised works affecting Scheduled Monuments or breaches of any conditions attached to a Scheduled Monument Consent.

## 10.0 Historic Parks, Gardens and Demesne

10.1 **Paragraph 1(b) of Part 1 of Schedule 3** to The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016<sup>41</sup> requires consultation to be undertaken by a council where a development proposal is likely to affect the site or the setting of a historic park, garden or demesne. Information on parks, gardens and demesnes is compiled by HED and is included on the Register of Historic Parks, Gardens and Demesnes of Special Historic Interest. HED therefore recommends that consultation should take place for development proposals within or adjacent to sites contained on the Register, including supplementary sites to the Register.

10.2 The Register and its supplementary list contains sites that are worthy of protection through the planning process. There are no additional statutory controls that follow from the inclusion of a site on the register. However, the protection of the character, principle components and setting of parks, gardens and demesnes included on the Register is a material planning consideration, provided for in **paragraphs 6.16 and 6.17 of SPPS and PPS 6 Policy BH 6: The Protection of Parks, Gardens and Demesnes of Special Historic Interest.**

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<sup>41</sup> For the Department's consultation requirements see Schedule 3 Part 2 of the Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016.



Department for

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