THE PLANNING PACK 2012

Planning Aid England
Engaging Communities in Planning

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SHEET 9

Development Management: Special Controls

Listed Buildings, Conservation Areas and other special designations

This is **Sheet 9** of The Planning Pack. This pack has been written by Planning Aid, and is endorsed by the Royal Town Planning Institute.

This information sheet provides an introduction to **Special Planning Controls**: Historic buildings, townscapes and other natural features in the landscape are important parts of our national heritage. So that these features can be preserved or enhanced, the government has established a system for their protection. Controls seek to ensure alterations to historic buildings and new development in historic areas and other landscape settings preserves or enhances the area.

Listed buildings

English Heritage, a government agency, is responsible for processing listing applications, although the Secretary of State for Department of Culture, Media and Sport makes the final listing decision in all cases.

The main legislation dealing with listed buildings include:

- The Town and Country Planning Act 1990
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Planning (Listed Buildings and Conservation Areas) Regulations 1990
- The Planning and Compulsory Purchase Act 2004
- The General Permitted Development Order 1995.
- The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

In addition, the government has set out policy on historic buildings in the following guidance:

- National Planning Policy Framework (2012) – Chapter 12 Conserving and Enhancing the Historic Environment. See **Sheet 16** for link.

What is a listed building?

A listed building is one which is considered to be of "special architectural or historic interest" (Planning (Listed Buildings and Conservation Areas) Act 1990) and has been placed on a List drawn up by English Heritage and approved by the Department of Culture Media and Sport. Listed status can also be applied to other structures if they are of special architectural merit or historic importance. For example milestones, gates, lamps, fences, walls and telephone boxes.

Guidance on the type of buildings that can be listed currently includes:

- All buildings built **before 1700** which are anything like their original condition.
- Most buildings built between **1700 and 1840**.
- **After 1840**, because of the greatly increased number of buildings erected and the much larger numbers that have survived, progressively greater selection is necessary.
- Particular careful selection is required for buildings from the period **after 1945**.
- Buildings **less than 30 years old** are normally listed only if they are of outstanding innovative architectural quality and under threat

Listed Buildings are classified according to their relative importance:

Grade I – These are buildings of exceptional interest and merit.

Grade II* – These buildings are particularly important, considered to be of more than special interest.

Grade II –These buildings are of special interest warranting every effort to preserve them. The majority (92%) of all listed buildings are Grade II.

The definition of a listed building includes the building itself, objects or structures fixed to it (or within it), and any objects or structures within the **curtilage**, provided they have been there since before 1st July 1948.For example these include walls, outhouses, gatehouses and fountains. The setting of the building is therefore also included in the listing. The important features of each listed building are set out on the list held by each local planning authority and English Heritage.

If a building is not considered of sufficient historical or architectural importance to be listed it can be included on a **local list**. The local list is prepared by the local planning authority and contains information similar to the statutory list. While the local list does not give any legal protection to buildings it does show desire by the local planning authority to protect it.

You can find out what buildings are listed or on the local list by contacting your local planning authority.

Altering a listed building

Alterations to a listed building which would affect "its character as a building of architectural or special interest" (1990 Act) require **Listed Building Consent**. It is the responsibility of the local planning authority to decide whether listed building consent is required. In most cases they will have a dedicated conservation officer to deal with these matters. **Planning permission** may also be required for some works and so it may be necessary to submit two applications. No fee is required for a Listed Building Consent application.

The local planning authority will advertise an application for Listed Building Consent in the local newspaper and put up a site notice. The local planning authority will consult English Heritage on applications affecting Grade I and Grade II* buildings and applications to demolish Grade II buildings. They will also consult the county council (if applicable), local amenity groups such as the Civic Trust and the Society for the Protection of Ancient Buildings and may notify neighbours.

In making a decision the local planning authority will consider the architectural importance of the building, the effect the alterations on the character of the building, and national and local planning policies.

If consent is granted, work can commence subject to any conditions imposed and other approvals such as planning permission. If it is refused the applicant can appeal to the Secretary of State for the Department for Communities and Local Government. The appeals procedures are the same as those for planning applications (see **Sheet 8**)

Protection

Historic structures are often expensive to maintain, or they become redundant and are left to decay. Whether the buildings are listed or not, the responsibility for care and upkeep lies with the owner. Individuals and local authorities can play a part in ensuring their protection.

To protect a building it is possible to have it listed. Requests to have a building placed on the statutory list should be sent to English Heritage (See **Sheet 15**). The following information should be included with any request:

- details on the location (address and map),
- the name and contact details of the owner,
- clear and original internal and external photographs of the building,
- the reasons why you believe the building merits listing,
- details about the date of construction, and
- information on materials used and the architect are also useful.

Once the building has been listed there is no right of appeal by the owners against the listing. However if someone is unhappy with the decision they can write to the Department for Culture, Media and Sport within 28 days of notification and request that it be reconsidered.

The local planning authority can serve a **Building Preservation Notice** on buildings of historical or architectural interest under threat but which are not listed. Once this notice is served the building will be protected for a period of six months. The preservation notice gives the same level of protection to the building as for listed buildings. During the six month period the local planning authority can ask for it to be listed. Compensation may be payable to the owner if the request for listing is refused.

If listed building consent has not been obtained or conditions imposed on consent are not complied with, **Enforcement Notices** can be served. This will normally require work to be carried out to return the building to its former condition or alterations made to make it more acceptable. The owner of the building can apply for 'retrospective' permission or appeal against the notice.

The local planning authority can also take action on listed buildings that are not being maintained. Such action may include serving of a **Repairs Notice** or **Section 215 Notice**. Further information on the use of these notices can be found at Department for Communities and Local Government or Department of Culture Media and Sport (See **Sheet 15**).

It is a **criminal offence** to carry out unauthorised works to a listed building. Owners, builders and architects can be prosecuted in the Magistrates or Crown Courts. Offenders can be fined up to £20,000 and face up to two years imprisonment or both.

Conservation areas

These are areas identified by local planning authorities as being of special historic or architectural interest. The Planning (Listed Buildings and Conservation Areas) Act 1990 operates to provide controls on development within and affecting conservation areas. **Conservation areas** are significant in their own right. In many circumstances there will be an overlap between the controls imposed on listed buildings and those in conservation areas, as many conservation areas contain listed buildings. However they will also include buildings and structures that are not listed but are still subject to controls.

Local planning authorities should periodically review their conservation areas, and consider any further areas that should be designated. Further the Secretary of State (Department for Communities and Local Government) also has powers to designate conservation areas. To find out if you are in a Conservation Area, you can look at your local planning authority's Local Plan which contains an **Adopted Proposals Map** identifying conservation areas or talk to your local planning authority's Conservation Officer. Local Authority's also often produce detailed Conservation Area Character Appraisals.

Once an area is designated, buildings within it cannot be demolished without first applying for Conservation Area Consent. In addition any works to trees need to be notified to the local planning authority 6 weeks before they are to take place. Also permitted development rights under the General Permitted Development Order 1995 are restricted in conservation areas.

Conservation Area Consent is required for the demolition of any building, including structures such as garden walls in a conservation area. The local planning authority must consider the effects of that demolition on the character and appearance of the conservation area, and whether or not the proposal is desirable in order to preserve or enhance that character or appearance of the area. Otherwise planning permission for development in a conservation area must be sought in the usual way (see sheet 6 for more details).

Ancient monuments

Ancient Monuments (as defined by the Ancient Monuments and Archaeological Areas Act 1979) can include almost any building, structure or site of archaeological interest made or occupied at any time. The legislation requires the Secretary of State for Department of Culture, Media and Sport to prepare a schedule of ancient monuments of 'national importance'. This is compiled and reviewed by English Heritage.

The fact that a monument is scheduled does not mean that it will automatically be preserved. However, permission in the form of a '**Scheduled Monument Consent**' is required for any works that could affect the monument. Scheduled Monument Consent Applications are dealt with by the Department of Culture Media and Sport in consultation with English Heritage. If consent is refused, compensation may be payable (under limited circumstances) if the owner suffers financial loss.

Other special designations and controls

Green Belts

Since 1955, it has been government policy that 'belts' of green land be identified in development plans to:

- contain urban sprawl;
- protect the countryside from encroaching developments;
- preserve the individual nature of towns and cities and prevent them from merging in to each other;
- preserve setting and special character of historic towns;
- promote the process of urban regeneration by encouraging the recycling of derelict and other urban land.

The relevant policy guidance and designated green belts can be found in National Planning Policy Framework (2012) – Chapter 9 Protecting Greenbelts (See **Sheet 16**).

Green Belts are intended to be of a permanent nature, and there is a strong presumption against 'inappropriate' development within them. New buildings are generally inappropriate, and should rarely be given planning permission. Development permitted in the green belt should normally be limited to the re-use of buildings for activities typical to the countryside, for example agriculture, forestry or recreation. Proposals for new development, even of a minor nature, must not be visually intrusive. To find whether any land is classed as Green Belt in your area, look at your local planning authority's Adopted Proposals Map, contained within the local development framework.

In seeking to submit, or comment upon a planning application within a Green Belt look at the National Planning Policy Framework and the development plan policies. It is also advisable to contact your local planning authority.

Areas of Outstanding Natural Beauty (AONBs)

AONBs are designated by the Countryside Agency and currently make up approximately 13.5% of the total land area of England and Wales. Once an area is designated, it is government policy that development controls should apply to preserve its beauty. Individual development plans will contain specific policies about development within AONB's; they will seek to maintain the special landscape features of the area.

There are restrictions on permitted development rights under the General Permitted Development Order, but small scale, appropriately designed development which meets the needs of the local community are usually acceptable. It is advisable to talk to your local planning authority before seeking planning permission for development within these special areas.

There may be other designations in your area, such as **Sites of Special Scientific Interest (SSSIs)** and Ancient Woodlands that may affect development proposals. National planning policy relating to AONB's and other designations can be found in Chapter 12 – Conserving and Enhancing the Natural Environment of the National Planning Policy Framework (2012). Again if any of these designations exist in your area they will be shown on your local planning authority's adopted Proposals Map which is part of their Local Development Framework.

Tree Preservation Orders (TPOs)

Trees, both individual and in groups, play an important role in both rural and urban landscapes. As such they can be considered to have an amenity value (providing a positive addition to the town or landscape). Local authorities have the power to make **TPOs**, applicable to individual trees, groups of trees or woodlands. Such orders prohibit the cutting down, topping, lopping or other works to trees without the written consent of the local planning authority.

If you wish to carry out such works you will need to make a written application to the Local Planning Authority clearly identifying the tree(s) subject of the application and specifying the works you wish to have carried out.

The only exception from this requirement is where the tree in question is dead, dying or is posing a threat and there is danger to persons or property.

The burden of proof that the tree is dead dying or dangerous is on the owner or person carrying out the work. You may therefore wish to obtain advice from a qualified tree surgeon.

It is a criminal offence to cut down, top or lop a tree subject to a TPO, without prior consent from the local planning authority. In the case of work which will or has led to the destruction of the amenity values of the tree such as cutting it down or removing the entire canopy from it the penalty on conviction at the Magistrates court is a fine not exceeding £20,000. On Indictment to Crown Court the fine is unlimited. Where work has been carried out to a number of trees each tree will be considered to be a separate offence. For all other works to trees such as removing a branch the penalty on conviction at the Magistrates Court is a fine not exceeding £1000.

Enforcement action can also be taken against landowners who have contravened any conditions attached to the TPO, and local planning authorities have the powers to require the replanting of a tree or a group of trees. There is a right to appeal against the refusal of consent to do works to protected trees and against a replant notice. Such appeals should be submitted to the Secretary of State (Department for Communities and Local Government).

However mere preservation of trees can lead eventually to decay and defeat the object of these controls. To prevent this, the local planning authority can make replanting obligatory when permission is given to fell trees.

In the **case of a tree within a conservation area** which is not subject to a Tree Preservation Order any person wishing to carry out work to the tree is required to give the local planning authority 6 weeks' notice in writing of the proposed works and again supply a plan clearly identifying the trees.

You may not carry out work to the trees until such time as the local planning authority has written to you to say that you may proceed with the works or 6 weeks has expired. The penalties for carrying out work to trees in a Conservation Area without giving such notice are the same as for a tree protected by a preservation order. In the case of Conservation Area trees the protection is only afforded to them when they have a stem diameter of 75 millimetres or more when measured 1.5 metres above natural ground level.

Control of advertisements

Advertisements are controlled by a code contained in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007). The Town and Country Planning Act 1990 also has a number of sections which refer to the control of advertising, specifically section 55 (5). These give the Secretary of State (Department for Communities and Local Government) wide powers in relation to controlling advertisements "**in the interest of amenity or public safety**".

The issue of public safety relates to whether any advertisement will cause danger to any road or other transport users. The reference to amenity relates to the likely impacts on local character including features of historic, architectural or cultural importance. These are the only two ways that advertisements can be judged, local planning authorities are unable to refuse advertisement consent on moral or taste grounds.

The 1992 Regulations identify a range of classes within which types of advertisements fall. These include types that are **exempt**, or have **deemed consent**. By default, all adverts which do not fall into these categories require **Express Written Consent** from the local planning authority. These include most posters, virtually all illuminated signs, fascia signs on shop and business premises, and advertisements on gable ends. If a local planning authority refuses consent, then an appeal may be made to the Secretary of State (Department for Communities and Local Government).A useful guide called 'Outdoor Advertisements and Signs' is available from Department for Communities and Local Government (See **Sheet 15**).

In addition, the local planning authority has the power to define **areas of special advertisement control** where very strict controls operate. Such areas include National Parks, Areas of Outstanding National Beauty and Conservation Areas. Generally no adverts may be displayed in these areas, although appropriate and sensitive facia signs for shops and business are usually permitted after detailed negotiation with the local planning authority.

It is a criminal offence to display an advert which requires the express written consent of the Local Planning Authority to be displayed or where consent deemed is granted for the display of the advert the standard conditions have not been complied with. The penalty on conviction for displaying an illegal advert is a fine not exceeding £2,500.

In the case of an illegal advert the local planning authority only have to prove that it is being displayed illegally not that it is harmful to the amenity of an area or harmful to public safety. Advertisement consent cannot be applied for retrospectively. The situation relating to adverts is complex and detailed. It is a good idea to talk to your local planning authority before you start.

Hedgerow Regulations 1997

These regulations stem from the widespread concern over the loss of hedgerows to mechanised agriculture since the 1950s. These regulations prevent the removal of certain hedgerows, unless:

- the local planning authority have received a prior 'hedgerow removal notice' from the landowner;
- that the notice has been approved by the local planning authority, and removal is carried out in accordance with it; and
- the hedgerow is removed within two years of the date of service of the hedgerow removal notice.

To prevent the removal of the hedgerow, the local planning authority may respond to a 'hedgerow removal notice' with a '**hedgerow retention notice**'. This only applies to 'important' hedgerows which have existed for over 30 years and satisfying at least one of the criteria set out in the Regulations. For example, marking the boundary of a historic parish or town, incorporating an archaeological feature, or containing certain specified species.

The removal of any hedgerow is **permitted** if it is required:

- for making a new opening for access, as long as the old access is replanted;
- temporary emergency access, or where another means is unavailable;
- flood defence and land drainage;
- to carry out operations under the General Permitted Development Order;
- certain highway functions and maintenance of statutory services; and
- for the proper management of the hedgerow.

Any individual found contravening the regulations will be subject to a fine. The local planning authority can also direct the landowner or statutory undertaker to plant a replacement hedge specifying species and position. Those served with a 'hedgerow retention notice' can appeal to the Secretary of State.