



Historic England Advice on Building Preservation Notices and the Pilot Scheme on Indemnification by Historic England against Compensation (updated November 2020)

Summary

A Building Preservation Notice (BPN) is a means for a local planning authority to protect a building which it considers to have special architectural or historic interest, but which is in danger of demolition or alteration in such a way as to affect its character, by a form of temporary listing. This advice note sets out how local planning authorities should approach the serving of a BPN and gives guidance about how to seek Historic England agreement to indemnification against the risk of compensation. This note also sets out how assessment of the building in question is processed alongside a BPN.

This advice note supersedes the advice note *Building Preservation Notices*, first edition (2015).

Part 1 – Building Preservation Notices

What is a Building Preservation Notice?

1 Buildings and structures which meet the criteria for national protection are listed. This protection system has been in place since 1947 and operates under the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA Act 1990). The criterion for listing is special architectural or historic interest (usually both), with the decision to list being taken by government (the Department for Digital, Culture, Media and Sport - DCMS) following advice from Historic England, the government's statutory adviser on the historic environment.

2 A BPN is a form of temporary listing served by the local planning authority (LPA) under section 3 of the PLBCA Act 1990. Planning authorities have the power to serve a BPN on the owner and occupier of a building which is not listed, but which they consider is of special architectural or historic interest and is in danger of demolition or alteration in such a way as to affect its character as a building of such interest. As part of the positive strategy for the conservation and enjoyment of the historic environment under the National Planning Policy Framework, local planning authorities may find buildings which appear to them to be both of listable quality and at threat of alteration or demolition. Where the threat is urgent, a BPN offers a quick means to safeguard the building until a decision on listing can be made.

3 Once a BPN has been served on the owner and occupier of the building, it remains in force for six months from the date when it was served and it will cease to be in force if either the Secretary of State lists the building, or he notifies the local authority in writing that he does not intend to. Whilst the BPN is in force, the building is treated as if it were a listed building.

4 A specimen form for a BPN is attached to this advice note at Annex 1.

How to apply for listing when a BPN has been served

5 The local planning authority serves a BPN on the owner and occupier of the building and then must also request that the building be considered for listing by Historic England.

6 All applications for listing triggered by a BPN should be submitted by the local planning authority to Historic England via the online application form on the Historic England website. Please select BPN from the list when submitting your application as this will allow the BPN to be published on the National Heritage List for England (NHLE). You must also upload a copy of the BPN. The application should be supported by as much information as possible, including a location plan and photographs of the building. For more information on how to complete the form, please see the Apply for Listing page on the Historic England website – [How To Get Historic Buildings or Sites Protected Through Listing](#).

7 It is important that a building which is selected for protection by a BPN is potentially eligible for listing and the twenty thematically-arranged [selection guides](#) give detailed guidance about eligibility. Each gives a brief overview of:

- The types of buildings and structures covered in the guide;
- Current understanding of their history and development; and
- In some cases, how many were erected and still survive.

8 The second half of each selection guide sets out the over-arching listing criteria, before moving on to offer guidance relevant to the specific buildings or structures treated. A select bibliography gives suggestions for further reading. The selection guides are periodically updated.

Assessment by Historic England

9 Following receipt of an application for a BPN, Historic England will carry out a full assessment, generally including an internal and external inspection of the building and make a recommendation to DCMS on whether it merits listing.

Timescale

10 For listing cases triggered by a BPN, the Secretary of State must decide within six months whether to list the building. The BPN remains in force for up to six months but will lapse if within that period DCMS either includes the building in the statutory List or notifies the local planning authority in writing that it does not intend to do so. A BPN entry will appear on the NHLE until expiry or lapse.

11 The NHLE is an online database which brings together all nationally designated heritage asset records in one place. For listed buildings the NHLE is the statutory record.

What happens next?

12 The local planning authority must notify the owner and occupier if the Secretary of State decides not to list the building. It may not serve another BPN in respect of that building within 12 months of the notification (as per section 3(6) of the Act which requires the authority to give

statutory notice of the decision to the owner(s) and occupier(s) of the building; and to section 3(7) which precludes the serving of another BPN within 12 months from the date of the notification). If the building is not listed, compensation may be payable by the local authority for losses sustained by those with an interest in the building as a result of the BPN.

13 If the Secretary of State is satisfied that the building is of special architectural or historic interest, then the building is listed.

14 If you consider that the listing decision has been wrongly made you may contact the DCMS to request that the Secretary of State reviews the decision. More information on reviews is available from the Historic England website - [What Happens after an Application to Protect an Historic Building or Site Has Been Submitted](#).

Part 2: Local Planning Authority indemnification against the risk of compensation: the Historic England Pilot Scheme

15 Historic England is running a two-year pilot (from November 2018) to explore the benefits of indemnification of BPNs, to promote engagement with the powers available and provide confidence against the likelihood of claims for compensation. **The pilot scheme has been extended for an additional year, and is therefore due to end in November 2021.**

16 Compensation may be payable in certain circumstances in the event that a building, on which a BPN has been served, is not listed (see section 29 of the PLBCA Act 1990). To remove the financial risk this poses for LPAs, Historic England may, in some circumstances and if the procedure below is followed, consider indemnifying local planning authorities against that possibility as part of a pilot project into indemnification against compensation.

Applications for indemnification

17 The legislation points out that, if the building is worthy of listing, compensation will not be payable; it is only if the building is not listed and there have been costs incurred in certain circumstances that there is a financial risk. For a BPN to be eligible therefore for consideration of indemnification by Historic England against the possible risk of a payment for compensation, local planning authorities should, at the earliest possible moment but before the BPN is served, contact Historic England under the following process:

- a) Local planning authority to contact Historic England, by email (at listing.enquiries@historicengland.org.uk) or telephone 0207 973 3584 to inform Historic England of a building which is eligible for the service of a BPN, ie it is:
 - i. at risk of demolition or alteration such as to affect its historic and architectural interest; and
 - ii. it is considered to be of sufficient architectural or historic interest to be listed; and, moreover,
 - iii. for the purposes of the indemnification, it is believed to be at a risk of a claim for compensation.

18 The LPA therefore needs to provide Historic England with brief details of the apparent situation as they currently know it, sufficient for Historic England to arrive at a judgment on

these matters (see paragraph 20 below for the kind of information which Historic England would wish to see in an indemnification case).

- a) Provide information to Historic England, which may contact the LPA for further details.
- b) Historic England will then carry out a rapid risk analysis of the case.
- c) Where in Historic England's opinion there is a risk of a successful claim for compensation and the LPA should be supported by indemnification, Historic England may in its ultimate discretion provide an indemnity to the LPA in writing. Historic England reserves the right not to support any case where in its opinion, for example, the perceived risk of compensation is too great.
- d) The LPA serves the BPN and the case follows the normal route.

Helping Historic England to make a decision on indemnification of Building Preservation Notices

19 To allow Historic England to come to an informed assessment, it is in the interests of the LPA to provide as much information as they are able to gather, recognising that if there is strong evidence of threat to the building a decision on whether to serve a BPN may need to be made with only very limited information and that there may be a likelihood of a claim for compensation. The more information available, the more likely it is that Historic England will be able to indemnify the LPA against a claim for compensation.

20 Because it is the imminence of work which could lead to the threat of compensation, Historic England needs basic information, based on 'best guesses' from the LPA if more accurate information is not available:

1. Are there clear plans for the site, or evidence that development is likely to commence imminently? (eg contracts for demolition, scaffolding, or the sinking of foundations)
2. Or is it likely that the site has effectively been banked for development later?

21 In cases where Historic England has provided the LPA with an indemnity against a claim for compensation in respect of the issue of a BPN and the BPN is not successful and compensation is sought, the LPA must contact Historic England immediately.

22 It should be noted that any claim for compensation would be after the BPN has been refused. Historic England would expect to be notified by the LPA of any claims within six months of the refusal of the BPN by the Secretary of State.

Contact Details

Email: listing.enquiries@HistoricEngland.org.uk

Telephone: 0207 973 3584

Annex 1

Specimen form for Building Preservation Notice

[COUNCIL HEADED PAPER]

To: [NAMES OF OWNER AND OCCUPIER] of [ADDRESSES OF OWNER AND OCCUPIER]

Building preservation notice (section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

THE COUNCIL GIVES NOTICE that:

1. The Council is the local planning authority for the area in which [ADDRESS OF PROPERTY] (the Building) is situated for the purposes of section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA Act 1990). The Building is shown on the map attached to this Notice edged in red [and is more fully described, for identification purposes only, in the Schedule to this Notice.]

2. It appears to the Council that the Building, which is not a listed building under section 2 of the PLBCA Act 1990, is of special architectural or historic interest, and is in danger of being demolished or altered in such a way as to affect its character as a building of special architectural or historic interest.

3. The Council has asked the Secretary of State for Digital, Culture, Media and Sport to consider including the Building in the list of buildings of such interest compiled or approved under section 1 of the PLBCA Act 1990.

4. As a result of section 3 (3) and 3 (4) of the PLBCA Act 1990, this notice will come into force on [DATE] (the date the notice was served on the owner[s] [and occupier[s]]) of the Building) and remains in force for six months from that date unless the Secretary of State:

- Lists the Building under section 1; or
- Notifies the Council that he does not intend to list it.

In the latter case, the Council will then immediately notify the owner(s) and occupier(s) of the decision.

5. While this notice is in force:

- The provisions of the PLBCA Act 1990 (except section 59) shall have effect in relation to the building as if it was listed. Listed building consent (LBC) will be required from the Council to demolish, alter or extend the Building in any way that affects its character as a building of special architectural or historic interest.
- IF WORKS ARE CARRIED OUT TO THE BUILDING WITHOUT OBTAINING LISTED BUILDING CONSENT, YOU WILL BE LIABLE TO CRIMINAL PROSECUTION, EXCEPT IN CERTAIN CIRCUMSTANCES WHERE THE WORKS ARE URGENTLY NECESSARY IN THE INTERESTS OF SAFETY OR HEALTH OR FOR THE PRESERVATION OF THE BUILDING (IN WHICH CASE YOU SHOULD NOTIFY THE COUNCIL AT THE EARLIEST POSSIBLE OPPORTUNITY).

6. If the Notice ceases to be in force because 6 months have elapsed since it was served, or because the Secretary of State during that period notifies the Council that he does not intend to

include the Building in the List, the provisions of Schedule 2 to PLBCA Act 1990 will then apply. Under that Schedule:

- The fact that the Notice has ceased to be in force will not affect the criminal liability of any person for having committed offences in relation to the Building while it was in force.
- Any proceedings relating to any application for listed building consent for works to the Building made while this Notice was in force, will lapse, as will any listed building consent granted whilst it was in force.
- Any listed building enforcement notice served in relation to the Building while this Notice was in force shall cease to have effect and any related appeal proceedings will lapse.
- The fact that the Notice has ceased to be in force will not affect the ability of the Council or a subsequent owner of the Building to recover, from a person who carried out unauthorised works to the Building, the costs of any remedial works required by a listed building enforcement notice relating to the Building.

7. If you require any further information regarding this notice, please contact [DETAILS OF COUNCIL OFFICER DEALING WITH MATTER].

Signed:

.....
[duly authorised officer of the Council]
(Address of Council)
Date

Schedule
(description of building - required if a simple address is insufficient to identify it)

We are the public body that looks after England's historic environment. We champion historic places, helping people understand, value and care for them.

Please contact guidance@HistoricEngland.org.uk with any questions about this document.

HistoricEngland.org.uk

If you would like this document in a different format, please contact our customer services department on:

Tel: 0370 333 0607

Email: customers@HistoricEngland.org.uk

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