

ARRANGEMENTS FOR HANDLING HERITAGE
APPLICATIONS – NOTIFICATION TO THE
SECRETARY OF STATE (ENGLAND)
DIRECTION 2009

INTRODUCTION

1. DETR Circular 01/2001 sets out the requirements for notifying the Secretary of State of applications for listed building consent where the local planning authority (LPA) is minded to grant consent (there being no requirement to notify where there is no intention to do so). The Direction at Annex A replaces the Direction set out at paragraph 26 of that circular.
2. This circular and Direction should be read in conjunction with Circular 01/2001 and ODPM Circular 09/2005.

POWERS

3. Section 12 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) allows the Secretary of State to give directions requiring that a listed building consent application be referred to him instead of being determined by the local planning authority.
4. Section 13 of the Act requires that if an LPA (other than a London borough council) to which an application is made for listed building consent intends to grant consent, it must first notify the Secretary of State of the application. The Secretary of State may, within the period of 28 days from the date of notification, direct that the application be referred to him for his own determination (under section 12) or give notice that he requires further time to consider whether to require its referral. The LPA may not grant consent until that period has expired without either the Secretary of State requiring referral or notifying them that he does not require referral.

5. Section 15 of the Act empowers the Secretary of State to direct that notification to him under section 13 is not required in certain descriptions of applications. The Direction is currently set out in Circular 01/2001 at paragraph 26. Broadly, the Secretary of State must be notified of all applications (where the local planning authority is minded to grant consent) affecting Grade I and II* buildings as well as those applications for Grade II (unstarred) buildings which involve the demolition of the principal building, the principal wall of a principal building, or a substantial part of the interior.
6. In addition, section 15 of the Act empowers the Secretary of State to direct LPAs to notify specified persons of any applications for listed building consent and the decisions taken by the authority on them. Paragraph 15 of Circular 01/2001 (amended by Circular 09/2005) directs that English Heritage and the National Amenity Societies (as named) should be notified of the same descriptions of listed building consent applications as the Secretary of State should be notified of at present (albeit at an earlier stage in the process).
7. The purpose of notifying English Heritage and the National Amenity Societies is to enable them to comment on applications at the earliest possible stage and before authorities have reached their own conclusions on them (paragraph 20 of Circular 01/2001). These bodies can ask the Secretary of State to consider calling in the listed building consent application for his own determination. The notification requirements for English Heritage and the National Amenity Societies remain unchanged by this circular.

PURPOSE AND SCOPE

8. The Government wishes to reduce the time taken for determining listed building consent applications, where possible, without reducing the level of protection that they are afforded. The Direction at Annex A replaces the Direction at paragraph 26 of Circular 01/2001. It adds to those descriptions of application of which the Secretary of State need not be notified, to include listed building consent applications received by LPAs outside Greater London to which English Heritage or any of the National Amenity Societies (which are set out in Circular 01/2001, as amended by Circular 09/2005) have no written objections. Where English Heritage or one of the National Amenity Societies has objected, the Secretary of State should be notified as at present and as set out in paragraph 4 above. Procedures for doing so remain the same as set out in paragraphs 28 and 30 of Circular 01/2001. The proposal will not apply to applications by a local authority for listed building consent; such applications will continue to be determined by the Secretary of State.
9. Authorities should allow 28 days from the date of notification for comment from English Heritage or the National Amenity Societies, unless an extension has been agreed with the local authority. Any comments from English Heritage or any of the National Amenity Societies must be in writing, and clearly state the objection(s) to the proposal, and that these objections require the Secretary of State to be notified. Consent should not be granted until this period has passed and no written objections have been received; or English Heritage and the National Amenity Societies have indicated in writing that they have no objections which require notification to the Secretary of State prior to the expiry of this period. Where an objection by English Heritage or one of the National Amenity Societies has been received, the Secretary of State should be notified of the application as at present.

10. LPAs should bear in mind that English Heritage may issue a non-intervention letter, which sets out the concerns about a proposal which they would like addressed, but which they do not feel justify notification to the Secretary of State. As at present, LPAs should continue to make every effort to address those concerns in taking forward an application.
11. A summary of the amended notification requirements for listed building consent applications which apply to LPAs are set out at Annex B. This replaces the Listed Building Consent Applications section of Appendix A to Circular 01/2001. The remainder of Appendix A to Circular 01/2001 is unchanged.

Annex A

ARRANGEMENTS FOR HANDLING HERITAGE APPLICATIONS - NOTIFICATION TO THE SECRETARY OF STATE (ENGLAND) DIRECTION 2009

The Secretary of State, in exercise of the powers conferred by section 15(1) of the Act, and after consultation with English Heritage, hereby directs local planning authorities in England as follows:-

Citation, commencement and application

1. This Direction may be cited as the Arrangements for Handling Heritage Applications - Notification to the Secretary of State (England) Direction 2009 and shall come into force on 1 December 2009.
2. This Direction applies in relation to England only.

Interpretation

3. In this Direction –

“Circular 01/01” means DETR Circular 01/2001: Arrangements for Handling Heritage Applications - Notification and Directions by the Secretary of State;

“Circular 09/05” means ODPM Circular 09/2005: Arrangements for Handling Heritage Applications – Notification to National Amenity Societies Direction 2005;

“National Amenity Society” means any one of the bodies listed in paragraph 15(1) of Circular 01/01 as amended by Annex A to Circular 09/05;

“relevant works” means-

- (a) works for the demolition of any principal building;
- (b) works for the alteration of any principal building which comprise or include the demolition of a principal external wall of the principal building; or
- (c) works for the alteration of any principal building which comprise or include the demolition of all or a substantial part of the interior of the principal building;

the following terms-

“the Act”; “curtilage building”; “English Heritage”; “principal building”

have the same meaning as in paragraph 7 of Circular 01/01.

Determination by Local Planning Authorities of Certain Listed Building Consent Applications without Notifying the Secretary of State

- 4(1) Section 13 of the Act shall not apply to applications for listed building consent -
- (a) to carry out works for the demolition, alteration or extension of a grade II (unstarred) listed building outside Greater London unless the application proposes the carrying out of relevant works;
 - (b) in respect of all applications other than those excluded from notification under (a), where the local planning authority has not received any written objection from English Heritage or a National Amenity Society in relation to applications notified by them under paragraph 15(1) and (2) of Circular 01/01.
- (2) Section 14 of the Act shall not apply to applications for listed building consent to carry out works for the demolition, alteration or extension of a grade II (unstarred) listed building in Greater London unless the application proposes the carrying out of -
- (a) works for the demolition of any principal building;
 - (b) works in respect of any principal building which is a railway station (including an underground station), theatre, cinema or bridge across the Thames;
 - (c) works in respect of any curtilage building to a principal building which is a railway station (including an underground railway station);
 - (d) works in respect of any other building which is owned by a local planning authority in its area and where the application is made by a person other than the authority; or
 - (e) works for the alteration of any principal building which comprise or include:
 - (i) the demolition of a principal external wall of the principal building; or
 - (ii) the demolition of all or a substantial part of the interior of the principal building.
- (3) For the purposes of this Direction -
- (a) a proposal to retain less than 50 per cent of the surface area of that part of a principal building represented on any elevation (ascertained by external measurement on a vertical plane, including the vertical plane of any roof) shall be treated as a proposal for the demolition of a principal external wall;
 - (b) a proposal to demolish any principal internal element of the structure including any staircase, load-bearing wall, floor structure or roof structure shall be treated as a proposal for the demolition of a substantial part of the interior.

Revocation

5. The Direction contained in paragraph 26 of Circular 01/01 is revoked with effect from 1 December 2009.

Saving

6. The Direction revoked by paragraph 5 shall continue to have effect in relation to any application for listed building consent made before the commencement date.

Signed by authority of the Secretary of State
November 2009

Michelle Banks
Head of Planning Systems Improvement Division
Communities and Local Government

Annex B

SUMMARY OF REQUIREMENTS FOR NOTIFICATION OF APPLICATIONS FOR LISTED BUILDING CONSENT

Local planning authorities (LPAs) to notify the national amenity societies of an application for works which comprise or include the demolition of the whole or any part of a listed building.

(Circular 01/2001, Direction paragraph 15(1) as amended by Circular 09/2005).

Outside Greater London, LPAs to notify English Heritage of all applications affecting Grade I and Grade II* listed buildings, and of those affecting Grade II (unstarred) buildings which involve the demolition of the principal building, the demolition of a principal external wall of the principal building, or the demolition of all or a substantial part of the interior of the principal building. Where English Heritage or any of the National Amenity Societies object to the proposal and have said they require the Secretary of State to be notified, and the authority is minded to grant consent, the Local Planning Authority should notify the Secretary of State.

(Circular 01/2001 Direction paragraph 15(2)(a), and Circular 08/2009, Direction paragraph 4(1))

In Greater London, LPAs to notify English Heritage of the following applications, and to seek English Heritage's authorisation before granting listed building consent: all applications affecting Grade I and Grade II* listed buildings; applications affecting Grade II (unstarred) buildings which involve the demolition of the principal building, the demolition of a principal external wall of the principal building, or the demolition of all or a substantial part of the interior of the principal building; applications for Grade II (unstarred) principal buildings which are railway stations (including underground stations), theatres, cinemas, bridges across the Thames, or are owned by the LPA in its area but where the application is made by someone other than the authority; and applications for curtilage buildings to Grade II (unstarred) principal buildings which are railway stations (including underground stations).

(Section 14 of the Act and Circular 01/2001, Direction paragraph 15(2)(b))

Applications by English Heritage for listed building consent for its own properties to be referred to the Secretary of State.

(Circular 01/2001, Direction paragraph 35)

Applications by a local planning authority for listed building consent in respect of a building in its own area to be made to the Secretary of State.

(Section 82 of the Act and regulation 13 of the Planning (Listed Building and Conservation Areas) Regulations 1990)

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