



department for
**culture, media
and sport**

Improving Listed Building Consent

A Consultation

July 2012

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

- 1.1 This consultation seeks views on options for changing the system of listed building consents. Government's response to the Penfold Review of Non-Planning Consents ("Implementation of the Penfold Review", BIS, November 2011) included a commitment to seek public consultation on simplifying the Listed Building Consent (LBC) system through measures to reduce the circumstances in which LBC is required and reduce the level of information applicants are required to submit, thus reducing burdens on developers and allowing the public agencies which administer these consents to focus upon the highest risk areas and to deliver a more efficient service. Potential measures were set out in the document. Wide-ranging pre-consultation discussions with heritage practitioners produced additional options for change. It is on both sets of options that we are consulting now. All are intended to meet the Penfold Review objectives, while ensuring that heritage assets are conserved in a manner appropriate to their significance, in line with the objectives of the National Planning Policy Framework, and at the same time to avoid increasing burdens on Local Planning Authorities.
- 1.2 The options for consultation include:
- 1) A system of prior notification leading to deemed LBC
 - 2) A system of local and national class consents granting deemed LBC
 - 3) A "certificate of lawful works to Listed Buildings"
 - 4) Replacing local authority conservation officer recommendations for LBC by those made by accredited agents, if LBC applicants wish to do so.
- 1.3 This consultation also seeks views on new or improved measures to address building neglect, which may or may not include legislative change.

Option 1: A system of prior notification leading to deemed LBC

- 1.4 Option 1 is a system of prior notification of proposals for specified types of work to local planning authorities, who would be able to respond to the notification with a request for a full LBC application within a specified time period, or to allow that period to lapse, with LBC thereby deemed to be granted.
- 1.5 Currently, Listed Building Consent is required for any works for the demolition, alteration or extension of a listed building which affects its character as a building of special architectural or historic interest. This brings a wide range of works into the

control system, not all of which have a harmful or significant impact on special interest. Submission to the Local Planning Authority (LPA) of a simple prior notification of the intention to carry out works to a listed building would then allow the LPA either to allow the works to go ahead without further intervention, if they judged them acceptable, or to require the submission of a full LBC application. Enabling LPAs to focus on applications more likely to impact on a building's special interest, while allowing a lighter touch for applications with less impact, would allow better use of their resources, and would also lighten the burden on owners and developers.

Option 2: A system of local and national class consents granting deemed Listed Building Consent

- 1.6 Option 2 is a system allowing class consents for defined works to defined heritage assets to be issued unilaterally by a local authority. It is also proposed that the Secretary of State, advised by English Heritage, be enabled to grant a class consent for an area or group of assets that cross local authority boundaries for a defined class or classes of works. A system of local and national class consents has been put forward as an alternative measure to Option 1.
- 1.7 This option seeks to address the number of full LBC applications for works which have neither a harmful nor significant impact on special interest. A system of local class consents, set up by a LPA, could be used to set aside the need for LBC for a defined class or classes of works affecting a defined area or group of heritage assets. The Secretary of State could be empowered to grant a class consent for an area or group of assets that cross local authority boundaries, for instance canal networks or other infrastructure, for a defined class or classes of works. By responding to well understood local characteristics this approach would allow a light touch for a range of works which have minor or acceptable impacts on the special interest of known categories of listed building. It would also reduce regulation and lift burdens by removing altogether any requirement to consider, make or process an application.

Option 3: A "Certificate of Lawful Works to Listed Buildings"

- 1.8 Option 3 is to allow local planning authorities to grant a Certificate of Lawful Works either for proposed works to a listed building which do not have an impact on special interest, or for existing works carried out in the understanding that no LBC was required, and confirming that this was the case.
- 1.9 Works to a listed building which do not affect its character as a building of special architectural or historic interest do not require consent. Interpretations of whether or not consent is needed can vary between Local Planning Authorities. LPAs are often reluctant to give a view as to whether the work would require LBC because it is ultimately a matter for the courts to determine and LPAs do not wish to fetter their own discretion. Those seeking to make change to listed buildings are sometimes required to submit a formal application for Listed Building Consent in order to gain certainty, whether or not the works in fact affect special interest. Owners and prospective developers have expressed their desire for a mechanism allowing them to receive a

simple assurance about whether or not LBC will be required for given works. A legal mechanism allowing a local authority to grant a “Certificate of Lawful Works” would allow formal clarification of whether or not LBC is required, and would avoid the submission of a full LBC application.

Option 4: Replacing local authority conservation officer recommendations for LBC by those made by accredited agents, if LBC applicants wish to do so

- 1.10 Option 4 is a system which allows independent accredited agents to make expert recommendations to Local Planning Authorities in the exercise of their statutory duty to determine applications.
- 1.11 Government is keen to expand the range of expertise involved in decision-making on LBC cases so that decisions can be reached more quickly and effectively, while standards of protection are maintained. Research indicates that nearly three quarters of all applications for LBC in town and city centres are made by an agent on behalf of the owner/tenant of the property¹. Pre-consultation discussions with heritage bodies and consultancies confirmed that detailed heritage reports are often submitted to accompany major applications affecting heritage assets. Enabling owners or developers to commission an independent agent to offer an expert report and recommendation to the LPA as part of the LBC application, effectively “certifying” the works as acceptable, would be a logical next step. It would expand the sources of expert advice to local authorities, and encourage early consideration of heritage issues in the development of proposals. The LPA would continue to administer consultation and notifications, including to English Heritage and national amenity societies, as at present, and decisions would continue to be taken following current governance arrangements.

Reform of measures available to address building neglect

- 1.14 The Government is concerned with the number of listed buildings which have been on the Heritage at Risk Register for a long time. Local authorities have powers to serve Urgent Works Notices or to pursue Compulsory Purchase Orders but find them problematic to exercise. This is a disincentive for carrying out any enforcement work in cases of listed buildings that appear to be neglected.
- 1.15 We wish to investigate reforms to measures available to deal with buildings at risk, which might include legislative reforms, but could cover a wide range of measures.

¹ “The Patterns of Business Occupation and Consent Applications for Historic Buildings”, Colliers International for English Heritage and the Heritage Lottery Fund, June 2012

Considering the Options

- 1.16 Options 1 and 2 look at alternative approaches to reducing the number of full applications for Listed Building Consent, and are mutually exclusive. We hope the responses to this consultation will help Government judge which approach is likely to have the most impact in improving the operation of the LBC system.
- 1.17 Option 3 deals specifically with works which do not affect special interest, and for which LBC is not needed. It could, therefore, operate alongside any of the other options.
- 1.18 Option 4 looks at a proposal for expanding the range of expertise available to inform or make decisions on LBC cases by opening up the process to accredited independent agents. This option could operate in tandem with Options 1 or 2, and Option 3.
- 1.19 For some of the options, we have identified areas where more information would be of value in understanding the current operation of the system and would inform a decision on possible changes. We ask for your assistance in filling in these gaps if you are engaged in the heritage protection system and have access to this information.

Section 2: Purpose of this consultation and next steps

2.1 This proposal seeks your views on options to streamline the Listed Building Consent system as follows:

- A system of prior notification leading to deemed LBC
- A “certificate of lawful works to Listed Buildings”
- A system of local and national class consents granting deemed LBC
- Accredited Agents replacing local authority officer recommendations on LBC, if applicants wish

We are also seeking your views on the enforcement mechanisms for dealing with listed buildings which have been put at risk through neglect, such as Repairs Notices and Compulsory Purchase Orders, with a view to making these more effective.

2.2 A separate, consultation stage Impact Assessment has also been prepared, and is available on the DCMS website.

2.3 The geographical scope of this consultation is England.

2.4 This is a public consultation. We particularly seek views from those engaged in the system of LBC as past or prospective applicants and developers, or heritage and/or planning expert practitioners.

2.5 The consultation period will run for 4 weeks from 26th July 2012 to 23rd August 2012.

2.6 Please respond before the closing date by submitting responses to the questions asked and/or comments to listingsconsultation@culture.gsi.gov.uk. If you do not have access to email, please write to:

The Heritage Team
Department for Culture, Media and Sport
2 – 4 Cockspur Street
London SW1Y 5DH

- 2.7 For enquiries about the consultation (handling) process only, please email enquiries@culture.gsi.gov.uk, heading your communication “Improving Listed Building Consent”.
- 2.8 This consultation is intended to be an entirely written exercise. Please contact the Heritage Team on 020 7211 6129 if you require any other format, e.g. Braille, Large Font or Audio.
- 2.9 Copies of responses will be published after the consultation closing date on the Department’s website: www.culture.gov.uk.
- 2.10 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environment Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 2.11 The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
- 2.12 The consultation is guided by the Government’s Code of Practice on consultation which is available at www.bis.gov.uk/files/file47158.pdf .
- 2.13 We will publish a response to the consultation setting out any proposed changes arising from it.

Section 3: Option 1 - A system of prior notification leading to deemed consent

- 3.1 Government is committed to ensuring that levels of protection for listed buildings are maintained, and also wishes to reduce the burdens on local authorities and on businesses and householders proposing to change listed buildings. Burdens arise from the numbers of LBC applications submitted and processed for works which are limited in impact and which are subsequently approved. A system of prior notification leading to deemed consent, focusing full LBC applications away from works which impact little on a listed building's special interest, would reduce the number of such LBC applications made.
- 3.2 Currently, LBC is required for any works for the demolition, alteration or extension of a listed building which affects its character as a building of special architectural or historic interest. This brings a wide range of works into the control system, not all of which have a harmful or significant impact on special interest. On average there are 30, 000 applications for Listed Building Consent every year. Research commissioned by English Heritage and the Heritage Lottery Fund indicates that in town centres around 90% of these applications are for small schemes (costing less than £100, 000) or minor works (around 20% of total LBC applications).² The same study confirmed that the majority of LBC applications – 95% in the sample examined - are approved, although a significant number will have been amended before approval or will have received conditional approval. It has not been possible to establish through research the numbers of applications which required amendment before approval was granted, nor the numbers to which substantive (rather than standard) conditions were attached – finding this out will be important in establishing the numbers of LBC applications annually that could potentially be dealt with through deemed consent.
- 3.3 Enabling Local Planning Authorities to focus on applications more likely to impact on a building's special interest, while allowing a lighter touch for applications with less impact would allow better use of their resources, and would also lighten the burden on owners and developers. We propose, therefore, a system whereby a developer may give the LPA a simple prior notification of their intention to carry out works to a listed building. If the notification indicates little or no harm to special interest, or some harm, clearly justified in the interests of conserving the building in its optimum viable use, the LPA will be able either to confirm that works could go ahead through a simple letter, or,

² "The Patterns of Business Occupation and Consent Applications for Listed Buildings", Colliers International for English Heritage and the Heritage Lottery Fund, May 2012.

by allowing the notification period to lapse, confirm the grant of deemed consent by default. If the LPA are satisfied that the notification is for works which are likely to harm the special interest of the listed building, and does not contain any clear justification for that harm in terms of the conservation interests of the building, they will, within a period of 28 days, be able to request the submission of a full LBC application.

- 3.4 To ensure that this proposal brings about real improvements, it will have to be simpler than the current system of LBC. It will work best if targeted on applications for works which affect but do not harm special interest, or where levels of harm are low, and clearly justified in the interests of keeping a building in its optimum viable use. These works could be defined nationally, but the system could be more flexibly applied if it is left up to the LPA to make a judgment on a case by case basis. In either case, applicants will benefit from clear national guidance on the kinds of works which are likely to benefit from deemed consent, and on the standards of information to be submitted.
- 3.5 A time limit of 28 days would ensure that a request from the LPA for submission of full LBC did not create appreciable delay. Pre-application discussions would remain an important means of gaining clarity in advance and reducing delays once a notification is submitted.
- 3.6 The standards for supporting information will have to be carefully balanced; too high and they risk reproducing the system of full LBC, too low and they risk either harm to the listed building, or the application being called in for full LBC anyway. The information supplied should be sufficient to ensure that the extent and impact of the proposed works are clear to the LPA. A national definition of appropriate standards would support LPA and applicant alike. Careful thought will be needed by Local Planning Authorities, to ensure that expert staff are given an early opportunity to view notifications, and decide between deemed and full consent before 28 days elapse.
- 3.7 To avoid the risk of harm to special interest through incremental and uncontrolled changes over time, and to maintain clarity on changes to listed buildings, there should be a proper record of decisions made under deemed consent; they should be recorded in the planning register. A formal note confirming the outcome of notification would protect the interests of both applicant and Local Planning Authority and also avoid doubt, for instance, when a property is sold. It would be prepared by the LPA, and could be provided only on request of the applicant in a form much simpler than a standard decision notice.

Question 1: Do you agree with the proposal to introduce a system of prior notification of works to a listed building, leading to deemed Listed Building Consent if the Local Planning Authority does not request a full application within 28 days? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 2: If you are commenting from a Local Planning Authority, are you able to comment on the proportion of your LBC applications which require amendment or the application of non-standard conditions prior to consent? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

Section 4: Option 2 - A system of local and national class consents

- 4.1 There are over 350, 000 listed buildings, and within that number great variation in type and character. This makes it challenging to identify nationally the kind of works that could be done without harming special interest in every case; a feature may be affected which is common or relatively unimportant in one area or building type, but may be key to special interest in others³. There may be, however, localised groups of buildings whose similarities mean that it is easy to identify works which can be removed from the LBC system without fear of harming special interest. This may be due to the design, materials or history of use common amongst them. Local authorities will be in a good position to judge which of their inventory of listed buildings will be most amenable to a light-touch management approach without undermining the protection of what is special.
- 4.2 This option proposes a change in legislation to enable LPAs voluntarily and unilaterally to grant consent in advance for certain defined works to listed buildings within a defined area or of a defined type within their boundary. They could be encouraged in the use of these consents – “class consents” – to grant advance consent for works of limited impact, or, based on understanding of local characteristics, works whose impact can be confidently identified as not harmful.
- 4.3 An example of situation in which this approach might work well could be the terraced townhouses of seaside and spa towns, which often have a lengthy history of subdivision into flats accompanied by changes to interior layouts and features. Their special interest may often be seen to reside primarily in their external, townscape and group value, although their interiors can retain features with special interest. Specified internal changes to such much-altered properties could be exempted from the need for further LBC application, and might include removal, relocation or alteration of internal partitions and features. Known unaltered survivals could be specifically exempted from the class consent.

³ For example, the great majority of works to bathrooms – replacing fittings, etc, are unexceptionable and do not require consent. There are, however, a very small number of exceptional bathrooms of the early twentieth century that are certainly worthy of protection – mirrored Art Deco bathrooms, for instance – where there is a need to guard against their unnecessary harm or loss.

- 4.4 This option also proposes that the Secretary of State, advised by English Heritage and the relevant LPAs, be enabled to grant class consent for a defined class or classes of work relating to an area, type or group of listed buildings that cross local authority boundaries. This might be applied, for instance, to listed structures in the ownership of an infrastructure manager such as British Waterways Board/The Canal and River Trust. The national class consent could cover predictable and repetitive defined works of repair and maintenance to these assets which safeguard their special interest.
- 4.5 In setting up class consents, the works within scope would need careful definition, and if conditions are used, care should be given that they are proportionate and enforceable. This content should be drawn up in discussion with owners, English Heritage, and local and national amenity societies, and publicly consulted on. Rather than being required to sign off all local class consents, the Secretary of State could retain the power to call in and review where there is particular local controversy or opposition by English Heritage, say, for going beyond minor works. The issue of a class consent should be accompanied by guidance to help owners carry out consented works to an appropriate standard.
- 4.6 National or cross-boundary class consents would be promoted and negotiated on behalf of the Secretary of State by English Heritage. They would be set up as above, although consultation would be with all relevant Local Planning Authorities. Single or small numbers of owners of a large portfolio of heritage assets would almost certainly be involved in negotiations, but large numbers of multiple owners would be unlikely to be approached individually, although national notification/consultations could be carried out. As national class consent would be seen to benefit the owners of properties by reducing their need to apply for consent, this need not be seen as harmful. It would, however, be necessary to work with the relevant local authorities to ensure that in the event of such a class consent being put into operation, all those affected were notified, to avoid any abortive work in preparing consent applications that are no longer needed. Local authorities should also be given the opportunity to restrict use of national class consent, through a measure mirroring Article 4 Directions, whereby certain permitted development rights are removed by a Local Planning Authority.
- 4.7 Arrangements for monitoring the impacts of class consents would help to address concerns that this is a less transparent approach than LBC, and that there is a danger of the class consent being exceeded in unauthorised works; normal enforcement should apply to works which do this, and if a class consent is manifestly leading to abuse, then there should be a mechanism to rescind it.
- 4.8 This is a voluntary approach, which Local Planning Authorities or the Secretary of State would adopt as and when they perceive an advantage. The savings and benefits of fewer full LBC cases would be built up incrementally over the medium- to long-term through the actions of individual Local Planning Authorities, but could potentially be considerable; local flexibility means there is potential to be far-reaching in scope, and, once a class consent is in place, it removes altogether any requirement to make, process or consider an application.

Question 3: Do you agree with the proposal to introduce a voluntary system of local and national class consents? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 4: If you are commenting from a Local Planning Authority, are you able to comment on the likely applicability of this option within your area, in terms of the kinds of listed building and type of works to which it might be applied, and to the likely resource implications of setting up a local class consent? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

Question 5: Which of the options set out in this consultation to reduce the number of LBC applications for works with limited or justifiable harm to special interest (Options 1 and 2) do you prefer? Please state the reasons for your preference.

Section 5: Option 3 - A Certificate of Lawful Works for Listed Buildings

- 5.1 Works to a listed building which do not affect its character as a building of special architectural or historic interest do not require consent. Judgements on whether or not works need consent can vary between Local Planning Authorities. LPAs are often reluctant to give a view as to whether the work would require LBC because it is ultimately a matter for the courts to determine and LPAs do not wish to fetter their own discretion. As a result, LBC applications may be made which are not really necessary, imposing a burden on LPA and developer alike: it is not known how many, but anecdotal evidence suggests a small but significant number. Pre-consultation discussions with heritage and development bodies and practitioners revealed that owners and prospective developers would welcome a simple assurance about whether or not LBC will be required for proposed works.
- 5.2 This option proposes the introduction of a “Certificate of Lawful Works” which would be able to specify, by reference to a plan or drawing, the listed building and precise nature of works carried out to it that are certified as lawful. This would be a voluntary mechanism, whereby an owner or prospective developer could receive assurance concerning works. The certificate could take two forms; one to certify works which are proposed, and one granted retrospectively for works carried out in the belief that LBC was not required.
- 5.3 A Certificate of Lawful Works for proposed works, would describe the works considered permissible without the need for consent. It would provide the formal mechanism to allow Local Planning Authorities to confirm that LBC is not required. It would provide an optional and simple approach for seeking clarity on the need for consent. There would be a right of appeal to the Secretary of State. Works going beyond those specified in the certificate would risk being the subject of enforcement action. Although it would be a new measure, which would require additional input from LPAs, this would be offset through reductions in the numbers of unnecessary applications for LBC.
- 5.4 The second option, to get retrospective certification of works would help to inform potential buyers of listed properties about the legality of works which have been carried out to a listed property. It does, however, carry the risk of encouraging a culture of doing works first and seeking certification afterwards, with the risk for the applicant that if a certificate cannot be issued due to the nature of the works carried out, the applicant may be considered to have committed an offence.

5.4 There are successful precedents for this approach in other parts of the planning system in the certificate of lawful use and certificate of lawful development. The Certificate of Lawful Works could help avoid the misapplication of LBC and of any lighter-touch system for LBC that may be introduced; it deals simply with works which do not require consent at all.

Question 6: Do you agree with the proposal to introduce;

- a) a Certificate of Lawful Works to Listed Buildings for proposed works;
- b) a Certificate of Lawful Works to Listed Buildings for works already undertaken?

If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 7: If you are involved in the Listed Building Consent system either in a Local Planning Authority or any other capacity, can you provide further information on the following;

- a) possible numbers of LBC applications currently made due to the lack of a formal mechanism for LPAs to confirm whether or not consent is needed;
- b) the numbers of informal requests received or made every year concerning the need for LBC;
- c) how such queries are handled?

Section 6: Option 4 – Accredited Agents replacing local authority officer recommendations on LBC, if applicants wish

- 6.1 Most LPAs have access to expert advice in some form when determining LBC applications. However, the past few years have seen a steady decline in the numbers of local authority conservation staff; in early 2011 there were 957.5 full time equivalent (FTE) historic environment members of staff in local authorities in England, a reduction of 5.6% since comprehensive data was first collected in 2003 and a 21.8% reduction since the high point in numbers of historic environment staff in 2006 when 1224 FTEs were working in local authorities⁴. Government is keen to expand the sources of expertise involved in decision-making on LBC cases so that decisions can be reached more quickly and effectively and there is more choice and flexibility for developers, while standards of protection are maintained.
- 6.2 Research indicates that nearly three quarters of all applications for LBC in town and city centres are made by an agent on behalf of the owner/tenant of the property⁵. Pre-consultation discussions with heritage bodies and consultancies acknowledged that detailed heritage reports are often submitted to accompany major applications affecting heritage assets. Enabling owners or developers to commission an independent agent to offer an expert report and recommendation to the LPA as part of the LBC application, effectively “certifying” the works as acceptable, would be a logical next step.
- 6.3 Option 4 would allow independent accredited agents to be commissioned by the applicant to make technical, expert recommendations to Local Planning Authorities in the exercise of their statutory duty to determine applications. The accredited independent agent would take on some of the role of the LPA; they would have to set out the special interest of the building under consideration, analyse the impact of the proposed works on special interest and make a recommendation on the basis of those considerations as to

⁴ “A Third Report on Local Authority Staff Resources”, produced by English Heritage, the Association of Local Government Archaeological Officers and the Institute of Historic Building Conservation, August 2011.

⁵ “The Patterns of Business Occupation and Consent Applications for Historic Buildings”, Colliers International for English Heritage and the Heritage Lottery Fund, June 2012, which indicates that architects are the biggest single category of agent used for all kinds of application (36%), with planning consultants (9% of total) and chartered surveyors (7% of total) used almost exclusively for non-residential schemes.

the suitability of the proposed works to receive LBC. They would also advise the applicant on any modifications that may be required to achieve LBC, and suggest appropriate conditions. Where any impact on special interest was low, or justified by conservation considerations, the agent would be able to recommend that LBC be granted. The LPA would normally be expected to follow this recommendation, unless, in their opinion, the special interest of the building would in fact be harmed. Existing procedures for appeal and enforcement would remain.

- 6.4 The LPA would continue to administer consultation and notifications on the consent as at present, including to English Heritage and national amenity societies. Decisions would be informed by the technical report and recommendation provided and taking into account the representations of third parties, and would continue to be taken following current existing governance arrangements. This proposal would reduce the burden on LPAs, as the preparation of the technical assessment of the development was passed over to the accredited agent, and the role of the LPA becomes one of scrutinising and signing off their recommendation in the light of impact on special interest, and any wider considerations of public benefit.
- 6.5 Benefits to owners or developers taking advantage of this approach would include early advice on proposals which was focused on achieving LBC. This in turn would tend to bring earlier certainty about the outcome of an application, and a potentially faster consent process. Overall, accreditation has the potential to drive up standards for applications, create a smoother process where the likelihood of flat rejection is reduced, and improve productivity. However, owners would be likely to have to take on additional costs above those already incurred in employing an agent, as the agent's role would be greater.
- 6.6 There are challenges in this approach as determination of LBC is not simply a matter of technical compliance; it often requires different factors to be weighed up in reaching a judgement. These factors may go beyond conservation considerations into issues of wider public benefit or interest: local authorities are able to draw on a range of professional inputs to reach judgments in such cases. This will set the limitations of the system, and help to define those cases most suitable to determine relying on accredited agent report and recommendation. These are likely to be those where impacts on special interest are low, or are entirely justified in the interests of keeping a building in its optimum viable use.
- 6.7 Concerns have been expressed that this approach might blur the demarcation between regulatory function and development interests, with independent agents carrying out functions previously belonging to LPAs, but on behalf of the applicants. It would be possible to reduce this risk through clearly defining and limiting the circumstances in which determination can be made on the basis of the accredited agent's recommendation, and by ensuring that robust and well-enforced professional standards are applied through the accreditation process. It is suggested therefore that national government defines the circumstances in which accredited agents' reports may be accepted and that appropriate professional safeguards are in place.

6.8 A system of accreditation would be needed to ensure that appropriate standards of expert advice were applied to LBC cases, and to provide monitoring and enforcement of professional behaviour. In principle this could be provided through the existing professional institutions and accreditation schemes whose members are involved in the LBC system, working to agreed common standards through existing systems of accreditation⁶. We need to understand whether there will be additional costs for these professional bodies in expanding their existing systems of accreditation. It has not yet been possible to investigate this in detail, and we would like to find out more about likely changes to them from the professional institutes whose members would be most likely to become accredited agents under this system. Further information about practical issues such as public liability insurance is also needed.

Question 8: Do you agree with the proposal to introduce a system whereby accredited independent agents provide expert reports on LBC applications directly to the LPA? If you are involved in the Listed Building Consent system either in a Local Planning Authority or any the capacity of an independent consultant, we will be particularly interested in your views on the likely take-up of this option. If you do not agree with it, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 9: If you are commenting from a one of the professional institutes listed, are you able to comment on the likely impact on your institute of establishing, monitoring and administering such an accreditation system to support this option? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

Question 10: How should the existing heritage accreditation scheme be modified or replaced to accommodate this proposal? What professional standards and enforcement would be needed to cope with the potential conflict of interest, and should agents scope be constrained through national government?

Question 11: Should the proposal for advice be extended further, as some stakeholders have suggested, for example allowing accredited agents to certify LBC directly themselves?

⁶ Architects Accredited in Building Conservation, Institute for Archaeologists, Institute of Historic Buildings Conservation, , Royal Institute of British Architects, Royal Institute of Chartered Surveyors, Royal Town Planning Institute.

Section 7: Reform of Enforcement Powers for Buildings at Risk

- 7.1 There are many listed buildings which have been on the Heritage at Risk Register for a long time; around half of those on the original 1999 Register, 1, 428 buildings, remain there. Although local authorities were granted extensive powers to serve Urgent Works Notices and Repairs Notices or to compulsorily acquire listed buildings in poor repair under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) they often elect not to pursue any of these courses of action. English Heritage conducted an informal survey of local authority planning officers in which nearly all those asked stated that they and their planning committees were very reluctant to issue Repair Notices or Urgent Works Notices in respect of buildings which have fallen into disrepair.
- 7.2 We are committed to exploring the reasons why LPAs are discouraged from taking action to deal with neglected buildings, with a view to identifying appropriate legal reforms and other non-statutory measures, where these would deliver substantive improvements. Information gathered from this consultation will be important in doing so.

Question 12: If you are commenting from an authority which is able to take action under Enforcement and Compulsory Purchase powers, can you give any examples of where you have done so, or can you comment on the reasons why you have chosen not to?

Question 13: Do you consider that amending the legal powers relating to Urgent Works Notices, Repairs Notices and Compulsory Purchase could be effective in encouraging authorities to pursue cases of neglect to listed buildings? If so, please clearly state your reasons.

Question 14: Can you propose any further changes or amendments, including non-statutory changes, beyond those suggested here, which would provide additional benefits or improvements to protect Buildings at Risk?

Section 8: Summary of Questions

Question 1: Do you agree with the proposal to introduce a system of prior notification of works to a listed building, leading to deemed Listed Building Consent if the local planning authority does not request a full application within 28 days? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 2: If you are commenting from a Local Planning Authority, are you able to comment on the proportion of your LBC applications which require amendment or the application of non-standard conditions prior to consent? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

Question 3: Do you agree with the proposal to introduce a voluntary system of local and national class consents? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 4: If you are commenting from a Local Planning Authority, are you able to comment on the likely applicability of this option (2) within your area, in terms of the kinds of listed building and type of works to which it might be applied? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

Question 5: Which of the options set out in this consultation to reduce the number of LBC applications for works with limited or justifiable harm to special interest (Options 1 and 2) do you prefer? Please state the reasons for your preference.

Question 6: Do you agree with the proposal to introduce;

- c) a Certificate of Lawful Works to Listed Buildings for proposed works;
- d) a Certificate of Lawful Works to Listed Buildings for works already undertaken?

If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 7: If you are involved in the Listed Building Consent system either in a Local Planning Authority or any other capacity, can you provide further information on the following;

- d) possible numbers of LBC applications currently made due to the lack of a formal mechanism for LPAs to confirm whether or not consent is needed;
- e) the numbers of informal requests received or made every year concerning the need for LBC;
- f) how such queries are handled?

Question 8: Do you agree with the proposal to introduce a system whereby accredited independent agents provide expert reports on LBC applications directly to the LPA? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 9: If you are commenting from a one of the professional institutes listed, are you able to comment on the likely impact on your institute of establishing, monitoring and administering such an accreditation system to support this option? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

Question 10: How should the existing heritage accreditation scheme be modified or replaced to accommodate this proposal? What professional standards and enforcement would be needed to cope with the potential conflict of interest, and should agents scope be constrained through national government?

Question 11: Should the proposal for advice be extended further, as some stakeholders have suggested, for example allowing accredited agents to certify LBC directly themselves?

Question 12: If you are commenting from an authority which is able to take action under Enforcement and Compulsory Purchase powers, can you give any examples of where you have done so, or can you comment on the reasons why you have chosen not to?

Question 13: Do you consider that amending the legal powers relating to Urgent Works Notices, Repairs Notices and Compulsory Purchase could be effective in encouraging authorities to pursue cases of neglect to listed buildings? If so, please clearly state your reasons.

Question 14: Can you propose any further changes or amendments, including non-statutory changes, beyond those suggested here, which would provide additional benefits or improvements to protect Buildings at Risk?