



AMS

Defending Historic Buildings

Patron: HIS ROYAL HIGHNESS THE PRINCE OF WALES, KG KT

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Sent by email to: planning_wales@lawcommission.gov.uk

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Dear Sir / Madam,

Law Commission consultation – Planning Law in Wales

Thank you for inviting The Ancient Monuments Society (AMS) to respond to the Law Commission's consultation on Planning Law in Wales.

The AMS is a National Amenity Society and is therefore included among the national conservation bodies which have to be informed of all applications for Listed Building Consent in England and Wales where there is any element of demolition. For this reason, we wish to focus our response on Chapter 13 of the consultation document: *Works affecting listed buildings and conservation areas*.

We previously commented on a Scoping Paper for the proposals which you published in October 2016. Many of the comments we made then are repeated in this response. We continue to be very alarmed by the prospect of listed building consent being merged with the broader planning regime for the following principal reasons:

1. **Historic Environment (Wales) Act 2016:** the new heritage Act for Wales (with associated policy and guidance) has been very well received by a wide range of users, including planners, heritage specialists, developers and building owners. It has also been successful in the devolution of planning legislation. We cannot imagine why the Welsh Assembly would want to undo such exemplary work by putting forward a proposal which would undermine one of the founding principles of the heritage protection system.
2. **Special status of listed buildings in planning:** Listed Building Consent is important precisely because its whole premise is the protection of the historic environment. The fact that there is a separate regime makes it clear to applicants and decision-makers that they are dealing with sensitive, valuable, precious structures. It is fundamentally different in its legal basis and ethos from Planning Permission. To have a single regime for the construction of

a utilitarian industrial shed and the demolition of a listed building is to downgrade the significance of the latter.

3. **Limiting and controlling change:** there is a presumption within the planning regime in favour of sustainable development (see, for example, Planning Policy Wales, Paragraph 4.2.2.). Listed Building Consent allows for proposals which commit “substantial harm” to be refused and is about managing change. Planning Permission is about encouraging it.
4. **Sanctions:** acting without Listed Building Consent is a criminal offence, whereas acting without Planning Permission is simply a “planning breach”. Sanctions can be severe, requiring the breach to be undone (although the majority seem to win retrospective Planning Permission), but the breach is not itself a criminal offence.

When considering works of alteration, extension and demolition of listed buildings there is a statutory duty to have special regard to heritage considerations, whereas there is only ordinary regard for planning considerations. Parliamentary draughtsmen clearly recognised that particular attention needed to be paid to the primacy of preserving and protecting a finite resource.

Would the abolition of Listed Building Consent have any unexpected consequences on Repairs Notices?

5. **Conservation Area Consent:** we are reminded in the document that Conservation Area Consent has been subsumed into Planning Permission in England but not in Wales (see Paragraphs 13.32, 13.33 and 13.62 of the consultation). This is because, as we understand it, representations against the idea persuaded those behind the Historic Environment (Wales) Act not to include it. The fears about perceived loss of control and the downgrading of conservation areas voiced by others must have been taken on board.

Conservation Area Consent, in essence, acts for the protection of the broader appearance of a conservation area, including unlisted buildings. Listed Building Consent is designed for the protection of individual buildings, all of which have been granted this bespoke regime of protection because they are formally and expressly recognised by Government as being “special”. If it has been concluded that Conservation Area Consent (in essence for the protection of unlisted buildings) deserves to retain its separate identity, how much more worthy of retention is the Listed Building Consent regime which deals only with structures that are listed?

6. **Internal works:** Listed Building Consent is required for many changes to a listed building that do not need Planning Permission. Above all this is for internal works. Planning Permission is needed for “material change” which by definition is external (works affecting the external appearance, environment, the use). A building owner does not need Planning Permission to sell a fireplace or pull down a plaster ceiling, for example, but such interventions do require Listed Building Consent.
7. **Increase in bureaucracy:** the document makes play of the fact that the regularisation should reduce the work of local planning authorities, but the number of planning applications would inevitably rise as stand-alone Listed Building Consent proposals would have to be submitted as Planning Permissions.
8. **Fees:** Planning Permissions presently attract fees whereas Listed Building Consent does not. This is mainly on two grounds:

a) that the applicant shouldn't be expected to pay on what can be a commercially unproductive change rather than development; and

b) where Listed Building Consent and Planning Permission are required an applicant shouldn't have to pay twice for what can be the same proposal. Under the proposed system, owners of listed buildings would be charged when they applied for Planning Permission for small-scale proposals which, more often than not, are in that first category – change that that is for convenience rather than overt commercial gain.

In addition to this, some owners regard the fact that Listed Building Consents are free as a recognition by the State to the individuals who look after the nation's heritage in the days when grant aid for privately owned listed buildings (two thirds of the total) is virtually non-existent.

9. **Local authority expertise:** we are extremely concerned that the proposed changes would further erode the standing of conservation expertise within local authorities. The number of conservation officers employed has already diminished dramatically in recent years, and the abolition of Listed Building Consent would only exacerbate the problem. The lack of specialist advice at a local level will only serve to weaken heritage protection and will cause delays in the decision-making process. There is also the risk that poor or incorrect advice will be provided to building owners by non-specialists, leading to harm to historic buildings and possible litigation.
10. **Ecclesiastical Exemption:** finally, the Ecclesiastical Exemption is, by definition, an exemption from Listed Building Consent, not from Planning Permission. Logically, if Listed Building Consent were to be abolished, the exemption would lapse. It is not clear whether this possible 'unintended consequence' has been given due consideration.

For the reasons stated above, we urge you to reject the proposal to merge Listed Building Consent with Planning Permission, which we believe would only serve to undermine the heritage protection system in Wales. We strongly disagree that bringing the two consent regimes together would be beneficial.

Yours sincerely,



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