

A NOTE ABOUT CERTIFICATES OF IMMUNITY FROM LISTING

1. Introduction

- 1.1 This note describes what certificates of immunity from listing are, and why they are issued. It also sets out the circumstances in which an application for a certificate might be made, and explains how to apply for one.

2. What is a Certificate of Immunity?

- 2.1. A certificate is a legal guarantee that the building or buildings named in it will not be statutorily listed as being of special architectural or historic interest during the five years from the date on which the certificate is signed. The issue of a certificate also prevents the local planning authority from serving a building preservation notice on the property during this period. (A building preservation notice is a form of temporary listing served by the local planning authority under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which the Secretary of State decides whether the listing should be made permanent). The statutory provisions relating to certificates of immunity are laid down in section 6 of the above Act.
- 2.2. Application for a certificate is made to the Secretary of State. Anyone can apply, whether or not they own the building in question, **provided that planning permission is being sought or has been granted in respect of the building or buildings**. English Heritage, the Department's statutory advisers on the historic environment, are asked to carry out a full internal and external inspection of the building and make a recommendation on whether it is worthy of listing. If the Secretary of State is satisfied that the building is not of special architectural or historic interest, the certificate is granted. In cases where the application is refused, the building is normally listed.

3. Why Certificates are granted

- 3.1. Under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 the Secretary of State is required to compile lists of buildings of special architectural or historic interest. The criteria for listing are given in the Annex to this note.
- 3.2. It is fully recognised that listing a building at a late stage in the preparations of planning proposals can cause delay and other hardships to owners, and even the abandonment of redevelopment schemes. The certificate of immunity procedure was introduced to enable owners and developers to seek an early resolution to uncertainties over possible listings. By applying for a certificate they can establish either that they have five years to carry out their development without the possibility of listing interrupting their programme, or that they must seek listed building consent for the alteration, extension or demolition of the building.

4. Whether to apply for a Certificate

- 4.1. Applying for a certificate is primarily a way of ending uncertainty about whether building is to be listed or not, so applicants must accept that the building may be listed as a result. It may be worthwhile applying for a certificate if the building appears to come within the listing criteria and listing seems distinctly possible, or there is reason to think that the treatment of the existing building under the redevelopment proposals for the site will be controversial.
- 4.2. The local planning authority will sometimes know whether the Secretary of State has previously considered listing the building. It should not be assumed, however, that a certificate of immunity will necessarily be granted in every instance where the Secretary of State has refused a previous request to list a building, even if the earlier decision was very recent. The Secretary of State's refusal of a request to list a building means that on **the evidence available** the building is not considered to fulfil the criteria for listing at that time. Because a certificate gives a guarantee against listing for five years, an application is only decided after a very thorough inspection of the building in question, which may reveal features not known about at the time of the earlier decision. Other new evidence may also have come to light in the meantime.

5. How to apply for a Certificate

- 5.1. There is no application form, and no charge. Applications should be made by letter, addressed to the Department for Culture, Media and Sport and should include the following:
 - 5.1.1. **The full address of the building or buildings.** One application can cover several buildings, provided that they are all included in the same planning application or planning permission.
 - 5.1.2. **A copy of the planning permission in respect of the building, or a current planning application** (current means that the planning application is un-determined at the date of the application for a certificate or that an appeal in respect of it has been lodged). It does not matter whether these are in outline or detailed, or whether the planning application has been made by, or permission granted to, someone other than the applicant for a certificate. If the necessary planning permission has been granted by virtue of Article 3 and Schedule 2 of the Town and Country Planning General Development Order 1988, this should be clearly stated in your application.
 - 5.1.3. **A site location plan with the building clearly marked on it in red** (an Ordnance Survey map extract at 1:2500 scale, or similar).
 - 5.1.4. **Clear recent photographs** (not photocopies or slides), preferably in colour, of the main elevations of the building and any particularly notable internal features.

- 5.1.5. **Confirmation that the application for a certificate and all the documents and photographs supporting it have been copied to the relevant local planning authority, and, if that authority is a London borough, also copied to:-**

Regional Director (London Region)
1 Waterhouse Square
138 – 142 Holborn
London EC1N 2ST

- 5.2. It is useful, but not essential, if the application gives the approximate date of the building and the name of the architect if these facts are available, as well as very brief details of what is known - if anything - about the buildings' historic or architectural interest.

- 5.3. The application should be sent to:

Department for Culture, Media and Sport
Architecture & Historic Environment Division
2-4 Cockspur Street
London SW1Y 5DH

- 5.4. The Department will acknowledge the application and, if all the necessary information has been provided, will seek the view of English Heritage. English Heritage will then contact the applicant to arrange the inspection of the building, unless they have very recently carried out a complete "cellar to attic inspection" for listing purposes. The Department will also ask the local planning authority if it wishes to make any comments on the application. Where an application for a certificate is made by someone who is not the owner of the building, the owner will be given the opportunity to comment. Applications normally take 4-6 months to deal with. They can be withdrawn at any time that the applicant wishes: a letter to the Department is all that is required.
- 5.5. A certificate takes the form of a letter to the applicant, and is signed by an official on behalf of the Secretary of State. The Department will notify both the District Council (or London Borough Council), the County Council (in London, the London Division of English Heritage) and the owner when a certificate is issued. It is suggested that the existence of a certificate and its expiry date should be included in the information relating to planning matters disclosed in response to enquiries by prospective purchasers of land.
- 5.6. Certificates do not secure immunity from the designation of a conservation area. Accordingly, even if a certificate is granted, consent will still be required for demolition if the building is in a conservation area (section 74 of the 1990 Act).
- 5.7. Where a certificate has already been issued it is possible to apply for the renewal of that certificate before the expiry of the five years of the original certificate. However, any such application will be subject to exactly the same procedure and

considerations as a new application. It cannot be assumed that a certificate will be re-issued automatically in such cases since the circumstances may have changed since the issue of the original certificate, particularly if new evidence about the building has come to light.

6. "Spot Listing"

- 6.1. It remains open to local authorities, amenity societies and individuals to bring to the Department's attention – via English Heritage - unlisted buildings which appear to fall within the criteria for listing and which are likely to be affected by proposals for development. They should write to English Heritage at the address below giving the full address of the building, reasons why they believe it may merit listing, clear, original external and internal photographs, name and contact details of the owner, and a location plan:

Heritage Protection Operations Department
1 Waterhouse Square
138 – 142 Holborn
London EC1N 2ST

- 6.2 The more information that is supplied, the quicker a listing application can be dealt with.
- 6.3 The building will be considered for listing and, if it qualifies, added to the statutory list. It is emphasised that it is in the interests of all concerned for the Department to be notified of proposals for listing at as early a stage as possible,, rather than when rather than when planning permission has been granted or redevelopment plans have been drawn up and alteration or demolition are imminent.

Statutes and Guidance

Planning (Listed Buildings and Conservation Areas) Act 1990 (HMSO)
Town and Country Planning Act 1990 (HMSO)
Planning Policy Guidance 15 (PPG15) Planning and the Historic Environment (September 1994 - HMSO)

Published by:

Department for Culture, Media and Sport
Architecture & Historic Environment Division
2-4 Cockspur Street
London SW1Y 5DH

ANNEX

HOW BUILDINGS ARE CHOSEN FOR STATUTORY LISTING

All the properties considered for listing are judged according to a set of national standards.

The following are the main criteria which the Secretary of State applies in deciding which buildings to include in the statutory lists:

- architectural interest: the lists are meant to include all buildings which are of importance to the nation for the interest of their architectural design, decoration and craftsmanship; also important examples of particular building types and techniques (eg: buildings displaying technical innovation or virtuosity) and significant plan forms;
- historic interest: this includes buildings which display important aspects of the nation's social, economic, cultural or military history;
- close historical associations with nationally important people or events;
- group value: especially where buildings comprise together an important architectural or historical unity or a fine example of planning (eg: squares, terraces or model villages).

Not all of these criteria will be relevant to every case, but a particular building may qualify for listing under more than one of them.

Age and rarity are important considerations, particularly where buildings are proposed for listing on the strength of their historic interest. The older the building is, and the fewer the surviving examples of its kind, the more likely it is to have historical importance. Thus all buildings built before 1700, which survive in anything like their original condition, are listed; and most buildings of about 1700 to 1840 are listed, though some selection is necessary. After about 1840, because of the greatly increased number of buildings erected and the much larger numbers that have survived, greater selection is necessary to identify the best examples of particular building types, and only buildings of definite quality and character are listed. Buildings which are less than 30 years old are normally only listed if they are of outstanding quality and under threat. Buildings which are less than 10 years old are not listed.

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