

Building Preservation Notices

A good practice guide for District Councils

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Historic Environment Division



Department for
Communities
www.communities-ni.gov.uk

Front Page: Lidells Mill, Donaghcloney ©DfC

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'This good practice guide aims to assist councils achieve a consistent approach when considering serving a Building Preservation Notice on an unlisted building. Its correct application will help councils to identify and satisfy legislative requirements with regard to Building Preservation Notices, where the building appears to be of architectural and historic importance and is in danger of demolition or of alteration in such a way as to affect its character.'

This guide does not attempt to provide a detailed account of the legislation and policy that underpin Building Preservation Notices in Northern Ireland, and is not intended to be a source of definitive legal advice. This guide is not intended to replace the need for council judgement in their decision making. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between this guide and legislation, the provisions of the legislation will prevail.

*Further information can be obtained from the Department for Communities website
<https://www.communities-ni.gov.uk/>*

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Overview

Since 1st April 2015, district councils have had the power to serve a 'Building Preservation Notice' (BPN), where it appears to a council that a building is of architectural or historic merit and is at risk of demolition or significant alteration.¹ This discretionary power transferred from the former Department of the Environment (DOE), to district councils, under the Review of Public Administration transfer of functions agreement.

To assist councils undertake this new function, this good practice guide has been developed as a series of questions and accompanying answers to explain how and when councils may consider serving a BPN.

On 9th May 2016, the functions of the former Department of the Environment (DOE) were allocated to three new departments; Department for Infrastructure (DfI), Department of Agriculture, Environment and Rural Affairs (DAERA) and Department for Communities (DfC)

Historic Environment Division (HED) transferred to DfC and Strategic Planning Division (SPD) functions transferred to DfI. Respective departmental powers under the Planning Act (Northern Ireland) 2011, have been set out in the The Departments (Transfer of Functions) Order (Northern Ireland) 2016.



Front cover image & above: Lidells Mill, Donaghcloney, Grade B2 listed building, initially protected by a BPN© DfC

¹ Sections 81 & 82 of The Planning Act (NI) 2011

1. Introduction

- 1.1 The historic environment is an asset of immense cultural, social, economic and environmental value, which contributes to our sense of history, place and our quality of life. District Councils and the Department² have responsibility under the Planning Act (NI) 2011 to protect and conserve the historic environment for the benefit of our present and future generations.
- 1.2 District councils can actively contribute to the protection and conservation of the built heritage through the appropriate application of Building Preservation Notices (BPN) where there is concern that an unprotected historic building of special interest is in danger of demolition or significant alteration.
- 1.3 'Historic Buildings' can be understood to be any feature or structure built by man. The more recent the date of a structure the less historic it will be. This implies that a recent structure will need to have high architectural interest if it is to be protected in this way.

2. What is a Building Preservation Notice?

2.1 A BPN is a form of temporary listing which provides statutory protection to an unlisted building, for a period of 6 months, as if it were listed. The Planning Act (Northern Ireland) 2011 gives councils the discretionary power to serve a Building Preservation Notice (BPN) on the owner and occupier of a non-listed building that they consider meets the following test:

- It is of special architectural or historic interest; and
- It is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

2.2 These powers are detailed in Section 81 – 83 of the Act. For the 6 month period of the BPN, the building is protected as though it was a listed building and all relevant planning controls apply. This includes the need to apply for Listed Building Consent for changes that might affect its architectural or historic interest, and enforcement powers relating to unapproved works.



² References to the 'Department' in this guide refer to the 'Department for Communities' - DfC)

- 2.3 Prior to the Review of Public Administration, BPNs were available to the Department of the Environment (DOE) under the Planning (NI) Order 1991 and were implemented by the Historic Environment Division (HED). Central government no longer has this power.

3. What is the process for serving a BPN?

- 3.1 If a council considers that a building meets the statutory tests then it can issue a Building Preservation Notice. A standard form, (*see Appendix A1&A2*) can either be served on the owner and occupier by registered delivery or in urgent cases it can be affixed to the building. Though it is important that an owner knows of this legal change as soon as possible, it is also essential that there is no confusion in regard to ownership and protection. Where there is any doubt in regard to ownership, it is recommended that a notice is also affixed to the building. This approach, using the same form, is provided for by Section 82 of the Planning Act (NI) 2011.
- 3.2 At the same time the council should forward a listing request to HED, who on behalf of the Department, will consider listing the building. This will give HED the maximum time to consider the case. **HED requires a minimum of five months to consider such a request.** A copy of the information used by the council in arriving at this decision would be very helpful to HED as it commences its appraisal. This should be enclosed with the request.
- 3.3 From notification, HED will commence a process to: record the structure; consider the building against the Listing Criteria³; undertake statutory⁴ (and non statutory) consultations; and make a final decision. The council will be consulted as part of the process and informed of the final decision.
- 3.4 It is not anticipated that the number of BPNs served will be large. From introduction in 2003 to the end of 2013 only 43 BPNs were issued. Public requests and Departmental use of the power rose in line with development activity during the 2000s and declined in more recent years in line with the economic downturn.

³ The Listing Criteria was published in a revised and updated Annex C of Planning Policy Statement 6 in March 2011.

⁴ Historic Buildings Council, District Councils and Strategic Planning Division in DfI

4. How can district councils be made aware of such buildings?

4.1 Councils can be made aware of such buildings through a number of different ways:

- A planning application may be submitted that involves the demolition of a historic building. A council planning officer or a member of the public may then raise a request that this building be considered for protection.
- HED may separately ask a council to consider taking action. Its power to protect by making a structure a listed building requires detailed research and advance consultation. It may consider there is a high risk of loss during this period.
- It is also possible that a member of the public may make a request without a current planning application being in place - in this case they would need to supply other evidence that the building is in risk of demolition or substantial alteration.

5. When should district councils consider using the power?

5.1 Before a BPN can be served there are two tests that need to be met:

Test 1: Does it appear to the district council that the building is *of special architectural or historic interest*?

Annex C of Planning Policy Statement 6 (March 2011) sets out the criteria that the Department follows when considering this test. The BPN legislation is, however, carefully written to make clear that its test is one of appearance. Detailed research and assessment can be carried out later. This lower test allows for swift action.

5.2 A report along the lines of a standard listing query report (Appendix B) is recommended. This may be compiled by a Conservation Officer⁵ or appointed consultant⁶ with reference to the published criteria. HED's listing team will be happy to liaise with district councils at this early stage in regard to advice on standards.

5.3 Listing Queries involve a site visit, initial historical research and an assessment of the record taken. While assessment by the Conservation Officer or consultant is likely to be sufficient, approval by the wider Planning team may, however, provide a more

⁵ This is normally a qualified planner or architect who has responsibility for providing advice to decision makers on the designation and management of heritage assets, such as Conservation Areas, within a Council area.

⁶ Where councils choose to appoint an external consultant, it is recommended that councils appoint consultants with appropriate architectural and historical expertise to make an initial assessment and recommendation.

robust corporate decision. If, following this stage, council officers consider that the building appears to be a building of special architectural or historic interest they can then consider the other BPN test.

5.4 Test 2: Is the building *is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest?*

This test is normally met if there is a current planning application involving the demolition or substantial alteration of the building or if the building is being advertised for sale as a cleared site/development opportunity. Unconfirmed rumours from the public are less clear cut, but may on occasion justify action if officers conclude that the risk is high. Unoccupied buildings can be considered to be of higher risk of sudden removal than those which are occupied.

5.5 It is good practice, in any case, that a letter is issued to the person who made the initial request to inform them of the outcome of the investigation.

6. When is compensation payable to affected owners?

6.1 Revocation of existing planning permission

A BPN can be served on a building even if there is an existing planning permission for its demolition or alteration. Should the building be subsequently listed, Listed Building Consent (LBC), will also be required for any proposed works of alteration. If LBC is not granted for works approved under a current planning permission, this may require the current planning permission to be revoked. Under Section 179 of the Planning Act (NI) 2011, applicants may seek compensation for losses associated with a revoked planning permission.⁷

To avoid major disruption to the smooth working of the planning system, together with consideration of the significant financial implications, and damage to the reputation of the heritage protection system, the Department has adopted the following policy:

*'A building will not normally be considered for listing by the Department once planning permission which will affect its special architectural or historic interest has been granted and is still valid, or while works which have received such planning permission are under way.'*⁸

⁷ See Section 179 of the Planning (Northern Ireland) Act 2011 '*Compensation where planning permission is revoked or modified*'.

⁸ Paragraph C26 of Annex C of Planning Policy Statement 6

If a council is actively considering serving a BPN in this circumstance, then the exceptional nature of the case will need to be highlighted in the request for listing submitted to HED.

6.2 Building fails to merit statutory listing

Compensation may also be claimed from the council for losses incurred due to the service of a BPN if, after consideration, the structure is not protected by the Department as a listed building. Section 186 of the Planning Act 2011 makes clear that such compensation would be in respect of *'any loss or damage directly attributable to the effect of the notice.'* This includes (Section 186 (2) *'a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.'*

6.3 No claim for such compensation has been made against the Department since the introduction of this power in 2003 even though, in a number of cases, the service of a notice did not lead to protection as a listed building. The provision emphasises, however, that a council should have due regard when considering serving a BPN.

7. If the building is not listed, can an alternative means of protection be applied?

7.1 Paragraph 6.24 of the Strategic Planning Policy Statement 2015 (SPPS), allows District Councils to bring forward bespoke policies in their Local Development Plan for historic buildings of local importance. These are defined as: *'a building, structure or feature, whilst not statutory listed, has been identified by the council as an important part of their heritage, due to its local architectural or historic significance.'*

7.2 The policy makes it clear that the effect of a planning application on the significance of a non-designated heritage asset should be taken into account in determining the application. Though it also says that such assets will have been *'identified by the council as an important part of their heritage'*⁹, there is no time requirement for this work, and such identification, could, in principle, be carried out at a late stage i.e. after the submission of a planning application.

7.3 To ensure that such structures have protection from demolition and inappropriate alteration, councils can consider the use of an 'Article 4 Direction'.¹⁰ This allows the removal of permitted development rights, including demolition, for a designated

⁹ Strategic Planning Policy Statement for Northern Ireland. September 2015, paragraph 6.24, page 41

¹⁰ Article 4 of the Planning (General Permitted Development) Order (NI) 2015 allows the Department or a District Council to *'give a direction that the permission granted by Article 3 shall not apply to— (a)all or any development of the Part, Class or paragraph in question in any particular area specified in the direction; or(b)any particular development, falling within that Part, Class or paragraph, which is specified in the direction.'*

area or feature. However, the agreement of the Department for Infrastructure is required¹¹ before such a route is followed.

- 7.4 It is good practice, however, to ensure that prospective applicants are aware of any potential designations on their property well in advance of making a planning application. This also helps to ensure that the identified historic and architectural interest can be taken into consideration at an early stage and costly changes avoided. The Department for Communities therefore recommends that district councils consider protection for such buildings well in advance of proposals for significant change.
- 7.5 To assist district councils take forward strategies to protect historic buildings of local importance, HED has published a guide to their identification and protection, which is available to download from its website at:
- www.communities-ni.gov.uk/topics/historic-environment

8. What other heritage designations offer protection?

- 8.1 The temporary protection of historic buildings and structures through the service of a BPN is only one tool in a suite of controls aimed at managing the Historic Environment. Other features may be more appropriately protected as Monuments in State Care; Scheduled Historic Monuments; as part of Conservation Areas, or through area plan designations such as Areas of Townscape Character and Local Landscape Policy Areas¹².
- 8.2 Service of a notice on a structure which is already protected as a Listed Building, a Scheduled Historic Monument or a Monument in State care is not appropriate. Research to ensure that a structure is not already protected should form part of initial review of a case. Where a structure is located within an area designation, the merits of increasing protection via the BPN versus reliance on the existing planning controls should be considered.

9. Can councils seek support from HED?

- 9.1 Yes. As the Government's expert advisor on the Historic Environment in Northern Ireland, HED can provide further advice to councils as they decide how best to deploy this power. HED has 40 years experience of carrying out historic buildings surveys across Northern Ireland and 10 years in the service of Building Preservation

¹¹ Article 4 (2): 'Subject to paragraph (4), a direction by a council under this Article shall require the approval of the Department who may approve the direction with or without modifications.'

¹² The Strategic Planning Policy Statement provides more information and definitions for all of these area heritage designations.

Notices. Engagement with councils who want to set up appropriate procedures in regard to this facet of heritage protection is welcomed by HED.



Above: Dundrum Road, Tassagh, B1 Listed Terrace, protected initially by BPN © DfC

Appendix A Typical Building Preservation Notice.

Appendix A (1) Notice for service on owner/ occupier

Appendix A (2) Notice to be served on the building

Appendix A (1)**NOTICE FOR SERVICE TO OWNER/ OCCUPIER****PLANNING ACT (NORTHERN IRELAND) 2011 SECTION 81-83****BUILDING PRESERVATION NOTICE****IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY****SERVED BY:** XXX District Council*(Serving Officers Details: Name, Grade, and Telephone Number)***TO:** *Owners Name and address (if Known)*

This Building Preservation Notice, (the 'Notice') is served by XXX District Council for the purposes of Section 81-82 of the Planning Act (NI) 2011 ("the Act") because it appears to XXX District Council that the building described in the Schedule to this Notice which is not a listed building, is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

XXX DISTRICT COUNCIL GIVES NOTICE THAT:

1. The building described in the Schedule ("the Building") appears to XXX District Council to be of special architectural or historic interest and the Department¹³ is considering including the Building in a list of buildings of special architectural or historic interest compiled under Section 80 of the Act.
2. By Section 81(3) of the Act, the Notice shall come into force as soon as it has been served on both the owner and occupier of the Building and shall remain in force for 6 months from the date when it was served or last served.
3. By Section 81(4) of the Act the Notice shall cease to be in force if, before the expiration of that 6 months, the Department either includes the Building in a list compiled under Section 80 of the Act or notifies the owner and occupier of the Building in writing that it does not intend to do so.
4. By Section 81(5) of the Act while the Notice is in force, the provisions of the Act (other than Section 103) shall have effect in relation to the Building as if it were a listed building; and by Section 83 of the Act, if the Notice ceases to be in force by virtue of the expiry of the 6 month period or service of notification, in writing by the Department that it does not intend to list

¹³ Historic Environment Division on behalf of the Department for Communities (DfC)

the Building, then the provisions of Section 83 shall have effect with respect to things done or occurring under the Notice or with reference to the Building. Under Section 83:

- (a) the fact that the Notice has ceased to be in force shall not affect liability for offences committed under the Act with respect to the Building while it was in force;
- (b) any proceedings on or arising out of an application for listed building consent with respect to the Building made while the Notice was in force and any such consent granted while it was in force shall lapse;
- (c) any listed building enforcement notice served under the Act while the Notice was in force shall cease to have effect and any proceedings, including appeal proceedings, relating to the listed building enforcement notice, shall lapse;
- (d) Section 186 (as applied by Section (186 (2)) of the Act shall continue to have effect as respects any expenses incurred by the owner or occupier as mentioned in that Section and with respect to any sums paid on account of such expenses.

NOTE: This Notice does not call for any action on your part unless you propose at any time to demolish the Building or execute or cause to be executed any works (either to the exterior or interior) for the demolition of the building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historical interest. If you wish to carry out such works you will need to obtain listed building consent, in writing from **XXX District Council Planning Authority** before commencing the works.

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE OF SERVICE. THERE IS NO RIGHT OF APPEAL TO THE PLANNING APPEALS COMMISSION AGAINST THIS NOTICE.

Any person who carries out unauthorised works to the Building will be guilty of an offence under Section 85 of the Act and liable:

- A) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;
- B) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;

and in determining the amount of any fine imposed on a person convicted of an offence under Section 85 (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.

If you need independent advice about the Notice, you are advised to contact a lawyer, planning consultant or other professional advisor specialising in planning matters. If you wish to contest the validity of the Notice, you may only do so by an application to the High Court for judicial review.

SCHEDULE

Insert address of building being served.

Dated this (insert date) day of (insert month) 20XX

Signed: (signature)

Authorised Officer on behalf of XXX District Council.

Appendix A (2)

NOTICE TO BE AFFIXED TO STRUCTURE

PLANNING ACT (NORTHERN IRELAND) 2011 SECTION 81-83

BUILDING PRESERVATION NOTICE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

SERVED BY: XXX District Council

(Serving Officers Details: Name, Grade, and Telephone Number)

TO: Owners Name and address (if Known)

This Building Preservation Notice, (the 'Notice') is served by XX District Council for the purposes of Section 81-82 of the Planning Act (NI) 2011 ("the Act") because it appears to XX District Council that the building described in the Schedule to this Notice which is not a listed building, is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

XXX DISTRICT COUNCILS GIVES NOTICE THAT:

1. The building described in the Schedule ("the Building") appears to XXX District Council to be of special architectural or historic interest and the Department is considering including the Building in a list of buildings of special architectural or historic interest compiled under Section 80 of the Act.
2. By Section 81(3) of the Act, the Notice shall come into force as soon as it has been served on both the owner and occupier of the Building and shall remain in force for 6 months from the date when it was served or last served.
3. By Section 81(4) of the Act the Notice shall cease to be in force if, before the expiration of that 6 months, the Department either includes the Building in a list compiled under Section 80 of the Act or notifies the owner and occupier of the Building in writing that it does not intend to do so.
4. By Section 81(5) of the Act while the Notice is in force, the provisions of the Act (other than Section 103) shall have effect in relation to the Building as if it were a listed building; and by Article 83 of the Act, if the Notice ceases to be in force by virtue of the expiry of the 6 month period or service of notification, in writing by the Department that it does not intend to list the Building, then the provisions of Section 83 shall have effect with respect to things done or occurring under the Notice or with reference to the Building. Under Section 83:

- (a) the fact that the Notice has ceased to be in force shall not affect liability for offences committed under the Act with respect to the Building while it was in force;
- (b) any proceedings on or arising out of an application for listed building consent with respect to the Building made while the Notice was in force and any such consent granted while it was in force shall lapse;
- (c) any listed building enforcement notice served under the Act while the Notice was in force shall cease to have effect and any proceedings, including appeal proceedings, relating to the listed building enforcement notice, shall lapse;
- (d) Section 186 (as applied by Section (186 (2)) of the Act shall continue to have effect as respects any expenses incurred by the XX Council, owner or occupier as mentioned in that Section and with respect to any sums paid on account of such expenses.

5. By Section 82 of the Act:

- (1) If it appears to a council to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.
- (2) The affixing of a notice under subsection (1) shall be treated for all the purposes of Section 81, this section, Section 83 and sections 86 to 101 as service of the notice.

The notice has been so affixed and by virtue of it being so affixed it is treated as being served for those purposes described in Section 82 (1) and (2) of the Act.

NOTE: This Notice does not call for any action on your part unless you propose at any time to demolish the Building or execute or cause to be executed any works (either to the exterior or interior) for the demolition of the building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historical interest. If you wish to carry out such works you will need to obtain listed building consent, in writing from **XX District Council Planning Authority** before commencing the works.

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE OF SERVICE. THERE IS NO RIGHT OF APPEAL TO THE PLANNING APPEALS COMMISSION AGAINST THIS NOTICE.

Any person who carries out unauthorised works to the Building will be guilty of an offence under Section 85 of the Act and liable:

- A) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;
- B) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;

and in determining the amount of any fine imposed on a person convicted of an offence under Section 85 (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.

If you need independent advice about the Notice, you are advised to contact a lawyer, planning consultant or other professional advisor specialising in planning matters. If you wish to contest the validity of the Notice, you may only do so by an application to the High Court for judicial review.

SCHEDULE

Insert address of building being served.

Dated this (insert date) day of (insert month) 20XX

Signed: (signature)

Authorised Officer on behalf of XX District Council.

Appendix B Listing Query Report Form

Building Name:			
OS Map No:		IG Ref:	
Apparent Current Use:			
Pictures taken – Number:		Type: Digital/ Slides	
Date of Inspection:			
Exterior Description (not more than 100 words)			
Considered by council planning authority on :			
Checklist	Yes	No	
Building appears to satisfy listing criteria			
Building has permission to demolish or significantly alter the			

Decision

Signed: **Date**

Name & Title of authorising officer

Case Study: Navigation House, Lisburn

Navigation House is a detached three-bay, two-storey, polychromatic brick house, built c. 1866 for the Canal Manager of The Lagan Navigation Company. It is a well proportioned Victorian villa with its original ornate door surround, retaining most of its original external features and its interior. The building was occupied by successive superintendent /managers of the canal, the last of whom was in post from 1928-1954. It is the only canal manager's house on the waterway and is a well preserved remnant of a period when the Lagan Navigation was probably the most commercially successful of all the waterway enterprises in Ulster. Set in its original secluded, landscaped site, with enclosed yard and outbuildings, Navigation House has group value with the listed Lock Keeper's house (HB19/08/005) and Union Lock canal structures (DOW 009:500) directly adjacent.

Navigation House was brought to the attention of the Department by Lisburn City Council's Planning Committee, who asked for a planning application involving the demolition of the building to be deferred pending consideration of its historic interest.

A BPN was served on the building's owners in June 2012, to give the Department time to carry out detailed research and consultation to determine if the house should be the subject of permanent listing as an historic building. Following consideration of a detailed survey and research, evaluation against the listing criteria and consultation with the Historic Buildings Council and Lisburn City Council, the building was listed in December 2012, as a Grade B1.

Hearth Revolving Fund and Lagan Canal Trust have since been working in partnership to conserve the heritage significance of the building and its group value with the associated canal structures. In 2014, Hearth Revolving Fund negotiated a temporary loan from Ulster Garden Villages to acquire Navigation House, and have carried out essential holding repairs.

The Lagan Canal Trust has now relocated their offices to Navigation House, with the future ambition of acquiring the property and reusing the existing building and outbuildings as a visitor centre and teaching centre as part of the 'Discover Waterways Lisburn' project, subject to planning permission, listed building consent and scheduled monument consent.



*Left:
Navigation House,
134 Hillsborough Road,
Lisburn © DfC*



DfC

Department
for Communities
www.communities-ni.gov.uk

Supporting and sustaining vibrant communities and a strong economy through realising the significant, ongoing value of our historic environment.

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