

# BUYING AND OWNING A LISTED BUILDING

## ADVICE & INFORMATION LEAFLET

### What is a Listed Building?

A listed building is a building or structure which is considered to be of '*special architectural or historic interest*'. The Secretary of State for Culture, Media and Sport has a duty under the Planning (Listed Buildings & Conservation Areas) Act 1990 to prepare and approve lists of such buildings, on the advice of Historic England. (The District Council has no powers to list, or de-list buildings or structures).

When a building or structure is assessed for 'listing', both its architectural interest and its historic interest are considered. Its condition/state of repair is not as important a consideration and buildings/structures may be 'listed' although they are in poor condition.

Each building or structure is looked at on the basis of a set of national criteria.

### How are buildings and structures selected for listing?

Buildings and structures are selected for listing on the basis of their architectural interest, their historic interest, and their close historical associations or group value. Age and rarity are also important considerations

What are the criteria used for listing buildings or structures?

- All buildings built *before 1700* which survive in anything like their original condition
- Most buildings constructed *between 1700 and 1840*, (though selection is necessary)
- *Between 1840 and 1914* only buildings of definite quality and character, including the principal works of principal architects
- *After 1914*, only selected, outstanding, buildings
- Buildings that are *less than 30 years old*, only if they are of outstanding quality, and are under threat

In selecting buildings for listing, particular attention is paid to:

- Age and rarity

- Special architectural interest and/or social and/or economic interest
- Technological innovation or virtuosity
- Association with well-known people or well-known events
- Group value, especially examples of town planning such as squares and terraces.

### What is the difference between the grades?

Listed buildings or structures are graded to show their relative national importance. There are three grades: I, II\* and II.

- **Grade I** - are buildings or structures of exceptional interest (*forming only 2% of the national stock of all listed buildings*)
- **Grade II\*** - are particularly important buildings or structures of more than special interest (*forming only 4% of the national stock of all listed buildings*)
- **Grade II** - are buildings or structures of special architectural and historic interest (*representing 94% of the national stock of all listed buildings*)

There is no legal difference in the protection afforded by the above grades.

### What is the relevant legislation?

Current legislation relating to listed buildings is contained within the **Planning (Listed Buildings & Conservation Areas) Act 1990**. The Act is supplemented by the **National Planning Policy Framework** (February 2019), Part 16 – Conserving & Enhancing the Historic Environment, the **National Planning Policy Guidance** (March 2014). National conservation guidance is provided in **Making Changes to Heritage Assets** (Historic England – February 2016). Statutory procedures are further covered by Government Direction 2015, entitled 'Arrangements for Handling Heritage Applications'.

### Where can the 'lists' be found?

Each local authority holds copies of the 'lists' and these are available for inspection during normal office hours. This information can also be accessed on the Council's web-site at: [www.derbyshiredales.gov.uk](http://www.derbyshiredales.gov.uk). Paper copies are available for a fee. The information given in the 'lists' are: the name and address of the building; its listing reference number; the listing

grade; the date the building was listed and the formal listing description of the building.

With regard to the latter, the formal written description is intended for **identification only**. It is not intended to be a detailed schedule of all the elements and components, externally or internally, of the building.

There is a general mis-understanding that if some feature or element of a building (to its exterior or interior) is not actually mentioned in the listing description that that feature or element has no protection or heritage significance. This is an incorrect assumption.

### **How much of a building is listed?**

The **whole** building, or structure, is protected by the listing – Contrary to a popular misconception ‘listing’ imposes **equal** protection to all parts of the building, both internally\* and externally, including any fixtures & fittings. There is no such thing as a ‘listed’ façade only, or that the staircase, a fireplace, plasterwork or its windows are the only items protected by the ‘listing’. Every part (internally & externally) of the building has the benefit of statutory protection. It should be assumed that proposals to **alter** any part of the building are, therefore, likely to require an application for Listed Building Consent.

Any *attached* extensions/buildings/structures etc are protected under the listing. Listing descriptions are only indicative (see above).

\* *refer to the District Council’s information leaflet entitled – ‘Listed Building Interiors’*. This can be found on the Council’s website.

Buildings or structures *detached* from the main listed building, such as out-buildings, garden structures, garden buildings and boundary walls, gates/gateposts and railings, whose construction dates from **before 1948**, may also be protected under the listing of the main building. These are known as **curtilage-listed buildings/structures**. Such structures may, or may not, be mentioned in the formal listing description but may require Listed Building Consent for proposed alterations. Owners should, therefore, seek advice from the planning department before considering any work to such buildings/structures.

Buildings or structures *detached* from the main listed building (which are entirely free-standing) and which were

constructed **after 1948** are not protected by the listing of the main building, and would not require Listed Building Consent for alteration.

### **Owning a listed building:**

The decision to purchase a listed building generally brings with it stringent constraints on owners, as to what can and cannot be undertaken to its fabric. These constraints should be carefully considered in advance, especially as works of repair and approved alterations generally require high specification materials and workmanship and an attention to detail that may be costly to undertake.

Listed buildings (and most other historic buildings) have an inherent character, plan-form, layout and room sizes etc, together with internal fixtures and fittings. With regard to interiors; fixtures, fittings, & some finishes, *of any date*, may have historical importance and significance to the evolution of the house and such items are all protected by the listing.

Listed buildings (and most historic buildings) do not always readily ‘fit in’ with how we choose to live today. In buying a listed building the purchaser is also buying into a specific (and perhaps constrained) way of living. If a listed building is purchased with an intention to enlarge it to suit the level of accommodation that is required, or desired, then such a building may not be the right one for you as the District Council may not support such proposals if they impact detrimentally on the character, appearance or significance of the listed building. Furthermore, the internal plan-form/layout of a listed building is considered to be a fundamental and important part of its *special* character. To this end, within the interior of a listed building, the removal of walls; the insertion of new doorways; the removal of fireplaces/chimneybreasts; the removal/alteration/re-orientation of staircases; the erection of partitioning to create en-suites and the forming of passageways through rooms etc. may not be supported on application, as they may affect the special significance/interest of the building.

### **What can I do without Listed Building Consent?**

Owners of listed buildings have a duty to keep the building repaired and maintained. Applications for Listed Building Consent do not have to be made where **repairs** are being carried out to the property. However, the work of **repair** must be strictly carried out on an exact like-for-like basis, using the same materials and replicating all existing details. Any repair that involves any alteration, however subtle that alteration may be,

may trigger the need for an application for Listed Building Consent to be made to the District Council.

### **What can't I do without Listed Building Consent?**

Any **alterations**, internally or externally, which affect the special character, appearance or significance of a listed building will require an application for Listed Building Consent to be made to the District Council. This would also be the case for any *curtilage-listed* buildings or structures. In some cases the proposed works may also require an application for Planning Permission to be made. You should contact the planning department (via its Pre-application Advice Service – refer to web site) to enquire as to whether the works you are intending to carry out would require only an application for Listed Building Consent, or applications for both Listed Building Consent and Planning Permission.

### **Before I buy what should I look for?**

When looking around a listed building you may notice works or alterations that have been undertaken, or the owner may state that they have undertaken some works to the property since they purchased it. (This may be to the building itself – inside or outside – or within its grounds/curtilage). It is strongly recommended that potential buyers ask the current owner directly (or via their solicitor), what works they have undertaken to the property/grounds during their ownership. They should be able to readily provide this information, together with copies of any formal approvals granted for works by the District Council (i.e. 'Decision Notices').

The District Council holds records of all applications for Listed Building Consent (and/or Planning Permission) that have been made on a particular property. You can find out from the Council what type of applications have been made, and when, and what they were for (*fee applicable*). You can arrange to look at the application file(s)\*, via a written request, at the District Council offices (by appointment) to look over the documentation, drawings, the case-officers report and the Decision Notice (including any 'conditions' which may have been imposed).

*\* some application files are in archive storage and a fee is payable to retrieve them.*

### **What if I become aware of works undertaken that have not received formal approval?**

If you become aware that works to the listed building have been undertaken without the benefit of Listed Building Consent (and/or Planning Permission, where applicable) then you, or your solicitor, are advised to inform the current owners of the property of your concerns. Such works may be deemed as 'un-authorised works' which, in respect of Listed Building Consent, may constitute a criminal offence for which the District Council can instigate enforcement action and/or prosecution. The current owner may have to address such issues (i.e. rectifying such works and/or applying for 'retrospective' Listed Building Consent – which may, or may not be granted) *prior* to a sale proceeding.

If a listed building is purchased, and un-authorised works have been undertaken, the District Council can instigate enforcement action (via an 'Enforcement Notice') on the new owner to rectify the works, at their cost, within a prescribed time limit. The new owner may also have to prepare and submit a formal application(s) for the rectification works.

### **Once I have bought a listed building what do I do if I want to undertake alteration works?**

It is advised that you (or an appointed agent – see below) discuss your proposals with the District Council in the first instance (this is often referred to as 'pre-application advice'\*). Proposal sketches, floor plans, photographs, and any other information, can be sent to the Council in order for the proposals to be assessed. Following consideration, the Council will provide a written response as to whether, or not, such proposals are likely to gain support. If the proposals are likely to be supported you may wish to proceed with an application for Listed Building Consent (and Planning Permission, where applicable).

***\*since 1 April 2017 the Council operates a fee-paying 'Pre-application Advice Service' – refer to website for details & fees.***

### **Engaging professional advice:**

A listed building owner can outline their proposals for their building, or works within the grounds of their building, with the District Council directly (via the 'Pre-application Advice Service') and obtain their views/comments on those proposals. The building owner can also prepare and submit an application and deal with any conditions imposed on any grant of Consent. However, some owners may wish to engage the services of a professional agent (i.e. an architect, plan-drawer or planning

consultant) to assist them in preparing an application for Listed Building Consent (and Planning Permission, where necessary) & undertaking survey & design work and advice on behalf of the owner. Such a professional could also liaise, on behalf of their client, with the District Council regarding a forthcoming application (i.e. via the 'Pre-application Advice Service').

It is strongly recommended that owners of listed buildings engage a professional agent who has experience in dealing with historic buildings and is aware of the procedures and policies relating to the historic environment. Such professionals should be able to furnish owners with a resume of their relevant experience in this regard.

If a professional agent is engaged a building owner should expect the following service, as a minimum:

- The agent enters into 'pre-application' discussion with the District Council to ascertain the Council's initial views/comments on any proposed works. The agent should report back those views/comments to the building owner (all application forms enquire as to whether 'pre-application' advice has been sought from the Council)
- Following advice/comments from the Council (via its 'Pre-application Advice Service') the agent would prepare the necessary documentation and drawings for the application. If instructed by the owner, the agent would submit the application to the Council on their behalf. It is strongly recommended that the owner should request a full copy of the application from their agent for their records (to provide them with confirmation of what is actually being applied for and the date the application was submitted).
- Where necessary, the agent may also bring in other professionals (subject to the owners agreement) to provide specialist advice, such as structural engineers, damp specialist, archaeologists etc.
- The agent would deal with any queries raised by the Council during the life of the application and, where required, provide amended drawings or provide additional information/details (with owner approval). The owner should be provided with any amended drawings etc. from their agent for their records.
- When a decision is made the **Decision Notice** will be sent (electronically where an e-mail is provided) to the agent (or owner, if no agent has been employed). The agent should forward a copy of this

to the owner and, where Conditions have been imposed, explain to the owner the implications of these and the procedure for discharging those Conditions.

- If the owner retains the agent to discharge Conditions then the agent should undertake this service and inform the owner when Conditions have been formally discharged by the Council and that the works can proceed on site. (The owner themselves can, of course, apply to discharge Conditions).
- An owner may decide to retain their agent to progress & administer the construction works on site and liaise with the building contractor etc. If the owner does not retain their agent then they should ensure a copy of the Decision Notice (indicating the Conditions imposed), is passed on to the building contractor so that they are fully aware of any Conditions which need to be complied with (including any 'pre-commencement' conditions).

### How do I apply for Listed Building Consent?

Application forms are available on the District Council's website (for download) or via the national 'Planning Portal'. Applications can now be submitted 'on-line'. (Forms can be sent out in paper form, on request, or collected from Main Reception at the Town Hall)

The Council strongly advise that **pre-application** discussions take place. This can provide useful advice and information regarding the forthcoming application and can also be used to find out if the Council are likely to support such an application if it were to be made. All applications for Listed Building Consent should include the following, supporting information:

- a location map (1:1250 scale).
- Metric scale drawings (plans, sections and elevations – 1:50) **as existing**
- Metric scale drawings (plans, sections and elevations – 1:50) **as proposed**
- Photographs of the building, or parts of the building, to be affected by the works
- A **Statement of Significance & Impact\*** – clearly setting out the understanding and significance of the building and how the proposed works will ***affect and impact upon the special architectural and historic character and/or appearance of the listed building or structure***. This Statement is not to explain why you want to do the work you are proposing

(\* the Council has produced a guidance note on the preparation of a Statement of Significance & Impact – refer to the Council's website).

- Large scale detail drawings (1:10) of new (or replacement) elements such as doors, windows etc, including mouldings details at 1:1 or 1:2.
- Where the proposed works involve **structural works** to the building, or structure, a copy of any structural engineer's report & recommendations should be submitted. If the proposals for the building or structure also include **damp and infestation works** then the relevant specialist reports, and recommendations, should be submitted with the application.
- Where the proposed works, or some of those works, may require **Building Regulations** approval you (or your agent) are advised to consult with Building Control and any proposed works, as required under the Building Regulations, clearly identified within the application for Listed Building Consent (and/or Planning Permission). *Please note that Building Control may exercise certain relaxations of the Regulations in respect of works which may affect the special character and appearance of the listed building (internally & externally).*
- Under certain circumstances you may be required to submit a 'protected species' assessment and report.

Your completed application (and associated/supporting documentation) should then be sent to the District Council. On receipt it will be checked to make sure all the necessary information has been submitted. If it has not, you will be contacted and informed as to what *further* information and details are required in order to validate the application. Applications for Listed Building Consent can take up to **8** weeks to determine. This timescale should be taken into consideration when programming works to a listed building. (Please note – there is no 'fast-track' application procedure).

Following consideration and determination of your application you will receive a **Decision Notice\*** informing you if the application has been granted or refused Consent (*\*this is a formal, legal, document*). If Consent is granted it may have been **Granted with Conditions**. The Conditions that may have been imposed are clearly listed on the Decision Notice. All Conditions must be formally discharged in writing by the District Council and those that are 'pre-commencement' conditions must be discharged **prior to any works commencing on site**, otherwise, the approval could be considered null & void. It is the responsibility of the

building owner/occupier to comply with all Conditions. Contractors/builders carrying out approved works should also be made fully aware (by the owner, or their agent) of any Conditions attached to a Consent. The District Council has a period of **8** weeks to formally discharge conditions, in writing, following receipt of such a request.

Listed Building Consent is normally valid for **3** years from the date of the Decision Notice (unless, otherwise, specified in the Notice). The works must be commenced within that time period for the Consent to be valid.

#### **How much will an application for Listed Building Consent cost?**

There is no fee payable for making a Listed Building Consent application. There is, however, a potential *hidden* cost to the applicant where they consider appointing an agent (see above) to produce the necessary drawings/details and supporting information/documentation to accompany the application.

*(There is a fee payable for corresponding planning permissions and a fee for discharging Conditions on a planning permission).*

#### **What if Consent is refused?**

If Listed Building Consent is refused an appeal can be made to the Planning Inspectorate. An appeal must be made to the Inspectorate within 6 months of the date of the decision. Details of the procedure for making an appeal are available on the Council's website.

#### **What if work to a listed building is carried out without Consent?**

Any person who carries out or causes works to be carried out to the exterior or interior of a listed building (or curtilage-listed buildings/structures), without first obtaining Listed Building Consent, and where those works affect the character/significance of the building as a building/structure of special architectural and historic interest will, if convicted, be guilty of a criminal offence. Proceedings can be taken for the offence which, dependant on the severity of the works, can result in a large fine and/or imprisonment. Enforcement action may also be taken to restore the building to its former state. There is no time limit for listed building enforcement action.

Failure to obtain Consent for alteration works often becomes apparent during the sale of a property and may make the building

difficult to sell until any un-authorised works are remedied. If you buy a listed building with un-authorised work(s) you become liable for any listed building enforcement action in connection with that work(s) (although you cannot be prosecuted for such work(s) which is only relevant to the person who authorised the works to be carried out). Potential purchasers of listed buildings are strongly advised, therefore, to thoroughly check the planning history of their listed building to ensure that Consents have been obtained for all alteration works that may have occurred. The viewing of previous application files, via written request, can be made via Regulatory Services (a fee may be payable to retrieve archived files).

### **What other approvals may be required?**

As stated earlier, some types of works to listed buildings (for example, extensions and development within their curtilage) will also require an application for **Planning Permission**. Planning applications carry a fee (contact the planning department to find out the current fee scale).

Prior to, and during, construction of any new-build element or conversion, an application for **Building Regulations** approval may also be required. This requires a fee and you (or your contractor) should contact the Building Control Section at the District Council for further advice/information.

It should be noted that Listed Building Consent, Planning Permission and Building Regulation Approval are all **separate** approvals, and obtaining one does not mean that the others are not required in order to carry out the work(s).

### **What is 'spot-listing'?**

Some historic buildings or structures may have been overlooked when the Department of the Environment produced the 'lists' in the 1970s and 1980s. Where such buildings or structures are considered to have *special* architectural and historic merit, and are thought worthy of listing, a request can be made to Historic England to ask them to investigate the property and make a determination on whether, or not, it should be listed, i.e. added to the statutory register of buildings of special architectural/historic importance. *The District Council cannot, and does not, 'list' buildings.*

Anyone can make a request to **Historic England** to have a building/structure 'spot-listed'. There is a formal (online)

application form (accessed on the Historic England website) which would need to be completed - a link to this online application form can be found on the District Council's website. Together with the necessary supporting information this should be submitted *directly* to Historic England (not the District Council) for processing. This process can take up to 6 months.

### **Can a listed building be de-listed?**

A building owner can make a formal application to **Historic England** to ask for their building to be de-listed. Online application forms are available - a link to this online application form can be found on the District Council's website. Together with detailed photographs (interior and exterior) the owner must submit clear and sound reasons, based on the *special architectural and historic importance of the building*, as to why the building should be de-listed. Personal, emotional or economic reasons for a building to be de-listed are unlikely to be considered. The process can take up to 6 months. For both 'spot-listing' and 'de-listing', applications should be submitted 'online' directly to **Historic England**. *The District Council cannot, and does not, de-list buildings.*

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### **Advice and Information:**

It is advised that *pre-application advice* (via the 'Pre-application Advice Service') is sought at an early stage in order that potential costs associated with abortive drawn and written work is not undertaken. Via this service (fee payable), officers may be able to confirm, at an early stage, if they are likely to support an application for particular works. There may be occasions when further consideration and deliberation is required before such an answer can be given. ***Any advice and information given by officers is provided without prejudice to any formal decision of the Council in its capacity as Local Planning Authority.***

*For details and fees relating to the 'Pre-application' Advice Service' please refer to the website (link - <http://www.derbyshiredales.gov.uk/planning-a-building-control/submit-a-planning-application/pre-application-advice>*

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For further information refer to the Council's website (Conservation pages).

Website: [www.derbyshiredales.gov.uk](http://www.derbyshiredales.gov.uk)

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