

Legal Developments

New Law and Clarity for Listed Building Entries

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By the time you read this I hope the sun will be warming your copy of the Enterprise and Regulatory Reform Act 2013. It may sound only remotely interesting, but in there are a clutch of heritage protection reforms that have been waiting patiently for a Parliamentary landing slot since the ill-fated Heritage Protection Bill was last seen in Government's airspace.

Tucked in amongst a miscellany of other regulatory efficiencies are the heritage bits that:

- allow for heritage partnership agreements to give listed building consent
- create a new certificate of lawful proposed works to a listed building – where what's proposed does not affect the special interest
- allow local authorities and the Secretary of State to issue a class consent order, giving listed building consent for a category of works to a category of buildings
- remove the requirement for conservation area consent, but replace it wholesale with an equivalent new requirement for planning permission
- allow for applications for a certificate of immunity from listing to be applied for at any time
- allow for new and revised listed building entries to be more precise about what is protected and why.

I want to focus on the last of these as it will come into force around July. The rest will be later as there are underpinning procedures that still need to be created and consulted upon.

In 1969 two problems came into life: one for my mother, and the other for listed buildings. From that point on, not only was a principal listed building protected, but also any structures attached to it and within its curtilage, provided the latter pre-dated 1948. Prior to that date and subsequently there has also been the problem of deciding what fixtures and fittings are affected by the listing.

A typical example might be an 18th-century house with a 20th-century lean-to shed attached to it and a 19th-century greenhouse in the garden. Whether these are architecturally or historically interesting, on their own or in combination with each other, is irrelevant. The law says they are protected if they are ancillary to the principal building and either attached to it or within its curtilage.

So the lean-to and the greenhouse are in principle protected in this made-up case. The question is then whether consent is needed for works to them.

The list entry may be of little help as they may not even get a mention in the accompanying narrative.

That raises uncertainty enough. Now move on to consider what the curtilage of a listed railway station is, or whether a wing of a hospital is ancillary to the listed admin block to which it is attached, and you start to get a feel for some of our caseload here at Ivory Towers and at local authorities around the country.

This lack of clarity is deeply unsatisfactory for owners and developers, but nothing could be done without a change in the law.

Thanks to this enterprising new Act, the Secretary of State (advised by English Heritage) can, in all new and revised list entries, say definitively whether attached or curtilage structures are protected. A list entry may thus have a red line around a building and expressly state that nothing outside of it is protected, whether attached or in the curtilage. Listed building consent will then unarguably not be needed for works to those attached or curtilage structures, unless the works go so far as to affect the fabric of the principal listed building.

The new entries may also exclude from protection objects that are fixed to a listed building. So lights, signs or art, for example, that might be deemed fixtures rather than fittings, could be expressly excluded from protection if they are not part of the building's special interest.

Furthermore, new entries can also definitively state that a part or feature of a building is not of special interest. This could be very useful where an internal aspect of the building could be helpfully freed from the consent requirements without harming the heritage value. I'm no expert, but I doubt the modern partitioning here at Ivory Towers is really the finest aspect of this Grade II* building.

Importantly, this will not mean that silence in the list entry implies a lack of heritage value or that the description of special interest is definitive. Modern list entries are more extensive in their description of the historic and architectural interest of the place, but they are not exhaustive and will not be interpreted as such because of these changes in the law.

We will be updating our online Guide to Heritage Protection and designation advice web pages as these changes take effect. To keep up to date on Twitter just follow @EHLegalDirector. ■

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