



Handling of Listed Buildings losses

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Introduction

In handling property losses, loss adjusters will occasionally encounter listed buildings. These may require specialist repair techniques and planning considerations.

The purpose of this document is to provide the reader with a basic understanding of listed buildings, when listing building consent is required and the procedures, parties and expertise involved in seeking and obtaining such consent. The document also includes practical tips for loss adjusters and some example scenarios.

Background

In the United Kingdom we are fortunate to have centuries of history encapsulated in buildings and monuments that surround us. They have been passed to us by our ancestors and previous generations and their value is beyond their functional use.

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Societally, we are committed to conserving and protecting these assets for the next generation to enjoy and learn from them. We have an obligation to maintain these assets, manage any change to them and prevent them from harm.

Historic assets fall into different categories and the most common are **listed buildings**. Scheduled monuments and World Heritage Sites sit above this designation. There are also registered parks and gardens, registered battle fields and conservation areas.

This document focusses on listed buildings, as loss adjusters are most likely to encounter these in their work, but readers should also be aware of the other categories.

Historic England records in 2017 refer to nearly 380,000 listed buildings. The most significant are Grade I and these represent 2.5%. Grade II* sits below this and represents 4.8%. The remainder are Grade II.

Buildings are listed under The Planning (Listed Buildings and Conservation Areas) Act 1990.

They are afforded protection through listing by the Secretary of State for Digital, Culture, Media and Sport due to their particular architectural or historical interest. There is a Government guide that explains the selection criteria for listed buildings.

Grade I buildings are of exceptional special interest. Grade II* are particularly important, with more than special interest. Grade II are buildings of special interest.

In the remainder of the UK the bodies involved are as follows:

- Scotland – Historic Environment Scotland
- Wales – Historic Environment Service, known as *Cadw* which translates in English to the word “keep” or “protect”
- Northern Ireland – Department for Historic Environment

For comparative purposes categorization across the UK is shown below:

Description	England	Scotland	Wales	N. Ireland
Buildings of Exceptional Interest	I	A	I	A
Buildings of Particular Importance with more than special interest	II*	B	II*	B+
Buildings of Special Interest	II	C	II	B1 and B2





Factors that determine listing and categorisation are architectural interest, historical interest, group value, fixtures and fittings, buildings within their curtilage and they contribute to the character of conservation areas.

In simple terms, any building older than 1700 with a significant proportion of its original fabric will be of special interest and likely to be listed. Buildings more recent than this are more commonplace and listing of them is more selective.

Modern buildings can be listed for architectural or historical significance and buildings can be listed if they are part of a valuable street scene or part of wider group value.

Some examples are shown below.





For a record of listed buildings in the United Kingdom, loss adjusters can search the **National Heritage List** for England or other equivalents.

If a building is listed it includes any object or structure fixed to it or within the curtilage of the site if it existed before 1 July 1948, unless the list entry says it is excluded. In simple terms, if a building is listed it is everything inside the 'red line' site plan.

List Description

A typical **Grade I** list description is as follows.

1. 5141 ST MARTINS WITHOUT BURGHLEY PARK The Orangery (formerly listed under the Civil Parish of Barnack) TF 00 NW 1/514 16.1.56 I GV 2. Circa 1756-63 by Capability Brown whose master plan for Burghley depicts the orangery and is dated 1756, and the orangery was seen by Horace Walpole in 1763. Gothic orangery. Ashlar with slate hipped roof behind battlements. Eleven bays with octagonal turrets, flanking the centre bay and at the corners, large 4 centred arch windows with Perpendicular panelling above. Sashes and central glazed door with Gothic glazing bars.

Listing NGR: TF0486006089

A typical **Grade II** list description is as follows.

1. 1671 ST MARTIN'S (West Side) Nos 61 to 63 (consec) TF 0306 1/497 II gv 2. Victorian Tudor, Architect, J B Corby, 1879. Left-hand of 2 storeys and attics in stone. One 2-storey gabled bay of 4 lights. One hipped dormer, Door beneath coat of arms. Curved cornice, Right-hand section of 3 over 2 windows. Door recessed, carved spandrels. Nos 62 and 63 are of 3 storeys. 2 gables. Canted 3-storey bays of 4 lights, 2 central windows on 2 storeys above recessed paired doors, separated by a short column with carved capital. 2 flights of steps. Nos 39 to 43 (consec), Garden Wall to No 43, No 44, Wall to No 44, 45 to 70 (consec), Garden Wall to Nos 68 and 69 with Burghley Almshouses form a group.

Listing NGR: TF0307806776

It is possible to get a building removed from the list, i.e. de-listed, if there is evidence that the original list criteria has been destroyed or is not correct. De-listing is rare but possible after major losses such as fire or explosion.





Listed Building Consent

Permission is required to demolish, alter or extend a listed building that affects the character of the building. Failure to obtain this consent can lead to enforcement to reverse the work and / or prosecution. It is a criminal offence.

If urgent work is needed to a listed building, the local authority or Secretary of State can intervene to execute this and set about recovering costs from the owners, as discussed below.

Establishing what activity does and does not require listed building consent is complex and subjective.

In simple terms, if the work involves altering, extending or demolishing a listed building then consent will be required if that affects the character of the listed building from an architectural or historical viewpoint.

It is therefore possible that simple like-for-like maintenance repairs to a listed building do not need listed building consent.

In some circumstances, planning permission may also be required as well as listed building consent, i.e. demolishing and rebuilding an outbuilding within the curtilage of a listed building.

Listed Building Applications

The procedure for listed building consent is very similar to obtaining planning permission.

A form is completed with the local authority. It is not normal for an application fee to be attached to a listed building consent. With the form, drawings as existing and as proposed are required and also an Ordnance Survey Location Plan and Block Plan. A design and access statement is required, explaining the nature of the works and historical context.

The local authority will validate the application within a couple of weeks and then eight weeks apply to make the decision. Applications typically take this time but it is possible to reduce this if the application is simple and the local authority can use delegated powers and avoid a committee decision.

If the building is Grade II listed the local authority will make the decision themselves via their own Conservation Officer. If the property is Grade II* or Grade I, they will seek guidance from Historic





England or the equivalent. They may also seek guidance from national amenity societies such as the Victorian Society or Georgian Society.

Local authorities are encouraged to discuss any areas of concern that emerge from reviewing applications and instigate revisions to try and achieve permissions where possible.

If permission is granted, it is typical for conditions to be attached. Usually there will be a requirement to begin works within three years of the permission and provide samples of materials before construction work begins. A requirement may be to produce an archaeological report and historic building report before work begins.

Listed building consent will be very precise and relate to specific works referred to in the application. If other work becomes apparent during the course of the construction project, further applications may apply which will halt progress.

Good Conservation Officers for local authorities will police the approval with site visits and ensure that permissions are abided by. If works are not carried out correctly, enforcement notices can be issued to reverse works and instigate prosecutions.

In the event an application is refused, there are appeal procedures via the Secretary of State.

An appeal process can also be instigated in the event a local authority does not make a decision within the eight-week deadline.

In making their decision to grant listed building consent, a local authority must have regard for the desire to preserve the building and its historic and architectural interest. It is a balancing act to allow the works but ensure the heritage asset suffers no harm.

Funding

Grants exist for listed building work, but it is rare that they will be applicable to insurance loss scenarios.

Before 1 October 2012, works to listed buildings requiring listed building consent was VAT exempt. However, after that date VAT applies at the standard 20% rate.

For some work on ecclesiastical buildings, a VAT grant can be obtained retrospectively to recover VAT outlay for certain repair and maintenance projects.





Loss Adjuster Tips

- **First Visit**

If a property is old, unusual or on a unique site or street scene, it could well be listed. Ask the Insured if they have any knowledge of specific protection. Regardless of what they say, check the insurance policy to see if there is information regarding any protection and check the national list to see if the property and site is featured.

- **Consider – Will it need consent?**

Look at the loss and the likely works. Unless it is very minor, like-for-like repairs, consent is highly likely. If you are unsure, speak to the local Conservation Officer to obtain a view. Make sure you back up the dialogue in writing so a record of what has been agreed exists.

- **Engage a Specialist**

If consent is needed it is important to engage a professional who is familiar with listed buildings and heritage projects and applications. Most contractors are unfamiliar with local authority planning procedures and may not be able to complete applications correctly. Many Surveyors do not handle heritage work and planning matters and may get this incorrect.

It is important to explain to Principals and Policyholders that specialist Architects, Surveyors and Engineers need to be engaged to ensure legislation is complied with.

- **Build relationship with the Conservation Officer and monitor the Specialist**

After a typical buildings loss, such as a fire or flood, it is important to instigate emergency works to mitigate further consequential loss.

A good heritage expert will identify key tasks and should immediately arrange with the local authority Conservation Officer to discuss the prospect of completing certain tasks without the need for formal consent. A proactive loss adjuster will encourage the specialist to open up the dialogue at an early stage and ensure that the loss and listed building application is set off on the right track. It is particularly important to strike up a relationship with the Conservation Officer at a very early stage as this can save cost and time. It is worth noting that the Conservation Officer has statutory powers to serve repair or urgent works notices.





Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Listed Buildings Act 1990') enables local authorities to execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area.

It is worth noting that under the Act S55 allows the local authority to recover these costs from the Building Owner and such costs will then be passed to Insurers.

As soon as emergency work is complete, loss adjusters should push the heritage expert for their reinstatement schedule and get the listed building application submitted as soon as possible. This is a considerable package of work involving drawings and statements and it is important to ensure this is validated and processed by the local authority as early as possible to optimise the claim's life.

A useful procedure with the local authority is to submit a pre-application advice request. This encourages the local authority Conservation Officer to explain their concerns with the application before it is formally submitted and provides an opportunity to address this with the formal application. This greatly improves the chances of approval being granted without lengthy dialogue.

- **Manage Time Expectations**

Listed building consent takes time.

Delays are unavoidable which will impact on alternative accommodation payouts, business interruption losses, storage costs, etc.

Before the eight-week decision period for the Council begins, drawings and statements will need to be prepared which, in itself, will take weeks to produce.

When permission has been granted, the trades that typically undertake heritage work are often in high demand and they could have lengthy lead times before they can commence the work.

The pre appointment of stone masons; thatched roof contractors; etc. should be encouraged.

When trades are on site, some of the heritage techniques that may apply often take longer to execute than modern construction, meaning contract periods are longer than regular construction.

Lime plaster is a good example with days if not weeks needed between coats. Another example is working with lime mortar, which is difficult in winter conditions and is not recommended at temperatures below 5°.





- **Manage Reserves**

Costs will also increase on listed building losses and heritage works in general. Because specialist trades are in demand, they are generally more expensive.

As stated above there is always a keenness to protect the building at the earliest opportunity to preserve the building fabric.

It is typical for listed building consent only to be granted if heritage techniques and materials are utilised and hence these costs are unavoidable.

It is also typical that consent will only be granted if repairs utilise heritage techniques even if more modern materials have been used on the building 'illegally' pre-loss.

On non-listed major loss scenarios, the option to complete mass demolition and reconstruction is often considered opposed to complicated and expensive repairs. However, with listed buildings there is an obligation to instigate repairs and restore the heritage asset and cost considerations will not influence this. The only means to override this would be to de-list the asset, but achieving this is exceptionally rare.

Policyholders, having experienced at first hand the obligations imposed upon them relating to listed buildings may wish to pursue a de-listing; sometimes to save their own costs as unfortunately under insurance on listed buildings is all too frequent. The de-listing process is lengthy and if it is decided to do this then it must be borne in mind the consequential cost of adopting such an approach.

Below is a check list of other items to consider in a reserve calculation (over and above a non-listed building):

- Abnormal protective measures
- Specialist drying techniques
- Careful debris removal (demolition often by hand to reclaim as much fabric as possible)
- Increased professional fees for survey work & applications for Listed Building Consent, etc.
- Pro – longed reinstatement period

- **Adequacy of Sums Insured**

It is the policyholder's responsibility to set their sums insured. All too often it is seen that the sums set are inadequate, particularly on listed buildings whereby it is seldom for home owners and property owners to take expert advice.





This is exacerbated due to a dearth of published cost information. It is the abnormal costs as discussed in the reserve section which seemed to be ignored.

In the domestic market some policies may have an unlimited rebuilding cost although this is usually only found with High Net Worth products. Others may pay the extended reinstatement cost if reinstatement costs exceed the sums insured although this would not usually apply to Grade I or II* properties and only if insurance reinstatement valuations have been undertaken by approved surveyors in the last 5 years.

Many listed buildings are however insured in the retail market where policies do not have the benefit of such extensions of cover and this is where problems are likely to occur.

When it comes to commercial properties, as well as the points above, another factor to consider is the Maximum Indemnity Period for the purposes of Business Interruption cover with the overall reinstatement period often taking much longer than a modern building for the reasons stated above.

- **Churches and Conservation Areas**

Most churches are usually listed but listed building consent does not apply to repairs. Instead, work on ecclesiastical buildings is handled by the Diocese through Faculty Approval. This is a very similar procedure to listed building consent and equally time consuming and costly.

Loss adjusters should also be wary of working on buildings and sites in Conservation Areas.

External works such as renewing roofs, removing vegetation and replacing windows are likely to require conservation area consent and similar application procedures apply through the local authority.

Example scenarios

1. ***A lath and plaster ceiling and cornice is water damaged in a listed building and needs to be taken down and replaced.*** If it is to be repaired exactly as the existing, using the original mouldings as a template, this is probably like for like repair and no consent applies. However dialogue with the Conservation Officer is recommended and an exchange of emails/letters to confirm the view. Accurately record the existing ceiling to demonstrate the reliability of the repair work.





- 2. The Policyholder has said the building is listed but it is only the fireplace that is protected.**
The building may have been listed due to the fireplace but it is the whole site that is listed and protected.
- 3. An outbuilding of a listed building has suffered from a fire and needs demolishing and rebuilding.** If the building is older than 1948 it will need listed building consent. Dialogue with the planning authority is recommended as Planning Permission may also be needed.
- 4. A listed building has suffered from a modest fire and it is just a roof covering that needs renewing.** It is unlikely the roof will go back exactly as original. Modern felt is likely to be used and insulation introduced to comply with building regulations. Although this may not affect the appearance of the roof and architectural merit it is a change and listed building consent will be needed.
- 5. You have a loss on a listed building and the Insurer is convinced that VAT does not apply this work.** The Insurer may have experienced VAT exemption in the past (albeit in limited circumstances) but after Oct 2012 VAT applies at 20% rate.
- 6. You have heard that double glazing is unacceptable on listed buildings and a Surveyor has allowed for this in a repair specification.** Double glazing that affects the appearance of a listed building and historical fabric won't be allowed. Hence modern uPVC and aluminium windows aren't acceptable. However slimline double glazing can be approved if the rebates are deep enough to receive it. Listed Building Consent would be needed.
- 7. Following a major fire all that is left of timber frame listed building are the four timber frame walls. You are under pressure to get a building de-listed and arrange demolition and reconstruction of a new property.** To de-list a property an application is necessary involve the national government body (e.g. Historic England). They will need to see clear evidence that only very little of the historic fabric remains to consider a delisting and open the opportunity to demolish. If the 4 walls remain and even just the framework they are unlikely to accept a delisting and it could well prove to be a waste of time and fees. Therefore ensure you consider this carefully with the Insurer before considering a de-listing.





- 8. A garden wall within a listed building site has fallen over and the Policyholder is convinced the rebuild will need listed building consent.** If it is a precise like for like rebuild, using identical or salvaged bricks and mortar in the same pattern it is likely to be authorised repair. Consent isn't likely but best to check and record.
- 9. Following water damage the Policyholder's estate manager says listed building consent will be needed for the strip out work.** Strictly speaking this is correct but this could take months to achieve and major consequential damage could occur. A pragmatic approach is to meet the conservation officer and see if some emergency work can be agreed outside a formal application via exchange of letters. A sensible Conservation Officer will see the merit in this to prevent harm to the building and should embrace that approach.

Further reading

For further information, readers are directed to the websites of Historic England, Historic Environment Scotland, CADW (Wales) and NIdirect (Northern Ireland).

<https://historicengland.org.uk/images-books/publications/stoppingtherot/heag046b-stopping-the-rot/>

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