

## **BCAAC Appendix 3**

### **EXTRACT FROM THE Listed Buildings Act of 1990**

#### **IMPORTANT**

##### **Guidance Notes on Procedures**

**These notes should be read with the Planning Protocol which is incorporated in the Council's Constitution**

#### **EXERCISING SPECIFIC DUTIES IN RELATION TO LISTED BUILDINGS AND LAND WITHIN CONSERVATION AREAS**

The Council is required to give effect to the following statutory requirements in respect of listed buildings and land in Conservation Areas.

**Section 16(2) of the Listed Buildings Act 1990** (Planning (Listed Buildings and Conservation Areas) Act 1990) In considering whether to grant listed building consent for any works, the Council is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest, which it possesses.

**Section 66(1) of the Listed Buildings Act 1990** In considering whether to grant planning permission for development which affects a listed building or its setting, the Council is required to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

**Section 72(1) of the Listed Buildings Act 1990** In the exercise of various functions under the Planning Acts in relation to land in conservation areas (including determination of planning applications) the Council is required to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area.

These statutory requirements need to be considered alongside relevant heritage guidance contained in the National Planning Policy Framework including the following :-

132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance,

notably scheduled monuments,....., grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: ●● the nature of the heritage asset prevents all reasonable uses of the site; and ●● no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and ●● conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and ●● the harm or loss is outweighed by the benefit of bringing the site back into use.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

138. Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected ....

When considering an application that either affects the setting of a listed building or is within a conservation area the Committee are advised to follow the approach set out below

(a) Consider whether the proposed development affects a listed building (or its setting) or a conservation area? If yes, the relevant statutory test(s) (s.66 or s.72 or both) must be discharged by considering.... -Does the proposed development either preserve the listed building (or its setting) or preserve or enhance the character or appearance of the conservation area?, i.e. does it cause “harm”? And - If yes, assess what that “harm” is and, in doing so, “demonstrably apply” considerable weight to the harm. (This exercise is a matter of planning judgment)

(b) Then identify the significance of the heritage asset (listed building or CA) and take this into account in assessing the impact (or harm) being caused and specifically consider whether the harm is ... -“substantial” –if so this points to refusal unless there is very exceptional justification for the proposal [para 133 of the NPPF] or -“less than substantial”? – if so the Committee should carry out the balancing exercise balancing harm versus public benefits as set out in para 134, NPPF having regard inter alia to the relevant development plan policies.