



THE EFFECTIVE AND ECONOMIC USE OF STATUTORY POWERS

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1. Identification

Buildings of special architectural or historic interest – listed by the Welsh Ministers (WM),¹ on the recommendation of Cadw, in line with national policy: see WO Circ 61/96, Annex C: WO Circ 1/98, Appendix F; see also DCMS Circ 01/07. Listed Buildings Act 1990, s 1.

- Provides protection from minor alterations, and demolition.
- Exempts empty buildings from rates.
- Cost of alterations zero-rated for VAT.
- Unlocks repairs and grants powers (in theory).
- Protects from unsuitable development (policy, not law).

Authorities may lobby Cadw to list. Or they may serve building preservation notices – risk of liability to pay compensation if notice not confirmed by WM. Listed Buildings Act, s 3.

Monuments scheduled by WM. Ancient Monuments Act 1979.

Conservation areas – designated by authorities. But must be for protection of area (*Arndale Properties v Worcester City Council*).

- Protects buildings from complete demolition.
- Protects trees from premature felling.
- Unlocks repairs and grants powers (in theory).
- Protects from unsuitable development (policy, not law).

Buildings of local interest – non-statutory. Protection is only by policy.

¹ Functions of “Secretary of State” under planning Acts transferred to National Assembly of Wales in 1999 (SI No 672); transferred from Assembly to Welsh Ministers by Government of Wales Act 2006, Sched 11, para 30. Note that Welsh Ministers have general power to do anything appropriate to support buildings and places of historic or architectural interest in Wales (2006 Act, s 61).

2. Duties of owners of historic buildings

Very limited.

- Duty to keep safe (Occupiers' Liability Acts; law of negligence)
- Duty to adapt for disabled people (Disability Discrimination Acts 1995 and 2005)
- No duty to insure or repair.
- May be limited duty in respect of leasehold property

Very limited financial assistance.

Identification as heritage asset may be financial advantage or disadvantage.

3. Grants, loans and tax concessions

Grants from Cadw

- Powers in Historic Buildings and Ancient Monuments Act 1953, section 4
- Historic buildings grants
- Rural regeneration grants
- Civic initiative grants
- Townscape heritage
- Town Scheme partnerships

Grants from local authorities

- Listed Buildings Act, section 57
- Policies useful, but to be implemented with caution
- Repayment possible (but not essential) if building sold within 3 years
- Town schemes
- Housing grants

Loans also (theoretically) possible

Other sources

- Heritage Lottery Fund
- Building preservation trusts
- Miscellaneous sources
- Further information: www.ffhb.org.uk

Capital taxation

- Various reliefs on transfer of buildings of outstanding interest

Ancient monument grants and management schemes

4. Dangerous structures and unfit housing

Authority may order owner to make safe dangerous building, or to demolish it: Building Act 1984, s 77

- Listed building consent still required for works

Authority can take action itself under s 78.

If building is listed or in CA, authority must first consider carrying out works under s 54 (urgent repairs procedure) or acquiring building if listed: Listed Buildings Act, s 56

Consider carefully conflict between safety and heritage: *Derby City Council v Anthony*.

Authority may serve order under Housing Act 1985 and 2004 requiring unfit house to be demolished – but not if it is listed.

Authority should only exceptionally include listed house in a clearance area (WO Circ 59/96, Annex B); and may not demolish house in clearance area without listed building consent (Housing Act 1985, s 305(2)). See also WO Circ 1/98, Appendix E.

5. Urgent repairs

Local authority may carry out urgent works to preserve listed buildings: Listed Buildings Act, s 54; WO Circ 61/96, paras 130-132

- Can be used to preserve any unoccupied listed building
- Where building is occupied, only available to preserve part not in use
- Restricted to emergency repairs, to keep wind and weather proof, or prevent collapse
- Should not involve owner in great expense (oddly, not in Wales!)
- Sufficient that the authority considers works to be urgently necessary: see *R v Secretary of State for Wales, ex p Swansea CC*
- May include temporary support works
- See Henbury Hall case, noted at [1997] JPL 162

Authority first serves notice on owner, allowing 7 days to respond

It may then carry out works – should be to adequate standard

May seek to recover cost from owner; owner may appeal to WM against demand:

- Works not necessary
- Amount specified is unreasonable
- Recovery would cause hardship.

Applies also to unlisted buildings in conservation areas, but only where Cadw certifies that preservation of building is important for maintaining character of area: Listed Buildings Act, s 76; WO Circ 61/96, para 130

Monuments: only WM can take action

6. Requiring repairs to be carried out by owners

Action possible under section 215 (of Town and Country Planning Act 1990) where condition of "land" (including buildings) is adversely affecting amenity of neighbourhood.

Authority serves notice specifying steps to be taken, and time limit. Usually follows negotiation (see ODPM *Best Practice Guide*).

Appeal possible on grounds:

- Condition of land not adversely affecting area
- Condition of land results from normal exercise of lawful use
- Specified works are excessive
- Time period too short

Non-compliance with s 215 notice is criminal offence

Authority may carry out specified works and recharge owner, or register charge.

7. Other works

Authority may carry out at its own expense works necessary to reclaim or improve land (inc buildings) that are "derelict, neglected or unsightly" (to be given natural, common-sense meaning: ODPM Circ 02/2003, App F, para 5) – National Parks and Access to the Countryside Act 1949, s 89(2).

May also compulsorily purchase land for this purpose (s 89(5)).

8. Acquisition of historic buildings

Authority may acquire by agreement any building of special architectural or historic interest (need not be listed or scheduled or in a conservation area): Listed Buildings Act, s 52

- Cadw may contribute to cost of acquisition: HBAMA 1953, s 5B

Authority may serve repairs notice on owner, specifying steps necessary for repair (Listed Buildings Act, s 48)

- no requirement for owner to carry out works, but
- if no works carried out, authority may compulsorily purchase building (s 47).
- Procedure considered by House of Lords in *Robbins v Secretary of State* (Willesborough Windmill, Kent)
- Guidance from Cadw in Circ 61/96; from English Heritage in *Stopping the Rot*

Works will usually be discussed with owner or agent.

- Notice should not include works that are desirable but not necessary

Compulsory purchase follows usual procedure; appeal to Secretary of State; inquiry

- Secretary of State should only confirm order if satisfied that
 - it is expedient that building should be preserved;
 - reasonable steps are not being taken to preserve it; and
 - compulsory purchase necessary to secure preservation.
- Also possible to appeal against order to magistrates' court

Compensation for any compulsory purchase of listed building is on the basis that

- assumed that planning permission would be granted for redevelopment with only 10% increase in volume
- listed building consent would be granted for demolition necessary to achieve such redevelopment;
- listed building consent would not be granted for other demolition;
- but would be granted for alterations and extensions.

Where building deliberately neglected, CPO will include direction for minimum compensation; no listed building consent or planning permission to be assumed other than that necessary for restoration

- possible to appeal against direction to magistrates' court

Options after acquisition:

- authority sells building to new owner, who repairs building and occupies it;
- authority repairs building, and leases it back to original (impecunious) occupier;
- authority invites schemes from developers, including specified repairs
- authority sells it to building preservation trust, which repairs it and sells to new owner

9. Control over works to historic buildings

Works affecting listed buildings: need for planning permission and listed building consent

- Changes of use – planning permission
- Internal works that affect character – listed building consent (*East Riding v Hobson*)
- External works that affect character – planning permission (*Burroughs Day v Bristol*) and listed building consent
- Demolition – listed building consent
- Works only affecting setting – planning permission

Carrying out works without listed building consent is criminal offence.

- Defence available where works necessary for health or safety or preservation of building
- Must be limited to minimum (*Derby v Anthony*)
- Must be notified to authority

Need for conservation area consent – only for complete demolition or gutting of interior

Planning permission in conservation area – policy very strict in practice

- Circ 61/96, para 33: presumption in favour of retaining buildings that make positive contribution to CA; test as for listed buildings

Applications and appeals

- Policy in WO Circ 61/96; also guidance from Cadw and English Heritage (see *Conservation Policies and Principles*)
- Danger of over-prescriptive approach

Need for scheduled monument consent – also for works affecting ground

10. Unauthorised works

Enforcement action, where necessary

- More appropriate than prosecution, where restoration is possible
- Can be taken against present owner where responsibility for damage is unknown
- Consider effect of complete works, not just part (*East Riding of Yorkshire v Hobson*)
- Needs extreme care in drafting notices
- May need both [planning] enforcement notice and listed building enforcement notice

Recipient may appeal to Secretary of State

Injunctions: powers under Listed Buildings Act

- Buildings alleged to be dangerous: *Derby City Council v Anthony*

Criminal offences:

- Failure to comply with enforcement notice or listed building enforcement notice
- Failure to obtain listed building consent for works

Prosecution

- Can be very unproductive
- Needs care
- But can be effective

11. Proposed changes

Heritage Protection Bill

- Would have unified listing / scheduling etc
- Would have retained most if not all of powers above

Not in Queen's speech

New Planning Policy Statement PPS 15 to be produced by English Heritage (England only)

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