



HOLLAND HERITAGE

Listed Building Enforcement

NAPE Conference
5th October 2022
Bristol

Edward Holland

What this session will cover?

- Primary legislation and Statutory Powers
- Unauthorised Works or Neglect?
- Enforcement or Prosecution?
- Taking action to protect heritage assets
- Preparing Notices
- Questions and Discussion

Planning (Listed Buildings and Conservation Areas) Act 1990

s.7 Restriction on works affecting listed buildings

Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

Planning (Listed Buildings and Conservation Areas) Act 1990

s.9 Offences

- (1) If a person contravenes section 7 he shall be guilty of an offence.
- (2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.
- (3) In proceedings for an offence under this section it shall be a defence to prove the following matters—
 - (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
 - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
 - (c) that the works carried out were limited to the minimum measures immediately necessary; and
 - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.

Planning (Listed Buildings and Conservation Areas) Act 1990

s.38 Power to issue listed building enforcement notice

(1)Where it appears to the local planning authority—

- (a)that any works have been or are being executed to a listed building in their area; and
- (b)that the works are such as to involve a contravention of section 9(1) or (2),

they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a “listed building enforcement notice”).

National Planning Policy Framework

Paragraph 59

Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Published Guidance



Stopping the Rot

A Guide to Enforcement Action
to Save Historic Buildings



Best Practice Guidance on Listed Building Prosecutions



December 2006
Local Government: London



IHBC GUIDANCE NOTES

Practical Guidance for bringing Listed Building Prosecutions

GN2017/1
Mar 2017

This is one of a series of occasional IHBC Guidance Notes published by the Institute of Historic Building Conservation (IHBC). IHBC Guidance Notes offer advice on topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice.

The IHBC welcomes feedback, comment and updates on our Guidance Notes to our consultant editor Bob Kindred, at research@ihbc.org.uk

Executive Summary

1. This Guidance Note is intended to supplement, and be read in conjunction with, the relevant part of the Historic England document 'Heritage Crime – Guidance for Sentencers' 2017 relating to listed building and conservation area offences [1]. While that document addresses heritage crime more widely it makes no reference to the Institute's National Database of Listed Building Prosecutions [2]. Nor is it instructive regarding the day-to-day practicalities of investigation or in the preparation for court cases by local planning authority heritage specialists. The purpose of this guidance note is therefore to address many these issues.

2. This Note does not deal with cautions for which a separate IHBC Guidance Note has been prepared at:
http://ihbconline.co.uk/toolbox/guidance_notes/cautions.html

The IHBC National Database of Listed Building Prosecutions

3. The National Database of listed building prosecutions was established in 1996 in response to a lack of data on local authority activity. Its inception was prompted at the time by a pending (and ultimately) successful local authority prosecution of a serving Member of Parliament for multiple listed



www.ihbc.org.uk/prosecutionsDB
www.ihbconline.co.uk/toolbox

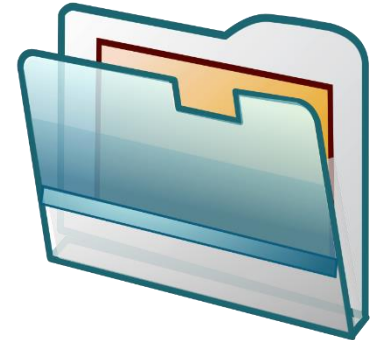
Unauthorised Works or Neglect?



Enforcement or Prosecution?



What to do when you first identify unauthorised works or neglect ?



Understand the heritage asset

Knowledge of what is significant about the heritage asset is crucial to putting together a robust case for enforcement.

- What is special about it?
- Why was it listed?
- When was it listed?
- What was its condition when it was listed?
- How do the unauthorised works or the neglect affect its heritage significance? What level of harm has been caused?

Remember that the list description is not definitive and remember that enforcement action is not dependent upon the grade of listing

Enforcement powers cannot cover all aspects of significance







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How to decide which course of formal action to take

Proactive



Reactive

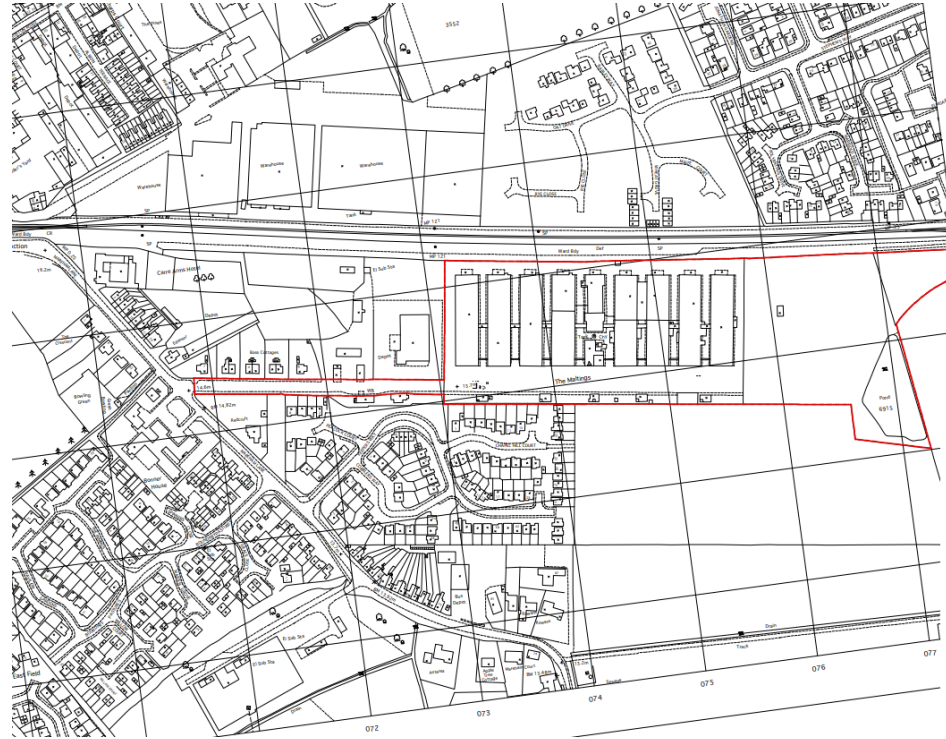


Cumulative Change



Potential obstacles to action

Bass Maltings, Sleaford, Lincolnshire- Grade II*





Former Mines Rescue Centre, Wrexham - Grade II
Planning Permission granted for demolition; inspected for listing but works started before it was formally listed resulting in significant damage. After an initial cessation of works, these resumed and caused further damage but the LPA could only take action to return the building to the condition it was in at the date of listing which was very poor.

Timely action is important



Also - always think ahead to how your actions would stand up at appeal or public inquiry

Issues that can deter use of enforcement powers with regard to heritage assets

- Risk to the Local Authority / Financial resources
- Confidence, skills, capacity of planning staff
- Not sure who has the authority to take action
- Lack of support from Enforcement / Legal colleagues
- Lack of Political / Corporate support
- Lack of awareness of unauthorised works or neglect to listed buildings
- Condition of a building at the time of its listing
- Owner claiming that the Council's action infringes their Human Rights
- Lack of partner organisations to whom the Local Authority could transfer the building to if they sought to compulsory purchase
- Health and Safety concerns

Can the objective be achieved without enforcement?

Enforcement powers should be used when the 'soft' powers of encouragement and negotiation have failed

In deciding whether or not to use enforcement powers local authorities should have clear objectives and justification for their use:

- Will intervention be in the public interest?
- Will it help to achieve a sustainable solution?
- Have all other options been exhausted?



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Preparing and Serving Notices

s.54 Urgent Works Notice

- **54 Urgent works to preserve listed buildings.**
- (1)A local authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area.
- (2)If it appears to the Secretary of State that any works are urgently necessary for the preservation of a listed building—
- (a)if the building is in England, he shall authorise the Commission to execute any works specified in the authorisation which appear to him to be urgently necessary for its preservation;
- The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the building.
- (4)If [\[F2](#), in the case of a building in England,] the building is occupied works may be carried out only to those parts which are not in use.





1. Remove the upvc window shown in the photograph and replace with single glazed, side hung casement with one horizontal glazing bar of 20mm per casement. The glazing shall be secured with putty.
2. Remove the upvc door shown in the photograph and replace with a solid timber door comprising six fielded panels.



Required floor plans / elevations to identify precise locations of breaches.

Required schedules of work to fully specify (as below)

“Provide 19mm external quality plywood sheet boarding over all windows and doors thatg are highlighted on Drawing No. AL.0.20. The boarding is to have 10no. 25mm diameter holes per window or door for ventilation purposes. The boarding is to be fixed using long bolts through the window and door openings to 100x50mm softwood timber spanning across the window and door openings internally. The external bolt heads are to be tamper proof. “

s.215 Notice





s.215 1990 Act

(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

(2) The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.

Tonedale Mill & Tone Mill, Wellington

- Somerset West and Taunton Council and its predecessor has fought hard for over 15 years to save these important textile industry buildings.
- At Tonedale, in 2022 they served an Urgent Works Notice and have previously served a s.215 Notice and three Repairs Notices in 2020, an Urgent Works Notice and an Enforcement Notice in 2018.
- With a grant from Historic England they had a member of staff to tackle Buildings at Risk and had financial support in taking action.
- At Tone Mill enabling development was granted consent with the intention of providing funds for the repair of the listed building but the owner defaulted and varying of the s.106 agreement required a Judicial Review. The owner sold to the Council which is now working with the Wellington Mills Community Interest Company to preserve both mills for future generations.

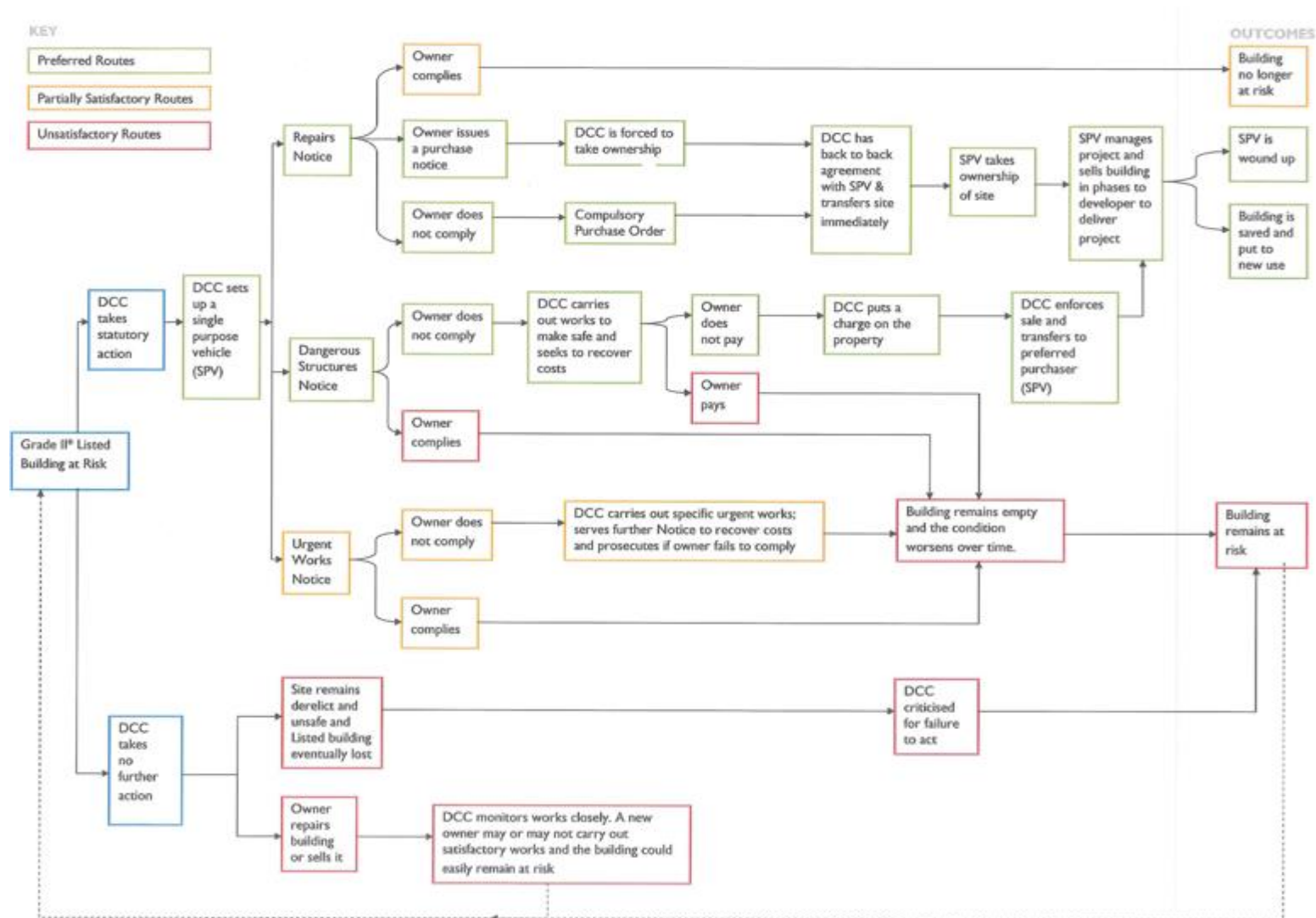
Compulsory Purchase Order s.47



Denbigh Hospital



A Route Map - assessing the most appropriate course of action



1990 Act s.38 (2)

“A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified—

- (a) for restoring the building to its former state; or
- (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
- (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.”



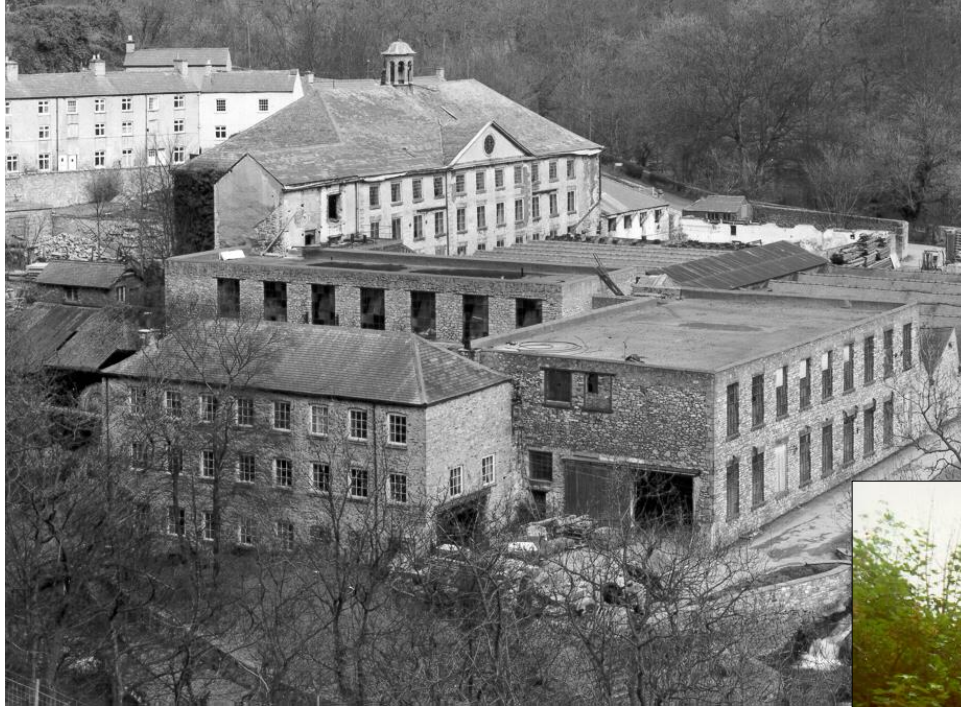
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Prosecutions and Appeals



Cressbrook Mill, Derbyshire

Grade II* and within WHS



Consent granted for conversion but developer chose to speed up the process by part-demolition. Fined £12,500 with £6K costs but his actions had saved him more than that.



Consistent fines?

In Much Wenlock Shropshire

- 1986 contractor removed a fire place from a Listed building - fined **£1,000**.
- 1995 the same contractor totally demolished 10 High Street, Much Wenlock Shropshire but only fined **£1,200**

1990 Act s.39

Grounds of appeal / Sail yr apel:

- “(a) that the building is not of special architectural or historic interest;
- (b) that the matters alleged to constitute a contravention of section 9(1) or (2) do not involve such a contravention;
- (c) that the contravention of that section alleged in the notice has not taken place;
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by section 38(4);
- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed; “

Publicity

Landowner prosecuted after wrecking historic building near Horsham

Tearing down period features and completely destroying several parts of the house, was, Judge David Wynn Morgan said, akin to "painting a moustache on a fine Old Master, or adding a drum and bass track to music written by Mozart."

Owner who 'ripped out layers of history from listed house must pay £300,000

Wall decorated with children's gravestones, mosaic Jacuzzi added and Regency features replaced with mock-Tudor design

DORSET

ANY PERSON WILFULLY INJURING
ANY PART OF THIS COUNTY BRIDGE
WILL BE GUILTY OF FELONY AND
UPON CONVICTION LIABLE TO BE
TRANSPORTED FOR LIFE
BY THE COURT
7 & 8 GEO 4 C 30 S 13 T FOOKS

Thank you for listening

edward@hollandheritage.co.uk