

Building Conservation & Enforcement

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Why enforce?

- Buildings are placed on the List of buildings of special architectural or historic interest by the Secretary of State
- For the purposes of their preservation
- Any works of demolition, alteration or extension which affect its character require consent
- Enforcement is required where works are undertaken without such consent or in breach of conditions attached to it



Enabling legislation

- Planning (Listed Buildings and Conservation Areas Act) 1990
- Supported by the Planning (listed Buildings and Conservation Areas) Regulations 1990 as modified

- Carrying out of works without listed building consent (where it would have been required) is a criminal offence
- Reflects seriousness of loss of historic buildings or features
- Availability of criminal sanction to enforce the State's view of the importance of our heritage

Different kinds of enforcement

- Consent to retain works already carried out
- Prosecution
- Listed building enforcement notice
- Injunction

carried out

- Where works are not so minor as to have needed consent in first place
- But where consent would readily have been granted had it been sought
- Such consent is not 'retrospective' as it does not absolve the owner from liability
- But does halt any enforcement proceedings that may have been underway

Unauthorised works to a listed building

- Two offences: contravention of s.7 (preventing unauthorised works)
- Elements of the offence are:
 - i) The building in question is listed
 - ii) Works are carried out for its demolition, alteration or extension
 - iii) If the works are for the alteration or extension of the building, they affect its character as a building of special architectural or historic interest
 - iv) The works are executed, or caused to be executed by the defendant

Liability

- Carrying out of works is an offence of strict liability
- That is, it makes no difference if the person carrying out the works did not know that the building was listed
- Thus no evidence needs to be called as to knowledge or intent of accused as irrelevant to question of guilt
- Liability only attaches to the owner if he or she was vicariously liable for the acts of the contractor at the time the works were carried out

Urgency of works as defence

- Under s.9(3) it is necessary to prove:
 - i) That works to the building were urgently necessary in the interest of safety or health or for the preservation of the building
 - ii) That it was not practicable to secure safety or health or preservation of the building by works of repair or works for affording temporary support or shelter
 - iii) That the works carried out were limited to the minimum measures immediately necessary
 - iv) That notice in writing justifying in detail the carrying out of the works was given to the LPA as soon as

EVIDENCE

- Burden of proof in a criminal trial lies on the prosecution to prove all elements of the offence charged to the normal criminal standard
- That is: to prove that the works were carried out; that the defendant was responsible; and that the building was listed; and, if relevant, that the works affected the character of the building
- But NOT motives or knowledge of the accused

Procedure

- Anyone is entitled to bring a prosecution in respect of unauthorised works
- Accused first brought before magistrates for decision on a summary trial (without jury)
- If found or pleads guilty: maximum penalty is fine up to £20,000 or prison sentence up to six months, or both
- Crown Court for trial by jury: maximum penalty is unlimited fine or prison sentence up to two years or both

- Second offence: s.9(2) – guilty of an offence by failure to comply with any condition attached to a consent
- Elements of the offence are:
 - i) The building in question is listed
 - ii) Works are carried out for its demolition, alteration or extension
 - iii) The works are executed or caused to be executed by the defendant
 - iv) The works are authorised by a grant of consent
 - v) The conditions on that consent having not been complied with

Penalties in practice

- Custodial sentences are extremely rare and only imposed in very extreme cases
- Fines are increasing as magistrates become more familiar with this type of offence
- Defendants have included two Members of Parliament, Councillors and members of the planning, surveying and architectural

Damage to a listed building

- Damage to a listed building is a criminal offence (s.59(1)).
- Elements of the offence are:
 - i) The building is a listed building
 - ii) A person does or permits the doing of any act which causes or is likely to result in damage to the building
 - iii) The act is not an act for the execution of excepted works
 - iv) He or she has the intention of causing damage to the building
 - v) He or she would be entitled to do or permit the doing of the act but for this section

Damage to a listed building

- Work that could, for example, lead to decay, but is not immediately damaging or needing consent – removal of some slates
- Committed by owner or occupier of land intending to cause damage
- Any other person not entitled to do anything at all on the land would be charged with causing criminal damage

- It is a criminal offence not to comply with a listed building enforcement notice (subject to appeal)
- An LPA may issue if:
 - i) It appears that works have been carried out to a listed building without consent or in breach of a condition attached to a grant of consent
 - ii) The LPA considers it expedient to do so having regard to the effect of the works on the special character of the building

Contents of notice

- Specify clearly:
 - i) The alleged contravention
 - ii) What the LPA wishes to see done about it
 - iii) The time in which that must be done
 - iv) The date on which the notice is to come into effect

General test: 'does it tell the recipient fairly what he has done wrong and what he must do

notices

- Grounds of appeal:
 - i) The building is not of special interest
 - ii) There has been no contravention of the Act
 - iii) Consent should be granted
 - iv) Service of the Notice was defective
 - v) Requirements of the Notice excessive
 - vi) Time for compliance

Injunctions

- Can be sought where urgent action is required to stop a listed building being demolished or substantially altered
- Or to halt unauthorised works in progress
- Application to be made to the Chancery Division of the High Court

- Demolition of an unlisted building in a conservation area is a criminal offence
- Non-compliance with a condition attached to consent for demolition works in a conservation area is an offence
- The same considerations would generally apply as to proceedings under s.9 in connection with listed buildings
- It is not an offence to damage an unlisted building in a conservation area

Conservation area enforcement notice

- Effect of unauthorised works on character and appearance of conservation area
- Provisions are same as for listed building enforcement notices
- As are grounds of appeal



1 - in previous ownership.



1994 - unauthorised alterations in progress

Old Hall Farmhouse, Orsett, Essex



Old Hall Farm, north west elevation, March 1991



Rewindowing of the west gable - only the small window is original; the lower picture window replaces a 19th century sash, and the doors and upper picture window are new



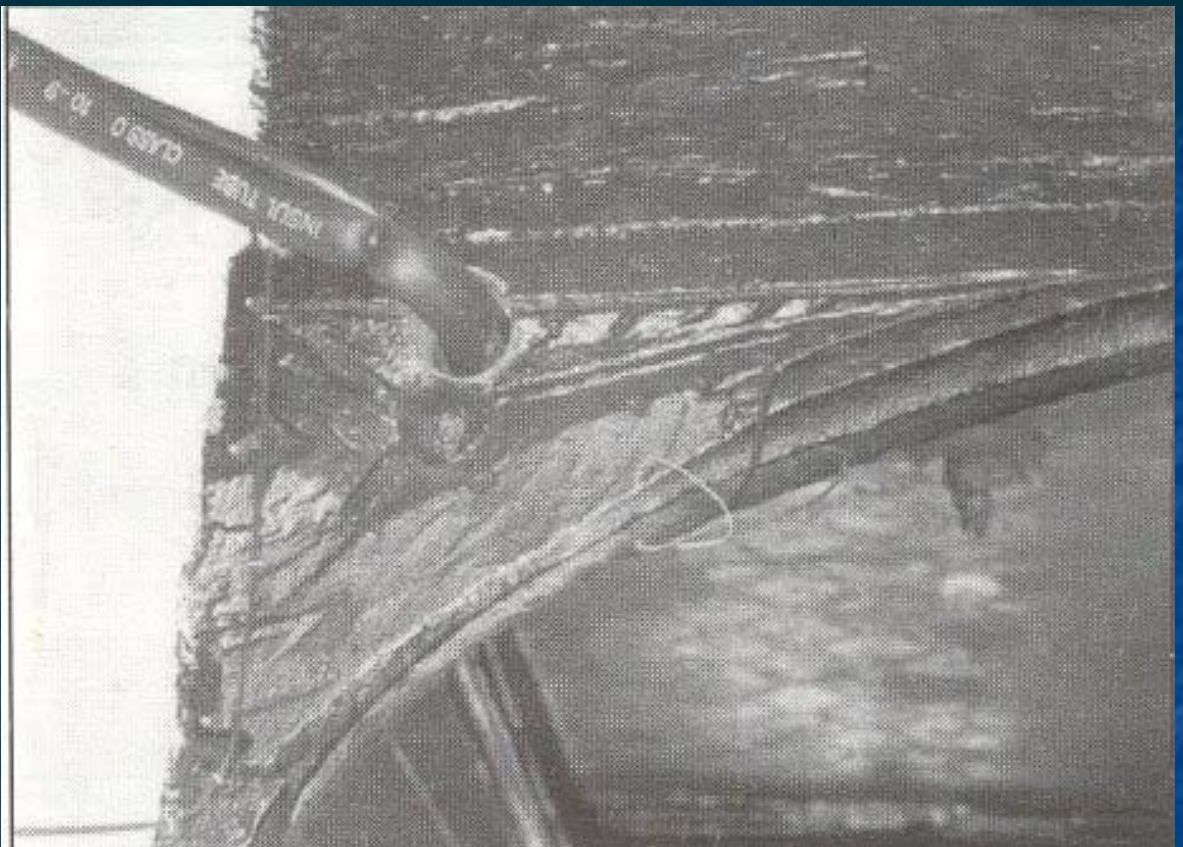
Stelvio House, Newport, Gwent





Northwich Park, Blockley, Gloucestershire







Heybridge Hall, Heybridge, Essex





Greenside, Wentworth, Surrey



Best Practice

- If you have a Conservation Officer – use him/her!
- At Maldon the Conservation Officer makes completion visits to all listed building sites with an Enforcement Officer to check compliance
- A pragmatic view: secure the undoing of the damage done – negotiate through enforcement rather than prosecute, where appropriate
- The difficulty with listed buildings prosecutions is that they do not happen often enough – the result is that the law is not entirely satisfactory