

Listed Buildings & Prosecutions

Presented to Members
of
The Southern Enforcement Officer Group

17th April 2009

by

Sharon Smith

Linda S Russell, Solicitors & Planning Consultants

Listed Buildings



Legislation & Policy

- Planning (Listed Buildings & Conservation Areas) Act 1990
- Planning (Listed Buildings & Conservation Areas) Regulations 1990
- Circular 01/07: Revisions to Principles of Selection for Listed Buildings
- PPG 15
- DCLG Best Practice Guide on LB prosecutions
- English Heritage Policies (Statutory advisor to the Crown on listed buildings & scheduled monuments)
- Local Plan Policies - local listing

A Listed Building

- A building which, because of its special architectural or historic value, is included in a list compiled by English Heritage on behalf of the Secretary of State
- To afford its special protection under planning law - to preserve its special character & features.
- A LB includes:
 - a) extensions & outbuildings
 - b) objects & structures fixed to the building, &
 - c) objects or structures within the curtilage which, although not fixed to the building forms part of the land, & has done so since before 1st July 1948 (e.g. statues)

Main Listing Criteria

- Architectural interest: design, craftsmanship, innovation, decoration
- Historic interest: buildings that illustrate important aspects of the nation's social, economic, cultural or military history
- Close historical associations: nationally important people or events
- Group value: a group of buildings with architectural or historic unity, for example squares/terraces/model villages that are a fine example of planning
- Grades
- Grade 1 - Most exceptional
- Grade 11*- Particularly important
- Grade 11 - Special interest

Darsham House in Suffolk - Grade 11*



Identifying the Curtilage

- Is often necessary to identify the curtilage, because curtilage buildings are also listed
- Curtilage: an area of land attached to & closely associated with a building, & forming one enclosure with it

Tests:

- Physical layout of the listed building & the structure
- Ownership of both - past & present
- Use or function of both - past & present

Temporary Listing - s3

- If it appears to LPA that an unlisted building:
 - a) of special architectural or historic interest; &
 - b) in danger of demolition or alteration in such way as to affect its special character
- They may serve on the owner & occupier (or if urgent, by affixing to building)
- “A Building Preservation Notice” (BPN)
 - *Comes into force as soon as served*
 - *The building can then be temporarily protected as a listed building, whilst awaiting approval for permanent listing*

Effect of a Listing

- No person shall execute or cause to be executed any works to a listed building
- For its demolition; or
- For any alteration or extension which would affect its character as a building of special architectural or historic interest
- Unless those works are authorised (by LPA or SS in writing)
- Examples of works: windows, fireplaces, removal of walls, change of roof materials

Enforcement

5 possible actions:

- 1. Serve a Listed Buildings Enforcement Notice(LBEN) requiring steps to be taken to remedy the breach
- 2. Prosecution for failure to comply with the notice
- 3. Direct Action regarding the work specified in the notice
- 4. Prosecute for unauthorised works to a listed building, regardless of whether or not the LPA serve a LBEN
- 5. Injunction - to halt works

Listed Building Enforcement Notice

- Section 38 Listed Buildings Act 1990 -
LPA has power to issue a LBEN where it appears that works affecting the architectural or historic character of a listed building, have been carried out without listed building consent, or in breach of a condition imposed on a consent
- It is only useful to serve a LBEN where remedial works are possible. Otherwise pointless. Consider prosecution for having carried out the unauthorised works, whether or not you serve a LBEN
- Is no time limit for taking action - 4 year rule does not apply

Listed Building Enforcement Notice

- LPA can require works as specified in the LBEN:
 - a) To restore to its previous state; or
 - b) If restoration not reasonably practicable, as considered necessary to alleviate the effect of the unauthorised work (a compromise); or
 - c) If the works constitute a breach of LB condition(s), to bring LB to the state it would have been had that condition(s) been complied with

Non Compliance with LBEN

- Owner - at the time the period for compliance expires
- Commits a criminal offence
- Evidence you need to prove the offence: The building is listed, a LBEN was issued & served, the works required in the notice were not carried out within the period specified; the Defendant is the current owner (not necessarily the person who carried out the works)
- Either way offence (Magistrates' or Crown Court)
- On conviction, defendant is liable as follows:
- Magistrates Court: £20,000, Crown Court: Unlimited fine
- Court must take account of any benefit accruing due to the offence

Direct Action - s42

Where LBEN not complied with, LPA may:

- Enter the land
- Carry out the works
- Recover the costs (you need to get three estimates, to be able to show that the costs incurred were reasonable)
- If items were removed from building as part of the unauthorised works, & are now in the possession of another, an injunction is needed to order the return of the item

Unauthorised Work to a Listed Building - s9

Regardless of whether a LBEN has been issued:

- It is a criminal offence for any person (not just the owner) to 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 those works are authorised by the LPA*
- Suspects can include owners, occupiers, architects, project managers, contractors. Those who ordered the works as well as those who physically carried them out

Elements of the offence

- The building is listed (& was at the time of the works)
 - Works have been carried out
 - Without written authorisation
 - By the Defendant(s)
 - Those works affect the historic or architectural character of the building
-
- This is a strict liability offence - intention of the defendant(s) is not relevant
 - Magistrates' Court: 6 months imprisonment &/or £20,000
 - Crown Court: 2 years imprisonment &/or unlimited fine
 - Court must take account of any benefit accruing

Evidence to prove each element

- 1. Building is listed: *Copy of the listing, description & plan*
- 2. Works have been carried out: *Listing details/witnesses/documents/photos to show the building in its previous state*
- 3. Without written authorisation: *Council records*
- 4. By the Defendant(s): *Title documents, witness statements, confessions made under caution*
- 5. Those works affect the historic or architectural character of the building: *Expert professional view from LB/conservation officer*
- The Council must prove beyond reasonable doubt that the Defendant committed the offence

Prosecutions Generally

Tests for Bringing a Prosecution

- 1. Is there sufficient evidence for a realistic prospect of conviction
- 2. Is it in the public interest:
- In addition to the standard tests of seriousness of the crime & behaviour of the defendant, additional tests are provided in the Best Practice Guide:
- Was feature historically/architecturally important or unique; Can the feature be replaced or replicated; Overall impact, Importance of building as a whole; Consideration of any consents; extent of compliance with any LBEN, Human Rights s6; How long has the building been listed

Statutory Defences

- Works urgently necessary in interests of safety, or health, or preservation of building
- Not practicable to secure or preserve by repair or works providing temporary support or shelter
- Works limited to minimum immediately necessary, and;
- Notice in writing given, justifying in detail why works carried out as soon as reasonably practicable
- Defendant must prove on a balance of probabilities any defence he raises

Injunction s44A

- Where the LPA consider it necessary or expedient for an
- actual or apprehended contravention of s 9
- (unauthorised works to a listed building) to be restrained by injunction, they may apply to the court for an injunction
- whether or not they are proposing to exercise any other powers (i.e. if they are already prosecuting)
- Injunction is a civil remedy - breach of injunctive order is a contempt of court - which is imprisonable