



Department for
Digital, Culture,
Media & Sport

THE UPKEEP AND REPAIR OF HISTORIC BUILDINGS

THE USE OF SECTIONS 47, 54, 55 AND 76 OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 AS AMENDED

1. There is no specific duty on owners to keep their buildings in a good state of repair but local authorities have powers to take action where a designated heritage asset* has deteriorated to the extent that its preservation may be at risk. These powers take two forms.

** use of s.76 applies to undesignated heritage assets in a conservation area, see references to s.76 below.*

Urgent works under S.54 and 55 of the Act

2. Section 54 of the Act enables a local authority (or Historic England in London) to carry out urgent works for the preservation of listed buildings in their area after giving notice to the owner. These powers can be used only in respect of an unoccupied building, or the unused part of a partly occupied building. Authorities or members of the public may ask the Secretary of State to make such a direction; such requests should be supported by evidence confirming the importance of the building.
3. The Secretary of State can also exercise these powers herself, but under the terms of the legislation she must authorise Historic England to give notice and carry out the works on her behalf. Her policy is to use his powers only in exceptional cases, for instance where a building is of exceptional interest or is in local authority ownership; or where a conservation area is of more than local interest and either the building in question is so important to the area that failure to carry out urgent works to it would seriously damage the character or appearance of the area, or the building, as well as meeting the basic section 76 criterion, is in local authority ownership. In all such cases she would normally only consider the use of her own powers where the local authority concerned has decided not to take action itself.

4. Authorities should note that these powers are confined to *urgent* works. In the Secretary of State's view, their use should be restricted to emergency repairs, for example works to keep a building wind and weatherproof and safe from collapse, or action to prevent vandalism or theft. The steps taken should be the minimum consistent with achieving this objective, and should not involve an owner in great expense.
5. Local authorities (or Historic England in London, or the Secretary of State) may recover from owners the cost of urgent works carried out under these provisions, subject to the owner's right to make representations to the Secretary of State. Representations may be made on the grounds that:
 - that some or all of the works were unnecessary for the preservation of the building; and/or
 - in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; and/or
 - that the amount specified in the notice is unreasonable; and/or
 - that the recovery of that amount would cause him hardship.

The Secretary of State will take all such representations into account before determining the amount to be recovered, and will be particularly concerned to establish whether the works carried out were the minimum required to secure the building's preservation and prevent further deterioration. If an authority intends to attempt to recover the cost of the works, the financial circumstances of the owner should be taken into account at the outset and any sums the authority wishes to recover from an owner should not be unreasonable in relation to his or her means.

A direction under Section 76 of the Act

6. Section 76 of the Act enables the Secretary of State to direct (after consulting Historic England) that the s.54 powers shall apply to an unlisted building in a conservation area if it appears to her that its preservation is important for maintaining the character or appearance of that area. The Secretary of State will consider sympathetically requests to make such a direction in respect of an unlisted building which makes a positive contribution to a conservation area. Such requests should be supported by evidence confirming the importance of the building to the conservation area.

Repairs notice under Section 48 of the Act

7. If a local planning authority (or Historic England in London) considers that a listed building is not being properly preserved, it may serve a repairs notice on the

owner. This notice must specify the works which the authority considers reasonably necessary for the proper preservation of the building, and must explain the relevant provisions of the legislation. These powers are not confined to urgent works or to unoccupied buildings, and authorities should consider their use in cases where protracted failure by an owner to keep a listed building in reasonable repair places the building at risk.

8. A House of Lords judgment (*Robbins v Secretary of State for the Environment* ([1989] 1 All E.R.878) has provided guidance on the nature of the works which may properly be specified in a repairs notice. The judgment held that, while the definition of works reasonably necessary for the proper preservation of the building will always relate to the circumstances of the individual case, and involve judgments about what is reasonable, the word 'preservation' has to be given its ordinary meaning in contrast to 'restoration', and this imposes an objective limitation which must be applied in considering the scope of works to be specified in a notice. The judgment also made clear that a notice can include works for the preservation of a building having regard to its condition at the date when it was listed: in other words, where a building has suffered damage or disrepair since being listed, the repairs notice procedure can be used to secure the building's preservation as at the date of listing, but should not be used to restore other features. If, however, repairs are necessary to preserve what remains of the rest of the building - for example, to a roof that was defective at the time of listing - it is legitimate, in the Secretary of State's view, to include them in a repairs notice.
9. Repairs notice powers may also be exercised by the Secretary of State, but, as with urgent works, her policy is to treat these powers essentially as reserve powers, and to use them only in exceptional circumstances. It is not open to the Secretary of State to authorise the use of repairs notices in respect of unlisted buildings in conservation areas.

Compulsory acquisition of listed buildings in need of repair under section 47 of the Act

10. If at least two months have elapsed following the service of a repairs notice, and it appears to the body who served the notice that reasonable steps are not being taken for the proper preservation of the building, they may begin compulsory purchase proceedings. Compulsory purchase orders (CPOs) made by a local planning authority or by Historic England require the Secretary of State's confirmation, and the Secretary of State must consult Historic England before making an order herself or confirming an authority's order. In making or confirming an order, the Secretary of State must be satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose. The Secretary of State will also need to be satisfied that the means and the resources necessary for securing the

building's repair will be available. A listed building CPO may also include land which an authority wishes to acquire for the purposes of access, amenity or management in connection with the building ('relevant land' in the Act).

11. The Secretary of State considers that privately owned historic buildings should, wherever possible, remain in the private sector. Local planning authorities are encouraged to identify a private individual or body, such as a building preservation trust, which has access to funds to carry out the necessary repairs and to which the building will be sold on as quickly as possible. Suitable covenants should be negotiated to ensure that repairs will be carried out by a purchaser. Authorities should be aware that where they wish to acquire a listed building and pass it on, 'back to back' deals are possible.
12. Any person who has an interest in a listed building which a local planning authority wishes to acquire compulsorily, and who has been served with a notice under the Acquisition of Land Act 1981, may apply to a magistrates' court for an order staying further proceedings on the compulsory purchase order. If an applicant is aggrieved by the decision of the magistrates' court, he or she may appeal to the Crown Court.

General considerations

13. The possible need to follow up with a CPO is clearly something which local planning authorities should take into account when contemplating repairs notice action. But the following are also relevant considerations:
 - a. the purpose of compulsory purchase is to ensure that reasonable steps are taken for properly preserving a listed building: it is not a requirement that the local authority should itself carry out the repairs or pay for them;
 - b. the Act contains provisions for minimum compensation where an owner has deliberately allowed a building to fall into disrepair in order to justify its demolition and secure permission for redevelopment of the site (section 50 of the Act); minimum compensation should however be sought only where there is clear evidence of such an intention;
 - c. where the minimum compensation provisions do not apply, normal market value rules apply (as laid down in the Land Compensation Act 1961); but even here, high costs of repair, combined with limited possibilities for development, may indicate a very low or even nominal value.
14. Authorities also have powers under section 52 of the Act to acquire land and buildings by agreement.

Contact details for representations on any of the above processes is:

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