

## PRESERVATION OF HISTORIC BUILDINGS

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### AN ANALYSIS OF THE RELEVANT PROVISIONS OF THE LAW

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The legal provisions which safeguard historic buildings are, in the main, contained in the Town and Country Planning Act, 1947 (which is hereafter referred to simply as "the Act"; other statutes are given their short title). The general scheme is as follows.

*Listing:* by sect. 30 (1) and (5) of the Act the Minister of Housing and Local Government, as he now is, is charged with the preparation of lists of buildings of "special architectural or historic interest" after consulting with "such persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, such buildings". The principles upon which the work of listing is carried out were settled by the Minister in consultation with an Advisory Committee, which is still in being and upon which architectural, learned and amenity societies are represented: the field work is done by the Minister's staff of investigators. Lists for the larger part of the 1480 local authority districts have now been issued. Historic buildings, other than occupied dwelling-houses, can also be scheduled as ancient monuments under sect. 12 of the Ancient Monuments Act, 1913; but this power is seldom exercised in the case of Georgian structures.

*Effect of listing:* by sect. 30 (6) of the Act no one may demolish any listed building, or alter or extend it in such a way as seriously to affect its character, unless at least two months before the work is put in hand notice in writing has been given to the local planning authority, which must then send a copy of the notice to the Minister, to the local council (where this is not itself the planning authority) and also to such other persons or bodies of persons (e.g., amenity societies) as the Minister may specify. It follows that listed buildings are *not* definitely preserved; but they are protected from demolition or damaging alteration without notice. The authorities, in short, are given an opportunity of considering each case on its merits and intervening, if necessary, in order to prevent the loss of a national asset.

*Alterations and Planning Consent:* most alterations of a kind to come within the scope of sect. 30 (6) of the Act will count as "development" and require planning consent under sect. 12. The need for such consent gives the local planning authority an opportunity to consider the proposals not only in themselves but also in relation to the character of the building and its setting, and to suggest modifications where necessary. Several local planning authorities have set up special advisory panels to which such proposals are referred. In the last resort consent can be refused. An appeal from such refusal lies to the Minister under sect. 16 of the Act.

*Building Preservation Orders:* by sect. 29 (1) and (8) of the Act, where it appears expedient to make provision for the preservation of any building of special architectural or historic interest, whether at the behest of the owner or in order to forestall his plans to damage or demolish it, the council of the county district in which the building is situated *or* the local planning authority may make the building subject to a Building Preservation Order. By sect. 100 (2) the Minister has power in default to direct that such an Order may be made or, alternatively, to make one himself. By sect. 29 (3) such an Order does not take effect until confirmed by the Minister, usually after the holding of a public local enquiry. No material alteration may be made to a building which is subject to a Building Preservation Order without the consent of the local planning authority. A Building Preservation Order can play a most useful part as a "holding operation", a means of providing time for discussions with the owners, for finding some compromise or alternative course of action. It should, however, be noted that neither listing nor the making of a Building Preservation Order imposes on the owner of a building any duty properly to maintain it.

*Compensation:* refusal of planning consent to proposed "development" or refusal of consent to an alteration proposed to a building subject to a Building Preservation Order may give rise to a claim to compensation under sect. 20 of the Act. This is expressed as the difference between the value of the property as it is and its value as it would be if consent had been given. Too much can be made of the so-called "bugbear of compensation". In many cases no claim will be made. In others no claim could be substantiated: by removing an attractive Georgian shop-window and replacing it (at considerable expense) by something more "modern", a shop-keeper does not necessarily enhance the value of his property—indeed, the contrary may be the case. Conservative treatment of listed buildings under expert supervision often proves more satisfactory and much cheaper than radical alteration. It is only in the last resort that the matter of compensation should be given weight; and even then it is to be hoped that local planning authorities will consider carefully whether preservation is not worth its price.

*Purchase Notices:* by sect. 19 of the Act, as amended by sect. 58 of the Town and Country Planning Act, 1959, an owner who has been refused planning consent to proposed development or who has been refused consent to proposed alterations to or demolition of a building subject to a Building Preservation Order and who claims that the building has become incapable of beneficial use in its existing state, may serve on the local authority a "purchase notice" requiring the authority to purchase the building. The case eventually comes to the Minister who, after holding a public local enquiry, decides whether to confirm the notice and, if so, by what authority the building shall be purchased, or whether to grant consent, wholly or in part, to the development, alterations or demolition to which consent was sought. It is apprehended that it is only rarely that a purchase notice will be served and that an owner would rather part with his property than come to terms with the planning authority when it is a case of settling on what alterations (if any) are to be carried out.

*Failure to maintain:* as has been stated above, neither listing nor the making of a Building Preservation Order imposes on the owner of a building any duty properly to maintain it. But by sect. 41 (1) of the Act, where it appears to the Minister that reasonable steps are not being taken to keep a building which is subject to a Building Preservation Order in a proper state of repair, he may authorise the council of the county or county borough or county district in which the building is situated to acquire it compulsorily together with any land needed for its proper control or management, or for the protection of its amenities. By sect. 41 (2) a similar power of compulsory purchase is given to the Minister of Works.

*Advice on Repairs:* by sect. 17 of the Ancient Monuments Act, 1913, the Minister of Works may, if he thinks fit, give upon request advice as to the treatment of a listed building and undertake the supervision of any repairs to it. Such advice or supervision is given free except that a charge may be made for out-of-pocket expenses. Owing to the shortage of specialist staff, such advice or supervision is usually only given in case of buildings of outstanding importance.

*Grants towards the cost of Repairs or Maintenance:* by sect 4 (1) of the Historic Buildings and Ancient Monuments Act, 1953, the Minister of Works may make grants for the purpose of defraying in whole or in part the expense of repair or maintaining any building of "outstanding historic or architectural interest". Before making any such grant the Minister is required to consult with the appropriate Historic Buildings Council both as to the making of a grant and as to the conditions (e.g., public access) upon which it shall be made. Under sects. 1-3 of the Act separate Historic Buildings Councils are set up in England, Scotland and Wales. At present a sum of £350,000 is provided each year to finance the making of grants.

It is *only* under this Act, and *only* where a building is "outstanding" that the owner of a listed building can get financial assistance from public funds towards its repair. It is true that under sect. 3 (3) of the Ancient Monuments Act, 1931, the Minister of Works may make grants towards the repair of an "ancient monument" and that local authorities have a similar power under sect. 11 of the Ancient Monuments Act, 1913; but there has been little recourse to this power and in any case its operation would be likely to be confined in practice to those structures which are "monuments" in fact as well as in law.

*Standard Grants and Improvement Grants:* Georgian houses were built before the invention of modern plumbing, and some buildings may still lack what are briefly known as "mod. con." It is therefore worth noting that in common with other buildings constructed before 1945, they rank under sects. 4-6 of the House Purchase and Housing Act, 1959, for a "standard grant" of one-half of the cost, with a maximum of £155, of installing a bath or shower, a lavatory basin, a hot water supply, a water closet and/or satisfactory facilities for storing food. So again the conversion of large Georgian houses into flats or maisonettes attracts a grant under sects. 30-33 of the Housing (Financial Provisions) Act, 1958 (as amended by sects. 9-12 of the House Purchase and Housing Act, 1959) normally equal to half the cost of the same, with a maximum of £300 per new dwelling in the ordinary course but without any maximum in the case of a listed building. Application should be made to the local authority for details of these grants and of the conditions upon which they are obtainable.

*Demolition Orders and Closing Orders:* by sects. 16-17 of the Housing Act, 1957, where a house is unfit for human habitation and is not capable at reasonable expense of being rendered so fit, and the person having control of the house does not upon notice offer to, and in fact, carry out the works which in the opinion of the local authority are necessary to render the house fit for human habitation, the local authority is ordinarily required to make a demolition order. But if the house is listed or intended to be listed, the local authority is required to make a closing order only and not a demolition order. This means that the fate of the building is left still at large and the way is still open to arrange for the necessary works to be carried out.