Historic England

Stopping the Rot

A Guide to Enforcement Action to Save Historic Buildings

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This guidance note has been prepared by Michael Guy and Sarah Lewis of Historic England. A summary is also available.

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Front cover:

This grade II listed timber-framed building was identified by the local authority as being 'at risk' in 1998 but it took 12 years, a prosecution and the service of a Listed Building Enforcement Notice, Urgent Works Notice and Repairs Notice before repairs were finally completed in 2010. See Case study 6.

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Introduction

Historic buildings add significant value to the character of the built environment. Keeping historic buildings in good repair and, where possible, in use, is the key to their preservation. The vast majority remain in beneficial use and are well-maintained. Sometimes, however, they become redundant, vacant and neglected. Decay sets in and without timely action they become at risk of permanent loss, both of their own historic fabric and to the character of the neighbourhoods of which they are irreplaceable components.

The owners of listed buildings are under no legal obligation to maintain their property in a good state of repair; even though it is in their interests to do so. When negotiation fails, local authorities have a range of statutory enforcement powers at their disposal including section 215 Notices, Urgent Works Notices, Repairs Notices and other statutory enforcement tools and powers under the various Housing, Planning and Building Acts, to secure the future of historic buildings. At their lightest level they involve no more than the serving of formal warnings of action, but in the last resort they can lead to enforced repairs or compulsory purchase.

Deciding which of the available powers to employ and in what combination will always depend on individual circumstances and the professional judgment of the local planning authority. However, there is much that can usefully be learnt from the practical experience gained by other local authorities who have pursued enforcement actions.

Historic England is here to provide professional guidance, advice and support across the country. This includes legal, architectural, conservation, engineering, valuation and enforcement expertise. Much of this information is set out in this publication and more is available by contacting your local Heritage at Risk team. In some cases grant support may even be available to underwrite particular enforcement action.

Therefore the aim of this new and enhanced edition of *Stopping the Rot* is to help local authority officers to navigate their way through the different statutory powers at their disposal and to learn how to apply them to best practical effect. As well as providing step-by-step advice on the use of each of the main powers, the guidance includes a series of case studies of their use in different situations.

At the request of users of the original 1999 edition of *Stopping the Rot*, Appendix 2 also includes an expanded selection of specimen letters, Notices, schedules and agreements that have been successfully used in the past by a range of different local authorities. These are also available to download from the Historic England website. It should be emphasised, however, that no two enforcement cases are the same and that these specimen documents are intended only as examples and should not be used as templates without the explicit approval of a local authority's own legal advisers.

This revised edition of *Stopping the Rot* could not have been prepared without the generously provided contributions of the Institute of Historic Building Conservation and numerous individual local authority conservation and planning officers. It is based on their hard-won practical experience and it is our hope that its advice and guidance can from now on be regularly updated in the light of their continuing work. Historic buildings at risk are our shared concern and we all have a part to play in securing their long-term future.

1 Introduction to Listed Building Act Powers

1.1 Urgent Works Notices

Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Listed Buildings Act 1990') enables local authorities to execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area.

Some of the key points to consider are:

- The works must be urgently necessary not just desirable
- If the building is occupied, the works may be carried out only to those parts not in use
- The owner must be given a minimum of seven days' written Notice of the intention to carry out works, and the Notice must describe the proposed works to be carried out
- Section 55 of the Listed Buildings Act 1990 allows the costs of the works to be recovered from the owner by the authority who carried out the works
- The owner must be served a Notice requiring him to pay the expenses of the works. Within 28 days of the service of the Notice, the owner may appeal to the Secretary of State by making representations, including that the works are unnecessary or that the amount specified in the Notice is unreasonable
- Section 76 of the Listed Buildings Act 1990 enables the Secretary of State (after consulting Historic England) to direct that section 54 powers apply to an unlisted building in a conservation area, if its preservation is important for maintaining the character or appearance of the area

1.2 Repairs Notices and Compulsory Purchase Orders

Section 48 of the Listed Buildings Act 1990 enables local authorities to serve a Repairs Notice on the owner of a listed building specifying those works it considers reasonably necessary for the proper preservation of the building.

Some of the key points to consider are:

- If, after a period of a minimum of two months, it appears that reasonable steps are not being taken the authority can begin compulsory purchase proceedings under section 47
- A Repairs Notice does not commit the authority to proceed to compulsory purchase action and the authority can withdraw the Repairs Notice at any time
- If the Notice is withdrawn, the authority must give Notice to the owner of the withdrawal
- A Compulsory Purchase Order (CPO) requires the Secretary of State's confirmation
- The Secretary of State has reserve powers under sections 47-48 of the Listed Buildings Act 1990 and must consult Historic England before exercising them, or confirming a CPO made by a local authority

Step-by-step guides to the use of section 215 Notices, Urgent Works Notices, Repairs Notices and compulsory acquisition are contained at sections 4 to 7 of this guidance. However, it is important to note that other powers are available to local authorities. Some of these are summarised below as are section 215 Notices which are also covered again in more detail in section 4.

1.3 Other powers that can be used to secure works to historic buildings

There are a number of other powers outside the Listed Buildings Act 1990 which may prove useful. While some of these powers, such as section 215 Notices, still use planning-based legislation, many enable an authority-wide perspective and work with different council departments to achieve results (section 11, below).

1.4 Section 215 Notices

Section 215 of the Town and Country Planning Act 1990 ('the Planning Act 1990') is a relatively straightforward power that, used imaginatively, can be effective in achieving improvements to the quality of the historic environment as an alternative or complementary action to Urgent Works Notices or Repairs Notices.

Some of the key points to consider are:

- A Notice can be served on an owner or occupier if the **amenity** of a part of their area, or of an adjoining area, is **adversely affected** by the condition of land in their area
- A Notice will require steps for remedying the condition of the land within a specified timescale
- The Notice will take effect at the end of the period specified in it, which should not be less than 28 days after service of the Notice
- The power in section 215 is a broad power which can be used in respect of any land designated or not, including buildings, in use or vacant
- Section 216 specifies the penalties for non-compliance, including that it is an offence punishable (on summary conviction) by fine

- Section 217 lays out the process of appeal in the magistrates' court. This is detailed in section 4 of this guidance but, in essence, a person on whom a Notice is served may at any time before the Notice takes effect, appeal on any of the grounds specified

- Under section 219, if any steps required to be taken have not been taken, the local planning authority may (a) enter the land and take those steps; and (b) recover from the owner of the land any expenses reasonably incurred by them in doing so

- Section 215 Notices can be used in conjunction with Urgent Works Notices and Repairs Notices

1.5 Housing powers

Many local authorities have programmes to deal with empty properties and have dedicated Empty Homes Officers. Historic buildings at risk may often be vacant residential buildings and colleagues in the Housing Department may be dealing with the same buildings and so liaison between departments is essential. Some of the possible powers are as follows:

- Empty Dwelling Management Orders (EMDO) – section 132 of the Housing Act 2004 introduced a power for local housing authorities to issue EMDOs to enable them to take over management control of a qualifying residential property

    - EDMOs were intended to help ease the lack of housing stock and to address the problems that empty properties can cause for local residents. They were amended in 2012 to extend the required unoccupied period from 6 months to 2 years and add that there needed to be information suggesting they are causing a nuisance and that there is community support for the EDMO

    - They allow a local authority to return a property to residential use without needing to force a change of ownership. The order can be interim then final and works can be done to make it habitable and the costs reclaimed from the rent

- Section 17 of the Housing Act 1985, 'Acquisition of land for housing purposes', allows local authorities to acquire houses or buildings that could be made suitable as houses by agreement or by a Compulsory Purchase Order (CPO) authorised by the Secretary of State following a CPO inquiry (section 8, below)

1.6 Enforced sale procedure

Under certain circumstances the Law of Property Act 1925 allows a local authority with a debt on a vacant property to register the debt as a charge registered in Part 2 of the Local Land Charges Register. The local authority has all the powers and remedies available to a mortgagee under the Law of Property Act 1925, which would include a power to force the sale of the property to recover the debt.

Some of the key points to consider are:

- Enforced sale is one of the main tools used to deal with empty homes. Its use on empty domestic property can be quicker than a CPO
- Its main benefit is that the authority does not own the property during the procedure, thus avoiding any concerns that may be associated with acquiring the building
- In addition, it does not incur compensation payments to the owner. The local authority can also recover its expenditure on previous Notices including professional costs and interest
- It is therefore a good option to consider where debts have been incurred through the various different statutory action below and a local authority now wishes to reclaim their money

A step-by-step guide to the enforced sale process is contained in section 8 of this guidance.

1.7 Dangerous buildings and structures

Local planning authorities have powers under the Building Act 1984 to take action regarding buildings in a dangerous or ruinous state. Before taking any steps under section 77 and 79 of the Building Act 1984, a local planning authority is required by section 56 of the Listed Buildings Act 1990 to consider whether they should instead use an Urgent Works or Repairs Notice.

The main powers under this act are as follows:

1.7.1 Dangerous Structures Order

Section 77 of the Building Act 1984 enables local authorities to apply to a magistrates' court for a Dangerous Structures Order requiring the owner to make a building safe, or to demolish it. If the person on whom an order is made fails to comply with the order within the time specified, the local authority can execute the order in such manner as they think fit; and recover the expenses reasonably incurred by them in doing so from the person in default. The person in default would also be liable (on summary conviction) to a fine. Works under a Dangerous Structures Order are subject to listed building control and consent may be required.

1.7.2 Emergency measures

Section 78 of the Building Act 1984 relates to emergency measures. If it appears to a local authority that:

(a) a building or structure, or part of a building or structure, is in such a state, or is used to carry such loads as to be dangerous; **and**

(b) immediate action should be taken to remove the danger, they may take such steps as may be necessary.

Before exercising their powers, however, the local authority must give Notice of their intention to the owner and the occupier of the building. The local authority may recover from the owner their expenses reasonably

incurred in carrying out the emergency measures. This power allows a local authority to take immediate action where it feels there is danger to the public and so the requirement to consider an Urgent Works or Repairs Notice does not apply as it does to the other powers. However immediate action does not have to mean demolition and if a heritage asset is at stake then alternatives can be suggested such as partial removal of the dangerous part of a building or a road closure order.

1.7.3 Ruinous and dilapidated buildings and neglected sites

Section 79 of the Building Act 1984 can be used by a local authority where a building or structure is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood.

Section 79 requires the local authority to serve a Notice on the owner requiring:

- The owner to execute such works of repair or restoration as may be necessary in the interests of amenity; or
- If the owner choses, to take such steps for demolishing the building or structure, or any part thereof, and removing any rubbish resulting from the demolition as may be necessary in the interests of amenity

A section 79 Notice must indicate the nature of the works to be executed and state the time within which they are to be executed. The Notice also needs to notify the owner of their right to appeal to a magistrates' court and that an appeal may be brought 21 days from the date on which the Notice is served. The grounds on which an owner can appeal are set out in section 102 of the 1984 Act.

Subject to the right of appeal in section 102, if the owner fails to execute the works within the time specified in the Notice, the local authority may execute the works and recover from the owner the expenses reasonably incurred in doing so. The owner would also be liable on summary conviction to a fine and to a further fine for each day on which the default continues after he has been convicted.

1.7.4 Local authority power to serve Notice about demolition

Under the provisions of section 81 of the Building Act 1984, the local authority has powers to give Notice to a person who appears to them not to intend to comply with a Dangerous Structures Order made under section 77 of the 1984 Act or a Notice given under section 79.

Again, the owner can appeal under section 102 of the 1984 Act against the Notice given under section 81. Such appeal may be brought within 21 days from the date on which the Notice was served.

As the local authority emergency measures powers are far reaching, in that a local authority can choose either to demolish or repair the building, these powers need to be used with care on historic buildings. To avoid unnecessary damage or demolition, good lines of communication between relevant council departments are essential to ensure that the Planning Department is consulted as early as possible, and appropriate steps agreed.

1.7.5 Works to prevent unauthorised entry or danger to public health

Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') enables local authorities to undertake works to an unoccupied structure or building or one whose owner is temporarily absent, to prevent unauthorised entry or prevent it becoming a danger to public health. Before undertaking any works, the local authority must serve a Notice on each owner or occupier of the building or structure notifying them that they propose to undertake the works under section 29(6) of the 1982 Act.

Some of the key points to consider are:

1 The Notice must specify the works which the local authority proposes to undertake and the Notice must be served 48 hours in advance of the specified works being undertaken.

2 A local authority need not give any Notice, however; where they consider that it is either:

(a) necessary to undertake the works immediately in order to secure the building against unauthorised entry or to prevent it from becoming a danger to public health; **or**

(b) that it is not reasonably practicable to ascertain the name and address of an owner or to trace the whereabouts of an occupier who is absent from the building.

3 Where works are undertaken by the local authority, they may recover the expenses they have reasonably incurred from the owner or the occupier (whoever received the Notice as the case may be)

4 There is a right of appeal to the county court within 21 days of a Notice being served under section 29 of the 1982 Act. The grounds for such an appeal are:

(a) that the works specified in the Notice were not authorised by section 29 of the Act

(b) that the works were unnecessary; **or**

(c) that it was otherwise unreasonable for the local authority to undertake them.

Note that local authority officers (duly authorised in writing) have powers of entry to exercise the powers conferred by section 29 of the 1982 Act. This power is very useful to swiftly address a concern on a listed building such as vandalism, arson, antisocial behavior or other criminal activity that could be easily prevented if it were secured.

1.8 Statutory nuisances

Sections 79-82 of the Environmental Protection Act 1990 (as amended) enable local authorities to serve an abatement Notice on the owner or occupier of premises, or on the person responsible for the nuisance, requiring the abatement or prohibition of the nuisance or requiring the execution of any works necessary for those purposes. This can include any premises deemed to be in such a state as to be prejudicial to health (section 79(l)(a)).

It is always worth considering the wider harm that may be being caused such as environmental damage and whether this could be tackled along with the harm to the heritage asset. These powers are useful for tackling the build-up of refuse, waste, vermin and dealing with this will help protect the building as well as the public.

1.9 Community Protection Notice (Anti-Social Behaviour, Crime and Policing Act 2014)

This relatively recent legislative change replaced Anti-Social Behaviour Orders with a new Criminal Behaviour Order. The Act also introduced new Community Protection Notices (CPN) to replace the existing tools for dealing with place-specific anti-social behaviour eg persistent littering, noisy neighbours, fly posters etc.

Some of the key points to consider are:

1 An authorised person may issue a Community Protection Notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that:

(a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, **and**

(b) the conduct is unreasonable.

2 The CPN can be used to prevent or reduce the detrimental effect by requiring the person:

(a) to stop specified actions;

(b) to do specified actions;

(c) to take reasonable steps to achieve specified results;

(d) to comply with the requirements within specified timeframes.

3 A written warning giving time to deal with the matter should be used.

4 New Public Spaces Protection Orders have also been introduced. These are similar in effect but apply to public areas of land rather than the owner's property specifically.

The wording of these new powers is extremely wide as is their potential application. At the time of publication it remains to be seen how they will be implemented in practice but they certainly offer the possibility of helping to tackle Heritage at Risk issues. They also have certain advantages over section 215 Notices. For example they can be used to control ongoing issues "of a persistent or continuing nature" rather than problems reoccurring and new Notices being required.

2 Assessing the Risk

2.1 Early signs of neglect

Historic buildings are at their most vulnerable when they are neglected, left empty and start to deteriorate. The visual evidence of disuse can itself begin the downward spiral because it advertises the building as an easy target for vandals and thieves.

The local authority should make contact with owners as early as possible to draw their attention to the risks to their property, to suggest appropriate measures and find out their own plans for maintenance and reuse. Prompt action will prevent repair costs escalating and avoid the loss of historic fabric.

External signs that remedial works may be needed include blocked gutters and plant growth in masonry, loss of slates or tiles, cracking or other evidence of significant structural movement, or indications of vandalism and illegal entry. A visual inspection of the building may be difficult in certain circumstances, for example where it is on private land and not visible without gaining access, or where plant growth obscures much of the building.

Deterioration is sometimes much worse than it would appear from the outside, particularly where there are hidden roof slopes or gutters. The local authority will therefore need to gain access to carry out a full inspection in order to:

- assess the extent of deterioration and damage
- assess the scope of works needed to remedy it
- decide whether statutory action is warranted, and which type of action is appropriate

2.2 Investigating ownership

HM Land Registry

The Land Registry records ownership details of all property in England that has a registered title and it can be inspected via the Land Registry website. It contains information on the mortgagee (if any) and rights of way or restrictions on the land may also be noted on the register. If the property has been sold since April 2000, the Land Registry will also list the price paid or its value. These details can be downloaded from the website for a small fee. However, not all land in England is registered and if the land is unregistered, the owner may be difficult to trace.

It is advisable to obtain Land Registry information even if the local authority believes it knows the owner's identity, as the register entries may reveal other parties with an interest in the land, eg a freeholder with a lessee under a full repairing lease.

Requisition for Information

A Requisition for Information Notice under section 330 of the Planning Act 1990 gives the local authority power to obtain details of ownership and of those with interests in the property.

The Notice can require any person with an interest in the land, including the occupier or tenant of the property and any person who, even indirectly, receives rent on it, to provide information on their

own interest in the property and on any other person they know to have an interest or to have used the property.

The Notice may require information to be given in a specified time, usually within 21 days. It is a criminal offence not to respond or to withhold or give false information. Some local authorities have a policy to prosecute for non-compliance immediately the 21 days have elapsed.

Similar powers exist under section 16 of the Local Government (Miscellaneous Provisions) Act 1976, the main difference being that the time period for compliance is only 14 days. They may be of use in some circumstances where a s330 Notice would not. For example, they can be used with a view to allow a local authority to perform any function conferred on it by law. In addition the Notice can be served on any person who is authorised by agreement to manage the land or to arrange for the letting of it. This would include most agents.

The information obtained from the Requisition for Information Notice will help define the appropriate method of service for any Notice, which may be by recorded delivery, by hand or by posting it on the building.

The action of serving a Requisition for Information Notice can sometimes be enough to persuade an owner to consider their position and carry out works.

Company searches

If the property is owned by a company, it is advisable to undertake a company search to ascertain the name of the company secretary and the registered company office before serving a Notice. The Companies House website provides a service called WebCHeck, a free searchable index of company names and addresses.

2.3 Gaining access to historic buildings

Rights of Entry

Under section 88 of the Listed Buildings Act 1990, any person authorised by a local authority may enter land for a number of purposes, including the preparation of Urgent Works Notices and Repairs Notices, the execution of works, to ascertain compliance with a Notice and ascertain whether or not a building is being maintained in a proper state of repair. These provisions apply to local authority officers and other individuals engaged in a professional or advisory capacity, which could include architects, engineers or Historic England staff such as members of the Heritage at Risk team if you think our presence or support would be beneficial. Section 88(5) specifically provides rights of entry for the purposes of valuation.

In the case of occupied buildings, a minimum of 24 hours' written Notice must be given. If required, evidence should be produced of authority to enter and the purpose for which entry is sought should be stated. Willful prevention of entry is a criminal offence.

A sample letter for gaining access to listed buildings is included in Appendix 2, Sample 1.

It is also possible to use these powers to enter land and property adjacent to the building for which action is being considered to inspect areas of the building. For example, an external wall of the property may only be visible from an adjacent garden.

If the building is unoccupied and can be entered without forcing entry, the local authority is entitled to enter it without prior notification, provided that it is left as effectively secured against trespassers as it was found.

What to do if access is withheld

Where difficulty is experienced in gaining access, it is recommended that the owner is advised in writing of the intention to enter the building under the provisions of section 88 of the Listed Buildings Act 1990 stating a date and time and reason for entering. A specimen letter is provided (Appendix 2, Sample 1).

Section 88 does not, however, permit forcible entry to the premises. If admission is refused, or the local authority receives no reply (which is deemed refused admission), it can apply to a local magistrates' court for a warrant of entry. This is straightforward, but the local authority should be able to show that it has given the owner a reasonable opportunity to provide access voluntarily. It is important to ensure that verbal arrangements are followed up in writing, and note on file any cancelled or abortive appointments. A warrant can be sought directly if it can be demonstrated that refusal is 'reasonably apprehended', for example, where a warrant has been sought on a previous occasion in relation to the same owner. When gaining access under a warrant, it is advisable to inform the local police in advance and if possible to have a police officer present on site.

A warrant can usually be obtained at short notice and the local authority solicitor should be able to arrange this with the court officials.

Obtaining a warrant under historic building powers is unusual and may be unfamiliar to the magistrates' court. It is helpful if photocopies of section 88 are made available to the court prior to the application being made.

A formal submission is not necessary, but it may help to have a short statement giving the name and position of the officer whose name will appear on the warrant (ie the person authorised to enter the building); the listed grade and date of listing; a brief history of the building's occupancy and condition; and a chronology of attempts to agree voluntary access and the response in each instance. The magistrate may not require to see this or for it to be read out, but it will be a useful aide-memoire should any questions be asked during the application.

It is advisable to photograph each stage, including the point of entry beforehand and again on exit once the property has again been made secure. If damage has occurred and it cannot be made good on the spot, the owner should be informed in writing that it will be corrected/repaired at the earliest reasonable opportunity by the local authority at its own expense.

Further advice on forced entry to buildings and obtaining a warrant is available in IHBC guidance.

2.4 Inspecting the building

It is likely that local authority officers will only have one opportunity to inspect the building. If this is the case, it is important to ensure that appropriate advisers (eg valuer; engineer) are on site on that occasion. If these professionals are not given access it may make future stages of the process more difficult.

Photographs are essential. When inspecting buildings to prepare Urgent Works Notices or Repairs Notices, take a comprehensive set of internal and external dated photographs, focusing on areas of failure, damage and rot, and existing architectural features. It is also useful to relate these to a sketch plan of the building.

Dated photographs will provide essential evidence of the building's prior condition if the owner contests the reclamation of costs of works carried out under an Urgent Works Notice. If a Repairs Notice is served, photographs will form a key part of the evidence at a magistrates' court or public inquiry if objections are made to a subsequent CPO. They will also provide essential evidence if damage or inappropriate works subsequently take place.

Reviewing photographs while still on site will help ensure they capture what is necessary. Ensure that camera equipment is suitable for the situation in the building, for example a flashgun may be needed to take photographs in the roof space.

3 Preparing to Take Action

3.1 On whom should statutory Notices be served?

The legislation requires section 215 Notices, Urgent Works Notices and Repairs Notices to be served on the owner or occupier. In practice, this may include:

- the leaseholder
- the freeholder
- mortgagee (if in possession)
- if the property is in receivership, the receivers or administrators
- anyone else with a legal interest in the land (eg a mortgagee, tenant or executors of the owner) either as shown on the Land Register or revealed as the result of a Requisition for Information Notice

A Notice is served on the owner and should a property be sold, it may be necessary to serve a new Notice on the new owner.

It is advisable to send a copy of the Notice to anyone involved in the management of the property, such as managing agents. The copy should be clearly marked as 'copy for information'.

It is essential that a Repairs Notice is served on all those with an interest in the land, as failure to do this could invalidate any subsequent CPO.

For this reason, it is strongly recommended that a Requisition for Information Notice is served in advance to establish all the interests in the land, in addition to undertaking the usual search at HM Land Registry.

3.2 Exemptions from Urgent Works Notices and Repair Notices

Urgent Works Notices and Repairs Notices cannot be served in relation to:

- ecclesiastical buildings in ecclesiastical use where exemption is retained under the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 2010
- listed buildings that are also scheduled monuments (provisions to secure urgent works to scheduled monuments are made under section 5 of the Ancient Monuments and Archaeological Areas Act 1979)
- Crown land, although an Urgent Works Notice may be served on any non-Crown interest in the land (such as a leaseholder)

The acquisition of Crown land is not permitted unless it is for the time being held by a body other than the Crown and the appropriate authority consents to the acquisition. Therefore it is unlikely to be possible to serve a Repairs Notice on Crown land.

3.3 Is Listed Building Consent or planning permission needed?

The usual tests apply regarding the need for consents. With an Urgent Works Notice the wording of section 54 of the Listed Buildings Act 1990 that 'a local authority may execute works which appear to be urgently necessary for the preservation of a listed building' can be seen as authorisation to carry out necessary works regardless of the need for listed building consent. In addition urgent works will normally be temporary measures or repairs which do not involve alterations to the building. For these reasons listed building consent should not be required. However, local authorities should avoid carrying out work which is an alteration unless absolutely necessary and should not take advantage of this deemed authorisation always ensuring that any permanent work is to an appropriate standard.

It is possible that some items in a Repairs Notice may require consent, particularly where they involve substantial reinstatement or reconstruction of missing elements, or other works of a specialist nature. If the local authority, using the normal statutory provisions, considers that consent is required for specific items, this should be stated in the Notice.

3.4 How do section 215 Notices, Urgent Works Notices and Repairs Notices differ?

Section 215 Notices	Urgent Works Notice	Repairs Notice
To secure improvements to external visible appearance of land or a building	To secure immediate works to halt deterioration	To specify repairs for the long-term preservation of the building
A statement of the local authority's requirement for the owner or occupier to remedy the condition of their land or building	A statement of the local authority's intent to carry out works itself (and to reclaim the costs from the owner)	A statement requiring the owner to carry out full repair of the building and preliminary to Compulsory Purchase
Local authority can carry out works itself	Local authority can carry out works itself	Local authority cannot itself carry out the works specified in a Repairs Notice
Can be served on any land or building whether designated or not	Can be served on any listed building and on unlisted buildings in conservation areas with the Secretary of State's permission	Can be served on any listed building but cannot be served in relation to unlisted buildings in conservation areas
Can be served on any land or buildings whether occupied or vacant	Can only be served on unoccupied buildings or parts of buildings not in use	Can be served in relation to occupied or vacant buildings

4 Section 215 Notices: a Step by Step Guide

4.1 When to use a section 215 Notice

The power for local planning authorities to require proper maintenance of land under section 215 of the Planning Act 1990 is as follows:

'If it appears to the local planning authority that the amenity of 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 section 215]', Town and Country Planning Act 1990.

Section 215 is a relatively straightforward power that can achieve imaginative and effective improvements to the quality of the historic environment as an alternative or complementary action to Urgent Works Notices or Repairs Notices. It has a number of potential advantages, which are reflected in its increasing use:

- early consideration of a section 215 Notice could prevent the need for an Urgent Works Notice
- section 215 Notices used in conjunction with Repairs Notices can ensure complete repair and reordering of the site
- action can be taken against land and buildings and thus it is a useful tool for enabling improvements to both listed and unlisted buildings in conservation areas without any recourse to the Secretary of State
- section 215 can apply to 'any land' which includes buildings or open space, whether vacant or occupied, and so can be used on those buildings where Urgent Works Notices could not be served in part or in full
- a section 215 Notice can sometimes address problems outside the scope of Urgent Works Notices or which (if the building is listed) may not be sufficiently extensive to warrant a Repairs Notice. These may include poor external maintenance, broken walls and fences, accumulated rubbish and overgrown gardens
- section 215 can be applied, unlike Urgent Works Notices and Repairs Notices, to ecclesiastical buildings in use for ecclesiastical purpose, scheduled monuments and registered parks and gardens

The Town and Country Planning Act 1990 section 215: Best Practice Guidance (ODPM 2005) provides detailed guidance and makes it very clear how useful section 215 Notices can be when dealing with listed buildings at risk. Many of the case studies given in the guidance concern heritage assets. The guidance also includes samples of the letters which should be sent with the Notice giving important supplementary information.

The threat of a section 215 Notice can be enough to persuade the owner to carry out work. Section 215 Notices have a high rate of compliance.

It seems very few are actually appealed against and of those that are, only a small proportion are upheld at appeal.

Subject to the owner's right of appeal, the local planning authority is entitled to carry out the works if the owner fails to comply with the Notice, and to reclaim the costs, which are registerable as a local land charge. If the owner appeals, the Notice is effectively suspended until the appeal is determined. For this reason, this legislation may not always be the most effective way of securing works which are needed urgently.

The local authority can also prosecute the owner for non-compliance with the Notice.

4.2 What can be included in a section 215 Notice?

The scope of works that can be required in section 215 Notices is wide and includes planting, clearance, tidying, enclosure, demolition, rebuilding, external repairs and repainting.

The test for a section 215 Notice is whether the land adversely affects the amenity of the area. 'Amenity' is a broad common-sense concept and not formally defined in the legislation or procedural guidance. For buildings, it usually means that any remedial works would be confined to improving the appearance of external visible parts.

The Notice should not specify works which would require planning permission or listed building consent.

4.3 Initial contact

Once the local authority has established that section 215 action may be appropriate, an initial letter should be sent to the owner (Appendix 2, Sample 2).

4.4 Drafting and serving a section 215 Notice

The Notice needs to specify:

- the steps the local authority requires for remedying the condition of the land. This should be specified clearly enough to allow the owner to carry out the works
- the period within which these steps are to be taken, not less than 28 days after the service of the Notice, when it will come into effect if it has not been complied with. The date on which the Notice comes into effect must be the same for any person on whom the Notice is served, even if the Notice is served on each person on a different day

Sample section 215 Notices can be found in Appendix 2, Samples 3-5.

It is important to ensure correct service of the Notice as incorrect service could invalidate it.

The procedures for correct delivery are the same as those for Urgent Works Notices and Repairs Notices or multiple Notices (described in section 5.11, below).

4.5 Penalty for failing to comply with a section 215 Notice

Under section 216 of the Planning Act 1990, if the owner or others who were served with the section 215 Notice fail to take the steps required by the Notice within the period specified for compliance, they will be guilty of a criminal offence and liable on summary conviction to a fine.

Where proceedings are brought by the local authority against the owner or occupier of the land and he has ceased to own or occupy the land before the end of the compliance period in the section 215 Notice, there is a procedure for proceedings to be taken against the current owner or occupier of the land under section 216.

If, after a person has been convicted under section 216 of the Planning Act 1990, they do not, as soon as practicable, do everything in their power to secure compliance with the Notice, they will be guilty of a further offence and will be liable to a fine for each day following the first conviction for which any of the requirements in the section 215 Notice remain unfulfilled.

4.6 Appeal against a section 215 Notice

A section 215 Notice can be challenged by way of an appeal to the magistrates' court under section 217(1) of the Planning Act 1990. An appeal can be made at any time within the period specified in the Notice (ie the 28 days before the section 215 Notice comes into effect) by anyone on whom the Notice is served or by any other person having an interest in the land to which the Notice relates. An appeal can be made on the following grounds:

- that the condition of the land to which the Notice relates does not adversely affect the amenity of the area
- that the condition of the land is a result of the ordinary use of the land
- that the requirements of the Notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of the area
- that the period specified in the Notice as the period to carry out the work falls short of what should reasonably be allowed

An appeal will be heard at the magistrates' court. If an appeal is made, the Notice will be suspended until after the appeal is heard.

4.7 Failure to comply with a section 215 Notice

If the owner or others who were served with the Notice fail to take the steps required, the local authority can instigate a prosecution through the magistrates' court.

Where proceedings have been brought against someone who has ceased to own or occupy the land, proceedings can be taken against the current occupier or owner of the land.

If, after a person has been convicted a first time, they do not as soon as practicable do everything in their power to secure compliance with the Notice, they will be guilty of a further offence.

4.8 Carrying out the works in default

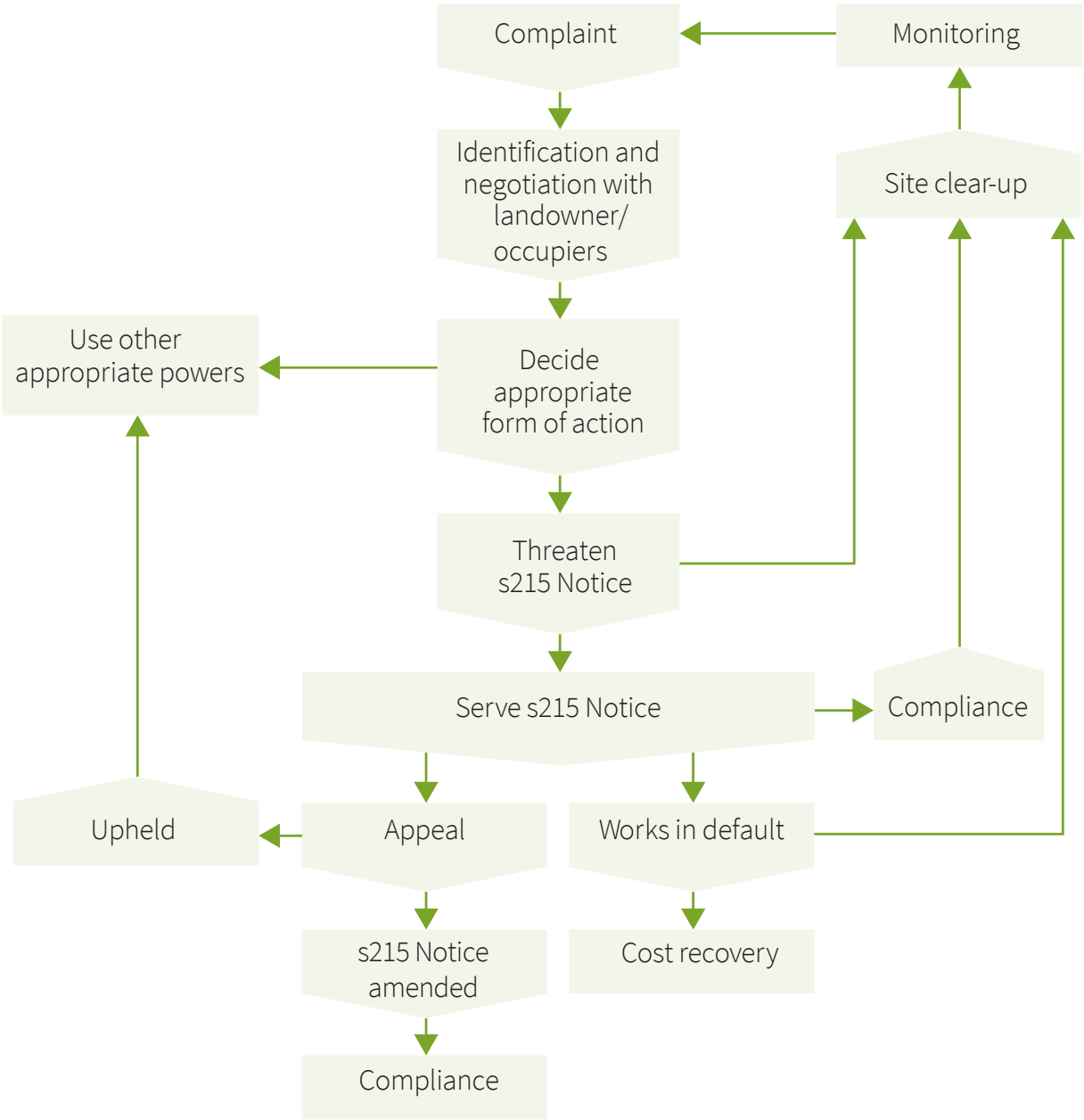
If, within the compliance period specified in the section 215 Notice or within such extended period as the local planning authority has allowed, the works still have not been carried out, the local planning authority may under the powers in section 219 of the Planning Act 1990:

- enter the land and take the steps specified in the Notice itself; **and**
- recover from the person who is the owner of the land the expenses reasonably incurred in doing so

The Town and Country Planning Act 1990 section 215: Best Practice Guidance suggests that recovery of costs is generally very successful. The local planning authority can recover their reasonable expenses from the owner of the land at the time and, in turn, the owner can recover those costs from the person who caused or allowed the adverse condition of the land when the section 215 Notice was served.

Section 215 Notices can be used in conjunction with Urgent Works Notices or Repairs Notices.

There are some local authorities whom Historic England have worked with who have had great experience and success with section 215 Notices. They would be happy to share their experience. This can be facilitated by contacting your local Historic England Heritage at Risk team. Section 215 Notices can be a valuable tool that should always be considered either on individual properties or even as a method to effect change more widely, for example across a conservation area or high street.



Section 215 (s215) procedure

After *Town and Country Planning Act 1990, section 215: Best Practice Guidance*, ODPM, 2005

5 Urgent Works Notices:

a Step by Step Guide

5.1 When to use an Urgent Works Notice

The power to execute urgent works to preserve unoccupied listed buildings may be exercised by any local authority under section 54(1) of the Listed Buildings Act 1990. The Secretary of State has reserve powers, and can authorise Historic England to serve a Notice and carry out works on his/her behalf, under section 54(2)(a), or in Wales by the National Assembly for Wales under section 54(2)(b).

The local authority may require the owner to pay the costs incurred in carrying out the works, but the owner has a right of appeal to the Secretary of State.

Section 54 may not be used in relation to the following:

- an ecclesiastical building which is for the time being used for ecclesiastical purposes
- any building which is a scheduled monument
- Crown land, except on a non-Crown interest in the land
- any listed building which is occupied (note that where the building is occupied in part, the powers may be used in relation to those parts which are not in use)

The Secretary of State may direct that section 54 can apply to an unlisted building in a conservation area where it appears to him/her that its preservation is important for maintaining the character or appearance of the conservation area.

5.2 Contacting owners

It is advisable to make contact with the owner as early as possible and suggest appropriate action including maintenance, repair and reuse of the property.

If the owner is unresponsive to the local authority's initial informal approaches, it is recommended that the local authority:

- considers if the works are clearly urgent or whether a section 215 Notice or use of an alternative power is a more appropriate course of action
- writes to the owner setting out the provisions of sections 54-55 of the Listed Buildings Act 1990, requesting a site meeting and access to the building. If the local authority anticipates problems in gaining access, refer to the statutory rights of entry
- follows up the site visit with a second letter and a draft schedule of urgent works, setting a date for formal service of a Notice if the works are not carried out

Specimen letters are provided in Appendix 2 (Samples 6-7) which can be adapted according to the circumstances (or amalgamated with the letters relating to Repairs Notices if both courses of action are being considered). A list of local firms with expertise in working on historic buildings could also be included.

The decision to hold back on any formal service of Notice is at the local authority's discretion, and will depend on individual circumstances and the owner's previous track record. However, too many warnings with no follow-up action could undermine credibility.

The local authority should set out its own timetable and must try to adhere to it. It should also ensure that the timetable is reasonable and not wait too long once the owner has been informed the works are urgent. A further course of action should be planned in case the owner does not do anything.

A written warning of an impending Urgent Works Notice can be sufficient to encourage the owner to undertake works. Research shows of the Urgent Works Notices approved by local authorities, 60% did not need to be served as the owner carried out the required works or sold the building (English Heritage 2011).

If the owner agrees to undertake works, the local authority should request written confirmation that these will be carried out in accordance with the draft schedule, a start-of-works date and an estimate of the time the works will take. It is important to monitor compliance in order to establish if further action is required. The local authority should consider carefully any request for additional time, but this should always be kept to a minimum. If extra time is allowed, a revised date for works to start should be agreed in writing and delivered by recorded delivery.

Under section 54(5) of the Listed Buildings Act 1990, the owner of a building must be given not less than 7 days' Notice in writing of the local authority's intention to carry out the works. This allows the owner the opportunity to discuss the matter with the local authority and to agree to carry out the works himself.

In cases where the owner cannot be traced, the local authority should attach the letter to the property, (taking care not to damage the fabric) addressing it to the owner/occupier. If, after 7 days, no response is received, the local authority can apply to the magistrates' court for a warrant of entry for the purposes of carrying out the work. However, if the owner is unknown the local authority will probably have to meet the costs itself.

5.3 Scope and content of an Urgent Works Notice

The use of Urgent Works Notices should be restricted to emergency repairs 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. The works specified should be those urgently necessary at the time and should not include precautionary or preventive work that may become necessary in the future (*Robbins v Secretary of State for the Environment* 1989).

Relevant cases to establish the extent of this test are limited, however, the decision of the local authority as to whether works are urgently necessary was clarified by Swansea Council (*R v Secretary of State for Wales, exparte Swansea Council* 1999). The council served a Notice specifying works considered urgently necessary for the preservation of the building. The works were then carried out by the council in default and a Notice served on the owners under section 55 to reclaim the costs. The owners appealed against this claiming that the works were not necessary for the preservation of the building. The Secretary of State determined that part of the work was urgently necessary but that the remainder; although necessary for the preservation of the building, was not urgently necessary. The council sought judicial review and the court quashed the Secretary of State's decision allowing all costs to be recovered and implying the council had been justified in serving the Notice. The decision indicates that the local authority may carry out works under section 54 provided that it believes at the time those works are urgently necessary. The ruling said, 'Authorities are expected to decide what may be difficult questions quickly. In those circumstances a balance has to be struck between the interests of the owner and the interests of society in the preservation of listed buildings'. An owner could only challenge such a Notice and the recovery of costs if it appeared completely impossible for any reasonable body to believe the works were actually urgent.

Analysis of section 55 cases in 2003 showed that of six appeals which claimed the works were unnecessary or that costs were unreasonable all six were found in favour of the local authority.

(Kindred, 2003.)

See http://ihbconline.co.uk/toolbox/research_notes/uwksAppeals.html

It is crucial that, if works are considered genuinely urgent, the local authority can take action quickly. In order to facilitate this a number of authorities have delegated the power to serve Urgent Works Notices, possibly to a maximum works value, to a relevant officer. If the power is not delegated then internal procedures should still allow for swift, well-informed decisions to be taken and should not be delayed by the usual requirements to follow set processes for standard local authority business or procurement rules in respect of the works in default for example. This is an action intended to address urgent issues and the decision making process should reflect and support this rather than undermine it.

5.4 Is the building occupied?

If a building is occupied, urgent works under section 54 may be carried out only to those parts that are not in use. The local authority should consider this issue carefully before serving Notices for any building which appears to be occupied, or which is in occasional use. An internal inspection is often required to discover whether the building is unoccupied.

Some guidance on how to judge if a building is to be considered in use is provided by a decision made by the Secretary of State for Wales (Swansea City Council Southgate Country Club 1996). If the building or parts of it are in use but the building itself is not occupied, then this will still remain within the scope of section 54. Occupation indicates a regular or active use of the building primarily for its intended purpose. Thus a warehouse, being put to use for its intended purpose and requiring only occasional attendance from personnel, should be regarded as being occupied. For a house to be regarded as being occupied it will be used for living or may be converted to some other significant active use, such as industry or commerce. On the other hand, a small house which is used for residual and occasional storage of largely unwanted items is not occupied.

The use of the term 'not in use' as opposed to 'unoccupied' means that Urgent Works Notices can be applied to certain unused parts of a building which is otherwise in use, such as the vacant upper floors over a shop that is in use. Urgent Works Notices will usually include works to parts of the building which serve, or are integral to, all of its parts: repairs to the roof or gutters, or works to ensure overall structural stability. If works are carried out to these areas the question is then what part can be considered unused if it encompasses parts which are in use. It is possible that a court would take the view that such common parts are 'in use' where they serve any part of a building which is occupied. So a roof will cover both used and unused parts and could possibly be considered in use. It has, however; been suggested that the use of the phrase 'not in use' could include a ceiling void (Mynors 2006).

When carrying out the initial survey of the building it is important to note which parts of it are unoccupied or not in use and why. It is important to ensure that work is carried out to the parts that are unoccupied or not in use.

5.5 When are works 'urgently necessary'?

The key words are defined in the *Oxford English Dictionary* as follows:

Urgent: requiring immediate action or attention

Preserve: keep safe or free from decay

Sudden, catastrophic events, such as a major fire, are the exception rather than the rule in causing the decay of historic buildings. Deterioration is usually an incremental process, resulting from the lack of supervision, routine maintenance, occupancy and security.

Legislation and guidance on the use of Urgent Works Notices lay emphasis on the prevention of deterioration and damage. This means:

- Preventing deterioration and damage from starting. When there is evidence of a condition which, if left unchecked, will cause deterioration, then immediate action is required. The precise extent of decay can be concealed when an initial external or ground-level inspection is carried out

- Preventing deterioration and damage from getting worse. When there is evidence of a condition explained above then immediate action is required to prevent further deterioration, the further diminution of the building's special architectural or historic interest, and higher repair costs

It is implicit in the legislation and guidance that urgent works provisions will apply to buildings in an advanced state of decay, requiring temporary support (eg scaffolding or propping) or shelter (eg a temporary roof).

5.6 What can an Urgent Works Notice specify?

The objective of an Urgent Works Notice is:

- to preserve what is there
- to prevent it from getting worse
- to do so in the most cost-effective way

Urgent Works Notices will usually comprise some, or all, of the instructions below, but this list is not exhaustive. Further guidance is available in *Vacant Historic Buildings: An Owner's Guide to Temporary Uses, Maintenance and Mothballing*.

Making the building weathertight

Works to prevent the penetration of water can include:

- works to the roof covering and flashings, either by localised repairs, or, where damage is extensive and costs not too substantial, provision of temporary roof cover. This is to prevent water ingress
- unblocking and repair or replacement of gutters, downpipes, gullies, drains, etc. If no downpipes are in place it may be appropriate to fit an offset pipe or swan neck which is turned outwards to throw water off the building. This is to ensure adequate rainwater disposal and prevent water ingress
- careful destruction of invasive plant growth in and immediately around the building. Vegetation rooting in the fabric of a building is a primary cause of water ingress as it blocks gutters and downpipes and provides routes for water penetration by prising apart wall and roof fabric. Dense vegetation around a building can sometimes create a security risk

Enabling the building to dry out

Wet and dry rot are the most common natural causes of deterioration that can lead to loss of fabric and structural collapse. If water ingress has occurred, it is essential to enable the building to dry out and thus remove the conditions for the start or spread of rot, which can be done through:

- the provision of through-ventilation, eg by opening inaccessible windows by 25mm and/or drilling holes in security boarding. This should not incur major expense
- the clearance of significant rubbish and debris, pigeon droppings, etc, inside the building. Rubbish can start or contribute to fires and may inhibit proper inspection or the execution of works. Wet rubbish will hinder the drying out of the building, may contribute to the spread of rot and, if significant, can overload the structure. Pigeon droppings not only pose a serious health risk, but can trap damp, causing rot

The treatment of dry rot which threatens the stability of the building could be included in an Urgent Works Notice but would depend on the impact of the rot on the integrity of the building and the extent of spread. Where dry rot is already within the structure of the building or shows signs of likely spread, the minimum work necessary to control it could be included as urgent work. However, works to ensure that the roof is covered, rainwater goods are functioning and the building is properly ventilated could prevent dry rot taking hold where it has not already done so, and further work may not be considered urgent.

Making the building safe from structural collapse

A structural threat to the building can be dealt with as urgent works. Temporary support for the building such as structural scaffolding can be included in an Urgent Works Notice. Other than simple propping, the local authority may need to consult a structural engineer in order to specify appropriate measures, particularly if there has been a major fire or other sudden damage. Engineering advice may also be important in establishing that the works specified are reasonable and the minimum necessary.

Action to prevent illegal entry, vandalism and theft

Security can be particularly difficult to deal with effectively. Potential vandalism and theft of architectural features, leadwork, slates, etc pose major threats to empty historic buildings. Temporary boarding may deter casual crime but not determined thieves. Appropriate measures will depend on local factors and the importance of interior fittings. Proprietary metal security grilles can be adjusted to fit most openings and may need to be considered where there is a severe problem. Grilles can be expensive but other local authority departments may already have access to them.

Boarding up a building may draw attention to its vacant state, and so it should be kept under regular observation. Scaffolding may increase security problems so fencing or adaptation to prevent its use for access to the building may be important, particularly if it is likely to be in place for a long time. The local authority may wish to consider appropriate local surveillance and community involvement. Advice can also be sought from a crime prevention officer on vulnerable areas and suitable precautionary measures.

5.7 Drafting an Urgent Works Notice

Section 54(6) of the Listed Buildings Act 1990 expressly requires that the Urgent Works Notice should describe the proposed works. Poor drafting can invalidate the Notice and make it impossible to recover the cost of the works from the owner.

Section 54(5)-(6) of the Listed Buildings Act 1990 requires 7 days' Notice in writing of the intention to carry out the works, which must include a description of what is proposed. Beyond this, there is no prescribed format but the following is recommended:

- a summary of the provisions of section 54
- reference to the provisions of section 55 regarding entitlement to recover costs
- a separate schedule of works with any accompanying plans or illustrations. The works should be described and specified in sufficient detail to enable the owner to carry out the works rather than a general statement such as 'carry out the steps necessary to satisfy the local authority that the work has preserved the structure of the building'
- a location map highlighting the property labeled 'for identification purposes only'
- a local authority contact name, email address and telephone number

A specimen Notice (Sample 8) and a specimen schedule of works (Sample 9) are shown in Appendix 2.

5.8 Period of time to be specified in the Notice

It may be reasonable in some cases to specify a slightly longer period, say a fortnight, but specifying too long a period could prejudice the local authority's case that the works were urgently necessary.

5.9 Presentation of Schedules of works in an Urgent Works Notice

Works should be presented as a separate schedule of works comprising a concise set of numbered instructions. It should be drafted in the anticipation that the owner may undertake the works, so layman's terms should be used as far as possible. It is advisable to describe clearly the appropriate techniques, materials and safeguards, particularly where there could be ambiguity or risk of damage to the historic fabric. Reference should also be made to relevant current British Standards and Codes of Practice making clear which works apply to which areas. Plans should be attached if necessary to highlight the schedule.

A specimen schedule of works (Appendix 2, Sample 9) shows the level of detail which is usually appropriate.

While the schedule should be confined to the works, supplementary information can be used to reduce the risk of unauthorised stripping out or damage, eg where fungal attack is present, or where there are loose items of historic joinery, which must be retained until their reinstatement when the building is eventually fully repaired. A photographic record should be made where practicable.

5.10 How long should the works be designed to last?

There is little guidance on the length of time that urgent works should be expected to hold off the need for further work. The Listed Buildings Act 1990 specifies 'works' rather than 'repairs', reinforcing the point that works are temporary rather than permanent. Permanent repairs can be specified when this is the cheapest option to achieve the objective. In specifying the works, cost-effectiveness will be the crucial consideration. The local authority will therefore need to strike a balance between ensuring that the scale and cost of the works are not excessive, and the (potentially higher) cumulative cost of serving repeat or adjusted Notices at frequent intervals because the works have failed.

Usually, a sensible balance will be to specify works that hold good for at least a full year; but this will depend on individual circumstances.

If temporary works are required to last longer than a year or if the building needs extensive permanent repairs, the local authority should give serious consideration to serving a Repairs Notice in conjunction with the Urgent Works Notice, or at a specified interval afterwards if no proposals are made for the building's long-term preservation.

The local authority can serve subsequent Notices if further works become urgently necessary. However; the primary purpose of an Urgent Works Notice is to act as a stopgap, and not be a substitute for finding a long-term solution for the building. Repeat Notices are rare; research shows that 87% of buildings had only one Urgent Works Notice served upon them and did not need successive or amended Notices (English Heritage 2011). If repeat Urgent Works Notices become necessary serious consideration should be given to serving a Repairs Notice.

5.11 Service of an Urgent Works Notice

Incorrect service could invalidate an Urgent Works Notice. The following advice applies equally to the service of section 215 Notices and Repairs Notices.

Multiple Notices

If the local authority is taking action concurrently on several properties, such as a terrace of houses, which are in the same ownership, a separate Notice should be served on each. In the case of Urgent Works Notices, this may reduce potential difficulties in reclaiming costs. In the case of either Urgent Works or Repairs Notices, it removes the scope for delays because the owner must (if complying with the Notice) undertake works concurrently to each property.

Service procedures

Service by recorded delivery should usually be sufficient, or it can be done in person. If evasive action is anticipated (particularly where the owner is some distance away), it may be worth engaging a local commercial process server to carry out personal service. The process server should sign a certificate of service as evidence that it has been properly effected.

Untraceable owners

If the owner cannot be traced and reasonable efforts have been made to do so, the Notice can be served by fixing it to the front of the property. The person serving the Notice should sign an appropriate certificate of service, take a photograph of the Notice in situ, check it at regular intervals to ensure that it is still in place and, if not, replace it and sign a certificate each time. The local authority will thus be able to avoid any challenges being upheld on the basis that the Notice was improperly served, or was removed by a third party, when it seeks to reclaim the expenses of urgent works, or make a CPO following a Repairs Notice.

Concurrent service of Urgent Works Notices and Repairs Notices

If both are being served concurrently, or in close succession, the local authority may need to provide further clarification, by way of a covering letter or an informative note in the Notices, that the two actions are entirely discrete and that compliance with one does not relieve the recipient of the requirement to comply with the other.

5.12 Carrying out the works

A suggested method for contracting and executing Urgent Works

It is important that the local authority is ready to carry out the works when the stated period after service of an Urgent Works Notice has expired. A suitable contractor to undertake works at short notice should be recruited as quickly as possible so as not to hold up the implementation of the works.

In order to support claims for recovery of costs under section 55, material and labour costs will need to be obtained at competitive market rates. The use of a term contract will place the contractor on call as and when required, thus avoiding the delays and administrative costs of raising a separate contract every time a Notice is issued.

Measured term contracts are best suited for maintenance and minor works such as those in an Urgent Works Notice. Usually a contractor undertakes to carry out a series of works within a time period throughout the local authority area such as all urgent works within a programme of buildings at risk action. The work is then measured and valued using either rates from a priced Schedule of Rates or using hourly rates. Contracts let on this basis often use the Joint Contracts Tribunal Measured Term Contract (JCT MTC) which was first published in 1989 and the latest version of which is Revision 3 of 2011. JCT MTC is designed for use where there is ‘a regular flow of maintenance and minor works, including

improvements, to be carried out by a single contractor over a specified period under a single contract'. When measuring works, it is important that contractors understand that the work is irregular or unusual.

Other forms of contract may be suitable where only one piece of work is proposed. In such circumstances it may be more practical to obtain an estimate from a single company that is a recognised specialist in dealing with historic buildings and have it checked by an independent quantity surveyor. This will ensure fiscal propriety and help ensure that section 55 costs are considered appropriate if an appeal is made by the owner.

The local authority's own procurement standards must be considered and observed unless appropriate authorisation has been obtained to do otherwise. For example, in one section 55 appeal the Inspector supported this approach and stated 'there is no requirement for the local authority to go out to tender and the local authority was entitled to take into account the urgency of the matter when considering its choice of contractor' (*11 & 13 Bridge Street, Horncastle, section 55 appeal.* HSD 66/04/44).

The costs of carrying out urgent works and other action are usually met from the local authority's capital contingency reserve and then reclaimed from the owner under section 55. It is advisable to assess potential contractors not simply on cost but on their record of working with historic buildings. The cheapest contractor may not carry out work in accordance with the required procedures.

Instructions to the contractor

It is vital to brief the contractor properly before works start, and to be on site when they arrive. The following points are important:

- local authority staff and contractors should carry a signed letter authorising their presence on site
- ensure that the site is secure at all times, especially outside working hours
- take a full set of dated photographs immediately before works begin and a further set on completion, showing the general condition of the building, focusing on areas where works have been carried out in order to support the local authority's decision to take action
- works must be carried out strictly in accordance with the schedule in the Notice. If it becomes apparent that other works are urgently necessary, the contractor should contact the local authority immediately. Consideration may need to be given to serving a further Notice enabling those works to be executed after 7 days
- if the contractor is ordered from the site by the owner, access is deemed to have been denied. If the local authority is unable to negotiate with the owner, it will need to apply to a magistrates' court for a warrant of entry
- the site foreman should have a copy of the Urgent Works Notice and any accompanying plans. A site log should be kept recording information on site conditions, describing the work to be carried out, including day sheets on labour, plant and materials, general progress, problems, visitors, security and any other matters which may be relevant. If more than one property is being worked on concurrently separate records should be kept for each. Any salvageable items, such as furniture or equipment, should be retained on site

- when the works are complete, the premises must be left at least as secure as at the time of entry

- the contractor's invoice should relate as closely as possible to the schedule of works. General site costs (eg plant, supervision), or relevant costs arising during the course of work, should be separately itemised. The contractor should provide details of the work carried out in some detail but the works should only be those included in the local authority's instruction and the Notice

5.13 How to respond if the owner agrees to do the works

While an Urgent Works Notice is a statement of intent by the local authority to execute works (not a Notice requiring the owner to undertake them), the minimum 7-day period gives the owner the opportunity to comply with the Notice.

In practice, Notices are usually served after informal requests to the owner to undertake works have been ignored and there is a risk that the building may deteriorate further if works are delayed. If the owner agrees to undertake the works, it is reasonable for the local authority to require convincing proof, including immediate written confirmation that the works will be carried out in accordance with the Notice, evidence that a contractor has been appointed, a start-of-works date and an estimate of the time the works will take. If additional time beyond the specified date is granted, this should be minimal. It is the local authority's statutory right under section 88 (2)(b) of the Listed Buildings Act 1990 to enter the building to ensure that the works are being undertaken or have been completed.

5.14 What if the work is of a poor standard or incomplete?

The best way to ensure that the works are carried out properly is to try and establish a good working relationship with the owner's contractor. If the work is unsatisfactory, having served Notice, the local authority is still entitled to enter the property and carry out works that were specified in the Notice. Unless it is a clear-cut matter of undertaking a specific item that the owner had omitted, or a case of extreme urgency, the local authority may need to consider serving a further Notice with a modified schedule of works, with a covering letter setting out the reasons.

5.15 Securing Urgent Works to unlisted buildings in conservation areas

Section 76 of the Listed Buildings Act 1990 enables the Secretary of State to direct that the Urgent Works provisions under section 54 apply to an unlisted building if its preservation is important for maintaining the character or appearance of a conservation area. Usually, the Secretary of State will make such a direction in response to a formal request from a local authority, to enable it to serve an Urgent Works Notice. Historic England is consulted before a decision is made.

The Secretary of State had stated in previous guidance that he will consider making such a direction sympathetically where an unlisted building makes a positive contribution to a conservation area.

Requests should be supported by evidence confirming the importance of the building. There is no formal procedure for approaching the Secretary of State. The local authority's case should consist of:

1 An explanation of the contribution the building makes to the conservation area that includes:

(a) a concise assessment of the character of the conservation area.

(b) a description of the building, its importance and why it makes a positive contribution to the character and appearance of the conservation area.

> Advice on these issues is given in Historic England's guidance leaflet *Understanding Place: Conservation Area Designation, Appraisal and Management*, which includes an 'assessment checklist' to identify elements in a conservation area which contribute to its special interest.

(c) a statement of why the building's preservation is important for maintaining the character and appearance of the conservation area.

(d) good illustrative material: a location map and set of photographs of the building and its wider context in the conservation area. Include a photograph taken when the building was in good repair, if one is available.

2 Information on the background to the case and the condition of the building that includes:

(a) a summary of the background: the local authority's efforts to encourage the owner to repair the property,

(b) copies of relevant correspondence,

(c) recent planning applications; the local authority's case will be particularly strong if there has been a refusal on appeal of conservation area consent for demolition.

(d) Attach the decision letter, an assessment of the building's condition and why works are urgently necessary. Refer to any other forms of statutory action already taken,

(e) a copy of the schedule of works the local authority proposes to carry out,

(f) reference to relevant conservation or regeneration initiatives within the conservation area. Will the continuing disrepair of this building undermine these efforts? Are Urgent Works Notices or Repairs Notices being served on any neighbouring listed buildings, which this action would complement?

Once the Secretary of State has made a direction under section 76, the procedures for serving the Urgent Works Notice are exactly the same as for a listed building. In drafting the Notice, however remember that it is served under the provisions of section 54 of the Listed Buildings Act 1990 and not section 76; the latter is purely the mechanism for obtaining the Secretary of State's authority. The Notice should set out the provisions of both

sections of the Listed Buildings Act 1990, specify that the Secretary of State has directed that the powers of section 54 can be exercised by the local authority, and note that the local authority is exercising its functions under section 54.

5.16 Recovering the expenses of the works

Section 55(1) of the Listed Buildings Act 1990 allows a local authority (or the Secretary of State or Historic England, as the case may be) that has incurred expenditure under section 54 in carrying out urgently necessary works for the preservation of a listed building to seek to recover their expenses from the building owner. The authority must serve Notice on the owner requiring them to pay the expenses of the works. In the case of continuing expenses for temporary support or shelter; the Notice may be repeated.

Urgent Works Notices are slightly different to statutory charges under section 215 or dangerous building act powers for example, in the sense that they start off as a personal debt and this is not a local land charge. There is a separate procedure under section 55 against the owner personally which allows them certain grounds to appeal as set out below.

However, an alternative to reclaiming costs under section 55 is possible as the debt incurred can still be converted under the Notice to a county court debt. This can then be protected by registering a charging order against the property. This means that it is possible to carry out the enforced sale procedure to take the building to the open market and have the debt repaid. Legal advice should be sought to assist with this process.

Which costs can be recovered?

Section 36 of the Local Government Act 1974 enables local authorities exercising their powers under any enactment to carry out works to any land or building and where they are entitled to recover the expenses of those works, to recover also such sums as appear to them to be reasonable in respect of their establishment charges.

The cost of the works will sometimes include professional fees incurred by the local authority eg a structural engineer's advice.

A local authority is entitled to recover the costs of works that are necessary for the preservation of a listed building, even if the works are found to not be urgently necessary. In *R v Secretary of State for Wales, ex p. Swansea* (1998), the Court held that if the works were necessary it was reasonable that the owner should be liable to reimburse the authority with the cost, provided that the local authority was acting reasonably in deciding that the works were urgently necessary.

In some cases the local authority may decide it is inappropriate or impractical to recover the costs because, for instance the owner is overseas, bankrupt, a charitable body or unknown.

What should a section 55 Notice contain?

There is no prescribed format but an example is provided in Appendix 2, Sample 10. Case law suggests that presenting a bare account is insufficient and that the Notice should contain sufficient detail to enable representations to be made to the Secretary of State, who should then be able to form some conclusion as to its validity or otherwise and also make it clear that the local authority is exercising its statutory power to seek reimbursement (*Bolton MBC v Jolley* l989).

The Notice should include:

- a statement that the local authority has carried out works to the named premises on (dates), pursuant to the Notice served under section 54 of the Listed Buildings Act 1990 on (date)
- a summary of the provisions of section 55 and a statement that the Notice is being served pursuant to those powers
- the amount being reclaimed
- the itemised costs of the works and any additional eligible items
- a copy of the invoice(s) and receipt(s)
- details of the mechanism for making representations to the Secretary of State
- method of payment and contact name

The Notice should be served on the same parties on whom the Urgent Works Notice was served. If the property has been sold in the interim, the costs are reclaimable from the previous owner on whom the Notice was served. Continuing expenses such as structural scaffolding can also be recovered from the owner.

Grounds for challenge

The owner has 28 days in which to challenge the Notice by making representations to the Secretary of State, on the grounds that:

- some or all of the works were unnecessary
- temporary works have continued for an unreasonable length of time
- the amounts are unreasonable
- recovery would cause hardship

These representations will be taken into account by the Secretary of State in determining the amount recoverable.

> Analysis of section 55 cases in 2003 showed that of six appeals which claimed the works were unnecessary or that costs were unreasonable all were found in favour of the local authority.
>
> Kindred, 2003

Informal approaches to building owner.

Letter to the owner setting out the provisions of sections 54–55 of the Listed Buildings Act 1990, requesting a site meeting and access to the building for inspection by the relevant professionals.

Draft Urgent Works Notice which is restricted to urgent works to keep the building wind and weatherproof and safe from collapse, or action to prevent vandalism or theft.

Follow up the site-visit with a second letter and a draft schedule of urgent works, setting a date for formal service of a notice if the works are not carried out.
Make preparations to instruct contractors.

If the owner agrees to undertake works, request immediate written confirmation that the works will be carried out in accordance with the draft schedule, a start-of-works date and an estimate of the time the works will take.

If no works are carried out or insufficient works are carried out, serve the Urgent Works Notice and ensure the contractors are on standby.

If no works are carried out within the time specified in the notice (at least 7 days after the date of the notice) enter the land and carry out the works in default. No further warning is necessary after serving the notice but a letter to the owner indicating when work will commence is reasonable.

Serve Section 55 Notice on owner to reclaim costs of urgent works.

Owner can appeal against the notice to recover costs if they consider the works were unnecessary for the preservation of the building, the amount being sought is unreasonable, or that the recovery would cause hardship.

Secretary of State determines costs to be paid.
Failure to pay section 55 costs can result in a local land charge being placed on the property.

6 Repairs Notices: a Step by Step Guide

6.1 When to use a Repairs Notice

Section 47 of the Listed Buildings Act 1990 provides that an appropriate authority or the Secretary of State may compulsorily acquire a listed building in need of repair if it appears that reasonable steps are not being taken for its proper preservation. Section 47 is a reserve power which is only to be used to ensure the long-term preservation of a listed building.

Under section 47, there is a two-stage process: (i) service of a Repairs Notice; and (ii) service of a Notice of compulsory acquisition on every owner, lessee and occupier if, after the expiry of two months it appears to the appropriate authority that reasonable steps are not being taken for properly preserving the building.

The compulsory purchase of a building under section 47 may not be commenced unless at least two months previously the authority has served a Repairs Notice on the owner. The Repairs Notice must specify the works which are reasonably necessary for the proper preservation of the building and explain the effect of sections 47 to 50 of the Listed Buildings Act 1990.

Instead of a purchase price being paid upfront, compensation will be payable to the owner of the building based on its market value but this is subject to section 50 of the Listed Buildings Act 1990, which allows for minimum compensation to be paid where the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition. Proving that the neglect is deliberate can be challenging and this is explained in more detail in section 7.9 below.

6.2 Contacting owners

A written warning of an impending Repairs Notice and possible compulsory purchase proceedings will often be sufficient to encourage the owner to repair the property, or alternatively to sell it to a third party who will undertake the repairs. Research shows that of the Repairs Notices approved by local authorities, 69% did not need to be served as the owner carried out the required works or sold the building following the threat of action (English Heritage 2011).

If the owner is unresponsive to initial informal approaches, it is recommended that the local authority:

- writes, setting out the provisions of sections 47-48 of the Listed Buildings Act 1990, requesting a site meeting and access to the building. If the local authority anticipates difficulty in gaining access, it should refer to its statutory rights of entry
- follows a site visit with a second letter and a draft schedule of repairs that it considers necessary for the proper preservation of the building, setting a date for formal service of a Repairs Notice if the works are not carried out

Specimen letters are provided below (Appendix 2, Samples 11-12), which can be adapted according to the circumstances (or amalgamated with the letters relating to Urgent Works Notices if both courses of action are being considered). A list of names of local firms with expertise in the repair of historic buildings may also be attached.

6.3 Scope and Content of a Repairs Notice

Section 48 of the Listed Buildings Act 1990 states that the works specified in a Repairs Notice must be those which are reasonably necessary for the proper preservation of the building. It is therefore necessary to begin by asking what is 'proper preservation'.

Proper preservation implies positive action to put and to keep a listed building in good repair in a way which fully respects its special architectural or historic interest, and to prevent it being exposed to harm. This normally involves undertaking regular repairs and routine maintenance. It may be achieved, of course, by bringing a usable building into, or keeping it in, full beneficial use.

A Repairs Notice should be considered when a building is neglected and the need for permanent repair accumulates to the point where there is potential for serious harm.

The building's condition at the date of listing is crucial in determining the extent of repairs that may be specified. 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 to include them in a Repairs Notice.

Repairs Notices are intended to secure works for the long-term preservation of a listed building. They should specify the use as far as practicable of matching materials, methods of construction and best conservation practice, in order to preserve the character; appearance and integrity of the building. Advice and good practice are set out in a range of specialist Historic England publications.

There can be no definitive statement about the type of works to be included in a Repairs Notice. Bearing in mind the date of listing, they can comprise:

- essential preliminary works to comply with health and safety regulations, eg decontamination, asbestos management
- comprehensive repairs to the structural envelope, roof structure, roof covering, chimneystacks and flues, brick, stone masonry or other construction materials, timber frame, external finishes and cladding, rainwater goods and flashings
- measures to secure general structural stability in accordance with specialist structural engineering advice
- repair or reinstatement of external joinery, ironwork and architectural features
- internal structural repairs to floors, ceilings, walls and partitions
- repair and reinstatement of internal finishes – including plasterwork, floor surfaces
- basic internal and external redecoration
- repair or reinstatement of internal joinery, staircases, features and fittings
- works to enable the building to return to beneficial use, such as repairs to existing services/reinstatement of missing services
- repairs to boundary walls, gates, railings, and associated fittings, surfaces, pathways, entrance steps
- installation of additional security measures to prevent vandalism or unauthorised access following completion of works

There will frequently be occasions on which it is essential that specialist advice is obtained before certain works in a Repairs Notice commence. If this is the case, the clause in the Repairs Schedule should instruct the work to be undertaken in accordance with the recommendations or specification of an appropriate specialist.

6.4 Presentation of Schedules of Works

It is recommended that the works should be presented in a separate schedule comprising a concise set of numbered instructions. Layman's terms should be used as far as possible. A description of clearly appropriate techniques, materials and safeguards, particularly where there could be ambiguity or risk of damage to the historic fabric should also be given. Reference to relevant current British Standards and Codes of Practice can be included and it should be made clear which works apply to which areas. Plans may be necessary to detail the scheduled works.

Works which go beyond repairs for the proper preservation of the building must not be included, only those which are necessary, or that return the building to its condition when listed, rather than those that would be desirable to fully restore the building. There is no requirement for the local authority to take into account the owner's means when specifying the works which it considers reasonably necessary for the preservation of the building.

A specimen schedule (Appendix 2, Sample 13) shows the level of detail which is usually appropriate. While the schedule should be confined to the works, supplementary information can be provided according to particular circumstances.

6.5 Drafting a Repairs Notice

It is important to ensure that a Repairs Notice is properly drafted. Poor drafting could invalidate it, and consequently a subsequent Compulsory Purchase Order (CPO).

The Listed Buildings Act 1990 requires the Notice to specify the works reasonably necessary for the proper preservation, and to explain the provisions of sections 47-50. Beyond this, there is no prescribed format. It is recommended that it contains:

- a summary of the provisions of sections 47-50
- a separate schedule of repairs with any accompanying plans/illustrations
- a location map highlighting the property labeled 'For identification purposes only'. This should encompass any adjacent land which it is intended to include in a CPO. A CPO can include relevant land which it is necessary to acquire for the building's preservation
- local authority contact name, email address and telephone number

'Relevant land' in relation to a CPO is defined in section 47(7) of the Listed Buildings Act 1990 as the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording proper access to it, or for its proper control or management.

This is explained in more detail at 7.8 below.

A specimen Notice is attached is shown in Appendix 2, Sample 14.

6.6 Service of a Repairs Notice

It is important to ensure correct service of the Notice as incorrect service could invalidate it. The procedures for correct delivery are the same as those for an Urgent Works Notice or multiple Notices which are described in section 5.11, above.

There is no right of appeal against a Repairs Notice. However, an owner who disputes some works contained in the Notice could undertake the non-disputed works alone. He/she will receive a section 12 Notice, required to be served under the Acquisition of Land Act 1981 (see section 7.7, below) initiating compulsory purchase. At this point he/she can apply under section 47(4) of the Listed Buildings Act 1990 for an order to halt compulsory purchase proceedings. The owner would be entitled this if the court was satisfied that the non-disputed works which had been done by the owner constituted reasonable steps for preserving the building, and the remaining disputed works were excessive.

In accordance with section 48(3), a Repairs Notice may be withdrawn at any time. Notice of such withdrawal would need to be given immediately to the owner.

6.7 Are any works 'urgently necessary'?

It will be important to bear in mind the potential time scale between the service of a Repairs Notice and the eventual resolution of the case if the owner fails to comply with the Notice and the case proceeds (under section 47) to compulsory acquisition of the listed building in need of repair. In accordance with section 48(1) the Repairs Notice must be served at least two months before the compulsory purchase is started. If, after two months, it appears that reasonable steps are not being taken for properly preserving the building, the appropriate authority may then serve Notice of the draft Compulsory Purchase Order.

Such Notices would need to specify the time within which objections to the order can be made. Within 28 days of service, any person with an interest in the building can make an application to the magistrates' court for an order staying proceedings. If the proceedings are not stayed by a magistrates' court, the order may be confirmed but not before the objector is given an opportunity to be heard at a public inquiry. If there are no objections then the inquiry will not be necessary and the CPO can be confirmed without it. More detail on objections is provided at section 7.10 below.

If there are concerns that the building is likely to deteriorate in the period before a CPO is confirmed, the local authority should consider serving an Urgent Works Notice in parallel with the Repairs Notice. This would enable the local authority itself to execute any works which are urgently necessary for the building's preservation. If necessary, Notices can be repeated until the case is resolved.

7 Compulsory Purchase Proceedings

7.1 When to use the power of Compulsory Purchase

As explained above, section 47 of the Listed Buildings Act 1990 allows a local authority, Historic England (in Greater London) or the Secretary of State to compulsorily acquire a listed building in need of repair. Making a CPO is not a commitment to purchasing the building, but it will strengthen the local authority's position. A considerable amount of time may elapse before the outcome is determined, which will permit further negotiations with the owner. The local authority can withdraw the CPO at any time if circumstances change. The pressure to repair (or sell) the property will increase the further along the route the local authority goes.

If compulsory purchase proceedings are commenced, the Secretary of State will not confirm a CPO unless satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose. In accordance with section 12 of the Acquisition of Land Act 1981, before submitting a CPO to the Secretary of State for confirmation the local authority must serve a Notice on every person with an interest in the building specifying:

- the effect of the order;
- that it is about to be submitted to the Secretary of State for confirmation; and
- the time within which objections to the order can be made.

Any person having an interest in the building may then apply within 28 days of service of the Notice of the order, to a magistrates' court for an order staying further proceedings on the CPO on the grounds that reasonable steps have been taken to preserve the building. If the court is satisfied that reasonable steps have been taken for properly preserving the building, the court shall make an order to stay further proceedings. There is a right of appeal to the Crown Court.

7.2 End use: establishing a strategy

While the likelihood of eventual compulsory acquisition is very small, it is important when serving a Repairs Notice to establish a strategy for the repair and disposal of the property.

In confirming a CPO, the Secretary of State will need to be satisfied that the means and the resources necessary for securing the building's repair will be available.

Valuation advice

An initial valuation of the property from the District Valuation Office or a RICS valuer in private practice, will be crucial in informing such a strategy. This is especially important where the property is likely to have a significant negative value (ie the repair costs exceed its estimated value once repaired), in which case one of the key elements in support of the case in seeking confirmation of a CPO will be the means of funding the 'conservation deficit'.

Briefing the surveyor

It is essential to brief the surveyor properly to ensure that full consideration is given to all the issues affecting the listed building. These will usually include:

- the planning context: planning brief; any current consents
- the relevant legislation
- appropriate uses
- scope for extension or new build, parking provisions, etc
- the estimated repair costs
- any other factors considered relevant

The valuer will then need to consider:

- the optimum use of the building compatible with its historic character and setting, and relevant planning policies
- the marketability of the property: could it be marketed in its current state, or will a specialist purchaser, building preservation trust (BPT) or developer need to be lined up and a funding package assembled, perhaps as a back-to-back agreement?
- the amount of relevant land (if any) to be included in a CPO
- the estimated market value of the property
  (i) in its present state and
  (ii) in a repaired state
- the estimated level of compensation under section 49 of the Listed Buildings Act 1990

Planning consent

Although not a statutory requirement, it is preferable to obtain planning permission and listed building consent as part of the CPO procedures to help the local authority demonstrate in its evidence to support and substantiate the use of CPO powers that there are no planning obstacles to the proposed future use for the building.

The end user

If the local authority does not propose to undertake the repair of the building itself, it will need to identify a suitable end purchaser to acquire the building as quickly as possible after acquisition. The Listed Buildings Act 1990 allows for local authorities to 'make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation'. The building can thus be passed on to an appropriate end user by whatever method seems most appropriate to secure the building's future.

The local authority could:

- enter into a back-to-back agreement with a building preservation trust or similar charitable group, a private restoring owner, or commercial developer
- purchase the building, carry out works and then lease it back to the original owners
- purchase the building, carry out repairs and retain it for their own use, sell it, or lease it to a new user or community body through asset transfer

7.3 Back-to-back agreements

A back-to-back agreement is one where the acquiring authority has agreed to sell on the building to a third party, eg private individual, developer or building preservation trust, as soon as it is acquired.

Local authorities have powers, under the Local Government Act 1972, to dispose of land in any manner they wish providing that they achieve the best consideration obtainable. The land can only be disposed of at a lower sum with the consent of the Secretary of State. Further advice on how to transfer heritage assets from public to community ownership is available from Historic England.

However; Circular 06/03: Local Government Act 1972: General Disposal Consent (England) 2003 gave local authorities much greater freedom to dispose, in certain circumstances, of land at less than the best consideration, without the specific consent of the Secretary of State. Specific consent is not required for a disposal which has a value of less than two million pounds and where the local authority considers disposal will help it to secure the promotion or improvement of the economic, social or environmental wellbeing of its area.

The Secretary of State advises local authorities to obtain a realistic valuation following the advice provided in the Technical Appendix of Circular 06/03.

The repair and reuse of a historic building can meet one or possibly all of these specific circumstances. A local authority is thus able to hand on listed buildings to building preservation trusts or certain other repairing owners at less than the market value. Often this will be at a nominal sum such as one pound.

A sample back-to-back agreement is included below (Appendix 2, Sample 15) but as individual circumstances will vary it will be necessary to produce an agreement suitable for each case.

7.4 Building preservation trusts

A building preservation trust (BPT) is a charity whose main aims include the preservation and regeneration of historic buildings. Trusts vary from those covering a specific geographical area to those which work with particular building types. Some were formed to save just one building and others, known as revolving-fund trusts, work on a succession of buildings. BPTs can play a vital intermediary role in the Repairs Notice and CPO process. If a suitable BPT does not exist it may be the building can generate enough local interest to lead to the formation of a single-project trust for that building.

BPTs can undertake to buy the property from the local authority as a back-to-back arrangement after compulsory purchase (or acquisition by agreement under section 52 of the Listed Buildings Act 1990), thus providing the certainty of an end purchaser.

As charities, they are eligible for low-interest loans from the Architectural Heritage Fund, and grants from a wide range of other sources, including the Heritage Lottery Fund. They can attract charitable rate relief and opt whether or not to charge VAT. These financial benefits help them close the conservation deficit gap on buildings at risk. They can tackle buildings which have little or no market value, or which are capable of limited use. They can sometimes undertake essential groundwork on behalf of local authorities, eg condition surveys or feasibility studies.

Detailed information about BPTs can be found through the UK Association of Preservation Trusts and the Architectural Heritage Fund.

7.5 Deciding whether to make the Compulsory Purchase Order

Once the two months after service of the Repairs Notice have expired, the local authority is entitled at any time to make the CPO. In seeking the Secretary of State's confirmation of the CPO, the local authority will need to demonstrate that reasonable steps have not been taken for properly preserving the building. There is, however, no guidance as to what steps the owner should have taken in order to comply with the Repairs Notice at this stage.

The basic test should be that the owner has demonstrated a clear intention to undertake the works specified in the Repairs Notice and has progressed as far as reasonably possible. Research shows that owners complied with 32% of Repairs Notices, which meant that no further action was necessary and the local authority did not need to consider pursuing compulsory purchase (English Heritage 2011).

Within two months it is usually reasonable to expect:

- written confirmation of the intention to comply fully with the works specified in the Repairs Notice
- a timetable for their implementation
- a letter of instruction to a professional and/or contractor to implement the works
- a copy of the specification for approval

7.6 Planning and Listed Building Consent applications

The Repairs Notice may prompt the owner, or a prospective purchaser, to submit applications for planning permission and/or listed building consent for more extensive works of refurbishment or conversion to a new use. While this may be a genuine and positive response, in view of the potential for delay, the matter of compliance with the Repairs Notice (and whether or not to make a CPO), and any negotiations concerning development proposals, should be treated in parallel as discrete issues.

7.7 Mechanisms for making the Compulsory Purchase Order

The rules regarding the making of a CPO are set out in the Acquisition of Land Act 1981, the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004 and Compulsory Purchase Process and The Crichel Down Rules, 2015 (as amended): Compulsory Purchase and the Crichel Down Rules.

Regulation 4 of The Compulsory Purchase of Land (Prescribed Forms) Regulations 2004 makes certain provisions for listed buildings. Where a compulsory purchase order is to be made under section 47 of the Listed Buildings Act 1990, it shall include:

- a standard form of CPO (Form 1)
- a Notice to be inserted in a local newspaper for at least two weeks (Form 7). The Notice must specify the date by which objection should be made, which will be 21 days after the draft order is dated
- a Notice to be served on owners/lessees/occupiers of the property (Form 8)

At the same time as serving Notice on the owner of the making of a CPO, the local authority will be required to serve a copy of a Statement of Reasons for making the CPO. In most cases, this will be the framework for the Statement of Case which the local authority will be required to submit in advance of the public inquiry.

Section 10 of the Compulsory Purchase Process and The Crichel Down Rules 2015 applies specifically to listed buildings in need of repair and action through sections 47, 48 and 50 of the Listed Buildings Act 1990 and includes specific guidance on the content of Notices in relation to the 2004 Prescribed Forms Regulations 2004.

7.8 Relevant land

The 'order land' in a listed building CPO can include land which it is necessary to acquire for the building's preservation. Section 47(7) of the Listed Buildings Act 1990 defines this as follows: 'Relevant land' in relation to any building means the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording proper access to it, or for its proper control or management.

The amount of land could be crucial in determining the economic viability of the building. This will depend on the building's location, scope for reuse and the repair and refurbishment costs. A CPO was confirmed in respect of a modest grade II listed house comprising a land area of approximately 600 sq m, in recognition of the need to allow the land to be used to provide additional development to subsidise the listed building repair costs (*Radford v East Hampshire DC* 1994).

For properties with conventional curtilages, such as street properties in urban areas, the order land is unlikely to be contentious. Complexities may, however, arise with sites where the listed building forms part of a large landholding with development potential, or where part of the land is in separate ownership from the listed building.

Another relevant factor may be the need to preserve the historic integrity of a site (including any listed and curtilage buildings and structures), which could be lost if the ownership or management of the land were divided. It is important that the local authority considers carefully the extent of the order land. It is open to the Secretary of State to reduce the amount of land when confirming the CPO, but not to increase it.

7.9 Compensation

The Upper Tribunal (Lands Chamber)

If the objections to a CPO relate only to the level of compensation payable to the owner, the Secretary of State will confirm the Order and pass any dispute about compensation to the Lands Chamber of the Upper Tribunal (previously the Lands Tribunal). Research shows that 36% of CPO cases were referred to the Lands Chamber to decide compensation (English Heritage 2011).

Calderbank Offer

A sealed offer can be made under section 4(l)(a) of the Land Compensation Act 1961, this is called a 'Calderbank' offer and is made by the local authority in writing on a without prejudice basis. A Calderbank offer includes any claim for legal costs which the owner may be seeking. For that reason a Calderbank offer is a precise amount offered in final settlement of the claim.

If the owner does not accept this offer and the case for compensation goes to the Lands Chamber, a determination that is significantly less than the Calderbank offer will entitle the acquiring authority to its costs from the date of the offer: The Calderbank offer is made specifically to enable the local authority to bring the offer to the Lands Chamber's Notice if the compensation awarded to the claimant is less than what has been offered. The logic is that the owner should have accepted the offer at the time and because they did not the process had to continue. As they were then awarded compensation less than the offer, they should be responsible for the costs incurred since the offer was made. It can be an effective tactic to put the burden and pressure of paying the costs of the process form the local authority onto the owner and can make them more willing to negotiate a settlement.

This is set out in paragraph 23.3 of the Lands Chamber's Practice Directions November 2010 which says that as a general rule the successful party ought to receive their costs. In the case of a CPO, the costs incurred by a claimant in establishing the amount of disputed compensation are seen as part of the usual expense of acquisition by the local authority. The Lands Chamber will therefore normally make an order for costs in favour of a claimant who receives an award of compensation unless there are special reasons for not doing so. Particular rules apply however, by virtue of section 4 of the Land Compensation Act 1961. Under this provision where an acquiring authority has made an unconditional offer in writing of compensation and the sum awarded does not exceed the sum offered, the tribunal must, in the absence of special circumstances, order the claimant to bear their own costs thereafter and to pay the costs of the acquiring authority.

Making a case for minimum compensation

Subject to section 50 of the Listed Buildings Act 1990, the starting point for compensation will be the market value of the land enhanced by an assumption that listed building consent authorising works to preserve the listed building will be granted and carried out.

Section 50 enables the local authority to include within a CPO a direction for minimum compensation if it considers that the owner has deliberately allowed the building to fall into disrepair in order to justify its demolition and secure permission for redevelopment of the site.

A direction for minimum compensation is defined by section 50(4) of the Listed Buildings Act 1990 as 'a direction that for the purpose of assessing compensation it is to be assumed that:

(a) planning permission would not have been granted for any development or re-development of the site of the building; **and**

(b) that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it and maintaining it in a proper state of repair'.

A direction for minimum compensation should be sought only where there is clear evidence of intent to deliberately allow the building to fall into disrepair. In practice, deliberate neglect may be difficult to establish. The fact of dereliction may be insufficient in itself to demonstrate a deliberate intent by the owner to bring about the building's demise. Nonetheless, this provision exists for good reason. A request for a direction for minimum compensation will be considered as a separate issue by the Secretary of State and will not prejudice the case for confirming the CPO. If the local authority believes the owner has deliberately neglected the property, it will need to present a cogent case. Relevant factors may include:

- a history of refusal of planning permission and listed building consent for schemes involving the demolition of the listed building
- unsubstantiated claims that retention of the listed building would be uneconomic
- persistent failure by the owner to undertake works to keep the building secure, weathertight and stable, necessitating the local authority to undertake urgent works under section 54 of the Listed Buildings Act 1990, and/or works under other statutory provisions (eg a Dangerous Structures Order)
- applications to the Secretary of State to delist the building
- damage other than casual vandalism which appears to be deliberately intended to hasten deterioration or cause structural instability

Where a minimum compensation direction is included within a CPO, any person with an interest in the building may, within 28 days of service of the Notice (served under section 12 of The Acquisition of Land Act 1981), apply to the magistrates' court for an order that no such direction should be included within the CPO.

If the objections on a CPO relate only to the level of compensation payable to the owner, the Secretary of State will confirm the Order and pass any dispute about compensation to the Lands Chamber.

Where a direction for minimum compensation is made, compensation will be assessed on the basis of market value, without any enhanced development value of a cleared site.

7.10 Objections to the Compulsory Purchase Order

The owner can do either or both of the following:

- under section 47(4) of the Listed Buildings Act 1990, apply within 28 days to a magistrates' court for an order to stay further CPO proceedings. Before granting an order, the court will need to be satisfied that reasonable steps have been taken by the owner for properly preserving the building

- under sections 11-12 of the Acquisition of Land Act 1981, object to the Secretary of State for Culture, Media and Sport. If the objection is not withdrawn, a public inquiry will normally be held although the appeal can also be dealt with by written representations

If the owner applies to a magistrates' court for a staying order, he will need to provide within 28 days sufficient evidence to satisfy the court that reasonable steps have been taken for properly preserving the building. If the court grants an order, it will normally be subject to a time limit. The court must be satisfied that the work to preserve the building has actually been carried out and not that the owner just promises to do so. An appeal to the magistrates' court is only worthwhile where the works have actually been carried out (Mynors 2006).

If objections are made to the Secretary of State, a date will be set for a public inquiry or in some cases the appeal may be dealt with by written representations. These deadlines will usually concentrate efforts to repair or sell the property.

To confirm the CPO the Secretary of State must be satisfied that:

- reasonable steps are not being taken for properly preserving the listed building

- it would be beneficial to properly preserve the building and its compulsory acquisition should be authorised for that purpose

A CPO is binding on successors in title to the property and so it stays with the land even if the owner changes. However, if the owner markets the property the existence of a CPO should not be a deterrent to a serious purchaser with a genuine commitment and the means to undertake the repair of the building.

If the owner starts work after the local authority makes the CPO, and if genuine progress is being made, it may be appropriate to ask the Secretary of State to adjourn the public inquiry. The CPO can be withdrawn at any time.

7.11 Notice to Treat

Once a Compulsory Purchase Order has been confirmed the local authority can serve a Notice to Treat or a General Vesting Declaration (see section 7.12), which will transfer the legal interest from the owner to the local authority. It is this further process which will change the ownership of the property not the making of the CPO.

A Notice to Treat is required to be given, under the Compulsory Purchase Act 1965, by an acquiring authority to all those with an interest in the land within the CPO boundary. The Notice must give particulars of the land concerned, demand details of the owner's interest in the land and state that the acquiring authority is willing to negotiate for the costs of purchase.

Once the CPO has been confirmed and the crucial stage of taking possession is reached, the acquiring authority is only required by section 11 of the Compulsory Purchase Act 1965 to serve a Notice giving not less than 14 days' notice of its intention to gain entry.

Compulsory Purchase Process and The Crichel Down Rules, 2015 guidance urges local authorities to keep owners informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition by agreement where requested by an owner. It is considered good practice to give owners an indication at the time of serving the Notice to Treat of the approximate date when possession will be taken. It is also worth noting that short notice can result in higher compensation claims.

7.12 General Vesting Declaration

A General Vesting Declaration is generally an alternative to the Notice to Treat and is made under the Compulsory Purchase (Vesting Declarations) Act 1981 in accordance with the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990. This enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation. It can therefore be particularly useful where some of the owners are unknown or the authority wishes to obtain title with minimum delay. It is also useful where there is little likelihood of agreement over compensation.

7.13 Acquisition by agreement

Section 52 of the Listed Buildings Act 1990 gives local authorities the alternative of acquisition by agreement. It is a more straightforward process than compulsory purchase and it is always worth discussing this option. It is appropriate for owners who are generally supportive of restoring the building but financially unable to carry out repair works. Acquisition by agreement can also be an option where compulsory purchase is becoming a likely prospect and the owner does not want to go through the anxieties and expenses of this process. It is one of the limited ways through which an unlisted property in a conservation area, which cannot be subject to compulsory purchase, can be acquired. A price can be agreed which reflects the condition of the building and the work necessary to restore it. However, if the owner is prepared to sell the building, encouraging them to place it on the open market at a price reflecting its condition is the simpler way forward.

Write to owner setting out the provisions of sections 47–48 of the Listed Buildings Act 1990, requesting a site meeting and access to the building for inspection by relevant professionals.

Follow site visit with a second letter and a draft schedule of repairs. Set a date for formal service of a Repairs Notice if the works are not carried out.

Refine repairs schedule and obtain estimate of costs from the quantity surveyor.

Obtain market valuation of property in its current condition and if the building were repaired.

Carry out financial options and feasibility assessment or residual valuation.

Discuss transferring the building in a 'back-to-back' agreement with potential purchasers.

Draft the Repairs Notice and seek relevant approval to serve the notice and compulsorily acquire building.

Draft legal agreement to be made with prospective purchaser if compulsory purchase order is confirmed.

Serve Repairs Notice on building owner.

If owner does not begin work within two months or a reasonable period, and if it has been decided to proceed, prepare Compulsory Purchase Order (CPO) and ensure continued third-party interest to purchase.

Serve CPO, advertise order in local paper and complete legal agreement with prospective purchaser.

The owner may:
Apply to the magistrates' court within 28 days on the grounds that reasonable steps have been taken for preservation or to have a minimum compensation direction removed.
Appeal to the Secretary of State. A public inquiry will be held.

Secretary of State confirmation of CPO. The CPO may also be modified or refused.

Property acquired and handed on simultaneously to new repairing owner.

If objections relate to the level of compensation only the Secretary of State will confirm the Order and pass any dispute about compensation to a tribunal.

New owner carries out repairs as specified in the legal agreement.

Repairs Notice and CPO procedure

8 Enforced Sale Procedure:

a Step by Step Guide

The Law of Property Act 1925 allows a local authority, in certain circumstances, with a debt on a vacant property, to register the debt as a Charge registered in part 2 of the Local Land Charges Register. Once registered, the local authority then has all the powers and remedies available to a mortgagee under the Law of Property Act 1925 and an enforced sale can be carried out.

Legal advice should be taken as there is a process to follow which relies upon the following steps covered by statute:

- section 7 of the Local Land Charges Act 1975 provides that a financial Local Land Charge takes effect as if it had been created by a Deed of Charge within the meaning of the Law of Property Act 1925. This means the local authority has a legal right over the property based on their financial interest in it from their debt

- section l0l(i) of the Law of Property Act 1925 confers on a mortgagee a power of sale without recourse to a court order meaning the local authority has a similar power to a bank foreclosing a mortgage

- section 87(1) of the Law of Property Act 1925 confers a right of possession which allows the local authority to take control of the property

Step 1

Place a charge on the property. An enforced sale can only be carried out where the local authority has placed a local land charge on the property. A variety of relevant legislation can be used to incur a debt on the property where works have been carried out in default and the costs are substantial, for example:

- Listed Building Repairs Notice
  – Listed Buildings Act 1990, section 48
- Urgent Works Notice to listed buildings and unoccupied buildings in conservation areas
  – Listed Buildings Act 1990, section 54 (see section 5.16 to understand the specific way in which this can be achieved which is different to the other powers)
- section 215 Notice, land adversely affecting amenity of neighbourhood
  – Planning Act 1990
- dangerous structures
  – Building Act 1984, sections 77 and 78
- unsecured properties
  – Local Government (Miscellaneous Provisions) Act 1982, section 29
- failure of the building's owner to pay council tax
- debts owed to the local authority as a result of works being carried out in default

Step 2

Advise the owner that if the debt is not paid enforced sale will be used to recover the debt.

Step 3

Re-serve copies of all relevant Notices and debts on the owner.

Step 4

After a period of 28 days if no appeal is made, serve a Notice under section 103 of the Law of Property Act 1925. The Law of Property Act 1925 allows the local authority to apply for an order of sale following the charge being imposed. A Notice under section 103 allows the owner 3 months to repay the debt. If the debt remains unpaid the property can be marketed by auction or offered to a preferred buyer. The local authority may not exercise the power of sale unless this Notice has been given.

The owner must be informed in writing that the local authority intends to put the property on the market. The local authority must also write to any other person with a charge on the property. If at any stage prior to the actual sale of the property the owner or any other person with a charge on the property should pay the outstanding debt, the process cannot continue.

Step 5

When the charge certificate is returned from the Land Registry, the property can be marketed for sale. The owner and any others with a charge on the property should be written to again to warn them again that the charge is to be enforced.

Step 6

The owner continues to have the opportunity to repay the debt but if it is not paid the local authority has the legal rights of a mortgage lender and can force the sale of the property or offer it to a preferred buyer. Once the property is sold all charges are cleared from the proceeds of the sale, allowing the local authority to recover the outstanding debt of any works previously carried out. The remainder of the sale value would be paid to the owner.

9 Housing Act 1985, Section 17

Section 17 of the Housing Act 1985 confers a power on the local housing authority to acquire land for housing purposes. Section 17(1)(a) of the act allows a local housing authority to acquire land as a site for the erection of houses. Section 17(1)(b) enables a local housing authority to acquire houses or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings.

Section 17(2) of the 1985 act confers power on a local authority to acquire land for the purposes of:

- disposing of houses provided or to be provided on the land **or**
- disposing of the land to a person who intends to provide housing accommodation on it, **or**
- providing facilities that serve a beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided

This power permits a local authority to promote a CPO for the acquisition of empty properties with a view to onward disposal. Case law has established that section 17 of the act is an appropriate power to be used by local authorities to acquire housing which has either been empty for lengthy periods of time and/or which is in an uninhabitable state of repair for the purposes of bringing properties back into beneficial housing use. The use of section 17 for this purpose is further supported by the guidance set out in the Compulsory Purchase Process and The Crichel Down Rules 2015 guidance.

The advantage of using these powers, rather than those under the Listed Buildings Act 1990, is that the local authority does not have to serve Urgent Works or Repairs Notices prior to acquiring the building. However, compulsory purchase powers under section 17 of the Housing Act 1985 are limited to residential properties and do not afford the opportunity to obtain a direction for minimum compensation in the case of the listed building deliberately left derelict.

Compulsory Purchase Process and The Crichel Down Rules 2015 guidance states that a CPO should only be made where there is a compelling case in the public interest. An acquiring authority should also ensure that the purposes for which it is making a CPO takes account of human rights.

Section 5 of the Compulsory Purchase Process and The Crichel Down Rules 2015 guidance provides specific advice on orders made pursuant to housing powers. It acknowledges that compulsory purchase of empty properties may be justified as a last resort in situations where 'the owner of the property has failed to maintain it or bring it to an acceptable standard'. It states that local authorities will at first seek to encourage the owners of such properties to restore them to full

occupation. If the owner cannot be traced, the guidance recognises that the use of compulsory purchase powers may be the only method of acquiring the land.

The guidance further advises that, in deciding whether to confirm such an order, the Secretary of State will normally wish to be provided with details of the following:

- how long the property has been vacant
- what steps the local authority has taken to encourage the owner to bring the property back into acceptable use
- the outcome of these steps
- what works have been carried out by the owner towards its reuse for housing purposes

10 Empty Dwelling Management Orders

Section 132 of the Housing Act 2004 provided a new discretionary power; the Empty Dwelling Management Order (EDMO), for local housing authorities to take over the management of long-term privately owned empty homes. The use of an EDMO does not take the property from the owner but does give local authorities power to return it to use.

There are two types of EDMO: an interim EDMO and a final EDMO. An interim EDMO is an order to enable a local housing authority, with the consent of the proprietor, to take steps to ensure that a dwelling becomes and continues to be occupied. A final EDMO is an order which is made after an interim EDMO or a previous final EDMO for the purpose of ensuring that a dwelling is occupied.

Initially the local authority will apply for an interim EDMO from the Residential Property Tribunal, an independent public body. The tribunal will give its approval if it is satisfied that:

- the property has been unoccupied for two years
- there is no reasonable prospect of it becoming occupied in the near future
- there is information suggesting the property is causing a nuisance
- there is community support for the EDMO **and**
- the order presents a reasonable prospect of the property becoming occupied

The legislation provides rights for owners to:

- appeal against decisions made by local authorities
- have EDMOs brought to an end early **and**
- to sell properties even while an EDMO is in force

An EDMO cannot apply to:

- property empty for less than two years
- a person's main home if they are temporarily living elsewhere or being cared for or caring for someone away from home
- second homes and holiday homes
- properties that are in the process of being sold or let, **or**
- properties that are going through probate or where probate was obtained within the previous six months

If the owner refuses to allow the local authority to let the property, the local authority can apply for a final EDMO, which gives it 7 years to find a tenant. Costs for renovation and property management are recovered from rent received on the property during the life of the order. While this action may not be appropriate for buildings in need of substantial repair it may be used to bring empty historic properties that are starting to fall into decay back into use before the risk becomes too severe.

11 Other Relevant Legislation

11.1 Housing Acts 2004 and 1985

The Housing Act 2004 requires local housing authorities to review the condition of housing in their area and to decide if any property can be classed as a category 1 or 2 hazard, as defined in section 2 of the 2004 act. For category 1 hazards, local housing authorities must take enforcement action. Whereas, for category 2 hazards, local housing authorities may take enforcement action.

Section 607 of the Housing Act 1985 (as amended) also requires local housing authorities, in preparing any proposals for the provision of housing accommodation or in taking any action under The Housing Acts, to have regard to certain environmental considerations:

- the beauty of the landscape or countryside
- the other amenities of the locality
- the desirability of preserving existing works of architectural, historic or artistic interest

A local authority concerned about a dilapidated historic building could therefore consider the provisions of the Housing Acts 2004 and 1985 which may provide a means of finding a solution to the problem, for example by an Empty Dwelling Management Order (section 10). Local authority Housing or Environmental departments should be able to assist with this.

11.2 Construction (Design and Management) Regulations

The Construction (Design and Management) Regulations 2015 (CDM) apply to almost all construction projects. The CDM Regulations explicitly instruct the client to ensure that:

- It provides pre-construction information (for example, any existing structural drawings, asbestos survey or other relevant information) to every contractor and designer (regulation 4(4), CDM 2015)
- The sole contractor or principal contractor prepares a construction phase plan before construction works begin (regulation 4(5)(a), CDM 2015)
- The principal designer (previously known as a CDM co-ordinator) prepares a health and safety file (regulation 4(5)(b), CDM 2015). Note that the duty to appoint a principal designer, and accordingly the duty to see that it prepares the health and safety file, is triggered only if there is more than one contractor

In addition the client must notify the Health and Safety Executive of a project if either of the following apply:

- Construction work is scheduled to last longer than 30 working days and have more than 20 workers on site at any point
- Construction work is scheduled to exceed 500 person days

Works specified in most Urgent Works Notices are therefore unlikely to be notifiable, however, they could be in some Repairs Notices, depending on whether they exceed the time periods above.

Notifiable works require the appropriate time to be taken to comply with the regulations and this may impact on the ability to carry out the works quickly. If the works are of a level that is notifiable it may be that they are beyond those suitable for an Urgent Works Notice and that a Repairs Notice would be a more appropriate action.

If a project is carried out under the supervision of a principal designer he will advise on fulfilling the responsibilities imposed by the CDM Regulations but will not take the above legal responsibilities away from the client. An existing professional adviser such as structural engineer, architect, project manager or surveyor may be able to perform this role.

11.3 Party Wall etc Act 1996

If the local authority intends to carry out work that involves work on an existing wall or structure shared with another property, building a new wall up to or astride the boundary or excavating near a neighbouring building, it should find out whether that work falls within the Party Wall etc Act 1996. If it does, all adjoining owners must be given one month's Notice of works. This will result in a delay unless the adjoining owner agrees in writing to the work starting earlier than stated in the Notice.

11.4 Protected species

All British species of bat are protected. It is an offence to deliberately capture, injure or kill a bat and also to disturb a bat in its roost, damage, destroy or block access to a bat roosting place (even if bats are not occupying the roost at the time). Nesting birds are also protected by the Wildlife and Countryside Act 1981. It is an offence to intentionally or recklessly kill, injure or take wild birds or to damage or destroy their nests while in use or being built.

As bats and birds often roost or nest in historic buildings care should be taken when specifying works or carrying out works. In many cases a specialist wildlife consultant would be needed to survey the building prior to work commencing on site and in certain cases mitigation action taken such as installing bat boxes. In addition license agreements may be required to be put in place with Natural England and their conditions complied with.

11.5 Health and safety

Inspecting empty and decaying buildings can be dangerous and should always be subject to a risk assessment which should:

- Identify the potential hazards, which may in the case of buildings at risk include:
  - is there evidence of dry or wet rot or water damage, which could have weakened part of the structure? Are the floors and floor structures capable of taking weight?
  - have all non-essential services been disconnected?
  - are there any long-term risks from entering the building, for example asbestos, pigeon droppings, etc?
  - are vermin present in the building?
  - are hazardous materials left from previous uses? Flammable liquids, fuel tanks, liquid spills? Furniture? Refuse? Broken glass?
- Evaluate the risks and decide on precautions – is the risk high or low that somebody could be harmed by these and other hazards, together with an indication of how serious the harm could be
- Record your findings and implement appropriate measures
- Review your assessment and update if necessary

It is important to consider taking and using personal protective equipment. Unaccompanied site visits should be avoided. A particular hazard with vacant buildings is the dust produced by pigeon droppings, which can cause a number of serious diseases.

If safe access for inspection cannot be obtained from the building itself it may be necessary to use articulating booms ('cherry pickers'), scissor lifts, working platforms or specially designed access scaffolding to gain access.

11.6 Human rights

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In the case of statutory intervention to protect historic buildings at risk, local authorities should be aware that the wider impact on the historic environment and the public benefit of improvement and restoration overrules the owner's right to the peaceful enjoyment of his property.

> The right to protection of property means that public authorities cannot interfere with the way that you use your property unless there is a law that lets them do it and unless interference is justified.

12 Case Studies

Case study 1: Section 215 Notice

A grade II* listed London town house

This Georgian town house, listed grade II* and in a conservation area, had been on the Buildings at Risk Register since 1991. From the late 19th century onwards it had been in institutional use, but became vacant when the institution moved out. Despite planning applications for conversion to residential and community use with new-build residential units on the site, no works were carried out and the empty building fell into disrepair and was occupied by squatters.

Law of Property Act receivers were appointed and successful negotiations began between them and the local authority. The receivers lawfully regained possession of the building and the local authority drafted a section 215 Notice. This detailed works that needed to be carried out to those parts of the building and the site facing the street in order to remedy the damage to the amenity of the area. It included repairs to the joinery and glass of the front sash windows to leave them in painted working condition, repointing part of the boundary wall and renovating the front pillars.

At negotiation meetings, the draft section 215 Notice was shared with the receivers, who were advised that the local authority intended to serve the Notice. The receivers decided to undertake the works listed before the local authority served the Notice. A schedule of works was approved by the local authority and the works were monitored by them in the course of several site visits. As a result, the improved appearance of the building will have helped with its marketing for sale.

Case study 2: Section 215 Notices

Liverpool City Council's Unsightly Buildings Initiative

In 1998 Liverpool City Council first introduced an action programme to deal with historic buildings in a poor state of repair through use of section 215 of the Planning Act. As part of a wider programme of more general environmental improvements, section 215 Notices had the advantages of being relatively inexpensive to draw up (no technical survey work is required). They also allow the local authority to either undertake works in default of the building owner and recover costs as a charge on the property, or in times when funding is unavailable to seek recourse through the magistrates' court and rely on punitive fines to encourage work to be done.

It was seen as an effective and positive mechanism to assist the city's regeneration. By 2002 when the programme drew to a halt, roughly half of the 44 targeted buildings had been successfully improved, with partial improvements to the remainder.

Because of this early success, a separate programme aimed at the Ropewalks historic merchants' quarter of the city centre was initiated in 2007 as part of a three-year 'Creative Ropewalks' initiative. Underpinned by plans for a 'creative industry and leisure' quarter within an area of warehouses, town houses, shops and offices dating from the late-Georgian period, the programme targeted buildings that were in a very poor state of external repair in spite of remaining occupied or in beneficial use. It was able to address problems with listed and unlisted buildings, in the latter case a useful alternative to Urgent Works Notices which require approval from the Secretary of State.

Buildings were initially identified on the basis of their having adverse impact on the amenity of the area. These were then surveyed in more detail using the services of the council's joint venture partner 2020 Liverpool Ltd. Under section 215 full and proper repairs can be prescribed as long as they do not lead to a requirement for planning permission or listed building consent as alterations. Best-practice guidance produced by the government (DCLG 2005) recommended the pro-active use of the legislation by a local authority to rejuvenate historic areas through encouraging basic maintenance and repairs to large numbers of buildings.

Preliminary letters containing a list of essential works along with an explanatory note were sent to owners. In the event that the first letter met with no response a second warning letter was issued confirming that formal action would be commenced under section 215.

Over the course of two years owners responded positively following the receipt of the first or, more frequently, the second letter. Of 38 buildings that warranted action, 25 were repaired to an acceptable standard. Frequently the action led to full and proper renovation and upper floor space brought back into use. Occasionally it led to owners going beyond the requirements of the draft Notice. It has been estimated that the initiative encouraged investment of more than £1.5 million by private property owners.

On the basis of the success in Ropewalks, the Building Conservation Team has taken on the responsibility of the service of section 215 Notices in all the city's 35 conservation areas, encompassing some 19,000 properties. From a total of 70 informal section 215 enforcement actions since 2009 it has been necessary to serve statutory Notice in only eight instances. The vast majority of problem sites have been dealt with at the informal stage by means of negotiation.

Case study 2: Liverpool

Both images © Liverpool City Council.

Two of the eight section 215 Notices served have resulted in prosecutions for non-compliance. Both prosecutions have been successful and have subsequently led to a change in ownership that is likely to provide a beneficial outcome for the building concerned.

Case study 3: Urgent Works Notice and direction from the Secretary of State

A derelict terrace of Victorian houses over shops in an inner-city location

This 19th-century three-storey terrace, with the ground floor converted to shops, probably in the early 20th Century, is unlisted but lies within a conservation area. The houses are built of brick with slate roofs behind a parapet. They are similar to many others in the city and contribute positively to the character of the conservation area.

In the mid-1990s the state of these buildings was having a severe impact on the success of an ongoing Conservation Area Partnership scheme. Seeing derelict buildings already under repair gives confidence to other owners to take up grant offers to improve their buildings. These buildings were therefore targeted for grant aid.

Negotiations for an acceptable scheme proved difficult and progress was very slow. In the meantime, the buildings attracted severe antisocial behaviour, which had a negative effect on the surrounding area. They had also become an eyesore and were the subject of many complaints.

The local authority considered its powers, and agreed to serve an Urgent Works Notice, but as the buildings were not listed, the Notice required a Direction from the Secretary of State who needed to know that the action was supported by English Heritage. This proved to be a perfectly straightforward process. The local authority drew up a schedule of works stating that the owner had 14 days to carry out the work specified, and also confirming that the local authority would carry it out in default if the owner failed to do so. It transpired that on the fourteenth day the local authority's contractor and the owner's contractor arrived simultaneously on site to carry out the works. The local authority's contractor withdrew and the owner carried out the urgent works.

Case study 3: London

Left (before) © Islington Local History Centre.

Case study 4: London
Before and after.

The buildings were made secure and wind and weathertight. Negotiations continued on grant-aiding the full repair of the buildings, which ensured that the local authority had control over the quality of the works and that the eventual repair of the buildings reinforced the benefits of the Conservation Area Partnership scheme.

Case study 4: Repairs Notice

A grade II listed Georgian terraced house in London

This listed terraced house within a conservation area was added to the Buildings at Risk Register in 1994 (when the building was listed), prior to which it had been included on the local authority's register of unlisted buildings at risk.

The building is a moderately sized three-storey house that has remained in single occupation. Lack of maintenance over a long period of time resulted in it being slowly engulfed by ivy, which covered the whole facade, including the windows, front railings and roof.

It was assumed that the building was vacant and possibly abandoned. The local authority decided to intervene to stop further deterioration and to reverse the adverse impact on the appearance of the street.

The owner was at first reluctant to give access to the building, but the local authority decided to treat the case with sensitivity (rather than use powers of entry) as this seemed the best way to gain trust and goodwill. This approach paid off as the local authority was allowed access, and it was found that the interior of the property was in a reasonable structural condition.

The owner thereafter appeared willing to discuss progress but stalled on several occasions. An Urgent Works Notice could not be served as the building was occupied, but a Repairs Notice was served in order to confirm the local authority's resolve to act if the owner did not. The serving of the Notice galvanised the owner, who promptly sold the building to a developer who in turn

Case study 5

The Hat and Feathers, London.

agreed an acceptable scheme with the local authority for its repair and return to residential use.

Case study 5: Urgent Works Notice and Repairs Notice

An inner-city Victorian corner public house

This public house, built on a prominent corner site, is listed grade II and lies within a conservation area. Constructed in the 1850s and enlarged into a 'gin palace' in the 1890s, it comprises three floors, built of London stock bricks covered in stucco with fine decorative figures, and having a slate roof behind a parapet. It had been on the London Buildings at Risk Register since 1991, the first year of its publication.

Adjoining the building there had been several 19th and 20th-century buildings, which contributed to the close grain of the area. The whole block was purchased by a developer possibly in the 1980s, with a view to redeveloping the site. The owner promptly demolished every building in the block, leaving the corner pub in isolation. The vacant site was turned into a rather scruffy car park, behind illegal advertising hoardings. The pub itself was left to decay, suffering serious outbreaks of wet and dry rot, with blocked downpipes and gutters. It was eventually squatted, vandalised and became increasingly an eyesore in a part of London that was being regenerated.

In the meantime, the owner submitted several schemes for the site, but never implemented any of them. As the pub remained in a poor condition, the local authority served both an Urgent Works Notice and a Repairs Notice on the owner. The effect of these was to prompt the owner to commence works. Repairs then continued at a very slow pace with considerable prompting from the local authority. Eventually the building opened as a pub and restaurant and appears now to be very successful. The adjoining vacant site remains undeveloped, an ugly hole in an otherwise dynamic and vibrant part of London.

Case study 6: Listed Building Enforcement Notice, Urgent Works Notice and Repairs Notice

A grade II listed timber-framed former farmhouse in Gloucestershire

This grade II listed timber-framed building was identified by the local authority as being 'at risk' in 1998, but it took 12 years, a prosecution and the service of a Listed Building Enforcement Notice, Urgent Works Notice and Repairs Notice before repairs were finally completed in 2010.

Despite approaches by the local authority, offers of grant aid in the late 1990s for repairs to the timber frame and infill panels were not taken up. In 2002 a fire in the attic storey left the building uninhabitable and open to the elements. The local authority's building control team, enforcement team and conservation officer adopted a team approach to the building, which was important in resourcing the action that followed in the ensuing years.

After the fire, initial letters encouraging repair but advising the owner of the local authority's enforcement options were issued. These were followed by section 330 Requisition for Information Notices to establish ownership. This was very useful in showing the local authority's intent to pursue an Urgent Works Notice and eliciting a response.

The owner claimed to have no resources and it became clear that the property had been under-insured so there was no prospect of a full repair. At this stage the conservation officer made contact with the insurance company and worked with them to ensure that temporary repairs to the roof with corrugated plastic sheeting were carried out. This stabilised the building for the next three years, during which time the owner offered the property for sale.

In February 2006, a contractor demolished much of the front and gable elevations of the building. Dangerous Structures procedures under the Building Act were immediately used by the

building control team to commission a structural engineer and to enforce the erection of temporary scaffolding support, sheeted and roofed to provide full protection for the building. In March the local authority's planning committee agreed to prosecute the owner and contractor for carrying out unauthorised demolition and served an injunction to prevent further works. The contractor was later found guilty by magistrates and fined £8,000.

Meanwhile regular monitoring of the building's condition was carried out by the team while the owner again attempted to sell the property. After eight months the view was taken that a reasonable period had elapsed in which the owner might have organised repairs or in which a sale might have been agreed and the local authority's executive committee agreed to serve a Listed Building Enforcement Notice to reverse the unauthorised works. The detailed schedule of works included re-forming and tiling the roof which, though not a direct result of the unauthorised works, was considered necessary to allow the reversal of the latter to take place. This, and the timescale for compliance (12 months), had to be considered carefully in order to avoid a challenge on the grounds that the works were unreasonable. The Notice was appealed three months later in March 2007 and only served after a dismissal in January 2008, which extended the compliance period by 15 months to April 2009.

Throughout this time the team had continued to monitor the protection of the building. In 2006 the scaffolding company had threatened to remove their scaffolding due to non-payment by the owner, and was advised by the conservation officer that to do so would render it liable to prosecution. Despite this, in November 2008, the scaffolding was removed. An emergency report was immediately taken to the local authority's executive committee recommending:

- the service of an Urgent Works Notice to re-erect the scaffolding within seven days and the allocation of £35,500 for the local authority to buy, erect, maintain and insure necessary scaffolding protection should the owner not comply
- the service of a Repairs Notice relating to the works set out in the extant Listed Building Enforcement Notice and works to put right the fire damage of 2002
- obtaining a valuation of the property from the District Valuer preparatory to the service of a Compulsory Purchase Order (CPO)

In drawing up this report the option to rely on the Listed Building Enforcement Notice was considered. Failure to comply is a criminal offence but it was clear that the owner did not have the means to fund repairs and that prosecution would

Case study 6: Gloucestershire

Left (before) © Tewkesbury Borough Council; right (after) © Nick Joyce Associates.

achieve little. The local authority had the option to carry out the repairs listed in the Notice and recover the cost from the owner, but this would not have addressed all the damage resulting from the fire. It was also felt that the Repairs Notice, with its threat of CPO, was important in persuading the owner to dispose of the property at a realistic price informed by the District Valuer's report.

The estimated cost of the scaffolding was based on a design produced by the structural engineer retained by the building control team and estimates provided by contractors. When the Urgent Works Notice was served, the owner had some new scaffolding erected but not to the required design. The local authority therefore funded its purchase, adaptation and completion in line with the Urgent Works Notice, and within four weeks had secured the building once more. A section 55 Notice was served to secure the local authority's debt and recover the cost of the scaffolding. The owner launched an appeal against this but did not continue as the property was on the market again and it was anticipated that the sale would be the means of discharging the debt.

In March 2009 the Repairs Notice was served. Copies were also sent to the estate agent and prospective purchasers to ensure anyone buying the building realised that they would be subject to the Listed Building Enforcement Notice and expected to comply with the Repairs Notice. No action was taken and after two months, the conservation officer instructed the District Valuer as the first step on the road to CPO and with a view to informing the asking price. A quantity surveyor's report on the cost of the works listed in the Repairs Notice was required to inform the valuation, which was finally produced in June 2009 giving a value of £110,000-120,000. With this information the local authority was able to approach the owner and dispel ideas of any higher value and the building was finally sold to a new owner in August 2009. The local authority's debt was paid and repairs have been completed without the need for further enforcement action.

Case study 7: Urgent Works Notice, Repairs Notice and Compulsory Purchase Order

A group of grade II listed buildings in a Lincolnshire market town

This group of mainly 18th-century grade II listed buildings in a conservation area was first identified as being 'at risk' in 1990. At that time the ground floor of some buildings were in use as a shop and hairdressers while the rest of the buildings were vacant.

Discussions with the owners led to consent for conversion of the buildings into offices and construction of two houses to the rear. The owners claimed that the development to the rear would enable the conversion and repair of the listed buildings. Work did not start on the approved scheme and the buildings continued to deteriorate, to the detriment of the town's historic commercial centre and an otherwise successful Conservation Area Partnership Scheme (CAPS). A total of £117,381 in CAPS and regional development grant was offered to the owners for repair, but none of this grant-aided work was ever begun.

When it became clear that the owners, despite repeated promises, were not going to carry out works required for the proper preservation of the buildings, the local authority served an Urgent Works Notice to prevent further deterioration. It also authorised the serving of a Repairs Notice and compulsory purchase in default. The latter was subject to a suitable back-to-back agreement with a restoring partner.

Although the owners instructed their builder to carry out the works set out in the first Urgent Works Notice, these were not carried out effectively and the buildings continued to deteriorate. A second Urgent Works Notice was therefore served and, as the owners did not undertake the works, the local authority stepped in to carry them out in default. Although the owners had instructed scaffolders to erect support scaffold, the local authority found it was necessary to redesign the scaffold to fulfill its function as a structural support.

Footway

JOSEPH BANKS CENTRE
SIR JOSEPH

At this point a feasibility study by the local building preservation trust (BPT), with whom the local authority intended to enter into a back-to-back arrangement if the CPO was confirmed, concluded that the most viable solution, allowing for grant aid, was repair and conversion into offices.

Meanwhile the owners applied for listed building consent to demolish two of the buildings and rebuild a facsimile on the site. These applications were refused, prompting the local authority to conclude that it had no other option than to make a Compulsory Purchase Order.

Despite attempts by the local authority to broker an agreement the owners appealed against the CPO. The local authority's solicitor co-ordinated the case and proofs of evidence were submitted from the conservation officer, consultant historic buildings architect, structural engineer and quantity surveyor. However; a week before the public inquiry was due to be heard, the owners withdrew their objection. The CPO was eventually confirmed by the Secretary of State.

A subsequent application by the local authority for costs of the cancelled inquiry under section 332A of the Town and Country Planning Act 1990 was refused by the Secretary of State. Although DCMS accepted that *prima facie* the powers could be used in this case, it pointed out that they are discretionary and do not apply to CPO proceedings (Circular 03/2009 – Costs Awards in Appeals and other Planning Proceedings).

In March 2003 the CPO was confirmed by the Secretary of State for Culture, Media and Sport, who noted that the local authority had identified a building preservation trust as a back-to-back purchaser, that a feasibility study had already been carried out, that planning permission and listed building applications were about to be submitted and that the trust had secured Heritage Lottery Funding in principle.

The local authority then sought to use section 55 of the Listed Buildings Act 1990 to recover costs incurred in carrying out urgent works. The owners in turn appealed to the Secretary of State that the costs were not justified. The Secretary of State found in favour of the local authority on the grounds that the very poor condition of the building, which in parts was close to collapse, had justified immediate expenditure on the employment of a structural engineer, historic buildings architect and planning supervisor. Furthermore a properly designed structural support scaffold was justified to protect the building and the public. The Secretary of State did not accept that recovery of the costs would result in financial hardship.

The local authority's normal competitive tendering procedures were waived, in part due to the urgent nature of the works and also because the authority was advised that only a limited number of companies had the expertise to carry out works of this nature. The local authority did, though, employ an independent quantity surveyor to check that the costs were reasonable and this was acknowledged by the Secretary of State.

The local authority was repaid the full cost of the urgent works including all professional fees and the cost of purchasing the support scaffolding.

Negotiations on compensation also proved to be protracted with both sides unable to reach agreement. The local authority was advised by the District Valuer.

Because of the lack of progress over compensation the local authority used a General Vesting Declaration to take possession of the site as soon as the building preservation trust had all its funding and permissions in place. The building was subsequently handed over to the preservation trust through a back-to-back agreement in which it agreed to take on the repair of the properties.

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Both images © East Lindsey District Council.

The final issue to be resolved was compensation. As valuations by both parties remained substantially different it was unlikely the parties would agree a price. The local authority relied on a residual valuation, the owners' agents on comparables.

The matter was referred to the Lands Chamber of the Upper Tribunal, which agreed with the local authority's case that extant planning permissions at the valuation date should be considered in arriving at the open market value.

In finding in favour of the local authority and agreeing exactly with its valuation, the member for the Lands Tribunal dismissed as 'unconvincing' the evidence for the claimants (former owners) that a local builder was prepared to pay almost twice as much as the price at which property had been advertised on the open market. He also did not feel the claimants' agent had adequately reflected the 'obviously parlous condition' of the property in his valuation. The comparables used were also not good examples when the condition of the building was considered.

In making its subsequent submission for costs the local authority referred to a sealed 'Calderbank' offer under section 4(1)(a) of the Land Compensation Act 1961. Because the claimants did not accept the local authority's Calderbank offer and as the Lands Chamber's determination was significantly less than the Calderbank offer it ordered the claimants to bear both their own and the local authority's costs, thus bringing the case to a successful conclusion 20 years after the building was first declared at risk.

Case study 8: Repairs Notice leading to Compulsory Purchase Order

A group of grade II listed commercial buildings in Yorkshire

These four adjoining 19th and early 20th-century commercial buildings are all separately listed grade II and together make an imposing group.

The buildings were constructed by the local Co-operative Society. A library occupied the first floor, and the very large hall at second-floor level was designed as a meeting room for up to 1500 people but was primarily used as a ballroom, cinema and latterly a snooker hall. A clock tower, topped with an octagonal domed roof and elaborate decoration of buttresses, urns, niches and blind balustrades is a distinctive landmark.

Planning permission and listed building consent was granted for a mixed-use scheme. Demolition of outbuildings was interpreted as the commencement of the approved scheme, but the local authority then became aware of further significant works when a walkway and outbuildings were demolished before conditions had been formally discharged. The building had also deteriorated further; window openings were left exposed to the weather and vegetation was growing from the clock tower:

Redevelopment of the site was abandoned immediately after this demolition and the building was left insecure, which led to further damage including lead theft from the roof. The Council attempted to persuade the owners to act, but in the absence of any meaningful response was forced to send them a letter setting out its concerns and warning about possible formal action. Limited steps were taken to secure the site.

A year later; the works to protect the building had still not been carried out. An Urgent Works Notice was therefore served, requiring the building to be secured and weather proofed, scaffolding to be erected up to the clock tower to enable structural inspection and the dome to be sheeted.

Case study 8: Dewsbury Pioneers Industrial Society
© Kirklees Council

Some of these works were carried out, but those to the clock tower were not. The local authority then attempted to erect the scaffolding itself but was physically prevented from doing so by the owner's employees. As a result, a Repairs Notice was served as a prerequisite to a Compulsory Purchase Order.

The owners appealed against the Compulsory Purchase Order on the grounds that they had taken the necessary action to preserve the building in accordance with the Urgent Works and Repairs Notices and that the statutory tests for the exercise of the Secretary of State's powers to confirm such an order had not been met.

The essential question the appeal inspector considered is whether reasonable steps were being taken: 'In the light of the English Heritage guidance, and the clear distinction in the legislation, the full list of works set out in the Repairs Notice is clearly required for proper preservation of the building. It is no answer to say that some works are not urgently necessary. All of the steps identified in the two Notices are reasonably required for proper preservation of the building.'

The appeal inspector found very strongly that the word of the owner to continue work could not be relied upon, concluding:

'Reasonable steps for the proper preservation of the building are not being taken. There is a history of failing to take reasonable steps. It is important that such steps are taken without delay. The council has the resources to secure the necessary works and importantly has identified a suitable scheme for returning the building into a beneficial use to secure its long-term preservation. In the circumstances, there is a compelling case in the public interest for acquisition of the building.'

In confirming the Compulsory Purchase Order the Inspector concluded:

'That [the property] merits proper preservation is not disputed. If there was certainty that the building would be kept in good repair; or if I was confident that the owner or objectors would move forward with a redevelopment scheme, then acquiring the building would not be a good use of public money or in the public interest.'

Case study 9: Use of the Housing Act 1985

A grade II listed late-Victorian villa

This late-Victorian gothic-style villa was spot listed grade II in 1994, following an application for demolition. It is an early and rare example of the iron shutter plate system of mass (un-reinforced) concrete construction and is attributed to the noted Victorian architect, Charles Barry (junior).

The building has appeared on the Buildings at Risk Register since 1995. In 2007, it also featured on the Victorian Society's top ten of endangered buildings, due to its advanced state of dilapidation.

The house had been vacant for at least 20 years and its condition had significantly deteriorated over this time. The local authority had for a long time been seeking to persuade the owners to bring the building back into use. Because the building was continually fly-tipped and had a vermin problem, the local authority also served a Notice under section 4 of the Presentation of Damage by Pest Act 1949 to address this problem.

Since 1997, the local authority had used powers under the London Buildings Acts (Amendment) Act 1939: part VII, to secure the site. It had served two Dangerous Structure Notices on the owner using the London Building Acts (Amendment Act) 1939: part VII, the LCC (General Powers) Act 1955: part II and 1958 part: III, and the London Borough of Southwark Dangerous Structures Fees and Expenses Regulations 1995 (as amended). The first, in 2005, followed removal of the floors and was to ensure that the building was stabilised. The second in 2006 related to the repair of the collapsed porch and bay window. The owner complied with neither of these Dangerous Structure Notices.

During this period, the council's Empty Homes Team and the Buildings at Risk Officer wrote frequently to the owner regarding the condition of the property and the owner's plans for bringing it back into use. The local authority had also advised the owner of its powers under sections 54 and 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to safeguard the building and to prevent any further deterioration.

The building had been subject to a series of planning and listed building applications over more than 17 years. These applications culminated with planning and listed building consent applications submitted on behalf of the then owner in 2008, for the demolition of the building and redevelopment of the site for a new building of five flats. These applications were refused on the grounds of poor design quality and the unacceptable demolition of a listed building.

Despite the local authority contacting the owner to secure a commitment to bring the building back into beneficial use and a reasonable condition, there was no evidence of him making any effort to repair it. In 2009 the local authority's Executive Committee resolved that a Compulsory Purchase Order be made to enable it to acquire the listed building. They considered that without the use of compulsory purchase powers the property would remain vacant, derelict and could not be used for housing accommodation.

This was the local authority's third attempt to use compulsory purchase powers to acquire the site. The last action in 2007 was stopped by the local authority because of the potential costs of acquisition and the potential liability for the repair of the listed building. Following the abandonment of this CPO, the local authority concentrated its efforts on protecting the building in the short term whilst discussions with a building preservation trust (BPT) could progress.

A particular BPT was approached as it had the necessary expertise, experience and resources to bring a property of this kind back into beneficial use. The BPT was in turn able to access funding from various sources, which could be pooled with that secured by the local authority's Empty Homes Team.

By 2009 the local authority was in the position to serve a Compulsory Purchase Order under section 17 of the Housing Act 1985 and the Acquisition of Land Act 1981. Running in parallel, planning and listed building consent were obtained by the BPT in 2010, for the conversion of the property into five flats. Following a public inquiry, the Compulsory Purchase Order was confirmed later in 2010. The restoration and conversion works began on site in June 2011. The non-standard construction of the building will require specialist skills and knowledge for its repair.

The local authority in question has for a long time been committed to bringing empty properties back into use and has employed Buildings at Risk and Empty Homes Officers for the past 20 years. In recent years it has compulsorily purchased a number of empty properties under section 17 of the Housing Act 1985 and the Acquisition of Land Act 1981. The property described in this case study was the second on the Buildings at Risk Register that the Local Authority has acquired using compulsory purchase powers.

With support from elected members, officers from across the local authority (Property, Housing, Planning, Building Control and Legal) have worked together to bring this important listed building back into beneficial use. The local authority has found the compulsory purchase powers under section 17 of the Housing Act 1985 a useful tool for securing the future of long-term empty properties. Usually these properties are sold on at auction with a sale condition to ensure that they are refurbished and occupied within a specified time period.

13 References

13.1 Useful publications

Architectural Heritage Fund 1997 *How to Rescue a Ruin by Setting up a Local Buildings Preservation Trust.* London: Architectural Heritage Fund

Brereton, C 1995 *The Repair of Historic Buildings: Advice on Principles and Methods.* (2nd edition) London: English Heritage

Butterworth's Planning Law Service 1991 and ongoing Division D, Section 1 (Listed Buildings). London: LexisNexis Butterworths

Department for Communities and Local Government 2003 *Disposal of land for less than the best consideration that can reasonably be obtained.* Circular 06/2003: Local Government Act 1972: General Disposal Consent (England) 2003. London: Department for Communities and Local Government https://www.gov.uk/government/publications/disposal-of-land-for-less-than-the-best-consideration-that-can-reasonably-be-obtained-circular-06-2003

Department for Communities and Local Government 2009 Costs Awards in Appeals and other Planning Proceedings. Circular 03/2009. London: Department for Communities and Local Government https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7680/circularcostsawards.pdf

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Department for Constitutional Affairs 2006 *A Guide to the Human Rights Act 1998* (3rd edn). London: Department for Constitutional Affairs. https://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf

English Heritage 1998 *Buildings at Risk A New Strategy* London: English Heritage

English Heritage 2004 *Grants for Historic Buildings, Monuments and Designed Landscapes.* London: English Heritage

English Heritage 2008 *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment.* English Heritage: London

English Heritage 2008 *Constructive Conservation in Practice.* London: English Heritage

English Heritage 2009 *Acquisition Grants to Local Authorities to Underwrite Repairs Notices.* London: English Heritage

English Heritage 2009 *Grants to Local Authorities to Underwrite Urgent Works Notices.* London: English Heritage

English Heritage 2011 *Practical Building Conservation.* London: English Heritage

English Heritage 2011 *Understanding Place: Conservation Area Designation, Appraisal and Management.* London: English Heritage

English Heritage 2011 *Vacant Historic Buildings: An Owner's Guide to Temporary Uses, Maintenance and Mothballing.* London: English Heritage HistoricEngland.org.uk/images-books/publications/vacanthistoricbuildings/

English Heritage 2013 *Heritage Crime Prevention: A guide for Owners, Tenants and Managers of Heritage Assets.* London: English Heritage

English Heritage 2013 *Heritage Crime Risk: Quick Assessment Tool.* London: English Heritage

English Heritage 2013 *Heritage Works: the use of Historic Buildings in Regeneration.* London: English Heritage

Historic England 2015 *Heritage at Risk Register 2015* (and previous annual editions since 2008) London: English Heritage/Historic England

Historic England 2015 *Pillars of the Community: the transfer of local authority heritage assets.* London: Historic England. HistoricEngland.org.uk/images-books/publications/pillars-of-the-community/

Kindred, Bob *Forced Entry to Listed Buildings.* Tisbury: Institute of Historic Building Conservation

Kindred, Bob 1992 *Listed Building Repairs Notices: Study of Those Used in England April 1984 to March 1990 Under Sections 47-51 of the Planning (Listed Buildings and Conservation Areas) Act 1990.* London: Association of Conservation Officers

Kindred, Bob 2003 'Section 55 Appeals' *Context* 81 Tisbury: Institute of Historic Building Conservation

Mynors, Charles 2006 *Listed Buildings, Conservation Areas and Monuments.* (4th edition) London: Sweet and Maxwell

Office of the Deputy Prime Minister 2005 *Town and Country Planning Act 1990 Section 215: Best Practice Guidance.* London: Office of the Deputy Prime Minister www.communities.gov.uk/publications/planningandbuilding/townplanningact

Suddards, RW and Hargreaves, JM 1996 Chapter 7 'Problem Buildings: Redundancy, Neglect and Disrepair', in *Listed Buildings:The Law and Practice of Historic Buildings,Ancient Monuments and Conservation Areas.* (3rd edition) London: Sweet and Maxwell

Tromans, S and Turrall-Clarke, R 2007 and ongoing *Planning Law Practice and Precedents.* (updated three times a year in loose-leaf form) London: Sweet and Maxwell

Historic England also publishes a list of technical guidance leaflets on the repair of historic buildings.

These and other Historic England publications are available to download from:
HistoricEngland.org.uk/images-books/publications

and

HistoricEngland.org.uk/advice/technical-advice/buildings/maintenance-and-repair-of-older-buildings

For further details contact:
Historic England Customer Services Department
PO Box 569, Swindon SN2 2YP
Telephone: 0370 333 0607
Email: customers@HistoricEngland.org.uk

13.2 Other useful resources

The **Historic England HELM (Historic Environment Local Management)** training programme provides training on managing the historic environment for local authorities, regional agencies and national organisations, free of charge.
HistoricEngland.org.uk/services-skills/training-skills/helmtraining/

The Institute of Historic Building Conservation is the principal professional body for building conservation practitioners and historic environment specialists. The website includes a searchable archive of the Institute's journal Context, a technical bibliography a database of recognised historic environment service providers and other information to help members, other professionals and the public.
www.ihbc.org.uk

Buildingconservation.com includes relevant articles from the Building Conservation Directory and lists companies and organisations covering all aspects of the conservation, restoration and repair of the historic built environment.
www.buildingconservation.com

Funds for Historic Buildings is a comprehensive guide to funding for historic buildings including details of virtually all substantive funding sources which specialise in historic buildings, as well as many (including a variety of regeneration programmes) which provide funding for historic building projects within a wider remit.
www.ffhb.org.uk

Heritage Lottery Fund sustains and transforms a wide range of heritage though innovative investment in projects with a lasting impact on people and places. As the largest dedicated funder of the UK's heritage it invests around £375 million a year in new projects.
www.hlf.org.uk

The Architectural Heritage Fund is a charity which promotes the conservation of historic buildings in the UK by providing advice, information and financial assistance in the form of grants and low interest working capital loans for projects undertaken by building preservation trusts and other charities in the UK.
www.ahfund.org.uk/

The UK Association of Preservation Trusts was established in 1989 to assist building preservation trusts to save historic buildings for future generations. It provides a network of specialist support and advice as well as offering opportunities to share problems and solutions.
www.ukapt.org.uk

The Society for the Protection of Ancient Buildings is involved in all aspects of the survival of buildings which are old and interesting. Its principal concern is the nature of their restoration or repair because misguided work can be extremely destructive.
www.spab.org.uk

The Georgian Group is the national charity for the preservation of Britain's Georgian heritage.
www.georgiangroup.org.uk

The Victorian Society is the champion for Victorian and Edwardian buildings in England and Wales.
www.victoriansociety.org.uk

The Twentieth Century Society safeguards the heritage of architecture and design in Britain from 1914 onwards.
www.c20society.org.uk

14 Glossary

1982 Act
The Local Government (Miscellaneous Provisions) Act 1982

Building at Risk
An historic building that is at risk from vacancy, under-use, neglect or structural disrepair

Conservation Area
An area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance, designated by local planning authorities. Once designated, the local authority should then pay special attention to preserving or enhancing the character or appearance of the area

Conservation Deficit
The amount by which the cost of repair (and conversion to optimum beneficial use if appropriate) of a significant place exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs, but assuming a nil or nominal land value

Listed Building
A building of special architectural or historic interest included in the statutory list compiled under the Listed Buildings Act 1990. Any building or structure or any part of a building, (or any building or structure falling within the curtilage of a listed building and dating prior to 1948) may be listed. Listed status protects a building against unauthorised demolition, alteration or extension. It ensures that its special interest is taken into account when proposals are put forward which affect its character or appearance

Listed Buildings Act 1990
The Planning (Listed Buildings and Conservation Areas) Act 1990

Local authority
County, district or borough council, unitary authority, national park authority or the Broads Authority responsible for the execution of devolved planning and regulatory functions

Planning Act 1990
Town and Country Planning Act 1990

PPG 15
Planning Policy Guidance 15 was a previous government guidance document on national planning policy and the historic environment. This has been withdrawn and replaced by the National Planning Policy Framework (NPPF)

Registered Parks and Gardens
Sites included in the Historic England Register of Historic Parks and Gardens of Special Historic Interest. An entry on the register confers no statutory protection but can help to inform management decisions

Scheduled Monuments
A monument included by the Secretary of State in the schedule of monuments compiled under the Ancient Monuments and Archaeological Areas Act 1979. It is a criminal offence to undertake works affecting a scheduled monument without written consent from the Secretary of State

15 Appendices

15.1 Appendix I: Repairs Notice and Urgent Works Notice checklists

Repairs Notice checklist

1 Write to the owner setting out the provisions of sections 47-48 of the Listed Buildings Act 1990, requesting a site meeting and access to the building.

2 Consider also writing to the owner at the same time setting out the provisions of sections 54-55 of the Listed Buildings Act 1990 and requesting a site meeting and access to the building.

3 Carry out a site visit with other relevant professionals, including an architect/building surveyor/quantity surveyor and engineer (this may be their only opportunity to visit the property). Take a comprehensive set of internal and external dated photographs and make a sketch plan of the building.

4 Consider if any of the works are urgent and would require a parallel Urgent Works Notice.

5 Draw up a draft schedule of repair.

6 Obtain an estimate of cost from the quantity surveyor for work to be carried out.

7 Obtain a market valuation of the property in its current condition and if the building were repaired.

8 Carry out financial option and feasibility assessments or residual valuation.

9 Obtain appropriate local authority permission for action.

10 Confirm details of owners and those with an interest in the property through the Land Registry.

11 Discuss handing over the building in a back-to-back agreement with potential purchasers if intending a compulsory purchase.

12 Serve a Requisition for Information Notice under section 330 of the Town and Country Planning Act 1990.

13 Follow up the site visit with a second letter to the owner setting out a draft schedule of repairs and a date for formal service of a Notice if the repairs are not carried out.

14 Draw up a Repairs Notice to include:

- a summary of the provisions of sections 47-50
- a separate schedule of repairs with any accompanying plans/illustrations
- a location map highlighting the property and any adjacent land which it is intended to include in a Compulsory Purchase Order (CPO)
- local authority contact details

15 Serve the Repairs Notice in person or by attaching to the property.

16 At expiry of Notice period, review and decide whether to pursue CPO action.

Urgent Works Notice checklist

1 Decide if an Urgent Works Notice is the appropriate way forward:

- is the building unoccupied or in partial use?
- are works urgently necessary for the building's preservation?
- are the proposed works the minimum necessary to achieve the immediate preservation of the building?

2 Write to the owner setting out the provisions of sections 54-55 of the Listed Buildings Act 1990 and requesting a site meeting and access to the building.

3 Discuss the building's problems with colleagues or professional advisors to ensure the correct type of advice is to hand for any site visit. An external architect or engineer may need to be engaged.

4 Carry out a site visit with other relevant professionals (this may be their only opportunity to visit the property). As well as noting aspects where urgent works are required, take a comprehensive set of internal and external dated photographs and make a sketch plan of the building.

5 Draw up a draft schedule of urgent works.

6 Obtain competitive quotations for work to be carried out, if not already obtained.

7 Obtain appropriate local authority permission for action.

8 Confirm details of owners and those with an interest in the property through the Land Registry.

9 Serve Requisition for Information Notice under section 330 of the Town and Country Planning Act 1990.

10 Follow up the site visit with a second letter to the owner setting out a draft schedule of urgent works and a date for formal service of a Notice if the works are not carried out.

11 Draw up an Urgent Works Notice to include:

- a summary of the provisions of section 54
- reference to the provisions of section 55 regarding entitlement to recover costs
- a separate schedule of works with any accompanying plans or illustrations
- a location map
- local authority contact details

12 Serve Urgent Works Notice in person or by attaching to the property.

13 When the Notice period (which may be more than 7 days) has expired, make arrangements to carry out the works, serving an additional Notice giving 24 hours' notice of intent if considered appropriate.

14 Draft a section 55 Notice to include:

- a statement that the local authority has carried out works to the named premises on (dates), pursuant to the Notice served under section 54 of the Listed Buildings Act 1990 on (date)
- a summary of the provisions of section 55 and a statement that the Notice is being served pursuant to those powers
- the amount being reclaimed
- the itemised costs of the works and any additional eligible item
- a copy of the invoice(s) and receipt(s)
- details of the mechanism for making representations to the Secretary of State
- method of payment and contact name

15 Serve the section 55 Notice to seek to reclaim costs.

15.2 Appendix 2: Sample Notices and letters

Sample 1: letter for gaining access to listed buildings

Planning (Listed Buildings and Conservation Areas) Act 1990, section 88,
as amended by the Planning and Compensation Act 1991: authority to enter upon land

[BUILDING NAME & ADDRESS]

In view of the difficulty in securing your co-operation in gaining access to the above premises, I am writing to advise you that any person duly authorised in writing by this council is empowered under the provisions of section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compensation Act 1991, to enter at any reasonable time land for the purpose of [insert relevant paragraph(s) from below].

I am writing to give you Notice that it is our intention to enter the land known as [name/address] on [date] at [time] for the purpose(s) mentioned above. Unless you are able to provide access on this date then it may be necessary for this council to apply to a magistrates' court for a warrant to gain entry. I would also advise you that wilful obstruction of a person exercising the right of entry is a criminal offence.

a) surveying it in connection with a proposal to make, issue or serve a Notice under [section 48/ section 54] of the Planning (Listed Buildings and Conservation Areas) Act 1990.

b) ascertaining whether a Notice under [section 48/section 54] of the Planning (Listed Buildings and Conservation Areas) Act 1990 has been complied with.

c) ascertaining whether the building is being maintained in a proper state of repair.

d) ascertaining whether any of the functions conferred under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 should or may be exercised in connection with the land.

e) exercising any of the functions conferred by section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

f) surveying it, or estimating its value, in connection with a proposal to acquire the land or any other land under sections 47-52 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or in connection with any claim for compensation in respect of any such acquisition.

Sample 2: section 215 Notice – warning letter

Dear Sir/Madam,

Property adversely affecting amenity of neighbourhood

[name of area]

As you may know, [local authority name] is committed to ensuring that improvements are carried out to buildings in [general/specific area] whose external condition has deteriorated. Improving such buildings has been identified by local people as a key priority for this council and as a result of this a number of buildings across the [local authority area] have been brought to a satisfactory condition.

The external appearance of the above-mentioned premises is a source of concern primarily because of [the condition of render; external metalwork, paintwork, windows, grilles, doors]. The council is writing to you today as the proprietor of the above-mentioned premises as identified by the Land Registry. This letter's purpose is to respectfully request that works be carried out to remedy the poor external condition of the building in the near future, and to ascertain whether you have any plans in this regard. I would emphasise that your property is not being treated in isolation. The owners of other premises in the vicinity are being similarly contacted.

I advise that if prompt progress is not made in terms of remedying the poor external condition of the premises and a guarantee given to the council by you that such works will be undertaken, the council has the option to take enforcement action under section 215 of the Town and Country Planning Act 1990. This is a course that the council would wish to avoid if at all possible. It is hoped, therefore, that your co-operation can be relied upon in terms of improving the building in the near future and giving a guarantee to that effect.

Sample 3: section 215 Notice (example 1)

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)

Section 215 Notice served by: [council name]

To: [name]

1 The Notice
This Notice is served by the council under section 215 of the above act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2 The land to which the Notice relates
The land known as [name] shown edged red on the attached plan.

3 What you are required to do
The Council requires the following steps to be taken for remedying the condition of the land:

i) Remove any perished, unkeyed and cracked render/stucco. Replace render/stucco so removed using suitable materials to match the existing.

ii) Prior to repainting, clean and prepare all render/stucco, removing in the process any flaking paint, so as to ensure all external render/stucco is in an appropriate condition for repainting.

iii) Prior to repainting, clean and prepare all external joinery, removing in the process any flaking paint, replacing any rotten or perished timbers with replacement woodwork to match the existing and renewing putty/joinery surrounds so as to ensure all external joinery is in an appropriate condition for repainting.

iv) Prior to repainting, clean and prepare all external metalwork, removing in the process any rust and flaking paint, so as to ensure all external metalwork is in an appropriate condition for repainting.

v) On completion of steps i) to ii) above, repaint all external render/stucco with a minimum of two coats of exterior masonry paint, the finished colour to be cream.

vi) On completion of step iii) above, repaint all external joinery with exterior wood primer exterior undercoat and exterior wood gloss, the finished colour to be white or cream.

vii) On completion of step iv) above, repaint all exterior metalwork with exterior metal primer; exterior undercoat and exterior metal gloss, the finished colour to be white, cream or black.

4 Time for compliance
Steps i) to vii) above to be complied with in full within four months of the date on which this Notice takes effect.

5 When this Notice takes effect
This Notice takes effect on [date]

Dated Signed

Sample 4: section 215 Notice (example 2)

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
Town and Country Planning Act 1990, section 215
(as amended by the Planning and Compensation Act 1991)

Notice Requiring Proper Maintenance of Land at [location]

To [name]

1 [name] Council ('the Council') is the local planning authority for the purposes of section 215 of the Town and Country Planning Act 1990 ('the act').

2 You are the owner of land situated at ('the land') edged in red on the attached plans.

3 It appears to the Council that the amenity of part its area is adversely affected by the condition of that land.

4 In accordance with its powers mentioned above, NOTICE IS GIVEN that the Council requires that the steps set out in the Schedule below should be taken to remedy the condition of the land.

5 Steps i) to xiii) in the Schedule should be complied with in full within 9 months of the date on which this Notice takes effect.

If you do not take the required action to comply with this Notice your failure could result in several courses of action. Either or all of these actions may be pursued as follows:

a) A prosecution in the magistrates' court for non-compliance with the section 2l5 Notice, which could result in a substantial fine if found guilty of an offence.

b) The Council carrying out the works required by the Notice followed by action in the County Court to recover, from you, all expenses and costs reasonably incurred by such action.

c) Registration with HM Land Registry of a charge on your property recoverable should your property be sold.

6 This Notice shall take effect, subject to the provisions of section 217 of the act, at the end of the period of 28 days after the date of service of this Notice on you.

Sample 4: continued

Schedule

i) Clear all gardens, yards and forecourts of foliage growth, rubbish, rubble, disused materials, and old, dilapidated vehicles. Any salvageable materials should be stored within the outbuildings to the rear of [address].

ii) Carry out repairs to any areas of defective brickwork to the front and rear elevations of the main buildings and all outbuildings and garden walls as necessary in a suitable lime mortar mix to match existing. These works include the replacement of any defective lintels, arches over door and window openings, blocking up redundant openings and making good boundary walls that may be necessary. Any such works should be approved by the Council's Conservation Officer beforehand.

iii) Carefully rake out and re-point all localised areas of defective pointing to brickwork in lime mortar to match the original. The outbuildings to the rear of [address] require extensive re-pointing in a suitable lime mortar mix. The mix and style of the finished pointing should be approved by the Council's Conservation Officer beforehand.

iv) Carry out repairs to all areas of defective render to the front and rear elevations of the main buildings and all outbuildings as necessary, including re-rendering areas where render has been removed. Render mix to match existing. Clean, prepare and treat all previously painted render with a suitable fungicidal wash prior to re-painting with 2 coats of suitable exterior paint.

v) Carry out repairs to all existing pitched roofs and flat roofs to all main buildings, rear and side additions and all outbuildings, as necessary, in matching materials. This includes re-fixing or replacing any defective lead flashings or through gutters.

vi) Restore or replace all damaged fascia boards/barge boards to all main buildings, rear and side additions and outbuildings. Clean, prepare and paint in suitable gloss finish paint.

vii) Restore or replace all damaged or missing gutters, rainwater down pipes, hoppers, waste pipes and soil and vent pipes to all main buildings, rear additions and outbuildings in matching materials, ie cast iron for cast iron, and in a like-for-like manner. Ensure that all rainwater and waste pipes discharge correctly into below-ground drainage. Clean, prepare and paint all soil and rainwater goods in black gloss finish paint (except where black plastic goods already exist).

viii) Remove all timber hoardings from the interior and exterior of all existing windows to all main buildings, rear additions and outbuildings. Repair and restore all existing windows, including re-glazing where necessary and including shop-fronts to the front and side elevations. Where existing windows are beyond repair or where no window exists, the specification of any new replacement windows must be approved by the Council's Conservation Officer, prior to manufacture. Clean, prepare and paint with suitable gloss-finish paint.

Sample 4: continued

ix) Remove all timber hoardings from all existing doors and doorways to all elevations of the main buildings, rear additions and outbuildings. Repair and restore all existing doors including re-glazing where necessary and including garage and coach house doors. Where existing doors are beyond repair, or where no door exists, the specification of any new replacement doors must be approved by the Council's Conservation Officer, prior to manufacture. Clean, prepare and paint with suitable gloss finish paint or varnish to match existing finish.

x) Remove all plant growth and restore/repair all damaged areas of the concrete forecourt to the side of [address].

xi) Upon completion of all the above works reinstate the rendered and painted brick wall to the outbuilding at the rear The rebuilt wall should match the existing wall and the outbuilding roof should be reinstated in matching materials.

NB
[Address] are listed buildings and any works other than like-for-like repairs may require Planning and Listed Building Consent. This includes any works to rear additions and outbuildings within the curtilages of the main buildings and you are therefore advised to consult with the Council's Conservation Officer [contact details], before any replacement features are manufactured or installed. Failure to do so could result in further enforcement action being taken under the Planning (Listed Buildings and Conservation Areas) Act 1990.

Dated: [day, month, year]

Signed:

(The officer appointed for this purpose)
Please address any communications to:
[address]

Sample 5: section 215 Notice (example 3)

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
Town and Country Planning Act 1990, section 215
(as amended by the Planning and Compensation Act 1991)

Issued by [name] Council

To [name]

Take Notice that:

1 It appears[name] Council (hereinafter called 'the Council'), being the Local Planning Authority for the area, that the condition of the land at [address], in the County of [name], shown edged in red on the plan annexed hereto (hereinafter called 'the Land'), is such that the amenity of that part of the Council's area in which it is situated is adversely affected.

2 Take Notice that the Council pursuant to section 215 of the Town and Country Planning Act 1990 (as amended), hereby require you as owner of the Land to take such steps which are set out in the schedule to this Notice, for remedying the condition of the Land, within the period of 28 days from the date that this Notice takes effect.

3 This Notice takes effect on [date].

4 Your attention is drawn to the provisions of sections 216-219 of the Town and Country Planning Act 1990 (as amended). Section 217 sets out your right of appeal.

5 What you are required to do
The Council requires the following steps to be taken as specified in the schedule below to remedy the condition of the land.

Schedule

1 Remove all flaking paint from the exterior of the building.

2 Permanently remove all boarding from the elevations of the building and the windows in the roof.

3 Prior to repainting, clean and prepare all external timbers and joinery, removing in the process any flaking paint, replacing any rotten or perished timbers with replacement woodwork which is an accurate replica of the original design in terms of pattern, detail and profile, so as to ensure that all external timbers are in an appropriate condition for repainting.

4 Prior to repainting, clean and prepare all external metalwork, removing in the process any rust and flaking paint, so as to ensure that all external metalwork is in an appropriate condition for repainting.

Sample 5: continued

5 On completion of step 1 of the schedule, clean and repaint all of the external elevations (except the roof) of the building with a minimum of two coats of exterior paint in colour BS08C3I (Honeysuckle Cream).

6 On completion on step 3 of the schedule, clean and repaint all of the external timbers in white exterior paint, with primer, undercoat and gloss.

7 On completion of step 4 of the schedule, repaint all exterior metalwork with exterior metal primer; exterior undercoat and exterior metal gloss in black. (Metalwork includes all of the tie bar plates.)

8 Paint with black exterior paint, the 'plinth' of the external elevation marked as 'plinth' on the photograph attached to this Notice.

9 Replace any broken glazing with new single glazed glass panes.

10 Remove the black plastic from the roof window.

11 Clean all of the guttering and downpipes.

12 Replace and repair any broken guttering or downpipes. If replacement is required use black rainwater goods only.

13 Repair and replace any roof tiles. If replacement is required use an accurate replica tile.

6 Time for compliance
Schedule steps 1-13 must be complied with in full within three months of the date which this Notice takes effect, by [date].

Dated: [day, month, year]

Signed:

On behalf of: [name] Council

Local Authority Reference: [number]

Sample 6: Urgent Works Notices – warning letter (example 1)

Planning (Listed Buildings and Conservation Areas) Act 1990, section 54

[Building Name & Address]

I understand that you are the owner [managing agent] of the above property. This building appears to be in a state of some disrepair.

[Address] is included in the statutory list of buildings of special architectural or historic interest, grade [I, II* or II] [and is situated in the [name] conservation area]. [It is also included in this council's list/register of buildings at risk].

The condition of this building is a matter of considerable concern to this council as the local planning authority. Owners of statutorily listed buildings are expected to maintain them in a sound, secure and weathertight condition. Quite modest expenditure on routine maintenance to keep the property secure and weathertight can prevent much more extensive repairs becoming necessary at a later date.

Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 enables this council to execute any works which appear to it to be urgently necessary for the preservation of a listed building in its area. Section 55 of the same act enables this council to recover from the owner the expenses of any works carried out under section 54.

In view of the condition of this building and the detrimental effect that this is having upon the character and appearance of the surrounding [conservation] area, I must advise you that we are actively considering the use of those powers described above in order to safeguard the building and to arrest any further deterioration.

I am sure you will agree that it is in the interest of all concerned that statutory proceedings are avoided. I would be grateful if you would provide access to the property on [date] at [time] so that we may ascertain what works may be urgently necessary for its preservation. If this date is inconvenient, perhaps you would contact me to arrange a suitable alternative.

Sample 7: Urgent Works Notices – warning letter (example 2)

Planning (Listed Buildings and Conservation Areas Act 1990), section 54

[Building Name & Address]

Further to my letter of [date] and our site meeting at the above property on [date], I attach for your immediate consideration a draft schedule of works which this council considers to be urgently necessary for the preservation of this building.

In my previous letter; I drew to your attention the provisions of section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which empower this council to execute any works which appear to them to be urgently necessary for the preservation of any unoccupied listed building in its area. The works in the attached schedule are those which we would seek to secure under the provisions of section 54. If such works were to be carried out by the council, we would also be empowered under the provisions of section 55 of the same act to recover from you the expenses incurred.

I hope that this matter can be settled without recourse to statutory proceedings, but I must advise you that unless we receive your written confirmation that you will be undertaking works in accordance with the attached schedule within [number] days of this letter we will be serving Notice forthwith under section 54.

Sample 8: Urgent Works Notice

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
Planning (Listed Buildings and Conservation Areas) Act 1990, section 54

Urgent Works Notice in respect of [Name & Address]

[Name of Local Planning Authority]

Urgent Works Notice

Whereas:

To: [Name & address of owner]

1 The building known as [name of building] ('the Building') is a listed building under section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereinafter known as 'the 1990 Act'). The Building is shown edged in red on the map attached to this Notice and described for identification purposes only in Schedule 1 of this Notice.

2 It appears to [name of local authority] ('The Local Authority') whose area includes the Building and being the Local Authority for the purposes of section 54 of the 1990 Act that the works specified within Schedule 2 of this Notice ('the Works') are urgently necessary for the preservation of the Building.

3 Notice is hereby given that on expiration of [date: at least 7 days after the date of this Notice] the Local Authority intends to carry out the Works in accordance with section 54(1) of the 1990 Act.

4 You should be aware that the Local Authority is not obliged to give any further warning after issuing this Notice. It therefore considers the need for the Works has become so urgent that they must be carried out without any delay. You will not be given any further warning.

5 When the Local Authority has carried out the Works you will be sent a further Notice to indicate the expenses incurred by the Local Authority in doing so, and requiring you to reimburse it as provided in section 55 of the 1990 Act.

If you wish to discuss this Notice or any related matter you should contact [name] as soon as possible.

DATED the _ day of [month]_[year]

Signed

For and on behalf of [local authority]
[Address]

Sample 8: continued

Schedule 1

[Attached map or description of building where address and map is insufficient for identification]

The listed building to which this Notice relates [name and address] as shown for the purposes of identification only edged red on the attached plan.

Schedule 2

List of urgent works.

Sample 9: schedule of Urgent Works

Planning (Listed Buildings and Conservation Areas) Act 1990, section 54

[Building Name & Address]

1 Cover up the external faces of 4 no. ground floor windows so as to protect glass. Use external grade plywood or corrugated metal sheets with 10 no. 25mm diameter drilled holes per window for ventilation, secured by long bolts with heads placed externally, through top and bottom sash openings. Fix to 100mm x 50mm softwood sections placed internally across the width of the window and shimmed off the inside face of the plastered external wall to both sides of the opening with timber blocking pieces, to provide clearance of the internal window architraves.

2 Clean and clear gutters, hoppers, downpipes and drains through to inspection chambers.

3 Repair existing and reinstate missing sections of rainwater goods and generally ensure that all rainwater run-off is conducted to main drains.

4 In such manner as to prevent ingress of rainwater [specify applicable method(s)]:

a) Re-fix loose and slipped roof slates and flashings. Repair leaks in gutters with self-adhesive impervious membrane.

b) Provide temporary roof covering at areas of the roof damaged or missing by installing impervious flexible sheeting, supported on existing structure and additional temporary support if necessary. Secure with suitable fixings, battens or weights. Dress into gutters and outlets. Install self-adhesive membrane flashings to seal edges and abutments.

c) Erect a temporary corrugated metal roof supported on scaffolding, fitted with gutters and downpipes discharging to drains at ground level. Install vertical flexible sheeting/netting as required to prevent wind-driven rain from entering the building.

5 Prop the rotted trimmer beam at the first-floor stair landing at its unsupported end using an adjustable metal prop. Secure prop with screws at top and bottom plates. Wrap the prop full height with hazard warning tape.

6 Cut back and treat vegetation rooting into rainwater goods and external brickwork using a suitable systemic killer in accordance with the manufacturer's recommendations.

7 Clear away accumulated rubbish and combustible material from the interior, including pigeon droppings.

8 Turn off any live services and drain down heating and water supply systems.

9 Ensure that ventilation is provided to all internal spaces in accordance with BSCP 5925:1980.

PLEASE NOTE this is a specimen schedule intended for guidance only.
Local authorities should ensure that any British Standards quoted above are current.

Sample 10: section 55 Notice, requiring owner to pay local authority expenses following an Urgent Works Notice

Planning (Listed Buildings and Conservation Areas) Act 1990, section 55

Demand for Payment: This Notice requires your urgent attention

[Name of Local Planning Authority]

To [Name and address]

1 The building known as [name of building] ('the Building') is a listed building under section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereinafter known as 'the 1990 Act'). The Building is shown edged in red on the map attached to this Notice.

2 It appeared to [name of local authority] ('the Local Authority') whose area includes the building and being the local authority for the purposes of section 54 of the 1990 Act that certain works were urgently necessary for the preservation of the building.

3 The Local Authority informed you by a Notice dated [date] that, unless by [date] it was satisfied that the works were being carried out it would itself enter the land on which the Building stands and carry them out.

4 No satisfactory response was received to that Notice. The Local Authority has therefore carried out the works itemised in the Schedule to this Notice ('the Works'). The expenses that were incurred by it in carrying out the Works were as indicated in that Schedule.

5 The Local Authority has resolved to require you to reimburse the expense of carrying out the Works.

6 You must therefore now pay the sum of £[number] to the Local Authority by [date, 28 days from the date of the Notice]. This may be done by any of the methods specified in the annex to this Notice.

7 You may if you wish at any time before [28 days from the date of the Notice] make representations to the Secretary of State:

a) that some or all of the Works were unnecessary for the preservation of the Building

b) that the amount being sought is unreasonable, or

c) that the recovery of that amount would cause you hardship.

8 The Secretary of State will then determine to what extent your representations are justified and will notify you of his decision, the reasons for it and the amount that he considers is reasonably recoverable. You will then be liable to pay that amount to the council.

Sample 10: continued

9 The Secretary of State may be contacted at: [contact details].

10 If you wish to discuss this Notice or any related matter you should contact [name] as soon as possible.

Dated the _ day of [month]_[year]

Signed

For and on behalf of [local authority].

[Address]

Schedule 1

The listed building to which this Notice relates [name and address] as shown for the purposes of identification only edged red on the attached plan.

Schedule 2

Description of works carried out and the costs incurred in doing so.

Annex

Methods of payment

Sample 11: Repairs Notice – warning letter (example 1)

Planning (Listed Buildings and Conservation Areas) Act 1990, sections 47-48

[Building Name & Address]

I understand that you are the owner [managing agent] of the above property. This building appears to be in a state of disrepair: [Building name & address] is included in the Statutory List of buildings of special architectural or historic interest, grade [I, II* or II] [and is also situated in the [name] conservation area]. [It is also included in this council's list/register of buildings at risk].

The condition of this building is a matter of considerable concern to this council as the local planning authority. I must therefore advise you of the provisions of section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which enable this council to serve upon the owner of the listed building a Repairs Notice specifying the works that we consider reasonably necessary for its proper preservation.

If, after a two-month period has elapsed from the service of the Repairs Notice, it appears that reasonable steps are not being taken to properly preserve the building, this council may begin compulsory purchase proceedings under section 47 of the same act.

In view of the deteriorating condition of this listed building, and the detrimental effect that this is having upon the character and appearance of the surrounding [conservation] area, I must advise you that we are actively considering the use of those powers described above in order to safeguard its future.

I am sure you will agree that it is in the interest of all concerned that statutory proceedings are avoided. I would be obliged if you would provide access to the property on [date] at [time] so that we may inspect it to ascertain what works may be necessary for its proper preservation. If this date is inconvenient, perhaps you would contact me to arrange a suitable alternative.

Sample 12: Repairs Notice – warning letter (example 2)

Planning (Listed Buildings and Conservation Areas) Act 1990, sections 47—48

[Building Name & Address]

Further to my letter of [date] and our inspection of the above property on [date], I attach for your immediate consideration a draft schedule of repairs which this council as the local planning authority considers to be reasonably necessary for the proper preservation of this building.

In my previous letter, I drew to your attention to the provisions of sections 47-48 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which empower this council to serve upon the owner of a listed building a Repairs Notice specifying those works which appear to be reasonably necessary for its proper preservation. If, after a two-month period has elapsed from the service of the Repairs Notice it appears that reasonable steps are not being taken to properly preserve the building, this Council may begin compulsory purchase proceedings.

The works in the attached schedule are those which we would be seeking to secure under the provisions of a Repairs Notice.

I hope that this matter can be settled without recourse to statutory proceedings, but I must advise you that unless we receive your written confirmation within [number] days of this letter that you will be taking reasonable steps for the proper preservation of this listed building, in accordance with the attached schedule, together with a timescale for their implementation, we will be serving Notice forthwith under section 48.

Sample 13: schedule of repairs

Planning (Listed Buildings and Conservation Areas) Act 1990, section 48

[Building Name & Address]

1 Acccess, Safety and Security provisions

1.1 Provide and maintain while works are being carried out all boarding, screens and barriers necessary to keep the building secure.

1.2 Install temporary propping in accordance with the directions of a structural engineer in order to stabilise stairs, floor joists, and the structure generally. Provide temporary balustrade and handrails where these are missing at staircases. Provide sheeting or boarding wherever floor boarding and stair treads are missing. Cordon off floor areas where joists are missing or unsupportable and display warning signs for duration of works.

1.3 Clear out rubbish from internal spaces so that all areas are open to inspection and free from nesting places. Prepare an inventory of all surviving historic features. Protect the following items [list] for the duration of the course of works by [method of protection]. All loose historic materials shall be retained and stored within a secure area within the building.

2 Roof and rainwater goods repairs

2.1 Overhaul and reinstate salvageable rainwater goods. Reinstate missing or irreparable parts of the system. Clean rainwater goods through to inspection chambers and generally ensure that all rainwater run-off is conducted to drains.

2.2 Carefully strip the existing slates and hip/ridge tiles. Set aside all sound items for re-use. Strip off all battens and de-nail rafters. Carry out repairs to timber roof structure in accordance with a structural engineer's survey and recommendations, including renewal of central valley joists, wall plates and ends of joists and rafters.

2.3 Fix new treated battens to BS 1318 of same size as the originals, using aluminium nails to BS 1202: part 1, set out to the same gauge as the original over reinforced sarking felt to BS 747, type IF. Re-roof using all original sound slates and tiles with new slates and tiles to match, fixing with copper nails. Install soakers at hips and re-lay hip/ridge tiles in sand/cement.

2.4 Renew all flashing, soakers, fillets, gutter linings and outlets using leadwork installed in accordance with the Lead Development Association booklets *Lead Sheet in Building* and *Lead Sheet Flashings*.

3 Brickwork, chimney and render repairs

3.1 Cut back and treat all plant growth in external brickwork using a systemic killer; leave to die and then carefully remove. Remove root growth from internal plaster and brickwork in similar manner.

3.2 Erect boarded scaffolding and carry out repairs to brickwork in accordance with a structural engineer's recommendations, including where necessary the following:

a) install corner ties at junctions of internal and external walls or at corners

b) install ties to bond together separated leaves of brickwork

c) repair parapets and chimneys, re-lay parapet copings on damp proof course and point all joints in copings

d) replace rotted timber courses in brickwork with concrete infill

3.3 Rake out loose or defective mortar joints at brickwork including chimneys and parapets (do not use hammer and chisel or pick hammer). Re-point using lime mortar and finish to a flush joint.

3.4 Replace broken chimney pots to match. Ensure all fireplace flues are clear throughout their height and install rain caps at all disused flues, for ventilation.

3.5 Repair external rendering in a colour, texture and composition to match the existing; renew existing rendered finish wherever this is cracked or has lost its bond, including sills, window mouldings and decoration. Repairs to mouldings and decorative work shall be carried out with the use of running moulds and squeezes in accordance with *Decorative Pliasterwork Its Repair and Restoration* by Don Stagg and Ron Masters (Attic Books, 1986).

4 Window and external repairs

4.1 Replace missing and irreparable window frames and sashes with new to match existing.

4.2 Overhaul all repairable windows and frames by replacing missing panes and parts; re-puttying and re-pointing externally; lubricating moving parts; refitting missing or defective ironmongery, cords and weights (adjusted as required for balance); preparing priming and redecorating including undercoat and two top coats to all bare wood, using good-quality gloss paint in accordance with the paint manufacturer's recommendations; easing and adjusting to ensure smooth operation. Isolated areas of decayed wood shall be replaced by piecing in new matching treated timber.

4.3 Redecorate all previously painted external surfaces using good-quality paint in accordance with the paint manufacturer's recommendations, including painted metalwork and rendering.

5 Internal repairs

5.1 Carry out repairs to timber floor structures and window lintels in accordance with a structural engineer's recommendations. Take up and retain for re-use sound floor boarding and skirtings. Where more than 50% of length or depth of timbers are decayed or defective, install new material to BS 4978 GS Grade; otherwise splice new material to existing timbers; new work shall match the original in all other respects. Install suitable ties where recommended to tie timber framing to brickwork walls. Reinstate floor boarding and skirtings including new material where required, to match existing.

5.2 Treat retained structural timbers affected by insect attack and rot, and basement/low level brickwork affected by rising or penetrating damp in accordance with a COSHH assessment and the standards of the British Wood Preservation and Damp Proofing Association.

5.3 Repair and reinstate internal plasterwork which has been lost or damaged at walls and ceilings. Take moulds of existing cornices and reinstate to match existing. Repairs to mouldings and decorative work shall be carried out with the use of running moulds and squeezes in accordance with *Decorative Plasterwork: Its Repair and Restoration* by Don Stagg and Ron Masters (Attic Books,l986).

5.4 In accordance with the recommendations of a joinery conservator: compile an inventory of loose or damaged joinery and fittings, including [specify, eg wall panelling, doors, window shutters]; label and store temporarily in a secure area within the building. Repair all damaged or defective items and reinstate loose items and missing parts of these to match original construction and patterns. Wall panelling shall be repaired in accordance with Historic England's guidance leaflet *Georgian Joinery*.

5.5 Decorate all internal plaster and woodwork surfaces using good-quality paint in accordance with the paint manufacturer's recommendations.

5.6 Provide ventilation to all internal spaces in accordance with BSCP 5925:l980, while ensuring that pigeons are prevented from entering the building.

Informative:
All new external and internal works, and works of making good to the existing fabric, should match the existing adjacent work with regard to the methods used and to material, colour, texture and profile, unless specified otherwise in the above schedule, or agreed otherwise in writing by the local planning authority.

PLEASE NOTE: this is a specimen schedule intended for guidance only. Local authorities should ensure that any British Standards, or other references, quoted above are current, or applicable.

Sample 14: Repairs Notice

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
Planning (Listed Buildings and Conservation Areas) Act 1990, section 48

Repairs Notice in respect of [Name & Address]

Issued by [Local Authority]

Listed Buildings Repairs Notice

To: [Name and address of owner]

1 The building known as [name of building] ('The Building') is a listed building under section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereinafter known as 'the 1990 Act'). The Building is shown edged in red on the map attached to this Notice and described for identification purposes only in Schedule 1 of this Notice.

2 It appears to [name of local authority] ('the Local Authority') whose area includes the Building and being the Local Authority for the purposes of section 48 of the 1990 Act that the works specified within Schedule 2 ('the Works') of this Notice are reasonably necessary for the proper preservation of the Building.

3 Notice is herby given that the Local Authority considers the works specified within Schedule 2 of this Notice reasonably necessary for the proper preservation of the Building.

4 If after two months from the date of service of this Notice the Local Authority have not withdrawn the Notice, the Local Authority may ask the Secretary of State to authorise it to acquire compulsorily the Building and any land contiguous or adjacent to it, which appears to the Secretary of State to be required for preserving the Building or its amenities, or for affording access to it, or for its proper control or management.

5 The Secretary of State may make or confirm an order for the compulsory purchase of the Building and any land contiguous or adjacent to it if:

a) it appears to him/her that reasonable steps are not being taken for the proper preservation of the Building

b) s/he is satisfied that it is expedient to make provision for the preservation of the Building **and**

c) s/he is satisfied that it is expedient for that purpose for it to be acquired compulsorily

6 If compulsory purchase procedures are initiated then any person having an interest in the Building which it is proposed to acquire compulsorily may, within 28 days after the service of the Notice required under section 12 of the Acquisition of Land Act 1981, apply to a magistrates' court for an order staying the proceedings on the ground that reasonable steps have been taken to properly preserve the Building.

Sample 14: continued

7 On compulsory purchase of the Building, it shall be assumed for the purpose of assessing compensation that listed building consent would be granted for any works:

a) for the alteration or extension of the Building **or**

b) for the demolition of the Building for the purpose of development of any class specified in Schedule 3 to the Town and Country Planning Act 1990

8 If the Secretary of State is satisfied that the Building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or re-development of the site, or any adjoining site, he may include in the compulsory purchase order a direction for minimum compensation.

9 The effect of such a direction is that for the purpose of assessing compensation that is payable for compulsory purchase it is assumed that:

a) planning permission would not be granted for any development or re-development of the site of the Building, **and**

b) that listed building consent would not be granted for any works, other than works necessary for restoring the Building to and maintaining it in a proper state of repair

10 Where such direction is included in a compulsory purchase order or draft order any person having an interest in the Building may, within 28 days after service of the Notice of minimum compensation direction, apply to a magistrates' court for an order that no such direction should be included.

11 If you wish to discuss this Notice or any related matter you should contact [name] as soon as possible.

DATED the __ day of [month]_[year]

Signed

For and on behalf of [local authority]
[Address]

Schedule 1

[Attached map or description of building where address and map is insufficient for identification]

The listed building to which this Notice relates [name and address] as shown for the purposes of identification only edged red on the attached plan.

Schedule 2

Specification of works to be carried out

Sample 15: Back-to-back agreement

Provided only for illustrative purposes. Specific legal advice will be essential in each individual case.

[name] Council and [name]

Agreement

For the sale of [address] in the County of [name]

This agreement is made the [number] day of [month] [year]

Between

[name] Council of [address] ('the Seller') and [Building Preservation Trust] the registered office of which is at [address] ('the Buyer').

It is agreed as follows:

1 Particulars

'The repairs' Those works of repair and alteration listed under Schedule A to this Agreement.

'Plan' The plan annexed hereto.

'Property' All that freehold property known as [name & address] shown for the purpose of identification only edged in red on the plan.

'Purchase Price' £1.00 (One Pound)

2 Definitions and Interpretation

2.1 In this Agreement the following expressions have the following meanings respectively unless the context otherwise requires:

2.1.1 'Completion' means the time at which legal title to the property will transfer from the Seller to the Buyer in accordance with this Agreement.

2.1.2 'Incumbrances' means the matters contained, mentioned or referred to in the documents of title relating to the Property.

2.1.3 'Particulars' means the particulars in clause 1.

2.1.4 'Standard Conditions' means the Standard Conditions of Sale (3rd Edition).

2.1.5 'VAT' means value added tax including any amendment or replacement thereof.

2.1.6 'Working Day' means any day other than a Saturday or a Sunday or a day which is a public or statutory holiday in England or any other day notified by the Seller's to the Buyer's solicitor as being a day when the Seller's office is closed.

2.2 In this Agreement unless inconsistent with the subject matter or the context:

2.2.1 covenants made by a party which comprises more than one person shall be deemed to be made by them jointly and severally.

2.2.2 words referring to persons include firms, companies and bodies corporate and vice versa.

2.2.3 words importing the singular number shall include the plural and vice versa.

2.2.4 words importing the male gender shall include the feminine gender and neuter meaning and vice versa.

2.2.5 construction of this Agreement shall ignore headings which are for reference only.

2.2.6 reference to a clause schedule paragraph or appendix are references to the clause, the schedule, the paragraph or the appendix of this Agreement so numbered.

2.2.7 an Authorised Mortgagee or Chargee shall mean a person to whom the property is mortgaged or charged with the written approval of the Seller, such approval not to be unreasonably withheld upon the Buyer demonstrating that the mortgage or charge is for the purpose of completing the Repairs to the Property.

3 Sale Agreement

3.1 Subject to the terms of this Agreement, the Seller agrees to sell and the Buyer agrees to buy the Property for the Purchase Price.

4 Consideration

4.1 The consideration payable by the Buyer for the Property shall be the Purchase Price plus (if any) VAT thereon.

4.2 The Seller will notify the Buyer of the Purchase Price in writing immediately upon expending monies pursuant to section 10 of the Compulsory Purchase (Vesting Declarations) Act 1981.

4.3 The Buyer will pay the Purchase Price by 5pm on the working day following that day the Buyer receives the notification referred to in clause 4.2 above. Should the Buyer fail to pay the Purchase Price within that time, interest (calculated at the contract rate as defined in the Standard Conditions) shall accrue on the Purchase Price.

5 Completion

5.1 Completion shall take place at the Seller's offices (or at such other place as they may reasonably specify) between 9am and 1pm on the day of Completion.

5.2 Completion will take place within ten (10) working days upon the Buyer being requested in writing by the Seller to do so, the parties having agreed that time is of the essence of the contract to do so.

5.3 Unless otherwise agreed in writing between the parties, monies payable shall be paid by telegraphic transfer to the Seller's account as notified to the Buyer's solicitors. Completion may occur before the Seller has been notified by its bankers that all such monies have been received into such account and are available as cleared funds, but the parties hereby agree that the occurrence of Completion prior to receipt of such monies shall not be deemed to waive the right of the Seller to such monies, nor the Buyer's liability to pay such monies.

5.4 If the Seller agrees to complete without the personal attendance of the Buyer's solicitors the Law Society's Code of Completion by Post shall apply.

6 Title

6.1 The Buyer shall be deemed to purchase the Property with full knowledge of the documents of title to the Property.

6.2 The Seller shall sell the Property with full title guarantee, save that the Seller not yet having executed a declaration vesting the land in themselves pursuant to section 4(1) of the Compulsory Purchase (Vesting Declaration) Act 1981, the Seller shall not, to the fullest extent permitted by law, be liable under any covenant implied by virtue of section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1994.

6.3 The Buyer shall not require the Seller to be registered as proprietor of the Property at HM Land Registry before Completion. If such a requirement is made by the Buyer or any objection is raised with regard to the fact that the registration of the Seller as registered proprietor of the Property at HM Land Registry has not been completed on or before the Completion, the Seller shall be entitled (but not obliged) to rescind this Agreement in the same manner and upon the same terms as if the Buyer had persisted in an objection to the title which the Seller was unable to deal with.

6.4 To the extent permitted by law, the Seller shall not be liable for any defect or limitation in the title to the Property that it conveys to the Buyer; nor shall the Seller be liable for any economic, indirect or consequential loss or damages that flow from such defect or limitation, including but not limited to:

6.4.1 Loss of profits, business, revenue, goodwill

6.4.2 Loss of contracts

6.4.3 Loss of anticipated savings

7 Possession

7.1 The Seller shall use all reasonable endeavours to transfer the Property with vacant possession on Completion.

8 Deposit

8.1 No deposit is to be paid on the exchange of this Agreement but notwithstanding such non-payment, a deposit of 10% of the Purchase Price shall at all times remain due from the Buyer to the Seller and in the event of the Seller being entitled to forfeit and retain the deposit, had a deposit been paid, the sum of 10% of the Purchase Price with interest at the contract rate (as defined in the Standard Conditions) from the date of this Agreement shall be forthwith payable by the Buyer to the Seller. The parties hereby agree that the occurrence of Completion shall not be deemed to waive the right of the Seller to such monies set out under this clause if applicable, nor the Buyer's liability to pay such monies.

9 Matters affecting the Property

9.1 Without prejudice to any other clause set out in this Agreement, the Property is sold subject to such of the following matters as relate to it:

9.1.1 all local land charges (whether or not registered before the date hereof) and all matters capable of registration as local land charges.

9.1.2 all Notices served and all orders, demands, proposals, regulations or requirements made by any local or other public or competent authority or body (whether before on or after the date of this Agreement).

9.1.3 all actual or proposed orders, directions, Notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the Property and the contents of all developments, plans, proposals or resolutions for the acquisition of the Property by any competent authority.

9.1.4 the Incumbrances.

9.1.5 all matters revealed or which would have been revealed by searches, enquiries and inspections which the Buyer has made or which a prudent buyer would have made and for the purpose of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994 all matters now recorded in registers open to public inspection are to be considered within the actual knowledge of the Buyer.

9.1.6 all matters which would be evident on an inspection or survey of the Property.

9.1.7 all matters which the Seller does not and could not reasonably be expected to know about.

9.1.8 all overriding interests affecting the Property as defined in section 70(1) of the Land Registration Act 1925 (as amended).

9.1.9 all legal easements benefiting the owners or occupiers of other property and all rights of way, water, light, drainage and other easements, quasi-easements, rights, privileges and liabilities of whatever nature affecting the Property.

10 Right to Inspect Grant Documents

10.1 To the extent permitted by law and until such time as the Seller's surveyor has certified that the Repairs have been completed to his reasonable satisfaction pursuant to clause 14.4 and forwarded a copy of the same to the Buyer; the Buyer shall deliver; upon request and free of charge, to the Seller copies of all information and documentation whether conveyed in writing, in machine readable form or otherwise in the possession of the Buyer that relates to:

10.1.1 all existing arrangements and agreements including grant aid from any source that relates to the Property **and**

10.1.2 all negotiations in relation to the Property that have taken place (or are still taking place) during the period of the Agreement with the intention to secure arrangements, or to enter into agreements, that would involve (or would have involved) monies being paid to the Buyer.

11 Agreement to Reconvey

11.1 On demand the Buyer will reconvey the Property to the Seller should the Buyer fail to complete, to the reasonable satisfaction of the Seller's surveyor.

11.2 The parties agree that in the event that the Buyer becomes unable to comply with the deadline set out in clause 11.1 above, the Buyer can by Notice in writing served on the Seller at any time prior to the expiry of the deadline (the 'Extension Notice') have the deadline extended by a further three (3) month period.

11.3 Notwithstanding clause 11.2 above, the parties agree that in the event that the Buyer becomes unable to comply with the deadline for the Repairs set out in clause 11.1 above for the reason that (in the reasonable opinion of the Seller's surveyor) the Buyer has yet to commence the Repairs, or while having commenced the Repairs has made minimal progress towards completing those repairs, the Extension Notice shall only have effect if the Seller consents in writing to the extension, such consent being not unreasonably withheld or delayed.

11.4 The deadline referred to in clause 11.1 above shall not be extended by more than three (3) months.

11.5 The exercise of clause 11.1 above shall be subject to the Seller reimbursing the Buyer for such sums of money as the Buyer will have expended upon the Property minus any sum of money that the Buyer has received or will receive from the Seller or any third party in connection with the Property or any sum of money that a reasonable person in the position of the Buyer would have requested from the Seller or any third party. The sum of money that the Buyer will have expended upon the Property shall (for the purposes of this clause 11.5) be limited to the Purchase Price and monies expended on performing such elements of the Repairs as have been completed to the reasonable satisfaction of the Seller's surveyor notwithstanding the fact that the entirety of the repairs have not been completed to his reasonable satisfaction.

12 Right of First Refusal

12.1 If at any time before the Seller's surveyor has certified that the Repairs have been completed to his reasonable satisfaction pursuant to clause 14.4 and forwarded a copy of the same to the Buyer, should the Buyer wish to dispose of the Property other than by way of Authorised Mortgage or Charge the Seller shall have the right to purchase the same on the following terms and conditions:

12.1.1 The Buyer (which for the purposes of this clause 12 shall be hereinafter referred to as the 'Grantor') shall give signed Notice in writing and in duplicate to the Seller of its desire to dispose of the Property other than and if the Seller (which for the purposes of this clause 12 shall be hereinafter referred to as the 'Grantee') shall within two (2) calendar months of the service of the Notice give notice in writing to the Grantor of its wish to purchase the same by signature and return of one copy of the Grantor's Notice a concluded contract for the sale and purchase of the Property for an estate in fee simple in possession free from incumbrances shall be made between the Grantee and the Grantor.

12.1.2 The purchase price shall be the fair value of the Property to be determined by a valuation by two duly qualified valuers one to be appointed by each party within ten (10) working days of the contract being made, whose determination shall take into consideration the repairs (if any) that the Grantor has satisfactorily completed at the date of the valuation, and the decision of the valuers shall be final, save where they fail to agree, when the final determination shall be made by an umpire who shall be such person as to be agreed upon by the parties, or failing agreement to be a person nominated by the President of the Royal Institution of Chartered Surveyors. The fees of the valuers shall be borne solely by the Grantor but the fees of the umpire shall be payable by the parties in such proportions as the umpire shall determine.

12.1.3 Subject to the provisions of this clause 12, the Notice to be served under clause 12.1.1 must incorporate the following clauses of this Agreement: 3.1 (save that the Purchase Price shall be calculated pursuant to clause 12.1.2); 4.1; 5.1; 5.4; 6.1; 6.4; 9; 15; 17.1; 17.2; 17.3; 17.4; 17.6 and shall further provide that the Grantor will sell the Property with full title guarantee, and will sell the Property with vacant possession, and shall further incorporate the Standard Conditions as amended in this Agreement, save that there shall be no addition of a revised Standard Condition 6.1.1, and Standard Condition 2.2 shall be deleted in its entirety.

12.1.4 The contract shall be completed and vacant possession given and the Property shall be conveyed by the Grantor to the Grantee on a date ten (10) working days from the date of the agreement or ten (10) working days from determination of the purchase price whichever shall be the later.

12.1.5 If the Grantee shall not within the period of two (2) calendar months from the service of Notice by the Grantor of its wish to sell the Property (unless that Notice has been withdrawn before service of any Notice by the Grantee) give Notice in writing to the Grantor of its wish to purchase the same (as to which time shall be of the essence) or shall within such period signify in writing to the Grantor its intention not to purchase the Property, the Grantor shall have the right to sell the Property to any other person as it shall think fit.

12.1.6 The provisions of section 196 of the Law of Property Act 1925 shall apply to all Notices to be given under this Agreement.

13 Standard Conditions Incorporated

13.1 This Agreement incorporates the Standard Conditions and where there is a conflict between those Conditions and this Agreement, this Agreement prevails.

13.2 The Standard Conditions shall be varied as follows:

2.1.1 is only to apply to this Agreement where the parties hereto fail expressly to state the Agreement date in this Agreement.

5.1.1 this clause shall be deleted in its entirety.

5.1.2 this clause shall be deleted in its entirety.

6.1 clause 6.1 shall be deleted in its entirety and shall be replaced with the following: 'Completion will take place within ten (10) working days upon the Buyer being requested in writing to do so by the Seller, the parties having agreed that time is of the essence of the contract'.

6.2 clause 6.2 shall be deleted in its entirety and shall be replaced with the following: 'Completion is to take place at the Seller's offices'.

6.4 this clause shall be deleted in its entirety.

6.5 this clause shall be deleted in its entirety.

6.7 sub-clause (a) shall be excluded in relation to this Agreement.

7.1.2 in this clause, a 'material difference between the description of the Property as represented and as it is' shall be construed objectively by reference to a reasonable Buyer.

14 Repairs

14.1 The Buyer hereby agrees to carry out the Repairs.

14.2 The Buyer shall keep the Seller informed as to the progress of the Repairs and shall permit the Seller's surveyor access at reasonable times and on reasonable notice for the purposes of carrying out inspections.

14.3 Upon the Seller's surveyor being reasonably satisfied that the Repairs have been practically completed the Seller's surveyor shall so certify and immediately forward a copy of the same to the Buyer.

14.4 It is hereby declared that section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies in connection to the undertakings set out under this clause.

15 VAT

15.1 Any fees charged by either party to either party under or in connection with this Agreement shall be deemed to be exclusive of VAT. All VAT which shall be payable in respect of any such fees will be paid at the same time and in the same manner as the fees in question.

16 Rescission

16.1 Either party shall by notice in writing to the other be entitled to rescind this Agreement if Notice to complete under clause 5.2 has not been served within twelve (12) months of the date of this Agreement, neither party having any claim on the other for costs, compensation or otherwise if the Agreement is rescinded under this clause.

17 Miscellaneous

17.1 The provisions of this Agreement shall not merge on Completion so far as they remain to be performed.

17.2 The Seller shall not be obliged or required to transfer the Property otherwise than as one whole to the person named herein as the Buyer.

17.3 This Agreement incorporates the entire contract between the parties and the Buyer acknowledges that the Buyer has not entered into this Agreement in reliance on any advertisement or other matter issued by the Seller or the Seller's agents or in reliance on any statements or representations made to the Buyer by the Seller or in reliance on any report plan and/or other written material and/or information either disclosed to it and/or orally communicated to it by the Seller or the Seller's agents both as to the condition of the Property and as to the nature and effect of any remedial works that may have been carried out thereon.

17.4 The Buyer shall be deemed to purchase the Property with knowledge in all respects of the authorised use thereof for the purposes of the legislation from time to time in force relating to Town and Country planning.

Sample 15: continued

17.5 It is hereby declared and agreed that section 33 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply to any covenant contained or falling within the said section on the part of the Buyer to carry out works or to do anything on or in relation to the Property.

17.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled to that person's own right to enforce any provisions of this Agreement pursuant to the provisions thereof.

Schedule A

'Repairs'

AS WITNESS the hands of the Seller's duly authorised officer and that of the Buyer the day and year first before written.

SIGNED for [name] Council by a duly authorised officer

SIGNED for [name of buyer] by a duly authorised officer

Schedule A

Schedule of repairs

16 Where to Get Advice

16.1 Local Authority Staffing and Delegation

It is likely that the local authority officer who initially begins action on an historic building will be the conservation officer or other conservation specialist. But where such professional input is not available the work could be carried out by planning or enforcement staff with conservation advice from external consultants. In some cases where unauthorised work has been carried out alongside general neglect or where public amenity is an issue, action such as that provided for in a section 215 Notice, may originate with enforcement officers.

Action of this type may be unusual and unfamiliar to elected members and the local authority's legal advisers. The conservation officer and other professional staff taking the lead will therefore need to have a good grasp of the processes and the options available under various pieces of legislation.

A team approach drawing in the expertise and resources of all relevant local authority staff is recommended and will help ensure that the most appropriate and effective legislative tools are used. The team involved in any action is likely to involve conservation, enforcement and legal staff. It could also include building control, housing and technical services staff.

Where the local authority has identified a strategy for dealing with buildings at risk this can include approval for delegated powers for action such as Urgent Works Notices. Repairs Notices are likely to need specific approval because of the possible further financial implications of compulsory purchase. Many local authority enforcement sections have delegated powers for section 215 Notices.

The costs of carrying out one-off action such as Urgent Works Notices are often met from the local authority's capital contingency reserve and then reclaimed from the owner under the relevant legislation. Thus there is usually an available budget for such work even where no specific conservation budget is available.

An operating budget coupled with a strategic approach to buildings at risk could allow a number of simpler cases to be dealt with more quickly, giving out a message that the local authority is active. This approach will then be useful when tackling the more difficult cases.

If a number of Urgent Works Notices, or other action requiring a budget to carry out direct works, are proposed as part of a strategic approach to buildings at risk in the area, a specific budget may need to be approved. When seeking authorisation to serve Notices this should include funding for sundry additional expenditures such as valuers', structural engineers' and quantity surveyors' fees.

16.2 How can Historic England help?

English Heritage (now Historic England) has long emphasised the importance of local authorities using their power to serve Urgent Works Notice and Repairs Notices and provides specialist advice to them via the Heritage at Risk Legal Adviser and Heritage at Risk Teams in nine local offices. There are also grant schemes to support such action.

Grants to underwrite Urgent Works Notices

Historic England encourages local authorities to serve Urgent Works Notices as soon as the need for them becomes apparent. It also considers applications from local authorities for grants to underwrite up to 80% of the cost of undertaking urgent works, including the cost of essential professional services 'bought in' and where necessary the cost of the carrying out the urgent works. Recharge costs for the use of in-house legal and other professional services are not normally eligible. However, they may be accepted in exceptional circumstances, provided a contribution from Historic England would demonstrably result in a proportionate increase in the resources applied to conservation work during the year.

Applicants must be local planning authorities. To be eligible, buildings must be listed grade I or II*, or be listed grade II and lie within a conservation area. In Greater London, all listed buildings are eligible, whether or not they are in conservation areas. In exceptional circumstances, Historic England may be able to consider grant aid for Urgent Works Notices in respect of unlisted buildings in conservation areas, where the local authority has been authorised to serve the Notice by the Secretary of State under section 76 of the Listed Buildings Act 1990.

Historic England will expect the local authority to seek to reclaim the costs from the owner unless there is no reasonable prospect of success. A share of any money recovered in this way will need to be returned to Historic England in proportion to the grant given.

Acquisition grants to underwrite Repairs Notices

Historic England is also keen for local authorities to serve Repairs Notices well before a building's value has become negative, and if necessary to follow up the Notice with a CPO, or acquisition by agreement.

Historic England is aware that it can be difficult to predict the outcome of any particular case, and that, having served a Notice, the credibility of the authority (and indeed the legislation) depends upon the procedure being followed through until the future of the building is secured.

Historic England will consider underwriting up to 80% of the costs of acquisition. Applicants must be local authorities, but any listed building at risk is eligible. Eligible costs can extend to professional services as well as the acquisition costs including the purchase price.

Before offering a grant, Historic England will expect to see a convincing strategy for resolving the long-term future of the listed building, including, where it has negative value, how the 'conservation deficit' can be funded. A 'back-to-back' agreement, often (although not necessarily) with a building preservation trust, to take the building from the local planning authority if and when they acquire it, commonly forms part of a solution. A building with a positive value might equally be sold on the open market, with suitable safeguards to ensure its repair.

The cost of professional services 'bought in' by authorities to enable them to serve and pursue the Notice are eligible, as well as the net cost of acquisition itself. Recharge costs for the use of in-house legal and other professional services are not normally eligible. However, they may be accepted in exceptional circumstances, provided a contribution from Historic England would demonstrably result in a proportionate increase in the resources applied to conservation work during the year.

Further advice

Historic England's grant schemes are administered through the Heritage at Risk teams in its local offices, which can advise whether a project will be a priority for support. The application packs for the schemes can be found on the Historic England website. In problematic cases, Historic England may also be able to provide technical advice on preparing schedules of works for Urgent Works Notices and Repairs Notices.

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Feedback

Historic England would appreciate feedback on this guidance, and on Urgent Works Notices and Repairs Notices served – both successes and problems. Please contact:
heritage.atrisk@HistoricEngland.org.uk

Contact Historic England

East Midlands
2nd Floor, Windsor House
Cliftonville
Northampton NN1 5BE
Tel: 01604 735460
Email: eastmidlands@HistoricEngland.org.uk

East of England
Brooklands
24 Brooklands Avenue
Cambridge CB2 8BU
Tel: 01223 582749
Email: eastofengland@HistoricEngland.org.uk

Fort Cumberland
Fort Cumberland Road
Eastney
Portsmouth PO4 9LD
Tel: 023 9285 6704
Email: fort.cumberland@HistoricEngland.org.uk

London
1 Waterhouse Square
138-142 Holborn
London EC1N 2ST
Tel: 020 7973 3700
Email: london@HistoricEngland.org.uk

North East
Bessie Surtees House
41-44 Sandhill
Newcastle Upon Tyne NE1 3JF
Tel: 0191 269 1255
Email: northeast@HistoricEngland.org.uk

North West
3rd Floor, Canada House
3 Chepstow Street
Manchester M1 5FW
Tel: 0161 242 1416
Email: northwest@HistoricEngland.org.uk

South East
Eastgate Court
195-205 High Street
Guildford GU1 3EH
Tel: 01483 252020
Email: southeast@HistoricEngland.org.uk

South West
29 Queen Square
Bristol BS1 4ND
Tel: 0117 975 1308
Email: southwest@HistoricEngland.org.uk

Swindon
The Engine House
Fire Fly Avenue
Swindon SN2 2EH
Tel: 01793 445050
Email: swindon@HistoricEngland.org.uk

West Midlands
The Axis
10 Holliday Street
Birmingham B1 1TG
Tel: 0121 625 6870
Email: westmidlands@HistoricEngland.org.uk

Yorkshire
37 Tanner Row
York YO1 6WP
Tel: 01904 601948
Email: yorkshire@HistoricEngland.org.uk

Historic England

We are the public body that looks after England's historic environment. We champion historic places, helping people understand, value and care for them.

Please contact
guidance@HistoricEngland.org.uk
with any questions about this document.

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If you would like this document in a different format, please contact our customer services department on:

Tel: 0370 333 0607
Fax: 01793 414926
Textphone: 0800 015 0174
Email: customers@HistoricEngland.org.uk

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What Historic England can offer:

Support remaining conservation officers

Engage and educate other Local Authority areas in Heritage at Risk, such as planning enforcement, legal, building control, Heritage Champions

Grant support

- Support HLF applications
- Underwrite Urgent Works Notices or Repairs Notices
- Engage with Local Enterprise Partnerships, Homes and Communities Agency and European Regional Development Fund

Provide expertise

- Significance (Local)
- Architectural (Local)
- Legal (National - Michael Guy)
- Surveyor/Development Economics (National – David Tomback)
- Policing and Crime Advisor (National – Mark Harrison)

Facilitate discussions and guide Building Preservations Trusts (BPTs) or local interest groups

Meet to discuss strategic approach