

ADVICE TO INFORM THE DEVELOPMENT OF PRESERVATION NOTICES FOR LISTED BUILDINGS

Final Report

SEPTEMBER 2017

Incorporating

EC HARRIS
BUILT ASSET
CONSULTANCY


Hyder

CONTACTS

ALISON POWELL
Associate Technical Director –
Planning

dd +02920 926818
+m +07736 723756
alison.powell@arcadis.com

Arcadis.
Arcadis Cymru House
St Mellons Business Park,
Fortran Road
Cardiff
CF3 0EY

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1. Introduction

1.1 Background to the Study

- 1.1.1 Arcadis Consulting (UK) Limited together with Holland Heritage were commissioned by Cadw in January 2017 to provide advice to inform the development of Preservation Notices for listed buildings.
- 1.1.2 The Historic Environment (Wales) Act 2016 received Royal Assent in March 2016 and makes important changes to the existing laws for the historic environment with the aims of:
- Giving more protection to listed buildings and scheduled monuments;
 - Improving the sustainable management of the historic environment; and
 - Introducing greater transparency and accountability into decision making.
- 1.1.3 One of the key issues discussed during the passage of the Bill through the National Assembly for Wales was the powers available to local planning authorities to protect buildings in disrepair and how it could be made easier and less costly to take effective action.
- 1.1.4 The Planning (Listed Buildings and Conservation Areas) Act 1990 empowered local planning authorities to serve Urgent Works Notices (S.54) and Repairs Notices (S.48) and ultimately serve Compulsory Purchase (S.47) Notices. However, these powers have not been widely used, with some local planning authorities never using them. The reasons for this are complex and can often be political, however the way the legislation was drawn up was acknowledged to have imposed restrictions on the use of these powers, which limited their effectiveness. For example, Urgent Works Notices could only be served on unoccupied buildings, or those parts of a building that were unoccupied, yet many buildings that fall into disrepair, remain occupied and therefore fell outside the scope of statutory powers prior to the 2016 Act.
- 1.1.5 The result has been that the condition of many listed buildings have declined to the point of severe dereliction before statutory action is possible, by which time the building may have suffered irreversible loss of historic fabric and character. By the time an Urgent Works Notice is served, the cost of the necessary works may be considerable and often more than the market value of the building, making it difficult for local planning authorities to allocate sufficient funding. Although the Act (S.55) provided the legal right to recover from the owner the cost of carrying out the Urgent Works, local planning authorities have rarely been successful in achieving this, as the legal process is hugely time consuming and costly and often subject to appeal. Denbigh Hospital illustrates well the difficulty of using the powers under the previous legislation, the cost of carrying out the necessary works and the challenge of recovering the cost from the owner. Indeed, this example was seminal to the discussion around the Historic Environment (Wales) Act, which resulted in a commitment from the National Assembly for Wales, to make statutory powers more effective and usable.
- 1.1.6 Repairs Notices are even less often used and local planning authorities can be deterred from doing so, fearing that it leads them unavoidably down the route of compulsory purchase. This ultimate statutory power to protect the heritage should only be used as a last resort, however the challenge of putting in place an appropriate body to whom to transfer the building and setting aside sufficient funds to pay compensation, has often meant that local planning authorities have been unable to use this particular power.

- 1.1.7 Other difficulties that limit the use of these powers, have included the definitions of ‘urgent’ and ‘minimum necessary’ and how this has been interpreted by the courts or Planning Inspectorate. Anecdotal evidence has suggested that local planning authorities have been concerned at the risk of being judged to have exceeded their statutory powers on account of the nature and extent of the works they have required. In addition, the availability of suitably qualified Conservation Officer time has been a further factor behind statutory powers being less well used than was hoped.
- 1.1.8 During the passage of the Bill through the National Assembly there has been discussion about how to deflect the financial penalty of rescuing historic buildings in disrepair more onto the owner and less on the local planning authority. In particular, there is concern that some owners deliberately allow their listed building to fall into disrepair with the long-term intention of proving it is ‘beyond repair’ and therefore the site should be redeveloped for financial gain.
- 1.1.9 The detail of how such a financial penalty could be imposed was unresolved at the time of the passing of the Act but the commitment to explore the options resulted in S.31, which allows the Welsh Ministers ‘to make regulations setting out further steps that local planning authorities in Wales may take to secure the proper preservation of listed buildings that have fallen into disrepair’. The Act allows the regulations to make provision for:
- A system of serving Preservation Notices, specifying the required works and the deadline for their completion;
 - A system for appealing against such Notices; and
 - The offences for failure to comply and for appeals in respect of such offences.
- 1.1.10 The Act therefore provides the legal framework for Preservation Notices, but it remains necessary now to work out the detail.

1.2 Aims and Objectives

- 1.2.1 The aim of this research is to ‘investigate why current powers are not being used by local planning authorities, gather evidence and outline potential options on how Preservation Notices could make a difference to historic buildings at risk in the future’.
- 1.2.2 Through the collection of an evidence base, the research aims to provide information in support of the following areas:
- what might constitute deliberate neglect – what does it look like, can it be defined, what are the main causes?
 - what are the strengths and weaknesses of the current powers available to local authorities and what are the obstacles to their use;
 - the circumstances in which Preservation Notices might be helpful, using case studies as examples;
 - identify a suite of potential options for the delivery of Preservation Notices.

1.3 Research Methodology

- 1.3.1 The research has gathered data from the following sources:
- An overview of the Buildings at Risk Register for all local planning authorities in Wales to quantify numbers of listed buildings of each grade and each category of

risk, in addition to various information relating to the type of building, ownership and occupation.

- Development and circulation of a structured questionnaire to all 25 local planning authorities in Wales. The aim of the questionnaire was to capture a mixture of qualitative and quantitative information including in relation to the numbers and relevant details of Urgent Works Notices, Repairs Notices and Compulsory Purchase Notices served by the authority over the last five years (including outcomes where this is known); how deliberate neglect of historic buildings is defined and confirmed; the identification of obstacles as to why current powers available may not be used; as well as the identification of potential solutions / recommendations. Information was obtained from sixteen LPAs (64%).
- Telephone consultations with a representative sample of local planning authorities in Wales. LPAs were selected on the basis of geography (inclusion of LPAs in north and south Wales), inclusion of a National Park Authority, rural and urban authorities, and inclusion of authorities known to have taken different approaches in relation to use of current powers (for example LPAs that have made use of statutory notices within the last five years and those that have made less use).
- Telephone consultations with other organisations, including for example the Country Land and Business Association (CLA), the Historic Houses Association (HHA), the Architectural Heritage Fund (AHF), the Canal & River Trust (CRT) and the Church in Wales (CiW).

1.3.2 The telephone consultations broadly covered the following areas:

- Discussion of instances where statutory powers have been successful / unsuccessful in rescuing historic buildings, together with reasons why;
- Whether the limitations of the existing statutory powers have prevented their use (for example restriction to unoccupied buildings);
- The role of appeals in challenging the use of statutory powers;
- The extent to which known or perceived financial gain has been made through allowing disrepair of listed buildings;
- The likely amount of financial penalty that is considered would be required to adequately reflect the gain made through allowing disrepair of listed buildings;
- The length of time over which disrepair generally occurs in such cases where disrepair has been left unchecked over many years for the purposes of making financial gain;
- Identification and discussions of particular case studies;
- Views about potential changes to regulations (for example if local planning authorities would be more likely to serve Preservation Notices if they could rely on being able to reclaim costs of carrying out repairs to buildings at risk without incurring a lengthy and costly legal process to do so);
- Whether penalties / notices are the right way to solve the problem of buildings at risk or whether a more proactive and incentivised approach could be more likely to succeed.

1.3.3 Following the data collection stage of the research, analysis has enabled the identification of various issues faced by stakeholders, together with the identification of commonalities and / or differences in approaches and circumstances between different LPAs and different perspectives. A workshop was held with Cadw staff in March 2017 to discuss initial

findings from the range of evidence collected and to discuss and review a suite of potential options for the development of Preservation Notices, together with their strengths and weaknesses.

1.4 Report Structure

1.4.1 This report is structured as follows:

- Chapter 2** provides an overview of the evidence collected from each of the various strands identified in Section 1.3, including findings from the BAR Register analysis, questionnaires and consultations in relation to buildings at risk across Wales and the issue of deliberate neglect.
- Chapter 3** summarises the existing statutory powers used in relation to listed buildings in disrepair, including findings from consultations with local planning authorities relating to frequency of use and obstacles to use. The chapter includes a summary of the strengths and weaknesses of individual powers, and identifies the gaps in provision that may currently exist.
- Chapter 4** describes how Preservation Notices might be used – their purpose, circumstances in which they could prove beneficial, and the strengths and weaknesses associated with a suite of potential options for their delivery.
- Chapter 5** identifies additional mechanisms and support structures aside from Preservation Notices, which may assist in the ongoing conservation of listed buildings at risk.

2. Buildings at Risk

2.1 Introduction

2.1.1 This chapter provides a summary of the evidence base that has been collated during the research in relation to buildings at risk, including evidence gathered from the review of the Building at Risk Register for Wales, the questionnaires and telephone interviews with local authority officers, as well as the findings of telephone interviews with other stakeholders. In addition to providing an analysis of buildings at risk across Wales, the chapter considers how neglect and deliberate neglect are currently defined, the scale of neglect as a problem, and how it is currently dealt with by local planning authorities.

2.2 Buildings at Risk Across Wales

2.2.1 A listed building at risk is one that is suffering through neglect and decay, meaning that the balance between its condition, use and ownership is no longer able to sustain it for the long-term (Managing Listed Buildings at Risk in Wales 2016, Cadw). The condition of listed buildings in Wales has been assessed since the 1990s, with local authorities directly commissioning surveys (funded by Cadw). Since 2012, a more consistent approach has been adopted, with Cadw commissioning an all-Wales condition review of listed buildings over a five year rolling period, surveying approximately 20% of the listed building stock per year. The surveys provide information relating to condition, use and risk status of listed buildings.

2.2.2 General data produced for Wales in 2015 identified that 8.54% of the listed building stock (of which there is a total of approximately 30,000 buildings in Wales) was defined as 'buildings at risk', with a further 12.2% defined as 'vulnerable'. Buildings experiencing a negative potential rate of change in condition (varying from short term action required through to complete loss possible and including those where the decline rate may potentially increase) relates to some 15% of these buildings.

2.2.3 The 2015 Update produced by The Handley Partnership in relation to heritage at risk draws the following conclusions:

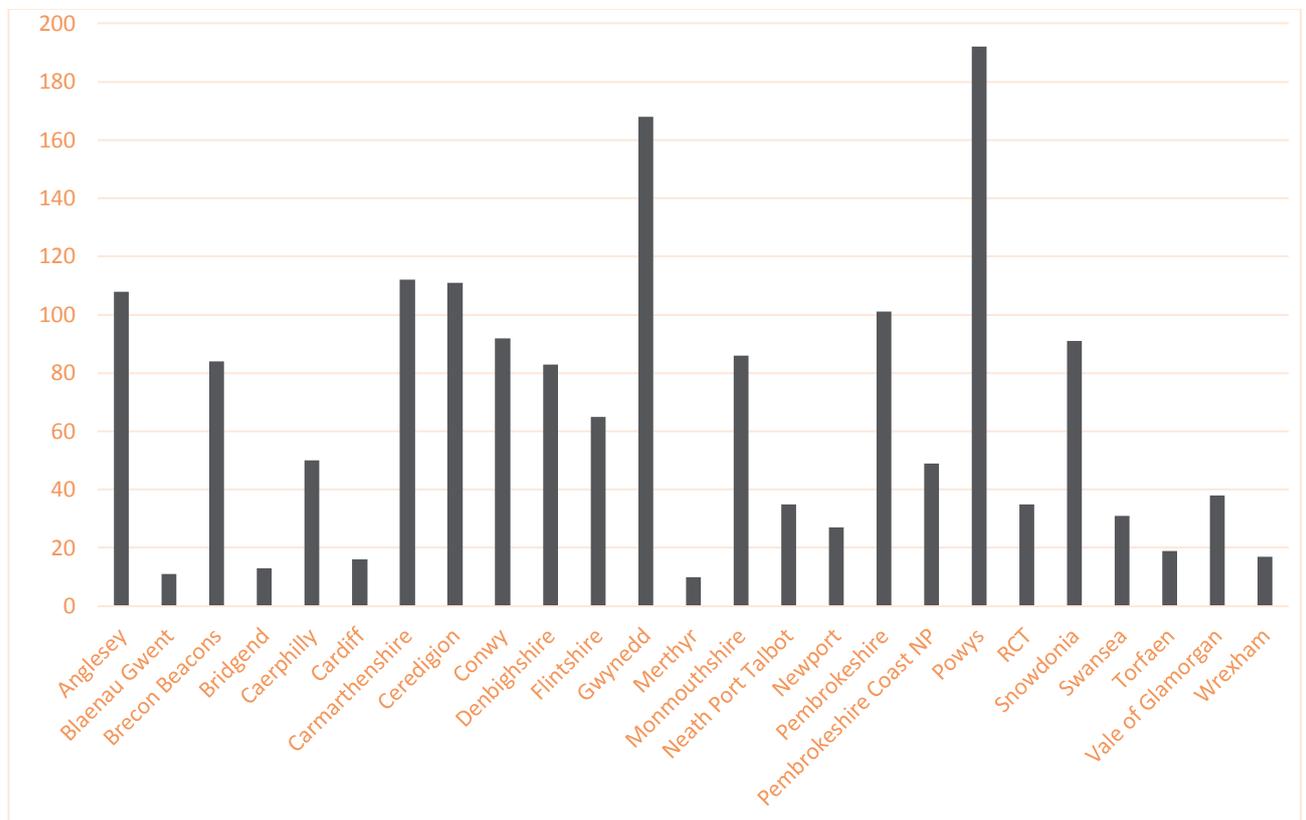
- That there are very different levels of risk and occupancy in certain types of buildings, with levels of risk and vulnerability being particularly high for groups such as 'extractive', 'process' and 'agricultural' building use types;
- Levels of maintenance to commercial buildings in economically challenged areas has been cut back, which may lead to increased levels of risk for this group;
- Difficulties associated with using or maintaining agricultural buildings in conjunction with modern farming methods;
- The overall risk profile across the spatial plan areas of Wales varies, with the Central Wales, Pembrokeshire Haven and Swansea Bay regions showing a very small increase in the number of buildings at risk between 2013 and 2015;
- Rural buildings are more likely to be at risk or vulnerable than ones in urban locations;
- The 2015 Update provides information relating to the 'rate of change' by building use types, and concludes that building types across Wales with the most rapid historic

decline are consistent with types highlighted as already at risk, namely agricultural, extractive, outbuildings, process, fortifications and vacant properties.

2.2.4 The Buildings at Risk Register includes all types of heritage, such as boundary structures, monuments, garden structures and street furniture. As part of this research into Preservation Notices, the Buildings at Risk database has been further interrogated to focus **only** on **buildings** in risk categories 1 to 3, and to look at information by individual local authority.

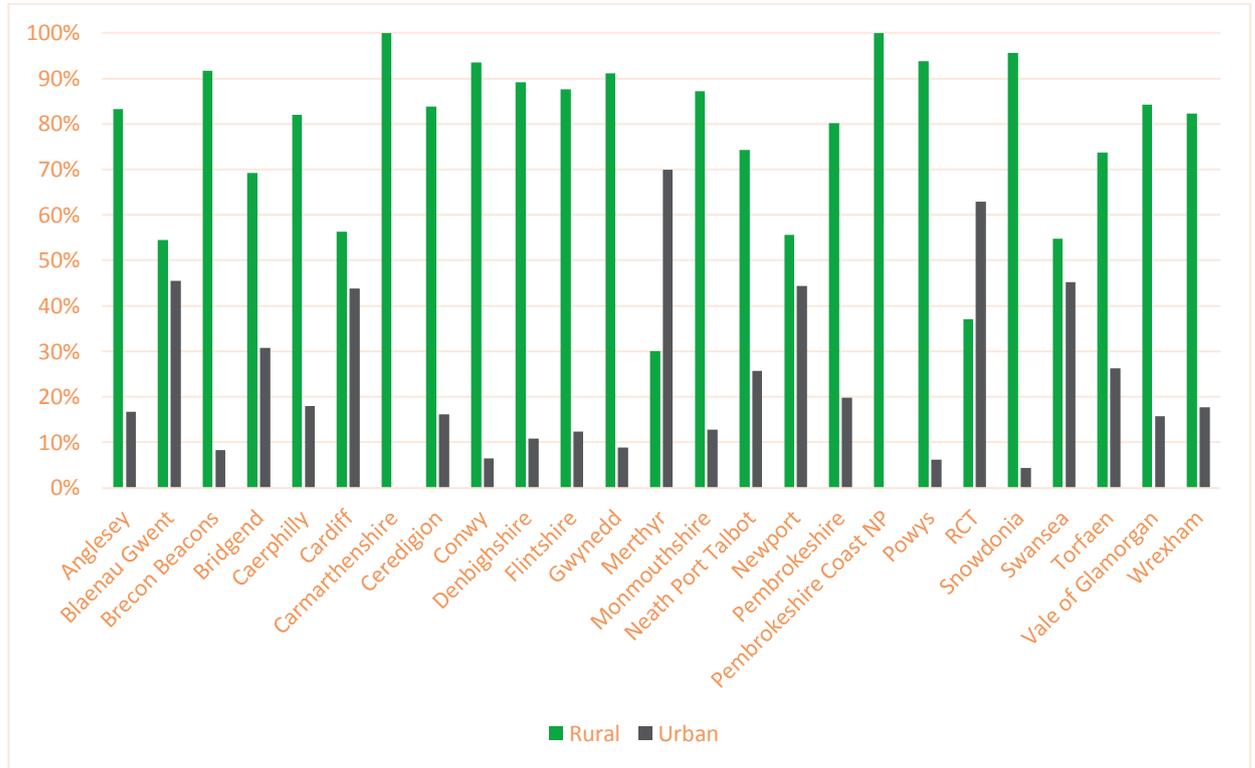
2.2.5 There are currently 1,644 **buildings** across Wales in risk categories 1 to 3, with the vast majority of these (92%) being Grade II listed. Grade II* buildings form a further 7% of buildings at risk in categories 1-3; and finally a total of nine Grade I listed buildings in these categories (approximately 1%) were identified and these were located in the local authority areas of Brecon Beacons National Park, Cardiff, Conwy and Denbighshire.

Figure 2.1 Number of Buildings at Risk by Local Authority – Categories 1 to 3



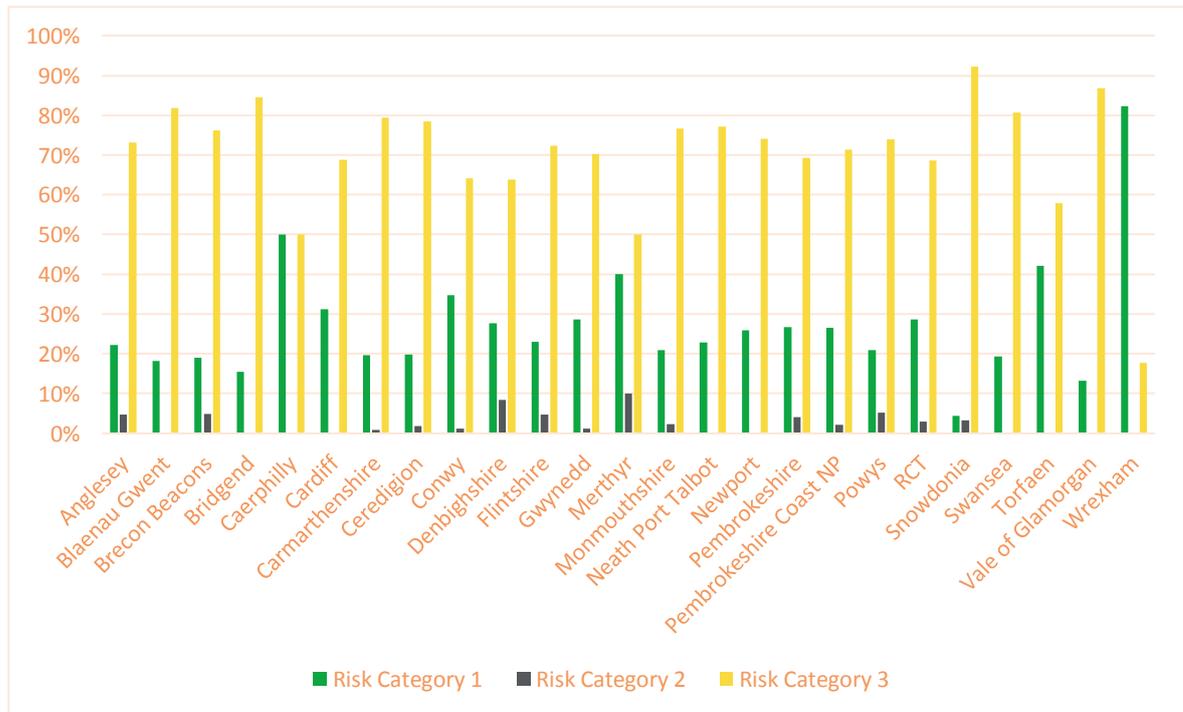
2.2.6 Figure 2.2 illustrates the proportion of these buildings at risk located in rural and urban areas, which confirms the broad findings identified in the 2015 Update document. Rural areas have been defined as including villages and smaller settlements. Interestingly, this is the case even for large urban authorities such as Cardiff and Swansea, which both have rural hinterlands.

Figure 2.2 Buildings at Risk by Local Authority – Rural and Urban Locations



2.2.7 Figure 2.3 shows buildings by risk category for each local authority.

Figure 2.3 Buildings at Risk by Risk Category 1 to 3



2.2.8 The vast majority of buildings at risk across all local authority areas are in private ownership, and nearly 60% of buildings in risk categories 1 to 3 are currently vacant.

2.2.9 Table 2.1 summarises buildings at risk by building type. The table shows that agricultural buildings, outbuildings and domestic properties form the highest proportions of buildings at risk in categories 1 to 3. Building types with higher numbers of buildings at risk may not necessarily mean more severe levels of risk or greater difficulty in rescuing. In fact some building types with smaller numbers of buildings at risk (such as industrial or religious buildings) often present more challenging problems to resolve.

Table 2.1 Buildings at Risk by Building Type

Building Type	Number (%) at Risk (Categories 1 to 3)	Building Type	Number (%) at Risk (Categories 1 to 3)
Agricultural - outbuilding	378 (23%)	Extractive – mine / quarry	66 (4.0%)
Agricultural – barn	120 (7.3%)	Former industrial	58 (3.5%)
Civic	7 (0.4%)	Fortification	12 (0.7%)
Cinema / Theatre	5 (0.3%)	Garden building	21 (1.3%)
Commercial – office / shop	36 (2.2%)	Institution – education / hospital / other	16 (1.0%)
Commercial – hotel / public house / restaurant	20 (1.2%)	Outbuildings	286 (17.4%)
Domestic – house	281 (17.1%)	Religious – churches / chapels	92 (5.6%)
Domestic - farmhouse	140 (8.5%)	Religious – church hall	6 (0.4%)
Other	100 (6.1%)		

2.3 Deliberate Neglect

2.3.1 This section contains a summary of evidence collected from local authority Conservation Officers and others with responsibility for heritage both through questionnaires and more detailed telephone interviews, in relation to the issue of deliberate neglect.

Defining Deliberate Neglect

2.3.2 The questionnaire and telephone interviews sought to obtain further information about deliberate neglect to historic buildings – what it is, how it can be defined, what approaches are taken by LPAs to confirm that disrepair is as a result of deliberate neglect.

2.3.3 The research has identified that the majority of local authorities do not have a specific definition for deliberate neglect and furthermore, that such a definition would be extremely hard both to determine and ultimately to prove in the courts. Deliberate neglect would essentially be a ‘conscious choice’ by the owner not to maintain the building even though it would be possible to secure the resources to do so. Although a likely potential outcome would be that a building in very poor condition could fall down or be demolished, proving this **intent** and securing sufficient redress in the courts would be very difficult.

- 2.3.4 A further point relates to the fact that there is no requirement enshrined in law for owners to *maintain* listed buildings in good repair; if this is the case then can they reasonably be prosecuted for deliberate neglect? The case would need to focus on the degree to which the lack of maintenance had diminished the special architectural or historic interest of the listed building and in this way caused irreversible harm. With reference to ‘minimum compensation’, the 1990 Act Section 50(1)(b) refers to buildings ‘deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or redevelopment of the site or adjoining site’.
- 2.3.5 An all-encompassing *definition* would be difficult to determine and may indeed be counter-productive, although *guidance* on what might constitute deliberate neglect would be more useful.
- 2.3.6 Deliberate neglect is cited as being just one of the reasons why a building might become at risk; there are many buildings on the BAR register that may not require intervention in the form of urgent works or repairs notices, but that still would require attention to ensure they do not deteriorate further. Many listed buildings would benefit from more robust cyclical maintenance plans, but the extent to which the absence of these may constitute deliberate neglect is hard to determine.
- 2.3.7 Due to resource issues, LPAs have stated that action in relation to the BAR Register is typically only being taken where buildings are in alarming decline / the poorest of conditions, with priorities including the value of the asset and where there is financial and political support. The presence of a regeneration area or funding for example, has been identified as one of the key factors likely to drive improvements to buildings at risk, although it is noted that this is likely to restrict priorities to urban areas.
- 2.3.8 The difficulties of proving neglect have been demonstrated with anecdotal evidence – for example one LPA described how they were unable to prove beyond doubt in court that a structure was deliberately removed without permission, with the owner claiming it ‘fell down’; the prosecution was ultimately withdrawn by the LPA notwithstanding the fact that they knew it had been taken down.
- 2.3.9 Several LPAs provided what they identified to be a ‘generally accepted’ definition of deliberate neglect, with examples including:
- ‘where the owner is wilfully allowing the condition of a building to deteriorate and/or is unwilling, as opposed to unable, to undertake sufficient action to ensure the proper preservation of the building’*
- ‘the owner allowing the building to degrade without taking any remedial action to keep the building in a wind and watertight condition’*
- ‘the wilful neglect of a building through not regularly maintaining the building and carrying out basic repairs’*
- ‘a combination of factors including lack of maintenance leading to decay, deliberate removal of material, leaving a building unsecured and an overgrown site surrounding a building’*
- 2.3.10 Views from LPAs as to how deliberate neglect could be *proved*, identified the following factors (although it should be noted that some of the following are not necessarily

deliberate neglect but could be circumstantial, thus again emphasising some of the difficulties here):

- A downward trend in the condition of the building over time (this could be achieved through BAR surveys or LPA monitoring for example);
- Proof that the owner of the building was the responsible guardian at the time the condition of the building was in decline;
- Track record of the owner, including unwillingness to communicate with the local authority;
- That the condition of the building had been brought to the attention of the owner and ensured that the owner was aware of what they needed to do to rectify the condition within a reasonable timescale.

2.3.11 Identifying a definition of deliberate neglect would therefore be expected to include provisions relating to:

- The non-maintenance of a building, particularly maintaining it in a weather-tight condition;
- The sale and/or removal of historic features or materials (internal or external);
- Lack of provision of security to protect the building from vandalism.

2.3.12 Other LPAs do not make a distinction between *deliberate* neglect and that which is more unintentional, or 'benign' (for example an elderly owner who is unable to keep on top of building maintenance), and define neglect simply as being where there is no visible intention by the owner to carry out repairs, where there is complete inactivity on the building, and often where the building is empty.

2.3.13 In some instances, an owner may have undertaken urgent works to secure the condition of a building in the short to medium term, but is unwilling to implement any satisfactory measures for lasting repair; this too could be considered to be deliberate neglect, although it could equally be the lack of financial resources.

2.3.14 Approaches currently taken by local authorities to deal with instances of neglect include:

- Early correspondence with owners raising concerns over the condition of the building and requesting the owner to confirm their intentions. Such correspondence could provide advice around the availability of the authority's pre-application advice service and the availability of grants as necessary;
- Meeting owners for informal discussion about the issues, taking a 'light touch' approach initially to offer support and encouragement; if no action is taken, then a more enforcement driven approach may be followed;

2.3.15 As part of the implementation of their Buildings at Risk Strategy 2012-2016, Wrexham CBC made efforts to identify and contact all BAR owners in order to ascertain the reasons for risk and potential barriers to bringing a building back into a good state of repair; this process has assisted in identifying those owners that would be willing to work with the local authority, and those who do not wish to engage / work towards a long-term solution for the building. Proactive approaches undertaken by other LPAs include Snowdonia National Park, which has removed 65 buildings from the BAR Register over the last ten years following the provision of grant-aid to repair buildings and correct unauthorised works; and Bridgend CBC, which has been successful in seeking opportunities to use regeneration

funding (for example Townscape Heritage Initiative funding) for potential building restoration projects.

2.3.16 A number of other organisations have been interviewed in relation to this research, including the Country Land and Business Association (CLA), Canal and River Trust (CRT), Historic Houses Association (HHA), the Church in Wales (CiW) and the Architectural Heritage Fund (AHF). These are organisations that either own large numbers of historic assets, represent the interests of owners of historic assets, or have direct involvement in heritage at risk. The purpose of consultations was to confirm experience of the current system of statutory notices from different perspectives and to gauge opinion as to how statutory powers could beneficially be amended. The general view from these organisations in relation to deliberate neglect included:

- deliberate neglect would be very hard to prove convincingly in the courts. Any claim of deliberate neglect would have to be fair, reasonable and beyond doubt.
- whilst it is often thought that a solution to a listed building in disrepair is for the building to be sold, this can often be hampered by issues of negative equity. Anecdotal evidence was provided of buildings with an 'asset value' in the owner's accounts of £1 million, when the District Valuer has judged its value to be effectively zero.
- Buildings at Risk is not widely enough understood by owners; for example owners should be told that their building is on the register and this should be included in Land Registry information so that prospective purchasers are aware before buying.
- The possibility of exploring a joint solution with Cadw that would be more proactive than punitive – for example Buildings at Risk Officers within local authorities or regions, or the financial risk of statutory action being shared with Cadw.

Deliberate Neglect – What is the Scale of the Problem?

2.3.17 LPAs were asked to estimate the number of listed buildings within their authority area currently in a state of disrepair or at risk as a result of deliberate neglect. Few LPAs were able to quantify this problem, primarily because of the difficulties that arise with being able to tell accurately whether or not neglect is deliberate. One LPA stated that they '*had not to date had the reason or ability to confirm whether neglect is deliberate*'. Responses received include:

- **Newport** – between five and twenty buildings of various types;
- **Wrexham** – approximately five buildings within the area for which they would consider serving a notice at present in order to deal with deliberate neglect. These include domestic properties, a dovecote and a public house;
- **Ceredigion** – identified eleven properties that have recently been drawn to the attention of the LPA, including six domestic properties, three chapels, and two farm/outbuildings.

2.3.18 Information received from LPAs relating to the *type* of buildings within their area that were more likely to suffer from neglect includes:

- Buildings within active quarries that do not serve a useful purpose for modern day quarrying activities but for which alternative uses are unlikely to be found (particularly an issue within Gwynedd);
- Rural cottages / isolated farmhouses that have fallen out of use as occupants move to better standard housing elsewhere. For many of these properties, ownership is unknown and the properties themselves have often fallen into too poor a state of repair to be converted back into residential use;
- Agricultural buildings / outbuildings;
- Religious buildings are likely to be more at risk of deliberate neglect due to their low market value on disposal, perceived liability rather than asset, and limited options for conversion to new uses;

2.3.19 The full extent of the problem is therefore not clear; LPAs stated that lack of resources was a key factor here, preventing authorities from being able to regularly monitor the listed building stock. A number of LPAs also commented that the usefulness of the BAR register has diminished since ownership was transferred to Cadw rather than being held by individual local authorities.

2.3.20 A further issue relates to buildings at risk that are in the ownership of the local authority (approximately 2% of buildings in risk categories 1 to 3 are in local authority ownership).

2.3.21 A high proportion of buildings most at risk are those which are economically redundant and isolated. Whilst there are instances within Wales of buildings deliberately being allowed to fall into disrepair for the purpose of justifying their demolition, the most common scenario with buildings at risk is of a redundant building or building of negative value, where the cost of repair exceeds the market value.

3. Existing Statutory Powers

3.1 Introduction

3.1.1 Local authorities already have a number of legal powers to address the problem of neglected historic buildings. This chapter draws on information obtained from questionnaires and consultations to identify the strengths and weaknesses of the current powers available, the frequency with which such powers are used, and obstacles to their use.

3.2 Summary of Existing Statutory Powers

3.2.1 Existing statutory powers available to local authorities relate primarily to Urgent Works Notices (Sections 54-55 of the Planning (Listed Buildings and Conservation Areas) Act 1990), Repairs Notices followed by compulsory purchase (Sections 47-53 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 215 notices (Town and Country Planning Act 1990). Table 3.1 summarises the circumstances in which each of these powers can be utilised and the type of works they may cover.

Table 3.1 Current Statutory Powers Relevant to Neglected Historic Buildings

Statutory Notice	Description
Urgent Works Notice (S.54)	<p>Enables LPAs to execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area. The 1990 Act originally specified that if the building is occupied, the works may be carried out only to those parts not in use, although importantly this has now been amended by the 2016 Act. The owner must be given a minimum of seven day's written notice of the intention to carry out works and the notice must describe the proposed works to be carried out.</p> <p>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 may appeal that the works are unnecessary or that the amount specified in the notice is unreasonable.</p>
Repairs Notice (S.48) / Compulsory Purchase Order (S.47)	<p>Served on the owner of a listed building specifying those works it considers reasonably necessary for the proper preservation of the building.</p> <p>If, after a period of not less than two months, it appears that reasonable steps are not being taken for the proper conservation of the listed building, the authority can begin compulsory purchase proceedings (section 47).</p> <p>Prior to Welsh Ministers confirming the compulsory purchase order, the local authority must be able to demonstrate that once the CPO is confirmed there is both funding available to compensate the ex-owner and funding available to restore the property.</p>
Section 215 Notice	<p>Enables LPAs to serve a notice on an owner or occupier demonstrating that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area. The Notice requires steps to be undertaken within a</p>

specified timescale. Sections 216 and 217 of the Planning Act specify penalties for non-compliance and appeal procedures respectively. Section 215 Notices can be used in conjunction with Urgent Works Notices and Repairs Notices.

If the Notice is not complied with, the owner can be fined as a criminal offence. The local authority can undertake works in default and recover the cost from the owner; until recovered, these costs are a charge on the property.

Source: *'Stopping the Rot'*, Historic England

3.2.2 Other powers available to local authorities include:

- the serving of Empty Dwelling Management Orders under section 132 of the Housing Act 2004 (which enable a local authority to take over management control of a qualifying residential property, defined as one which has been unoccupied for a minimum of two years together with evidence of nuisance and also community support;
- enforced sales procedures under certain circumstances of the Law of Property Act 1925. Under this process, the local authority exercises the power of sale to recover money owed for carrying out works in default. The charge is registered as a local land charge on the property by the local authority. There is flexibility over the minimum size of debt necessary for an enforced sale to take place, for example it could range from £500 to £1,500;
- powers under sections 77 and 79 of the Building Act 1984 in relation to dangerous structures, however local planning authorities are required to first consider whether they should instead use an Urgent Works or Repairs Notice.

3.3 Frequency of Use

3.3.1 Findings from the research have identified the number of instances where Urgent Works Notices (S.54), Repairs Notices (S.48), Compulsory Purchase Orders (S.47) and Section 215 Notices have been served by LPAs over the last five years. Table 3.2 sets out the number and type of statutory notices that have been served by local authority.

Table 3.2 Statutory Notices Served by LPAs 2012-2017

Local Authority	Urgent Works Notice (S.54)	Repairs Notice (S.48)	Compulsory Purchase (S.47)	Section 215 Notice
Anglesey	-	-	-	1
Brecon Beacons	2	-	-	2
Bridgend	-	-	-	4 (non-historic buildings)
Ceredigion	-	-	-	4
Conwy	-	-	-	Data unavailable
Denbighshire	-	1	1	-
Merthyr Tydfil	-	2	-	3
Monmouthshire	-	2	1	1
Newport	-	-	-	2
Pembrokeshire Coast	1	-	-	-
Pembrokeshire	1	3	-	-
Snowdonia	-	-	-	3

3.3.2 A further four LPAs to those listed in the table above (Caerphilly, Cardiff, Gwynedd and Wrexham) stated that they had not served any type of notice within the last five years. Section 215 Notices are clearly the most frequently served, with two LPAs having served at least four such notices within the last five years (Ceredigion Council and Bridgend CBC).

3.3.3 In relation to the range of other powers described, such as enforced sales procedures and EDMOs, none of the LPAs spoken with had experience of using these in relation to listed buildings, although at least one had explored the potential for enforced sales in detail. One LPA stated that works had been pursued under S78 of the Building Act where an immediate danger to the public had been identified.

3.4 Outcomes

3.4.1 LPAs were asked to briefly describe the outcomes to arise from serving statutory notices.

3.4.2 Of the four Urgent Works Notices served by LPAs within the past five years:

- A completely successful outcome was identified for one building – the property was sold to a developer and has subsequently been brought into a good condition;
- Partial success was identified for a further building – the works were completed in default to prevent water ingress and secure the property (success here has only been identified as partial, because a long-term solution for the property has not yet been found);
- An unsuccessful outcome was identified for a third building, which was ultimately de-listed and demolished as a dangerous structure;
- A fourth Urgent Works Notice is ongoing.

3.4.3 Of the Repairs Notices served by LPAs within the past five years:

- For two buildings, the Repairs Notice has led to repairs being undertaken by the owner;
- One building has been sold, but remains on the BAR Register;
- For three buildings, no action has been taken by the owner as a result of the Repairs Notice, with works undertaken in default by the local authority;
- Three Repairs Notices have led to compulsory purchase proceedings (or potential proceedings);
- A final case is ongoing.

3.4.4 The two compulsory purchase orders that have been identified relate to Denbigh Hospital in Denbighshire and Caerwent House in Monmouthshire. In both instances, the local authorities have drawn attention to the length of time taken to develop the CPO proceedings, with hurdles including legal challenges and resistance from the owner, finding appropriate partners for securing the back to back agreement (for example in the case of Caerwent House the initial partner went into liquidation and a second partner then had to be sought and secured).

3.4.5 The sixteen Section 215 notices that have been served in relation to historic buildings have had varying degrees of success. Examples include:

Ceredigion – two of the four notices served have resulted in either the need for further enforcement action or potential prosecution. One notice (for a property on Quay Street in Cardigan), resulted in repair works to external facades being completed and costs recovered, although further vandalism has taken place at the property recently.

Merthyr Tydfil – various degrees of success have been experienced here across the three Notices served.

Newport – minor cosmetic works carried out in both instances, but no long-term solutions for the properties achieved.

3.5 Obstacles to the Use of Current Powers

3.5.1 Clearly, the current range of powers are not regularly used. The main reasons as to why this might be the case were explored with local authority officers, with discussions identifying the following areas:

- **Risk (financial or otherwise) to the authority.** This was identified as one of the principal reasons why existing powers are not currently used. Financial risk related to both the non-recovery of the costs of urgent works as well as from potential compensation claims by owners. The level of risk was thought to be particularly heightened where there may be a conservation deficit which for some buildings may run into millions. Even where a back to back arrangement may potentially be in place, the costs are likely to fall on the local authority. Purportedly unrealistic District Valuer property valuations can be an added complication / risk. The financial risk is often perceived as outweighing any potential benefits, particularly in relation to Urgent Works Notices where the works themselves are not likely to provide a long-term solution to the building. One LPA stated that there were examples of buildings in the local authority area known to suffer from deliberate neglect, but for which it had not been possible to serve statutory notices due to a lack of confidence in cost recovery associated with the procedures or timing issues for sites with complex issues (specifically relating to buildings located within LDP strategic sites or affected by other emerging masterplanning proposals).

- **Confidence, skills and capacity of local authority staff.** The level of work necessary to prepare, serve notices and then undertake follow-up work (for example seeking interested parties who may be part of a solution such as a back to back deal for CPO action) is significant. Not all LPAs have staff with the right level of expertise to be able to make judgements as to what constitutes deliberate neglect and which statutory powers may be appropriate to which case. Also, not all conservation staff are at a level in their LPA where they have the ear of senior management and budget-holders and in such situations it can be more difficult for them to get support for action on listed buildings. One LPA stated that officers were 'scared of making even one tiny error' when preparing a notice, in case of potential legal and financial repercussions to the authority. The level of work involved can increase where there are absentee owners. For those LPAs that do not have a dedicated conservation team, capacity to undertake proactive work has reduced.
- **Financial resources.** All of the formal notices have a cost attached to them, whether that be officer time, legal expertise, provision of expert opinion via consultants, doing works in default, defending the authority's position at appeal or in court and ultimately in relation to compulsory purchase. The lack of resources across authorities has led to a much greater need to prioritise actions.
- **Support and experience of enforcement and legal officers.** The level of legal support and capacity within the local authority can be an important determining factor as to whether / if notices are served. A further point relates to where the conservation and/or enforcement teams 'sit' within the authority – for example, where enforcement officers are *within* the conservation team this may encourage a more linked-up and proactive approach, compared to where the enforcement team is within a separate department making the process more complaint driven / reactive. LPAs have identified a lack of supporting legal representation in court with the relevant expertise and experience, particularly for example to reclaim the money spent on commissioning urgent works.
- **Political and wider corporate support / appetite.** A number of LPAs identified a lack of both political and wider corporate support as a reason why notices were not served or progressed, with buildings at risk falling further down the political agenda. A further political issue relates to timescales and the lack of political stability to see long-term projects through. Senior management within a number of local authorities have specifically highlighted the risks of CPO from serving a Repairs Notice and would therefore not agree to serve such a notice.
- **Awareness.** Several LPAs were either not aware of certain powers that could be used (this particularly related to Section 215 notices) or had a different level of awareness of how they could be used. This latter point again related to Section 215 notices – one LPA considered they could only be served to require minimum works necessary to make the building secure (for example boarding the building up), whereas other LPAs were using the notices as a way of enhancing the external appearance of the property or its setting.
- **Support from Cadw.** More encouragement would be welcomed from Cadw to follow up on the Buildings at Risk Register, providing support to local authorities in addressing cases of deliberate neglect and adding weight to requests to LPA budget holders for funds to take statutory action.

- **Short-term fix rather than long-term solution.** There is uncertainty as to whether serving urgent works, repairs or section 215 notices is effective in achieving the necessary repair of the historic building. The fact that Urgent Works Notices are restricted to emergency repairs and do not offer long-term solutions was highlighted by a number of LPAs.
- **Condition of the building at the time of listing.** Several LPAs noted that it may not be effective or appropriate to serve notices on buildings that may have been listed in a ruinous condition – in these instances an Urgent Works Notice may not be appropriate and works under a Repairs Notice may be considered unreasonable.
- **Location of property.** For example, serving of a Section 215 Notice is limited to locations where buildings can be viewed from public vantage points, and therefore may not be an applicable power for isolated rural properties.
- **Absence of active Building Preservation Trusts.** There is not even coverage across Wales by BPTs, which can be an important partner in back to back deals and the CPO process. There is no active BPT in the Cardiff area or in North West Wales.

‘the system seems skewed in favour of the deliberate neglecter...we have not rushed to repeat the experience’

3.5.2 LPAs were asked whether or not they considered that the threat of using current statutory powers was a sufficient deterrent to owners; nine LPAs felt that the threat of action could work as a deterrent, and cited examples within their areas of where this had been the case, with instances of the threat leading to emergency repairs, security works and occasionally to the sale of the property. Other LPAs felt that letters giving the ‘threat’ of action were often ignored by owners, particularly owners for whom the deliberate neglect category might apply. One LPA stated that they did not issue letters that threatened action, but rather focused on more proactive work, providing repair grants for permanent repairs.

3.5.3 Feedback from other stakeholder organisations in relation to the use and effectiveness of the current range of statutory powers included that:

- The resources and time of local authority Conservation Officers are considered to be the key obstacles to greater use not being made of current powers.
- Ideally, more proactive work is necessary between Conservation Officers and the owners of buildings at risk.
- The statutory enforcement process does not necessarily result in finding a long-term solution for heritage at risk; it can be just a way of ‘buying time’. Examples have been cited of buildings where £600k of works were carried out following an Urgent Works Notice, but this had not led to more extensive repairs and so in time the building was once again at risk.

3.6 Strengths and Weaknesses of the Current System

3.6.1 The strengths and weaknesses of the current range of statutory powers are summarised in Table 3.3.

Table 3.3 Strengths and Weaknesses of Current Statutory Powers

	Strengths	Weaknesses
Urgent Works	<p>Local authorities are able to undertake any works that they deem urgently necessary for the preservation of a listed building after not less than seven days' notice to the owner.</p> <p>Provides the power for relatively rapid action to prevent serious damage to part or all of a listed building.</p> <p>Grant assistance potentially available from Cadw to local authorities to cover up to 50% of the non-recoverable costs following service of an Urgent Works Notice.</p>	<p>Restricted to emergency repairs only, therefore the building is likely to have deteriorated significantly before an Urgent Works Notice is required.</p> <p>In order for the local authority to recover their costs for undertaking works from the owner they have to serve a further Notice to which the owner may also appeal; there is a risk to the local authority that they will not be able to recover their costs (for example where the property is deemed to have negative value).</p> <p>Carrying out urgent works does not provide a long-term solution – urgent works are sometimes merely temporary repairs to prevent permanent loss.</p> <p>Urgent Works are unlikely to be sufficient to enable a building to be removed from the Buildings at Risk Register.</p> <p>Resources required to prepare the notice (level of detail), to contract and manage works if being carried out in default and to respond to appeals.</p> <p>Appeals process means that timescales for cost recovery can be very lengthy and potentially unsuccessful.</p>
Repairs Notices	<p>Useful in instances where the LPA is able to demonstrate that they are in a position to restore the building in the event of a CPO.</p> <p>Sets out a comprehensive fully specified programme of works needed to rescue the building such that it could be brought back into use and removed from the Building At Risk Register.</p> <p>Failure to comply with a Repairs Notice legally enables the LPA to move towards compulsory purchase if after two months the owner has not demonstrated any action to address the repair issues set out in the</p>	<p>After two months of serving a Repairs Notice it is possible for the owner to serve a purchase notice on the LPA forcing them to take ownership if they can claim that the LPA has prevented them delivering an appropriate solution for the building. This can mitigate against the use of a Repairs Notice as a 'threat', although statistically most Notices never get to CPO, triggering the owner into action.</p> <p>Reluctance by local authorities to serve repairs notices on the basis that CPO proceedings are undesirable; however without the threat of compulsory purchase, serving a Repairs Notice is</p>

Advice to Inform the Development of Preservation Notices for Listed Buildings

	<p>Notice.</p>	<p>ineffective.</p> <p>For buildings where viability is borderline, the LPA / other interested parties are likely to be unwilling to commit resources to work up schemes / commit to legal agreements.</p> <p>Level of work and expense involved in preparing specifications of repairs can be high. Also work and expense in developing understanding of the site should compulsory purchase be the outcome – valuations, options appraisals, payment of compensation to the owner and delivery of a financially viable project.</p>
Compulsory Purchase	<p>Enables LPA to take a listed building off the hands of an owner who has failed to rescue the heritage and who has been neglectful, whether deliberately or otherwise. Enables the LPA to pass the building into an appropriate new ownership for the building to be rescued.</p> <p>Can be the catalyst for successful heritage-led regeneration.</p>	<p>Level of compensation that may need to be paid to the owner on compulsory purchase; where a viable project for the property can be demonstrated this may leave the LPA open to payment of additional compensation despite deliberate neglect.</p> <p>Significant legal, consultancy and other costs involved.</p> <p>The process takes a very long time and can be legally very contentious, with LPA staff having to defend their action at appeals.</p> <p>Can be difficult to secure a back to back agreement with an appropriate third party to whom to transfer the building after CPO. Without this, the LPA is left with the liability of the listed building.</p>
Section 215 Notices	<p>Useful to improve the external appearance of publicly visible buildings, especially listed buildings in Conservation Areas where the character of the whole area is important.</p> <p>Procedure for issuing notices is relatively straightforward.</p> <p>Procedure for dealing with non-compliance is more straightforward as it involves prosecution rather than serving a further Notice.</p>	<p>The type of works undertaken is restricted, and as a result the notice can rarely resolve issues with the overall condition of properties</p> <p>May have little long-term impact.</p> <p>Not all LPAs are aware that these notices can be used / instances when they can be used.</p> <p>If non-compliance leads to a court case the fines imposed by magistrates can be so small as to fail to act as a deterrent.</p>
Enforced Sales procedure	<p>The local authority never owns the property.</p> <p>The process is much more user friendly and quicker than compulsory purchase proceedings.</p>	<p>Not all local authorities are aware that they could use this procedure in relation to listed buildings, or have adopted policies regarding its use.</p> <p>Procedure is unlikely to be successful in</p>

<p>The process is likely to achieve the twin aims of bringing a property back into use and recovering debts.</p> <p>Action can be taken before the condition of the building has deteriorated significantly.</p> <p>Onward sale can be either through auction or to a preferred bidder.</p>	<p>areas of market decline.</p> <p>Relates primarily to vacant domestic properties.</p>
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3.7 Summary of Key Issues and Gaps

3.7.1 This chapter has considered the range of current statutory powers that exist for local authorities in relation to buildings at risk, the principal obstacles to their use and the strengths and weaknesses associated with them. This review, together with discussions with LPAs and other stakeholder organisations, has highlighted a number of key issues and gaps. Key issues include:

- That there are a plethora of reasons why local authorities do not use existing powers to deal with buildings at risk, but that the principal reasons relate to financial risk to the authority, staff confidence, resources and capacity, and the political and corporate will/support within the organisation;
- Most local authorities have stated that they would like to be much more proactive when it comes to dealing with neglected buildings in their areas, but that because of resourcing issues, they have to take a much more reactive approach, either targeting buildings for which they have received complaints, or buildings for which there is a stronger possibility of solution (for example urban buildings in areas that may attract regeneration funding);
- The statutory enforcement process at present is merely a way of ‘buying time’ for a building, and may be more costly in the long-term than trying to find a permanent solution.

3.7.2 Gaps in the system at present are as follows:

- There are no suitable powers for local authorities to serve on owners prior to a problem becoming urgent, by which time costs of undertaking the works will no doubt have escalated and the building is potentially at risk. Whilst Repairs Notices can be served at an earlier stage, they present a risk to the local authority of the owner serving a purchase order, and the Notices themselves are much more costly to prepare because of the detailed specification of works required, all of which prevents their wider use.
- Present powers place a significant financial burden on the local authority, with the costs associated with works undertaken in default needing to be reclaimed from the owner direct, with timescales for cost recovery being lengthy. There is no method by which repairs / maintenance can be required, with a charge placed on the property instead of the owner (and then recoverable to the local authority on sale of the property).

3.7.3 Buildings that are at risk in Wales (whether this is as a result of deliberate or non-deliberate neglect) face uncertain futures due to a range of factors; as each building is physically

different, so too are the social and economic circumstances behind the building's current condition (absent, ill or elderly owners, viable or isolated locations, buildings that have belonged to a particular family for generations, buildings bought at auction for a quick refurbishment, sale and profit). Local authorities have a relatively narrow range of powers that try to deal with this potentially exhaustive range of circumstances. As shown in this chapter, the statutory powers that do exist have their own weaknesses and deficiencies and are not, in their current guise, used to anything like the extent they could be, either because of the level of financial risk using them may present to the local authority, the capacity and experience of local authority staff (conservation, enforcement and legal officers), or the fact that powers do not typically present a long-term solution to an individual property. There is not likely to be a quick fix, or instant solution to this problem, however there is an opportunity both to find ways to provide additional support to local authorities in making use of the existing system, one of which is to consider additional powers that could be brought in to try and make improvements. The following two chapters of this report therefore consider:

- Circumstances and options for delivery of a new power that could be introduced, namely a Preservation Order; and
- What additional support in terms of guidance, best practice and other mechanisms, could be introduced to assist the better working of the existing system.

4. Preservation Notices

4.1 Introduction

- 4.1.1 The preceding chapters of this report have identified the complexities associated with how to identify the deliberate neglect of listed buildings, difficulties associated with quantifying the scale of deliberate neglect across Wales, the various approaches by local planning authorities at present to deal with neglected listed buildings and buildings at risk, together with the gamut of reasons why current powers are not being used by LPAs at present.
- 4.1.2 The purpose of this chapter is to clarify what is meant by a Preservation Notice, identify the circumstances in which Preservation Notices might be helpful (using findings from both the BAR Register and consultations with LPAs and other stakeholders as evidence where necessary) and identify potential options for the delivery of Preservation Notices.

4.2 What is a Preservation Notice?

- 4.2.1 The aim of this research includes to identify options to support the development of legislative proposals under Section 31 of the Historic Environment (Wales) Act 2016 (preservation of listed buildings in disrepair). These proposals should assist with targeting buildings that are deliberately neglected by owners, but should not be an impediment to owning a listed building.
- 4.2.2 The purpose of a Preservation Notice would be to '*secure the proper preservation of a listed building in disrepair*'. Local authorities could serve a Preservation Notice on the owner of a listed building, specifying works considered necessary for the repair and maintenance of that building, and accompanied by a system of measures (for example fines) that may act as a means of encouragement.

4.3 Circumstances for Serving a Preservation Notice

- 4.3.1 From the research, there are a number of factors for consideration in terms of identifying the circumstances when it might be most appropriate to serve a Preservation Notice. These factors revolve around:
- **Ownership** of a property – issues include whether the owner can be confirmed/identified; knowledge of the owner (for example in terms of their track-record of dealing with listed properties / buildings at risk); their intentions for the building; their ability and willingness to communicate with the local planning authority; length of ownership and the condition of the building when the owner acquired it; whilst knowledge of financial capacity could also be relevant (i.e. it may be clear that some owners do not have the funds to undertake repairs, whilst others do), this would be difficult for a local authority to ascertain (although the distinction between an individual private owner and a company/developer could be relevant here);
 - The **potential for the building to be rescued** – factors here would be primarily focused around the type of structure under consideration (for example a potentially habitable building as opposed to a milestone or section of wall), issues that may impact upon the future viability of the building (for example its location, the potential for conversion / adaptation to new use); other factors may relate to political / corporate priorities (for example links to funding programmes, grade of listing);

- The **scale** of works that are required – extending from whether works to buildings should reflect a permanent sustainable repair solution or alternatively can be focused at the lower end of the risk categories and be more of an encouragement for less major works / more emphasis on maintenance; that the need for works may not be predicated solely on deliberate neglect; and for a balance between a prescriptive and a pragmatic approach to building restoration and refurbishment.

4.3.2 The following sections consider each of these areas, and include case studies where appropriate to illustrate examples.

Ownership

4.3.3 Ownership of a listed building in disrepair is often at the heart of the problem, and typically for various reasons as highlighted above. Complexities can include where a new owner may not have *chosen* to have the liability of the listed building (for example where the building has been acquired through inheritance) or where the property has been in the ownership of a family for a long time but where there are simply not the resources to undertake costly repairs (instances have been identified particularly in relation to isolated farmhouses with elderly owners where this may be the case, or where there has been a change in circumstance for the owner (bereavement, illness and so on)).

4.3.4 Preservation Notices could be about creating an exit strategy that the owner of a listed building at risk will accept – this could be either persuading them to carry out the necessary works themselves or persuading them to transfer ownership to someone who will.

4.3.5 The following specific circumstances have therefore been identified for which serving a Preservation Notice might be helpful.

Where a listed building on the BAR Register has been knowingly acquired (i.e. the fact that the property is a building at risk is known), following which there has been no progress / further action taken.

4.3.6 The assumption here is that the new owner's long-term intention is to redevelop for profit. These are likely to be owners who knowingly buy buildings at risk, have the knowledge and resources to submit the relevant applications / repair the building yet instead see more gain in allowing the building to fall into terminal decay and are not likely to have any personal interest in using the building themselves.

4.3.7 Evidence from consultations has suggested that listed buildings in disrepair being sold at auction are a particular issue in Wales; some of the problems associated with this method of disposal include the auctions themselves taking place at distance from the location of the properties being sold (for example Gwynedd Council cited a high proportion of auctions taking place in England, with prospective owners then not visiting buildings or undertaking surveys prior to purchase).

4.3.8 A further issue relates to the problem of buildings passing through successive owners at auction; owners not achieving their intended result for the building (perhaps being refused planning consent or realising that capital costs would be higher than originally estimated) and then placing the building back on the market through an auction house. Buildings may then be subject to a series of successive owners each of whom may have poor intentions for the building.

4.3.9 Factors that would need to be taken into consideration include:

- A timescale would need to be identified during which ‘no progress /action was taken’, this would need to be of an appropriate length to realistically have enabled the new owner to undertake some of the potentially time-consuming surveys that might be needed to support an application, for example bat or structural surveys. A period of up to two years is thought to be realistic. The date of acquisition of the property (which would be available through Land Registry information) would therefore be critical to serving the notice.
- A definition of what is meant by ‘progress’ or ‘action’ would be necessary. For example this may relate not only to applying for planning or listed building consents, but to whether the new owner had undertaken any protective works to the property (for example scaffolding or works to improve safety or security of the building), as well as the extent and detail of liaison with the local authority or whether any relevant professionals have been engaged.

4.3.10 A valid planning consent for change would make the local authority’s case stronger in that the owner has the way clear for carrying out works which would be assumed to include repairs and to bring the building back into use thereby removing it from the BAR Register. Failure to implement a beneficial planning consent / listed building consent would be an important factor to take into account. Notices must be able to demonstrate that no justifiable reasons have been given as to why the required works have not been carried out.

Case Study – Former Church, Maesycwmmmer

A Grade II* listed building which closed as a place of worship in 2005. The building was offered to sale at public auction and eventually sold to an owner who wished to convert the building into a family centre. Initial contact was made with the Planning Department, and grants sought from the local authority to help with repair of the building. However after failing to secure a grant from the local authority, the planning application was withdrawn, but the property was not put up for sale again and remains in a deteriorating condition.

How might a Preservation Notice have helped?

A Preservation Notice might have persuaded the owner to put the building back on the open market and thus encourage a further opportunity for new ownership and redevelopment.

Owners who are not willing to communicate with or are not responsive to approaches from the local authority.

4.3.11 Stakeholders have highlighted one of the potential impacts associated with Preservation Notices as being the risk that such notices may act as a disincentive to people buying buildings at risk with the purpose of restoring them / bringing them back into beneficial use. If this were the case the condition of buildings / heritage would continue to decline and good opportunities for removing buildings from the BAR Register could be missed; and current owners could be encouraged to sell such properties because of the potential risk attached to having a Preservation Notice served on them (leading to a further risk of the building being sold at auction to more unscrupulous owners). There is a further type of owner of a listed building who may not have committed any deliberate neglect themselves,

but who may have found themselves financially unable to maintain their building to a sufficient standard to prevent it becoming at risk – they may in all other respects be a good guardian of heritage, and a Preservation Notice would therefore need to avoid penalising too hard the genuine struggling private owner as opposed to a property developer where commercial gain is the long-term aim. These are all scenarios that a new system of Preservation Notices would ideally try to avoid.

4.3.12 As such, careful thought needs to be had as to the *type* of owner that would be included here. From the research undertaken, this category typically includes absentee owners (for example those living overseas) as well as those who, for whatever reason, are **unwilling** to enter into discussions with the local authority. Serving a Preservation Notice in these circumstances may act as an important first step in raising the possibility of punitive action with an owner – even though the property may be vacant and they may live at distance from the property, they continue to be liable.

4.3.13 Preservation Notices could be useful in instances where the owner is known to be knowledgeable and potentially evasive when it comes to existing statutory powers; as under this mechanism there would be no automatic follow-up of compulsory purchase (the local authority could, of course, still threaten to use Section 47 powers if necessary), together with little comparable risk to the local authority, it may be more attractive to pursue as long as a Preservation Notice could be effectively and simply enforced.

4.3.14 Factors that would need to be taken into consideration include:

- the 'track record' of an owner – for example are they known to the local authority for regularly acquiring buildings at risk, or submitting inappropriate applications for conversion/ refurbishment, unwillingness to enter into meaningful communications with the local authority
- Any other designations that could be affected by the works specified in the Preservation Notice – for example the presence of bats in a ruinous building may delay works whilst appropriate surveys and mitigation measures are undertaken.

Case Study – Former Hotel, Rhyl

The former Grade II listed hotel was bought on a speculative basis by a known developer thinking it would be viable. Both a planning application and listed building consents were submitted for the building in 2007, for the creation of twenty self-contained apartments, but the applications were refused. There was also exploration as to whether the property could attract grant funding for refurbishment. Following a fire at the property in 2008, the building suffered from damage, water ingress and vandalism. The owner went into liquidation in 2012, when the building was then sold at auction. The building then reached a point where 'the condition of the building had deteriorated beyond the reasonable cost of repair and restoration in relationship to its importance and to the value derived from its continued use.'

How might a Preservation Notice have helped?

A Preservation Notice could have specified and required the necessary protection and repairs after the fire thus preventing many years of exposure to the elements and to vandalism. Failure to carry out the works could have been deemed deliberate neglect in the circumstances of this case and so the Preservation Notice could have penalised appropriately.

Case Study – Redundant Former Chapel Building

A Grade II listed chapel located within the grounds site of a listed former hospital and within a Conservation Area. The hospital site was acquired by Redrow and a residential development, including enabling development has been constructed. The chapel was sold off to a private owner who has since made applications to the local planning authority for conversion of the building to residential use. An initial planning application together with listed building consent application for conversion of the chapel to two dwellings, were approved by the local authority in 2010, however these consents were not acted upon by the owner, ostensibly on the grounds of viability. Further applications were made for conversion to six residential units; although applications were withdrawn in 2013, they were amended and resubmitted in 2015 and have subsequently been approved. The Planning Officers report acknowledges that ‘the scheme for conversion to six units is far from ideal in terms of the special character of the listed building’ with conversion to two units preferable in that it involves sub-division into larger spaces; however the independent viability assessment submitted with the planning application was considered to have adequately demonstrated that sub-division into any less than six units would not be financially viable. The property is currently on the market.

How might a Preservation Notice have helped?

Whilst the future of the property has been advanced in as much as it now has both listed building and planning consent for conversion to a viable use, it is still the case that the condition of the property has continued to deteriorate since the time the first application was approved in 2010. The motive of the owner has clearly been to bring the property forward for development, however the existing condition of the building has not been dealt with. A Preservation Notice could have been served within two years of the 2010 approval – this would have been an appropriate length of time for the owner to have undertaken necessary works (or works relevant to commencing the development, such as bat mitigation).

- 4.3.15 One of the challenges may be in dealing with disputes over ownership (for example where it may either be unclear who the legal owner is, or where ownership of the property might be split between various parties or where ownership is an off-shore company).

Case Study – Former Hotel, Denbigh

The property was bought by a company following the death of the previous owner in 2006. The new owner submitted a planning application for the conversion of the hotel into two ground floor retail units and eleven self-contained apartments which was refused in 2008. The property has been on the open market since that time, with no buyer interest. There have been communications between the owner and the local authority in the intervening period, which have partly focused around the owner’s interest in increasing the number of residential units planned for the hotel in the interest of creating a viable project.

How might a Preservation Notice have helped?

A Preservation Notice could be linked to a District Valuer’s valuation to ascertain whether the lack of market interest and the request to increase the number of units are both the result of the developer seeking an over-inflated financial gain from this building. If so the Preservation Notice could, as well as specifying repairs needed, also impose a fine proportionate to the neglect the building has suffered.

Other Ownership Issues

- 4.3.16 This section has tried to identify specific circumstances in terms of ownership that a Preservation Notices may particularly target, focusing on problematic ownership patterns and features that are known to lead to neglect of listed buildings. The focus (in terms of the circumstances that have been identified) has been primarily on practices more likely to be features of private sector ownership than public (or example exploring financial gain/benefit or taking an obstructive approach to local authority communication).
- 4.3.17 However, some 2% of the buildings in categories 1-3 of the BAR Register are in public ownership. Consultations during this research highlighted the need for *fairness* within any new system of statutory notices – with the potential for notices to be served equally on buildings in public sector, third sector, and major institutional as well as private sector ownership. A number of LPAs have also acknowledged the need to ‘get their own house in order’ when it comes to buildings at risk, and identify similar factors to many private sector owners that are obstacles to undertaking major refurbishment / repair work, primarily lack of resources.

Case Study – Grade II Listed Detached Property, Rural South Wales

A Grade II listed residential property at serious risk for many years located in a rural area on the outskirts of a market town. The property was vacant and in private ownership. The owner was known to the local authority, and correspondence regarding the condition of the building was sent, although the owner did not respond to requests for works to be carried out. In 2006 the local authority served an Urgent Works Notice and carried out the repairs in default; it was unable to recover the costs of the works.

The Architectural Heritage Fund funded a local Building Preservation Trust to carry out an Options Appraisal for the building and subsequent discussions with the local authority led to agreement in principle for an extension to the property. The Trust contacted the owner’s family and offered to manage the repairs for the building and recover their costs through the sale of the property. Whilst the owner’s family initially agreed to this, the property was subsequently sold directly on the open market and the new owner has now extended and restored the property in full.

How might a Preservation Notice have helped?

The Urgent Works Notice was seen as a last resort when the building was in a very serious condition; serving a Preservation Notice at a much earlier stage in the proceedings may have helped encourage the owner to sell the property earlier.

Potential for the Listed Building to be rescued

- 4.3.18 Consideration has been given as to the potential type of building that may be most suited to being the recipient of a Preservation Notice. The following specific circumstances have been identified for which serving a Preservation Notice might be helpful.

Buildings for which it is possible to retain sufficient historic character.

- 4.3.19 Some of the most vulnerable buildings on the BAR Register are in such a poor structural condition that their historic character has already been compromised, and their repair / re-

use would not be capable of restoring it. It is not considered that Preservation Notices would be appropriate for these buildings, which may benefit rather from Urgent Works or Repairs Notices instead. An ideal solution would obviously be to prevent buildings from reaching such a state of deterioration – for example through the earlier serving of a Preservation Notice (how Preservation Notices could be linked to BAR categories is described later in this chapter).

- 4.3.20 Being on the BAR Register should not be an absolute requirement for the serving of a Preservation Notice as it could be an otherwise eligible building that has become at risk perhaps through neglect since the last revision of the Register, or perhaps may be an omission through error.

Buildings that have the possibility of a viable economic future.

- 4.3.21 Whilst local authorities would ideally be able to remove all buildings from the BAR Register, there is naturally a process of prioritisation to take into account ever dwindling public sector resources. ‘Managing Listed Buildings at Risk in Wales’ states that ‘when establishing priorities for action, the significance of the building should be a factor, as well as the severity of its condition and the rate of its deterioration. It is also important to take into account the likelihood and benefits of a successful result based on an evaluation of the risks and opportunities associated with particular uses or ownership’. Political and corporate priorities will also have a role to play.
- 4.3.22 Preservation Notices may therefore assist with a proactive approach of targeting those buildings that have the possibility of viable economic use. It is likely that the majority of buildings at risk in this category are located in urban areas / regeneration areas and would potentially apply to more mainstream building types (domestic or commercial properties for example, rather than religious buildings that may have particularly high conversion costs, though there are notable examples of where redundant religious buildings have been rescued and given a viable future through new uses, for example the former Bethany Chapel in Abergavenny). Applying this approach to the sample of buildings at risk in categories 1 to 3 collated as part of this research (i.e. excluding all essentially ‘un-occupiable structures’), identifies just over one hundred properties across Wales. If Preservation Notices could be applicable to these hundred properties, whilst this is a relatively small number in terms of the entire BAR Register, the serving of notices on this proportion would still represent a significant increase when compared to the handful of properties that are currently the subject of statutory powers.

Case Study – Grade I Listed Building, Monmouthshire

A Grade I listed property located in a Conservation Area and adjacent to the Grade I listed parish church. The property has been at risk for over two decades. Both Repairs Notices and S.215 Notices have been served on the owner in an attempt to improve the condition of the building and its setting, culminating in the owner being prosecuted in 2015. The fine imposed by the court was far too low to act as a possible deterrent to further neglect, which continues to be the case. Buildings are re-usable and repairable.

How might a Preservation Notice have helped?

A Preservation Notice could have enabled the Council to address a clear case of deliberate neglect following many years of clear requests to the owner as to what works need to be carried out, promises made they would but almost none actually done. If the Notice could result in the courts imposing a meaningful fine it might act as more of a deterrent in such cases than the current statutory powers.

4.3.23 However the category does not need to be restricted just to buildings in urban areas. Agricultural buildings, including barns and outbuildings, together comprise some 30% of our sample of buildings at risk in Wales. A large proportion of these properties and structures no longer have a viable function in the face of modern farming methods, and in many instances their isolated, rural locations, may mitigate against alternative uses. Such buildings are less likely than most to be the subject of other statutory powers; however were Preservation Notices to be such that the risk to the local authority of serving them was significantly reduced (for example there was no risk that the local authority would have to compulsorily acquire the property or that the local authority would have to incur substantial cost in carrying out the works themselves), there may be instances where serving a notice might encourage a viable alternative use to be identified (for example holiday accommodation or other appropriate educational or tourism use). This would need to be considered by local authority officers on a case by case basis.

4.4 Preservation Notices – Possible Options for Delivery

4.4.1 This section sets out potential options for the delivery of Preservation Notices, based on the research and analysis presented earlier in this report. The consultations that we have undertaken during the preparation of this research have, however, highlighted a number of areas that we think need to be clarified / emphasised from the outset, namely that:

- the existing system of statutory notices is already considered by many to be complex, with a range of obstacles to their effective use identified in the previous chapter. The introduction of a system of Preservation Notices therefore needs to fulfil a clear need; be as **simple** as possible in order to enable local authorities to understand the circumstances in which they might be used and how they might be implemented; and to ensure that they are effective and that the risk to the local authority is minimised as far as possible.
- one of the criticisms of the current system of Urgent Works and Repairs Notices relates to the amount of work that is involved by Conservation Officers and others in terms of negotiating with owners, detailing specifications, monitoring and so on. Preservation Notices would not greatly reduce or remove the need for this type of work, indeed they may require officers to undertake further 'upfront' work in terms of identifying the type of buildings that would be most appropriately targeted by such a notice. Capacity and resourcing issues are therefore a further area that needs to be taken into account when considering buildings at risk, whatever particular option for Preservation Notices may be implemented.
- Urgent Works Notices and Repairs Notices as currently existing are generally only used when buildings have deteriorated to the worst possible condition and where there is a complete impasse with the owner. Consideration needs to be given as to whether a new system of Preservation Notices would seek to give local authorities the ability to intervene at an earlier stage and even whether an objective could be to address straightforward maintenance issues as well as major threats to the survival of the building.
- Consideration needs to be given as to whether a new system would be entirely 'stick' (i.e. serving a formal notice with the cost of the works to be borne by the owner) or whether there is scope to ally the Preservation Notice to a 'carrot' such as a loan fund from which money could be borrowed to carry out the required works and a charge placed on the property to ensure it is repaid, for example on sale.

- 4.4.2 Preservation Notices have their foundations in work undertaken during the passage of the Historic Environment (Wales) Bill through the National Assembly for Wales, at which time the possibility was considered of introducing financial penalties for owners who deliberately allow their listed buildings to fall into disrepair with the intention of some financial gain, such as redevelopment. Chapter 2 of this report has expanded on this theme of ‘deliberate neglect’, how it might be identified, what the causes of it might be, and the scale of the problem within Wales. The main findings from this part of the research are that, although *deliberate* neglect clearly exists, there is concern about how it could be legally proven; anecdotal evidence from the case of Denbigh Hospital identified that the local authority were advised against trying to claim deliberate neglect (and therefore minimum compensation) in the compulsory purchase appeals proceedings, yet this has been a case where the likelihood of deliberate neglect causing the decline of the hospital building could not have been any more clear cut.
- 4.4.3 Predicating a new system of statutory notices on a definition of deliberate neglect would most likely create more issues than it would resolve – whilst neglect could be defined as a lack of care that has caused a detrimental impact to a building and its long-term future, adding an intentional element to this through the word ‘deliberate’ raises other questions. For example, how would the LPA be able to prove beyond doubt that an owner was aware of the condition of the building, or had the resources to be able to address this but chose not to do anything about it.
- 4.4.4 Rather, detailed guidance should be given on when Preservation Notices may be applicable, taking into account a range of factors that may help a local authority determine the scale, extent and nature of the neglect that has occurred and to ensure that when enforcement is taken the courts take a more robust approach on fines imposed.
- 4.4.5 The following sections set out three possible delivery options for Preservation Notices, focusing on a generalised approach, a targeted approach, and an alternative approach for dealing with neglected listed buildings in Wales.

Delivery Option A General Approach

- 4.4.6 The first option would be for Preservation Notices to be applicable to all building or structure types and all ownerships. A Preservation Notice could be served in place of an Urgent Works or Repairs Notice, specifying works to be undertaken and the timescale within which it was necessary. The Notice would be prefaced by a warning letter, and if this were ignored, enforcement action would follow (namely financial penalties and ultimately enforced sale procedures). The local authority would have full responsibility for identifying which buildings or structures were appropriate for enforcement action.
- 4.4.7 Table 4.1 summarises the strengths and weaknesses of such an approach.

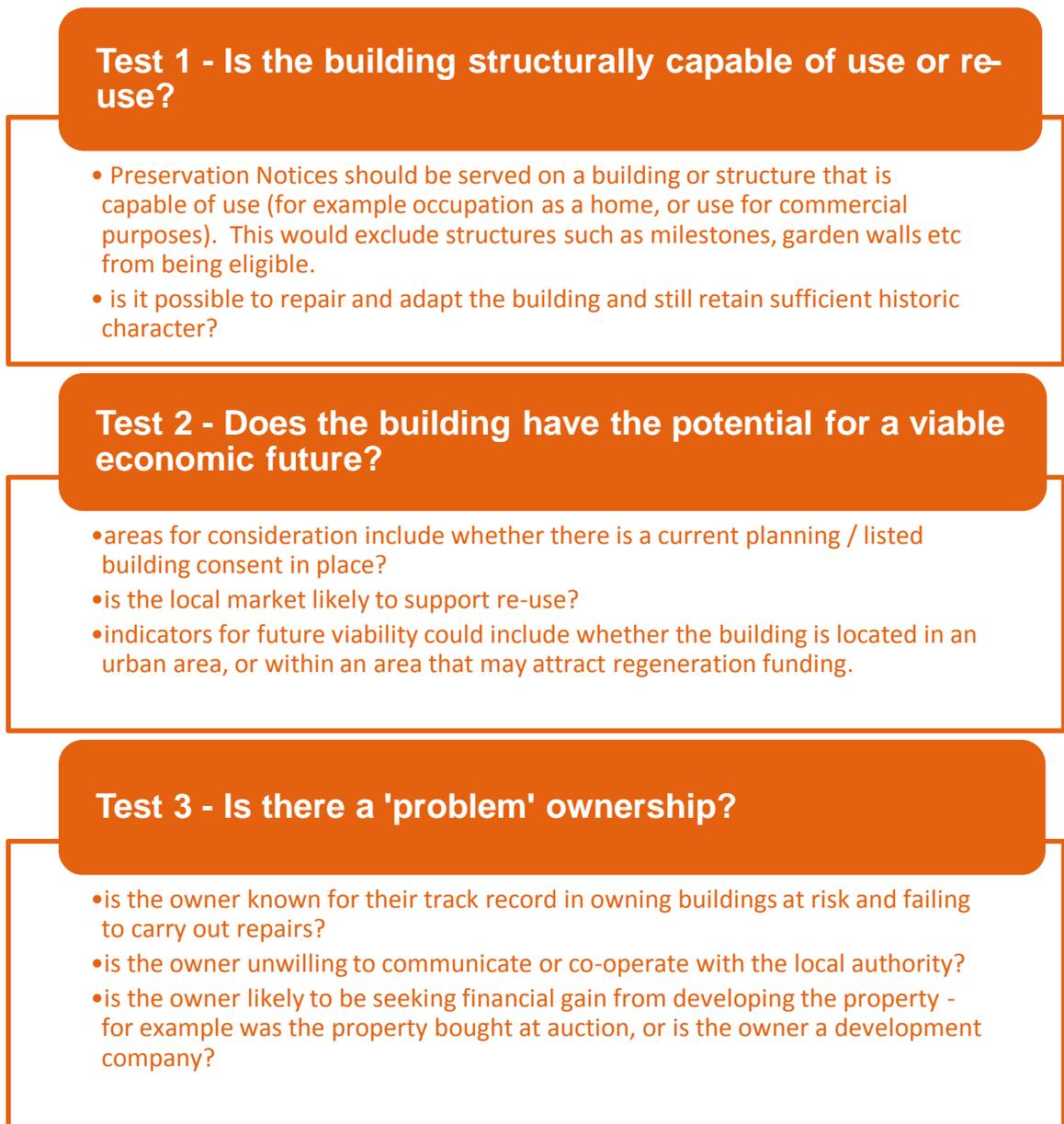
Table 4.1 General Approach – Strengths and Weaknesses

Strengths	Weaknesses
<p>Under a general approach, there would be potential for the inclusion of all ownerships (public and private sector).</p> <p>Local authorities would be able to establish their own priorities as to the type of building and ownership that could be targeted (for example listing grade, corporate priority).</p> <p>If tied to a priority charge on the property, thereby reducing financial risk to the local authority, officers may be more likely to use Preservation Notices as a possible action.</p> <p>Specified works would achieve a more sustainable solution to the building than short-term, urgent works.</p> <p>All types of heritage at risk could be targeted.</p>	<p>Theoretically, a Preservation Notice could be served on the owner of any listed building or structure in need of repair. The Notice would not take into account the circumstances of the owner, or the ability of the owner to undertake works.</p> <p>The approach may act as an impediment to ownership of a listed building, as potential owners may consider the threat of a Preservation Notice to be too great a risk should disrepair of the building continue through no perceived fault of their own (for example awaiting surveys, refusals of consent).</p> <p>In targeting all types of heritage at risk, there is potential for a ‘scatter-gun’ approach to be taken, and an inconsistent approach to be developed across local authorities.</p> <p>The approach would necessitate local authorities to undertake more upfront work in terms of setting their own priorities.</p>

Delivery Option B Targeted Approach

- 4.4.8 The second option proposes a more targeted approach to Preservation Notices, setting out specific circumstances for which such a Notice would be appropriate in terms of the potential for the building to be rescued and the type of ownership considered to be particularly problematic.
- 4.4.9 In a similar way to Option A, Preservation Notices could be served in place of an Urgent Works or Repairs Notice, specifying works to be undertaken and the timescale within which it was necessary. Again, the Notice would be prefaced by a warning letter, and if this were ignored, enforcement action would follow (namely financial penalties and ultimately enforced sale procedures). The key difference to Option A would be in developing a more consistent approach between local authorities as to the buildings that would be the subject of a Preservation Notice.
- 4.4.10 Figure 4.1 summarises the circumstances in which a Preservation Notice could be served under this option, represented as a series of ‘tests’ and including examples of what should be considered as part of each test.

Figure 4.1 Tests for Serving a Preservation Notice



4.4.11 The third test, around the subject of ownership, aims to ensure that Preservation Notices are targeted to the right audience – for example acknowledging that there are some owners with track records of buying buildings at risk who do repair them.

4.4.12 Table 4.2 summarises the strengths and weaknesses of such an approach.

Table 4.2 Targeted Approach – Strengths and Weaknesses

Strengths	Weaknesses
<p>A more consistent approach could be developed to tackling neglected listed buildings in Wales.</p> <p>Whilst the approach would likely only be relevant to a relatively small number of properties on the BAR, it attempts to tackle a specific problem (namely that of ‘obstructive’ or ‘vexatious’ ownerships), for which a body of experience / evidence could be built up and shared between local authorities.</p> <p>If tied to a priority charge on the property, thereby reducing financial risk to the local authority, officers may be more likely to use Preservation Notices as a possible action.</p> <p>Specified works would achieve a more sustainable solution to the building than short-term, urgent works.</p>	<p>This approach is more likely to be targeted towards private sector owners, which may create issues of perceived ‘fairness’ when there are clearly also instances where neglected listed buildings are in the ownership of public sector organisations.</p> <p>The approach would be relevant to only a limited number of properties on the BAR Register, compared to the scale of heritage at risk generally.</p> <p>The approach would necessitate local authorities to undertake more upfront work in terms of identifying those buildings that might fit the criteria or tests set down.</p>

Delivery Option C Allied to a Loan Fund

- 4.4.13 The consultations undertaken during the course of this research have highlighted an alternative potential option which gives consideration to whether a new system should be entirely ‘stick’ (i.e. serving a formal notice with the cost of the works to be borne by the owner) or whether there is scope to ally the Preservation Notice to a ‘carrot’ such as a loan fund from which money could be borrowed to carry out the required works.
- 4.4.14 The Department for Communities and Local Government (DCLG) funded a programme in 2015 entitled Community Assets in Difficult Ownership (CADO), which considered ten at-risk historic buildings in depth and identified a number of measures that could be introduced to make the enforcement system more effective. One of these measures included the provision of a loan fund to underwrite enforcement costs (Architectural Heritage Fund Paper, 2017).
- 4.4.15 Denbighshire County Council is currently initiating a system to offer loans to listed building owners where a building appears to be neglected, in order to encourage the owner to repair or sell the property (see best practice case study below). This type of system could be rolled out more widely across Wales (perhaps with some start-up funding from Cadw, or perhaps exploring other potential sources of funding or investment such as Big Society Capital) and extended to include loans to cover costs of undertaking works as specified in a Preservation Notice.

Best Practice – Denbighshire County Council ‘Seller’s Pack’

Denbighshire County Council is initiating a seller’s pack whereby the Council will offer a loan to a listed building owner where the condition of the building has declined. The loan will be up to £10k, but the majority of loans are anticipated to be in the region of £5k and would enable the owner to commission specialist repair advice (for example from a structural engineer, to prepare an application for outline planning consent, to prepare a building regulations application, or for general heritage advice). The loan would become a charge on the property and would have to be repaid after three years or on the sale of the property. The sellers pack is aimed at ‘demystifying the listed building consent process and unlocking buildings at risk’. Denbighshire County Council has allocated some funding to provide an initial ‘kick-start’ to the process, it is hoped that the system can run as a revolving fund.

4.4.16 This option could be trialled through a pilot programme covering a period of, say up to five years, after which point impacts could be monitored and assessed. An enforcement loan fund would not necessarily need to be restricted to Preservation Notices, but could extend to other statutory notices too, thereby potentially increasing take-up through lessening financial risk to the local authority. One of the key performance indicators after the trial period could be to see whether instances of Urgent Works and Repairs Notices being served had increased and whether the number of new buildings being added to categories 1 to 3 on the Buildings at Risk Register had significantly reduced through having tackled maintenance issues at an earlier stage. Where works were undertaken by the local authority in default, a priority charge would need to be placed on the property to ensure it is repaid, for example on sale.

4.4.17 Table 4.3 summarises the strengths and weaknesses of such an approach.

Table 4.3 Allied to a Loan Fund – Strengths and Weaknesses

Strengths	Weaknesses
<p>The combination of enforcement action and additional resources could be effective at dealing with buildings at risk.</p> <p>The option could help develop a consistent, Wales-wide approach to the issue of neglected buildings.</p> <p>All owners (public and private sector) could be targeted.</p> <p>Essentially a more proactive approach, aimed at encouraging owners to improve the condition of their listed buildings.</p> <p>A loan fund may increase usage levels of other statutory notices by helping reduce the financial risk to the local authority.</p>	<p>This would not be a cost neutral option. There would be both set-up costs to establishing the system, administrative costs and the loans themselves.</p> <p>More upfront work would be required from local authorities to undertake in terms of identifying those buildings that might be appropriate for a Preservation Notice.</p>

4.5 Penalties to Accompany a Preservation Notice

4.5.1 Whichever option was implemented, Preservation Notices would need to be accompanied by a system of measures to act as a means of encouragement and to give the action some 'teeth'. Options for various penalties are considered below.

Option 1 – Financial Penalty

4.5.2 The most critical features of a financial penalty for not meeting the requirements of the Preservation Notice are:

- The need for the financial penalty to be of sufficient **magnitude** that it may act as a deterrent to owners in the first instance, and that it may discourage future neglect. A third outcome could be that it encourages the sale of the property to a new ownership (which, as has been shown in this report, could have both advantages and disadvantages; potentially with additional support mechanisms in place as described in Chapter 5, the advantages could begin to outweigh disadvantages). A minimum level of fine would therefore need to be fixed.
- A fine in itself does not repair the building or work towards a sustainable long-term solution. Therefore it will be necessary to consider mechanisms whereby the funds raised through financial penalties can be ring-fenced for further work on buildings at risk within the local authority.
- There needs to be a clear mechanism for the local authority to recover their costs associated either with non-payment of the fine or where the local authority has stepped in to undertake works in default. The simplest approach here is likely to be for a priority charge to be placed on the property but this may not always be successful if there is a pre-existing priority charge already registered.

4.5.3 It is relevant here to highlight the 'penalty principles' set out in the Macrory Review (2006) (a review of sanctions and penalties across England and Wales) which are now included in the Regulators' Compliance Code (as used by other public bodies such as Natural Resources Wales, for example). These principles should be borne in mind when considering the appropriate course of action to address offending and to ensure compliance, namely whether the penalty should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

4.5.4 If the financial penalty does not exceed the cost of restoring or preserving the building according to the specification of works, then there is no deterrent to potential offenders; neglect will continue to be seen as a cheaper alternative to appropriate management.

4.5.5 Consultations during this research have highlighted examples of instances within other regulatory frameworks (for example environmental health and the Health and Safety Executive) which take a slightly more aggressive approach to enforcement – for example charges of £129 per hour for interventions made (such as writing a letter), and recovery of costs at ‘cost plus’. Fixed and variable penalty procedures are well used. Table 4.4 below highlights appropriate situations and features of each of these systems.

Table 4.4 Typical Features of Fixed and Variable Penalty Notices

Fixed Penalty Notices	Variable Penalty Notices
Can be used as both a criminal and civil sanction. As a criminal sanction, non-payment can be dealt with by prosecution.	Civil sanction.
Payment of the penalty discharges the liability.	Methodologies available to calculate the scale of financial penalty that is appropriate, taking into account for example the likely financial benefit, and a deterrent component (for example costs required to comply with the notice).
Typically suited to offences with little or minor environmental impact.	Used instead of criminal sanctions to not only change behaviour, but also to act as a deterrent and for faster resolution.
Levels typically range from £100 to £300 (higher FPNs for businesses as opposed to individuals).	Could be used to remove an identifiable financial gain resulting from non-compliance / negligence.
Useful for minor offences where it would not be in the public interest to prosecute.	Grounds of appeal can include error of fact, unreasonable penalty or other similar reason.
Grounds of appeal can include error of fact, unreasonable penalty or other similar reason.	

4.5.6 A further issue experienced by local authorities in relation to enforcement action for buildings at risk has included pleas of hardship in court and use of expert legal advice in order to get magistrates to minimise the financial penalty. Examples of how this type of situation is dealt with elsewhere in the world include in certain U.S states, where environmental negligence (for example properties left in dilapidated conditions by their owners) can be dealt with by magistrates having both the power to tailor fines to reflect the degree of neglect and for recourse to be extended to any asset of the owner (or any partner organisation or individual of the owner if the property is owned by a partnership).

Option 2 – Enforced Sale

4.5.7 The threat of effectively repossession may carry significantly more weight than a simple financial penalty. Chapter 3 of this report highlighted the existence and use of enforced sales procedures within local authorities – the evidence shows that this type of procedure is barely used in relation to listed buildings.

4.5.8 Greater use of the enforced sales procedure could enable the LPA to undertake works in default, following which enforced sales could take place. If debts to the local authority are secured on the property, by means of a priority charge, this could reduce the level of financial risk to the local authority.

- 4.5.9 Within a local authority, an enforced sale procedure could be strengthened with other, local actions, such as awareness raising with agents regarding buildings at risk and the particular issues and liabilities that may accompany such purchase; where buildings are acquired by the local authority through enforced sale, they could be accompanied by a development brief prepared by the local authority, which could set out matters relating to the historical significance of the property, key features of importance, possible appropriate uses and likely works necessary to secure the continued preservation of the building.

Overseas Case Study

Enforced Sale of Derelict Properties – the American ‘Quick-Take’ Approach

State statutes lay out detailed procedures for use of ‘eminent domain’, the power of government to take property from its owner against the owner’s will when needed for a public purpose. Traditionally, eminent domain has related to the redevelopment of blighted areas and the taking of properties by the municipality for redevelopment and then being resold to another private entity to develop.

Under a quick-take statute, the municipality is able to obtain title at the beginning of the process and can move forward with the resale or reuse of the property. There is a process by which the property owner can challenge the municipality’s decision, however the quick-take procedure can continue while the value of the property is disputed. Downsides of the quick-take procedure include where there is a disparity in valuation of the property between the court and the municipality, whereby the municipality is obliged to come up with the difference.

Source: Bringing Buildings Back: From Abandoned Properties to Community Assets (2006)

4.6 Specification of Works

- 4.6.1 The 2016 Act allows Preservation Notices to be able to specify works that the owner of a listed building in disrepair must execute in order to secure the proper preservation of the building and to set a deadline for the completion of such works. A Preservation Notice could bridge the gap between an Urgent Works Notice and a Repairs Notice, in that it would be able to specify the works required to enable a permanent sustainable solution to a building. This differs from, for example, the Urgent Works Notice whereby works can only be specified for the minimum necessary to make the building wind and water tight.

Option 1 – Detailed Specification of Works with Timescale for Satisfactory Completion

- 4.6.2 Preservation Notices should typically not be so prescriptive so as to negate any potential development and there should be a pragmatic approach taken, for example where works may be so cost prohibitive that nothing is achieved and the property then continues to decline. There may also be instances where the burden of the specification set out in the notice is such that it has the effect of the property being sold on the open market, hopefully to a new owner who is able and willing to undertake appropriate repairs and bring the building back into use. This would have the added advantage of enabling repairs to be defined that are necessary for the proper preservation of the building, rather than simply limited emergency repairs as is the case with current powers.

- 4.6.3 Considerations here include the possibility of the property then being sold by auction to a new owner who may (as described earlier in this chapter) also not wish to care for the building appropriately. The date of acquisition of a property will be a key factor and is something that could be monitored through the Land Registry, with change of ownership of known buildings at risk triggering letters from the local authority prompting the new owner to carry out repairs / reminding them of their responsibility, and identifying a reasonable timescale within which the authority would expect to see some evidence of works being undertaken (for example 12 to 18 months from acquisition).
- 4.6.4 Timescales required by the Notice for carrying out repairs need to be reasonable and realistic. As is well known with listed buildings, physical works are often hampered / delayed by other surveys/requirements that need to be undertaken first – a good example of this are bat surveys, which can only be carried out during specific times of the year and without doing so, can delay refurbishment or maintenance works. A potential concern with the serving of Preservation Notices could be that there is the appearance of neglect, but that ‘works’ in the form of bat surveys, archaeological surveys etc are being undertaken. The three tests outlined earlier try to avoid this situation through the ‘problem’ ownership test – i.e. that the owner is willing to communicate and co-operate with the local authority, informing the LPA that such works are being satisfactorily undertaken and the timescale for doing so.

Option 2 – Preservation Notices Linked to BAR Risk Categories

- 4.6.5 The BAR Register currently comprises six categories, with categories 1-3 representing buildings at various stages of risk, category 4 buildings being ‘vulnerable’ and categories 5 and 6 being ‘not at risk’. The research findings set out in Chapter 2 focused primarily on buildings within categories 1-3 in each local authority area, to provide a more detailed picture of buildings at risk in Wales. However, there is an argument, highlighted by consultations with local authorities and other stakeholders, that a greater focus on buildings not at such immediate risk (so for example, category 4 ‘vulnerable’ properties) could yield a greater long-term benefit.
- 4.6.6 Preservation Notices, and the specification of works that accompanies them, could therefore be linked to the various risk categories on the BAR Register; this could have the benefit of targeting those buildings on the Register that may not be in a sufficiently poor condition to trigger intervention in the form of Urgent Works Notices or Repairs Notices, but which would benefit from intervention to ensure they do not deteriorate to a critical condition.
- 4.6.7 The BAR Register identifies a total of 3,682 buildings and structures (all types) in Wales within risk category 4. Of these, the vast majority (91%) are described as being in ‘fair’ condition, with the biggest issue affecting structures being with ‘maintenance backlog build-up’ (affecting 36% of all category 4 structures). Just over half of the 3,682 buildings and structures can be described as habitable, with 27% of habitable properties currently standing vacant. The provision of a schedule of repairs for these buildings, focusing on those repairs reasonably necessary for the proper preservation of the building (for example repairs to roofs, guttering, windows and doors ensuring the building remains wind and watertight), could be of benefit. There is widespread agreement that it would be helpful to serve a Preservation Notice on buildings when they first start to deteriorate, rather than wait for buildings to get to a dilapidated state before taking action and in the meantime witness loss of historic character before works begin. This approach would help to prevent listed buildings becoming at risk and as such would better protect the heritage.

- 4.6.8 A paper produced by the Architectural Heritage Fund in January 2017 highlighted the benefits of this approach, stating that

'Repair needs quickly escalate when buildings are abandoned and unmaintained. When some of these buildings do eventually pass into the hands of community action groups, the cost of repair and adaptation can be eye-wateringly expensive, often requiring very large grants from, for example, the Heritage Lottery Fund to ensure the project can proceed. This inevitably reduces the amount of grant available for other deserving heritage projects. Action needs to be taken far earlier to avoid this unnecessary waste of limited public funds. Many of the buildings on the Heritage at Risk register could have been repaired and re-used for a fraction of the cost now required to achieve this if enforcement action had been taken at the point at which willful neglect first became apparent.'

- 4.6.9 The option therefore presents the consideration of a sliding scale of specification of works for buildings in the lower risk categories. The serving of a Preservation Notice may be valuable here as the starting point in a conversation with the owner as to the type of works required for the proper preservation of the building.

4.7 Conclusions

- 4.7.1 The purpose of this research has been to gather evidence and outline potential options on how Preservation Notices could make a difference to historic buildings at risk in the future, through review of data contained in the BAR Register and through consultations with local planning authorities and a range of other stakeholders.

- 4.7.2 This chapter has set out the particular problems that a system of Preservation Notices could attempt to solve, identifying a number of specific circumstances where they may be beneficial. A series of delivery options have been described, with the strengths and weaknesses of each set out, in addition to discussion surrounding potential penalty arrangements and options for the specification of works.

- 4.7.3 Whilst Preservation Notices were never intended to be a panacea for all the issues that currently exist with buildings at risk nor to overcome all the obstacles associated with the use of the current range of statutory notices, we consider that it would be preferable to implement a number of additional areas of support prior to introducing a new system of statutory notices. Some suggestions for these additional support measures are set out in Section 5.

- 4.7.4 In summary:

- It is felt that there are only limited circumstances where the service of a Preservation Notice could be beneficial. In particular, there are a combination of factors that would need to be aligned for any one building to be considered eligible for a Preservation Notice such as:
 - the nature of the ownership
 - the potential for the listed building to be rescued
 - the possibility of the building having a viable economic future

Essentially, these are the 'tests' for serving a Preservation Notice set out earlier in the chapter. As such, Preservation Notices might only be restricted to a very small number of buildings at risk (approximately 2-3%).

- It is important that, if Preservation Notices are introduced, they do not become a suite of powers that would simply 'sit on the shelf'. There is a risk:

- that such notices would be too complex
- that there would be difficulties with proving circumstances / intentions of individual owners (for example that unresponsiveness to local authority requests constituted neglect)
- that such notices would have significant resource implications for local authority officers

This chapter has also highlighted that, whichever delivery option was pursued, there would likely be a need for a considerable amount of 'upfront' work to be undertaken by officers in order to try and prove that an individual building met the identified tests for a Preservation Notice.

- What this research *has* highlighted is that there are significant problems / blockages within the current system, with existing statutory powers shown to be used extremely rarely. Reasons include:
 - financial risk
 - capacity and experience of local authority staff
 - the fact that such powers invariably do not result in a long-term solution for the property.

Adding Preservation Orders to the list of statutory powers may not help overcome these problems.

4.7.5 Based on the evidence gathered as part of this research, we would recommend that, prior to introducing a new system of preservation notices, a number of positive actions be undertaken to help overcome some of the current difficulties. These include primarily improvements to guidance and awareness raising / best practice sharing amongst stakeholders. There are also a number of other innovative opportunities that may wish to be considered further. These additional areas of support are described in the following chapter.

5. Additional Areas of Support

5.1 Introduction

- 5.1.1 The research has identified a number of other potential measures and additional areas of support that could be introduced or expanded upon in order to improve the effectiveness of the existing system of statutory notices and help LPAs deal with buildings at risk. Areas of support include the need for clearer guidance, sharing best practice / awareness raising, and the introduction of tools to try and streamline some of the workload of conservation officers.

5.2 Guidance

- 5.2.1 The most detailed guidance for dealing with buildings at risk and the range of statutory powers currently available is the Historic England document 'Stopping the Rot', which also includes a series of case studies. In 2017 Cadw published guidance entitled 'Managing Listed Buildings at Risk in Wales', which outlines the measures and powers available to local authorities to address the condition of a listed building. The guidance emphasises that local authorities should have clear objectives and justification for the use of specific powers and that factors for consideration should include whether intervention will be in the public interest; whether it is likely to be effective; is it the best available means of preventing further deterioration; and have all other avenues been exhausted. Clearly at present the guidance only alludes to Preservation Notices.
- 5.2.2 Whilst 'Managing Listed Buildings at Risk in Wales' presents a very useful overview and discussion about the various factors at play in terms of buildings at risk (primarily condition, use and ownership), LPAs have stated that more detailed guidance relating to circumstances in which each type of notice might be served, together with more detailed Welsh case studies, would be useful.

5.3 Sharing Best Practice and Awareness Raising

- 5.3.1 The majority of LPAs consulted during this research identified a clear need for the better sharing of experiences and expertise in dealing with buildings at risk and the use of statutory powers. Some LPAs have more experience in serving Urgent Works, Repairs and Section 215 Notices than others and it would be useful for 'lessons learnt' from these experiences to be shared more widely with other authorities, whether this is through existing regional fora such as the South Wales Conservation Officers Group or through especially convened training workshops (possibly by Cadw).
- 5.3.2 A further point to note here is that mentoring needs to be wider than simply Conservation Officers, who very likely have to convince others within the Planning Department and beyond (for example the Head of Planning, the Head of Legal, the ward member, Committee members and perhaps Cabinet Members) of the need for exercising statutory powers – Conservation Officers knowing better how to serve notices will not in itself achieve a significant change unless wider mentoring /awareness raising takes place within local authorities as a whole in the value of, need for and mechanics of serving notices. Linking workshops / training events with officers from other relevant departments (notably legal and enforcement officers) could therefore help provide the holistic view that is clearly needed. Such training could also be used to highlight the many benefits of buildings being brought back into re-use, for example aesthetic, political, and economic benefits.

- 5.3.3 The research has highlighted that are differences in approaches between local authorities in terms of specific measures, notably the Section 215 Notices, with inconsistencies about how they should be interpreted and applied, and in some instances a lack of awareness within some LPAs that they could be used at all. Encouraging local authorities to be more proactive with powers available can be illustrated by good practice from elsewhere in the

Awareness Raising Case Study – Village Alive Trust Conference

A recent conference was held by The Village Alive Trust in partnership with Monmouthshire County Council to provide information to owners of listed buildings about buildings at risk, with speakers including Council officers as well as local architects and the president of the Country Landowners and Business Association. Those invited to attend the conference included the owners of around fifty listed buildings deemed to be at risk of serious loss of features or decline in the County. The conference covered issues such as the responsibilities of owners, warning signs and practical steps to take to ‘stop the rot’, alternative uses for listed buildings and the need for lobbying politicians to help owners more easily protect and reinvent heritage buildings.

UK – for example Hastings District Council where the Leader of the Council undertakes a regular walkabout with the Enforcement Officer, highlighting issues that may need addressing and discussing possible solutions.

- 5.3.4 It would be useful also for officers to be more aware of some of the specific approaches being undertaken by individual LPAs in relation to buildings at risk that have either proved

Bridgend CBC have in the recent past run an Empty Properties Working Group, comprising officers from a variety of teams including planning, conservation and housing, and discussing on a weekly basis potential solutions for vacant properties within the local authority area. The group proved a useful way of linking various teams and disciplines together and seeking integrated and sustainable solutions to buildings at risk in the county.

successful in the past or which represent new opportunities. Two examples here are of the Empty Properties Working Group previously run by Bridgend County Borough Council, and the ‘Seller’s Pack’ initiative being brought in by Denbighshire County Council.

5.4 Other Opportunities

- 5.4.1 The introduction of a system of Preservation Notices does not overcome wider issues relating to the lack of resources in existing conservation teams to take the action required. Possible measures and opportunities that could improve this (both from a staff time and financial resource perspective) might include:

- The creation of online templates and a ‘toolkit’ for standard notices that may help to reduce time spent in their preparation.
- Consideration given to how pre-application charges can be used / ring-fenced to support buildings at risk.
- Wider consideration of a Buildings at Risk Fund for Wales – this could be limited initially to buildings of Grade I and II* and could perhaps form part of a loan system for local authorities to draw on for either direct works required on individual buildings, or

perhaps to fund specific studies and provision of advice as part of the development of a solution for individual buildings. This is similar to the Enforcement Loan Fund that has been discussed in England.

- The establishment of a centralised or regional pools of specialist advice to help tackle buildings at risk. One of the issues identified has related to lack of specialist knowledge or capacity within local authorities, not only from Conservation Officers but also within Legal Departments. Experience has shown that neglectful owners can have the financial resources to draw on experienced teams of specialist legal advisers; if local authorities were able to draw on similarly specialist advice this might have a beneficial impact in terms of success rates in court.
- Involvement of the Land Registry – for example for the Land Registry to be informed of what buildings are on the BAR Register, with the transfer of ownership triggering contact from the Conservation Officer to liaise with the new owner. Responsibilities / liabilities could be explained and the date of transfer becomes the date from when monitoring is carried out. This could be used to assist with setting of a timescale for repairs/ progress which could ultimately be used as evidence for future Preservation or other Notices served.

Arcadis (UK) Limited

Arcadis Cymru House
St Mellons Business Park,
Fortran Road
Cardiff
CF3 0EY

T: +44 (0)2920 926818

[arcadis.com](https://www.arcadis.com)

