

Report on Listed Building Enforcement Workshops organised by Cadw

1.0 Background

1.1 Cadw commissioned a series of four workshops for Welsh Local Authorities to provide training on the subject of Listed Building Enforcement. Four workshops were held, led by Edward Holland and Phil Ebbrell:

7 th November 2019	- Cardiff
28 th November 2019	- Llandudno
23 rd January 2020	- Carmarthen
6 th February 2020	- Cardiff

1.2 In all approximately 120 local authority staff attended from conservation, planning, enforcement and legal services.

1.3 This report is a summary of the workshops.

2.0 Structure of the Workshops

2.1 The workshops began with an outline of the relevant legislation and enforcement powers and, building on that, discussed the scenarios in which action to protect listed buildings is necessary and how the desired result can be achieved. Each workshop allowed time for discussion and questions.

2.2 Handouts were issued in advance of the workshops setting out a summary of the legislation and enforcement powers. At the workshops further handouts were issued giving guidance on what to do when identifying unauthorised works or neglect of a listed building.

3.0 Introduction

3.1 Sections 7, 9 and 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 were highlighted:

3.2 The key published guidance was highlighted, in particular:

- Managing Listed Buildings at Risk in Wales (Cadw)
- Planning Policy Wales TAN 24
- Stopping the Rot (Historic England)
- Best Practice Guidance on Listed Building Prosecutions (DCLG)

“A positive and active approach to enforcement will help to reduce the number of contraventions and secure sustained improvements to environmental quality”
(TAN 24, paragraph 6.17)

“In deciding whether or not to make use of these powers, local authorities should have clear objectives and justification for their use, which should be focused on remedying a problem.” (Managing Listed Buildings at Risk in Wales: Annex)

3.3 There was a discussion about the perceived risks to taking enforcement as identified by local authorities when surveyed in 2017. These were primarily:

- Risk
- Financial Resources
- Confidence, skills and capacity
- Support from enforcement and legal
- Political / corporate support
- Awareness
- Perception that enforcement is only a short-term fix
- The condition of the building at the time of listing
- Location
- Lack of active Building Preservation Trusts in Wales

4.0 What to do at the outset when first identifying potential neglect or unauthorised works

4.1 The following steps were encouraged in order to start to build up a comprehensive case:

- Take notes and digital photographs;
- Inform the owner in writing, without prejudice, as soon as possible (discovering who is the owner can often be difficult);
- Open a file and maintain a log of actions / telephone calls etc.;

- Assess whether the building’s condition is critical?
- Assess whether you need to return to site (with a witness) for a follow up meeting?
- Assess whether you have been able to fully access the site – do you need to use s.88 powers to gain access?
- Understand the circumstances of the owner and why they have neglected the listed building and how best to communicate with them.
- Make a requisition for information on interest in the property.

4.2 At an early stage decide if the issue to be addressed is unauthorised works which can be reversed or if it is total loss that cannot be undone. The former can be dealt with via enforcement requiring remedial action whilst the latter can only be dealt with by prosecution.

5.0 How to decide which course of formal action to take

5.1 First of all decide if the enforcement is *Reactive* or *Proactive* – i.e. is it reacting to unauthorised works that have been carried out or is it taking the initiative to address the poor condition of a listed building. The following will help to determine the answer as to which course of formal action to take:

Objective	Potential Enforcement Action
Stop ongoing works	Temporary Stop Notice / Injunction
Urgent works needed to safeguard the listed building	Urgent Works Notice
More comprehensive repairs needed	Repairs Notice
Reverse unauthorised works	Enforcement Notice
Works acceptable but need to be formally approved through the listed building consent process	Seek a Listed Building Consent application
Prosecute for irreversible and damaging change to the listed building	Prosecution
Seek a change of ownership	Enforced Sales Procedure
Acquisition of the building and partnership with a BPT as the last	Compulsory Purchase

resort option for preserving a listed building	
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5.2 Or you may decide that it is not expedient or not in the public interest to take any formal action.

5.3 The condition of the building at the time of listing will affect the scope of any enforcement action – i.e. it can only be returned to the state it was in at the time of listing.

5.4 With an **Urgent Works Notice**, only such works as are urgently necessary to preserve the listed building and are restricted to those works that are the minimum necessary to keep the building wind and weatherproof and free from collapse or protected from vandalism.

5.5 The s.54 Urgent Works Notice – as amended by the Historic Environment (Wales) Act, 2016 gives broader powers in Wales than in England in so far as they can be served on occupied buildings. However, it is important to note that:

And the owner/occupier must be given at least seven days-notice in writing of the intention to carry out the urgent works set out in the s.54 Notice.

5.6 A **s.215 Notice** can only be used to remedy poor condition of land (and therefore of buildings on that land) and its impact on the area. It should not, as evidenced by the so-called stripey-house case in Kensington be used solely to seek changes to the aesthetic appearance of a building.

5.7 **Compulsory Purchase** can take many years to achieve and be very demanding on local authority resources but the example of Allt y Bela, Monmouthshire was used as a reminder of the positive outcomes that CPO can deliver.



Allt y Bela c. 2000 pre CPO



Allt y Bela c.2018 after restoration

5.8 Enforced Sale (Law of Property Act 1925) is an alternative means of facilitating the transfer of ownership for the purposes of ensuring that the listed building is appropriately preserved. For local authorities to use this power they must have a charge on the property and if the debt is not repaid the local authority can use enforced sale as a means of recovering their costs. The debt must be of a sufficient level to justify taking the property and is most applicable for use on vacant residential properties.

5.9 Enforcement Notice

In terms of reactive notices re unauthorised works, an Enforcement Notice under s.38 can be used where specific works have been carried out without consent and where these works have an adverse impact on the listed building which can realistically be remedied by restoring the listed building to its previous condition.

5.10 Prosecution

In the most serious cases local authorities have the power to prosecute offenders and this can be a deterrent to others. It is important that before starting such proceedings that there is a realistic possibility of conviction. Prosecutions are likely to be needed if, amongst other factors:

- There is evidence which shows that the offence was premeditated;
- The defendant has relevant previous convictions;
- The listed building or feature of it that was destroyed or altered was important and cannot be replaced or replicated (e.g. as per below).



Stelvio House, Newport © Newport City Council

(this Grade II building was spot-listed on 20th March 1996 and the following day partial-demolition work started. The £200,000 fine imposed by the courts was based upon the likely profit resulting from the works)

6.0 Preparing and serving notices

Preparing

6.1 Before preparing a Notice assemble all the facts, ensure you know what approvals are needed and ensure that you have the necessary support. Seek advice internally – e.g. from Legal Services, Building Control.

6.2 Ensure all Notices are clear and unambiguous. Do they require floor plans and elevations to identify beyond doubt the works that need to be carried out. A Notice needs to be robust under cross-examination in the event of an appeal. Inspectors have the power to amend a Notice and they can also nullify one if the Notice is deemed to be “hopelessly ambiguous and uncertain”.

6.3 A *proactive* Notice (such as an s.54 Urgent Works Notice) must specify precisely the works that are required to remedy the poor condition of the listed building. An illustration of the level of detail that may be needed is seen in the following example (from an UWN re Denbigh Hospital):

"Provide 19mm external quality plywood sheet boarding over all windows and doors that are highlighted on Drawing No. AL.0.20. The boarding is to have 10 no. 25mm diameter holes per window or door for ventilation purposes. The boarding is to be fixed using long bolts through the window and door openings to 100 x 50mm softwood timber spanning across the window and door openings internally. The external bolt heads are to be tamper proof. Access into all parts of the building is to be provided via lockable secure doors. Galvanised corrugated steel sheeting or perforated steel sheeting is an acceptable alternative to plywood."

6.4 A reactive Notice (such as a s.38 Enforcement Notice) must specify:

- the alleged breach;
- the reasons for issuing the notice (e.g. the unauthorised works have an adverse effect upon the special character of the listed building);
- what the recipient is required to do (e.g. to restore the building to its previous condition).

Serving

6.5 Service of a Notice should be on anyone who has a legal interest in the land (hence the Requisition for Information Notice recommended at an early stage). Those who need to receive a copy of the Notice include:

- Owner / Occupier
- Leaseholder
- Freeholder
- Mortgagee
- Receivers or administrators
- Anyone else with a legal interest in the land

Anticipating an appeal

6.6 When preparing and serving notices anticipate an appeal and remember that s.39 of the 1990 Act allows for appeals to be made on the grounds that:

- “(a) that the building is not of special architectural or historic interest;
- (b) that the matters alleged to constitute a contravention of section 9(1) or (2) do not involve such a contravention;
- (c) that the contravention of that section alleged in the notice has not taken place;
- (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;

- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by section 38(4);
- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed; "

6.7 Before serving a Notice it is recommended to check through the above to be certain that a subsequent appeal on any of those grounds could be successfully dismissed.

7.0 Denbigh Hospital

7.1 This project was chosen as a case study as it presented the local authority, Denbighshire County Council (DCC), with a major challenge. They used a wide range of enforcement powers to save this important grade II* listed building from total loss. The fact that this relatively small local authority showed commitment and determination over several years to overcome successfully extreme difficulties is a credit to the Authority's elected members, senior management team and staff.



Denbigh Hospital main elevation

Background

7.2 The first phase of construction of this building was completed in 1848 to the designs of architects Fulljames and Waller. The intention was to provide care for Welsh speaking people with mental illness or mental disabilities. The hospital was extended in the 1860s, the 1880s and a major extension was added in the first decade of the twentieth century. At its peak it had 1500 patients and 700 staff employed largely from the local area. The intended closure of the hospital was announced in 1987. It finally closed in 1995. The main hospital building is listed grade II* and is described by Cadw as "an exceptionally fine and pioneering example of early Victorian asylum architecture". The setting, including views into and out of the site, is also significant.

Enforcement Action Taken

7.3 Attempts by the Health Authority and local authorities to find a new use for the building were unsuccessful. After closure the Health Authority maintained 24hr security until it was eventually sold in good condition in 1998 to a developer from Clitheroe. Under his tenure there was considerable theft from the building including lead from the roof leading to a rapid deterioration of the building's condition. His attempts to get planning permission for executive housing failed as he showed little regard for the listed building or its setting. DCC threatened prosecution and as a result it was sold to a family from Preston.

At the time there was a good working relationship between the new owners and the local authority.

7.4 A feasibility study showed that a viable project was possible which included enabling development in the form of new build housing which would release funding for the repair of the most important part of the main listed building. Conditional planning permission was granted in 2005 subject to the payment to DCC of funds to go towards the repair of the listed building. Unfortunately, ownership had been transferred to an offshore company making it difficult for DCC to enforce the planning conditions so they insisted on a bond from a British bank to underwrite the funding condition. Despite repeated requests by DCC, no repairs had been carried out by the owner. In addition, the owner had not progressed the project. Planning permission lapsed in 2008 and DCC decided to use its enforcement powers. In 2011, after significant preparation work, DCC served an Urgent Works Notice. The owner failed to comply so DCC carried out approximately £900k of emergency repairs to the important part of the main building which included the removal of all the rotting timber and the construction of a temporary roof.

7.5 The Council sought to recover these costs through serving five s.55 Notices. These were appealed by the owner but following a lengthy public inquiry the appeals were dismissed. The Council also served Dangerous Structures Notices and carried out work in default adding to their charge on the property.

7.6 The Council then decided to serve a Repairs Notice detailing the works necessary to bring the principal building back into use. The owner took no action and consequently this was followed by a Compulsory Purchase Order which was appealed by the owner leading to a further public inquiry where the appeal was dismissed. The Council proved that it had a viable and appropriate means of rescuing the listed building. The evidence included a Development Plan and Appraisal, a Statement of Reasons and adopted Supplementary Planning Guidance in the form of a Development Brief for the site. They also granted Planning Consent and Listed Building Consent for the proposed uses. The decision to dismiss the appeal was submitted by the owner to the Courts for Judicial Review. The Judge found that the owner's case was "totally without merit". DCC finally acquired ownership of the site in 2018 following the service of the General Vesting Declaration and is now in partnership with a local developer.

Lessons Learnt

- Teamwork - essential for effective enforcement action (Conservation / Planning / Enforcement / Legal / Building Control / Senior Management / Elected Members);

- Budget - secure the necessary financial resource to take on major enforcement cases;
- Research – obtain all the necessary information to be able to take action and defend it at appeal / inquiry;
- Authority to act – ensure that all decision makers in the local authority (e.g. cabinet) are supporting the enforcement action;
- Always prepare and plan ahead for the next step
- Stay safe – ensure Health and Safety is addressed