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CONSERVATION: OLD CHESTNUTS OR NEW CHANCES?

Notes from East Midlands Enforcement Training Event, Melton Mowbray,

Thursday, June 9, 2016

1. What is a Listed Building?

When a building is of special architectural or historic interest considered to be of national importance and therefore worth protecting it is added to the National Heritage List for England.

The purpose of the listing text is for IDENTIFICATION of the building or structure. ALL parts of the building or structure are covered by the listing whether they are mentioned in the listing text or not.

2. The Primary legislation is the 1990 Planning (Listed Buildings and Conservation Areas) Act. This has sections on authorisation of works to listed buildings and on enforcement.

3. The Enterprise and Regulatory Reform Act, 2013 removed the requirement for Conservation Area Consent for demolition in a Conservation Area, and replaced it with the requirement to secure planning permission.

4. The National Planning Policy Framework, 2012, introduced a distinction between 'substantial harm' and 'less than substantial harm'. However, whether the harm is substantial or less than substantial, there is a presumption against development that would harm a designated heritage asset.

5. This was clarified in February 2014 by an important Court of Appeal decision [Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council] and was confirmed in June 2014 in a High Court Judgement [The Forge Field Society and Others v Sevenoaks District Council] in which Mr. Justice Lindblom stated at para. 48:

As the Court of Appeal has made absolutely clear in its recent decision in Barnwell, the duties in sections 66 and 72 of the Listed Buildings Act do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit. If there was any doubt about this before the decision in Barnwell it has now been firmly dispelled. When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight.

6. Key differences for Listed Buildings enforcement

- A Criminal offence is committed once a breach occurs*
- No Planning Contravention Notice
- No time limit for enforcement or criminal proceedings
- The person who carries out the works, as well as the person who commissions the works, may also be liable.
- Works include removal and alteration, as well as works which would constitute development.

* Demolition of a building with a cubic volume of 115m³ or more (or a pre-1925 tombstone) without planning permission in a Conservation Area is also a criminal offence

7. The 3 options – or a mixture of all, some or none, – when might you use:

- Enforcement
- Prosecution
- Injunction (not discussed further at this event)

8. Enforce or Prosecute (or both or neither?)

A. An owner has installed 20 solar panels on the roof of a listed manor house. Although minimal damage to the roof itself has been done, the solar panels affect the character and appearance of the building.

Consensus at the training event was that enforcement is appropriate. Enforcement would bring about the removal of the solar panels and repair to any damage. Prosecution alone would not achieve this.

B. An unlisted Victorian warehouse with a distinctive roof form in a Conservation Area and in the setting – but not the curtilage - of a Listed Building is demolished by a local developer who is active within the area, not always to the benefit of heritage assets.

Consensus at the training event was to prosecute, assuming that the building made a positive contribution to the Conservation Area. The heritage asset has been lost and it is unlikely that it would be desirable or possible to force the applicant to rebuild a replica, so enforcement would be of little use.

C. A listed building, last used as a dwelling, has been left empty for 20 years. The present owner is a well-known local developer. The building stands in a prime position in a thriving town centre. The gutters are blocked and some roof slates are missing. Vandals have broken some of the windows.

Consensus at the training event was that no breach of listed building control has occurred. Therefore, neither enforcement nor prosecution is possible. A Section 48 Repairs Notice, or action under Section 215 of the Town and Country Planning Act, 1990, were proposed.

12. When an historic asset is gone, it is lost forever. Therefore, prevention of unauthorised works is preferable to enforcement or prosecution.

Opportunities to be explored include:

- Housing need – higher land values – both a pressure and an opportunity –repairs, retention of historic buildings within larger schemes, more likely to be economically feasible when land values are higher
- New forms of funding becoming – eg crowdfunding. Different ways of communicating due to social media could offer opportunities for education/awareness raising
- Be aware of the bigger picture. The details are important, but where a building is unoccupied and deteriorating, the best guarantee of ongoing maintenance is for a building to be in LONG TERM BENEFICIAL USE

- Design solutions – new technologies in materials such as glass, green roofs and walls, resurgence in older technologies all give opportunities for high quality authentic new build in historic contexts

13. Summary of Key points:

- Statutory presumption against development that would harm a heritage asset
- Prevention is better than cure – once lost, lost forever
- Long term beneficial usage is the best way to preserve a building, ideally serving the purpose for which it was originally designed and a purpose for which it would be in the owner's interest to keep the building well maintained

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