

Scrutiny Committee – 5 November 2013

7. Listed Buildings in Disrepair – Policy and Procedure

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Purpose of the Report

To clarify the council's duties and responsibilities in respect of listed buildings that fall into disrepair.

Please note: This will not be an opportunity to discuss individual properties. Any queries or updates regarding concerns or actions at specific properties should be raised with the case officer.

Public Interest

Clarification of the council's duties and responsibilities in the care and upkeep of listed buildings and outlines the powers available and the procedures followed in responding to cases of neglect and dilapidation.

Action Required

That members note the report and endorse the currently adopted practice of maintaining a Register of Listed Buildings at Risk and taking appropriate steps to seek their repair and future beneficial use.

Background

The report is in response to the request for clarification of the council's duties and responsibilities in the care and upkeep of listed buildings and outlines the powers available and the procedures followed in responding to cases of neglect and dilapidation of listed buildings in South Somerset.

There are an unusually high number of listed buildings in South Somerset; some 4675 entries in the 'List' amounting to probably over 5000 individual buildings and structures. This places South Somerset among the local authorities with the highest number of listed buildings in the country. This prominence of high quality historic buildings undoubtedly contributes enormously to the character of the area making the towns, villages and countryside attractive as places to live and work in and for visitors to enjoy, a fact that contributes significantly to the local economy and local quality of life. The value therefore of this rich heritage and the overall quality of the area is considerable and council policy continues to expect this inheritance to be safeguarded for the future.

The legislation, national guidance and local policy

The Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) is the principal legislation and this has been supported by specific policy guidance published from time to time by the government. The current guidance is contained in the National Planning Policy Framework. The obligations in the LBCA Act towards listed buildings are set out in s.66 which requires local planning authorities (LPAs) to have

'...special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

The conservation of listed buildings has been and remains an objective of Local Plan Policy in South Somerset. The present policy EH4 contains a presumption in favour of retaining listed buildings. Policy EQ3 of the emerging Local Plan says

'Heritage assets will be conserved and where appropriate enhanced for their historic significance and important contribution to local distinctiveness, character and sense of place.'

The National Planning Policy Framework, echoes the sentiment the previous versions of guidance about the expectations government places on LPAs:

'...they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. In developing this (Heritage) strategy, local planning authorities should take into account:

- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- *the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring' (NPPF 126)*

Note that a Heritage Strategy is now a requirement and is in preparation as a part of the emerging Local Plan.

Duties and responsibilities

There is no specific duty on an owner of a listed building to keep the building in repair. Nowhere in the legislation is there an obligation. There are sanctions if a building falls into disrepair but nowhere is there a positive obligation placed on an owner nor is it a criminal offense (unless in breach of a specific order or notice made under the LBCA Act, Building Acts or Public Health Acts). Obviously it is in the interest of an owner to keep their building in good order but the law has always placed greater emphasis on the powers of the local authority than on the duties of either the authority or the building owner.

However, Secretaries of State over the years have made abundantly it clear that, as a matter of policy as opposed to law, listed buildings should be preserved – whatever the strict interpretation of the statutory provisions. For example

"...the public interest in the preservation of buildings of special architectural or historic interest needs no emphasis. Once a building has been listed, that public interest has been declared." Lord Bridge in *Robins v. Sec of State* (1989)

The LBCA Act confers specific powers on LPAs to intervene to require owners to make repairs, or to carry out works themselves on behalf of the owner and to recharge the owner their costs. The powers of the LPA are just that; they not specifically a duty. The legislation was never drafted to force anyone to keep listed buildings in repair. However, the requirements of the Act *'to have special regard'*, in the NPPF *'to conserve'* historic assets, and a series of legal judgements means in effect that the LPA **is** responsible for

ensuring as far as possible that listed buildings are conserved. It is a principle of administrative law that the existence of a power imposes a duty on a council to consider whether that power should be exercised.

Powers of the LPA to intervene for the protection of listed buildings

The council has a range of powers that it can deploy, some specific to listed buildings (contained in the LBCA Act), and others that can be applied more widely to buildings and land. Specific to listed buildings are

- Urgent Works Notice s.54
- Repairs Notice s.48

Urgent Works Notice

- Specifically restricted to works urgently necessarily for the preservation of a building and to parts of the building not in use.
- Notice must specify works required and allow min 7 days for the owner to commence.
- In default LPA can carry out the work and can recharge the owner the cost

Repairs Notice

Requires detailed specification of work necessary for the long term preservation of the building, generally to put in back into the state it was in when first listed.

If owner defaults LPA can choose to start CPO proceedings. There is no provision for the council to do the work.

Other powers include

- 215 Notice under the Planning Act to secure improvements to the external visible appearance of any land or building
- Notices under the Building Act for emergency work to dangerous structures
- Enforced sale where a debt exists on the property (Requires a charge upon the property imposed by the courts)
- Giving grants or loans to help with cost of works of repair

Listed buildings at risk from neglect

The current NPPF requires the LPA to have

*'a positive strategy for the conservation and enjoyment of the historic environment, **including heritage assets most at risk through neglect, decay or other threats.**'*

The majority of listed building owners keep their buildings in good order. There are cases though where listed buildings are not properly cared for and it was to highlight this neglect of the nation's heritage that English Heritage introduced registers of Buildings at Risk in 1990. Since 1990 the Conservation Team has kept a register of listed buildings in the district considered to be 'at risk'. The number of cases on the register at any one time inevitably fluctuates, as cases are resolved and new ones come up. Over 150 cases have been on the register and subsequently resolved. Currently around 60 buildings are identified.

What are the options for dealing with buildings in disrepair?

1. Do nothing - the lack of an absolute duty technically makes this an option but for a conscientious LPA this would be to disregard government policy and guidance, local policy and best practice as indicated by many court decisions.

2. De-listing – sometimes suggested as a solution. However buildings are listed by English Heritage and the Secretary of State. The LPA has no powers to de-list. De-listing can be requested but the deteriorating condition of a listed building alone is not a reason that will elicit a de-listing. The building must be shown to no longer be of sufficient historic interest to remain on the list.
3. Offer advice and assistance – there is great value in knowledgeable conservation and other staff available to provide advice both on building works and to support owners to find a beneficial sustainable use for their building perhaps through a feasibility study, as part of a wider regeneration scheme or to secure outside grant aid. Sometimes the best solution is to persuade the owner to sell to a new owner who is willing to repair and reuse the building.
4. Offer financial assistance - Until a few years ago a council scheme of grants and loans was available to listed building owners to help them keep buildings in good repair. The offer of financial help is a good incentive but clearly current budgetary restrictions make this difficult now.
5. With residential properties, Environmental Health empty property schemes can be lead to effective solutions. E.g. Somerset Care and Repair
6. Cross subsidy or enabling development – In some cases it may be possible and appropriate for some form of new development to be approved that will provide the means to fund the repairs needed.
7. Utilise powers available to achieve repairs - Achieving a solution by persuasion and assistance is desirable but this is not always a solution to the problem. Over 20 years this council has used its powers where appropriate to try to ensure neglected buildings are repaired. This is usually through the Urgent Works Notice process where often the threat of such a notice produces results.

At risk procedure

The Conservation Team adopts a staged approach to dealing with Building at Risk cases. The procedure that has been adopted follows this pattern -

1. Identification.
2. Inspection and providing advice to the owner
3. Monitoring with persuasion and warning of the council's powers to intervene.
4. Service of a Requisition for Information followed by a formal warning of Urgent Works Notice with a schedule of the works required
5. Service of a formal notice
6. Implementing the work if owner fails to carry out notice.
7. Re-charge cost to owner.

Most cases are resolved by the owners themselves by stage 4; the service of a Requisition for Information and the threat of a formal notice being sufficient to persuade them to act. In the past 18 months 12 cases were repaired by their owner and 2 sold to keen new owners. The service of Urgent Works Notices is not frequently required: 5 have been served in the last couple of years. In 3 cases the council had to carry out the work and successfully reclaimed the cost in 2 of these. One case remains to be repaid. The fact that the council has a track record of using its powers is a considerable persuader but it is a last resort to secure repairs and is always carefully considered with the involvement of the Area Chair and relevant ward members. The decision to serve this type of notice is delegated to the Assistant Director after consultation with the Area Chair and ward member(s). The implications to the council for the cost of any works and risk of being unable to reclaim it needs to be carefully evaluated in each case.

Cases where no resolution is achieved after perhaps several Urgent Works Notices can lead to the consideration of the more serious procedure of a Repairs Notice and possible CPO. Often however the key to achieve the rescue of problem buildings is through a

change of ownership; exactly what the CPO process does, but it is sometimes possible to achieve the same result by persuasion and perhaps the mere threat of the use of this power. If this fails, following this process is a matter for the Area Committee and District Executive to decide upon after detailed understanding of all the time and cost implications.

Conclusion

Given the legislation and policies it is clear that where listed buildings are severely neglected by their owners it is the council's role to take action to see that they are preserved. Since 1990 the council has undertaken this responsibility on a large number of buildings with the conservation team taking the lead. Officers however have many other calls on their time so the resources that can be allocated to this work are limited. The practice to relate the time spent on intervention to the degree of risk, both reputational and to the building, taking into account listing grade, public safety and profile is the recommended way the case list continues to be handled.

Financial Implications

Taking action through legislative powers where this may lead to the council directly implementing building work has financial implications both in the immediate need to pay contractors' costs and over the risk of being unable to recover those costs.

While the now-discontinued historic buildings grant budget could in the past be used to fund emergency Urgent Works situations, currently there is no process except through the CEO and Leader to the council's reserve fund and reported de facto to DX. The committee may wish to consider simpler alternatives to meet these infrequent events.

Corporate Priority Implications

Theme 2 – Enhance the Environment

Carbon Emissions & Adapting to Climate Change Implications (NI188)

No adverse implications. Repairing and reusing buildings is inherently sustainable.

Equality and Diversity Implications

No direct impact.

Background Papers: *Planning(Listed Buildings and Conservation Areas)Act 1990*
National Planning Policy Framework
South Somerset Local Plan 1998
Emerging South Somerset Local Plan 2013
'Stopping the Rot – a guide to enforcement action to save historic buildings' English Heritage 2001