

Planning Enforcement and Protected Buildings

Q – What requires planning permission?

A – Development

Since 1948 we have become used to the idea that anyone desiring to undertake **development** should first seek planning permission from the relevant planning authority. Development is defined as “*the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of any building or other land.*”

Most of us would understand building operations as including erecting a building or extending a building outwards or upwards ... but maybe not taking delivery of a prefabricated coal bunker, painting a building, putting up a garden fence, installing a point for charging electric vehicles or **replacing** an existing CCTV camera. Yet each of these falls within the definition, and therefore requires planning permission. In contrast, demolition is not development (unless it falls to be treated as an engineering operation); and neither are works to the interior of a building that are not ‘building works’, or repairs.

Planning permission is granted for the erection of some buildings and extensions, and for a great variety of other types of development (such as the coal bunker, painting, &c, mentioned above), by the General Permitted Development Order (‘GPDO’). This Order contains some surprises. It is counter-intuitive to think that the change-of-use of an agricultural building to a State-funded school (or back again) need not require a planning application; and neither does a change-of-use from an office, farm or distribution building to a dwelling. The Order is capable of authorising a domestic extension covering up to half the undeveloped curtilage around it ... but not decking over the same area. The GPDO is complicated, and it pays to understand it.

Many of the provisions of the GPDO do not apply within conservation areas and/or World Heritage Sites or to listed buildings; several do not apply to Scheduled Monuments; and a few do not apply where the proposed development affects the setting of a Grade I listed building. The planning system therefore recognises that there exist **special buildings** which merit protection ... along with their settings. These appear on a list of places of special architectural or historic interest, compiled by Historic England for the Secretary of State for the Environment, which is why most of them are called ‘listed buildings’. The National Heritage List for England also contains entries for Scheduled Monuments, battlefields, parks and gardens.

Parts 1 and 2, and some of Part 3, of the GPDO apply to all land ... which is to say that the suite of alterations within curtilages of dwellinghouses, minor operations and some changes-of-use that are granted planning permission by the GPDO are authorised ... irrespective of whether the site is a listed building, a Scheduled Monument or whatever.

Where development outside the scope of the GPDO is proposed, it is normal to apply for planning permission. Planning permission is **permission**. Unless otherwise provided, it does not compel the developer to develop; it runs with the land; and the planning authority’s decision cannot be revoked or modified. It may be granted subject to conditions, but these must be reasonable. A condition:

- must fairly and reasonably relate to the permitted development – i.e. must serve some useful planning purpose;
- must not be wholly unreasonable;
- may restrict the user of the premises according to the personal circumstances of the occupier;
- may be invalid if its meaning is uncertain.

The startling fact that **unauthorised development is not generally unlawful** stretches back before 1948, when men were men and a landowner could do as he pleased with his land. If a local authority fails to challenge unauthorised works ... or a failure to comply with planning conditions ... or an unauthorised change-of-use to form a single dwelling, within four years of the alleged breach; or any other breach (usually other changes-of-use) within ten years; the breaches become immune from

enforcement and the developments stand. The law even provides a procedure for obtaining a **Certificate of Lawful Development** to regularise the position post-breach. This is not to say that we can ignore the planning system, local plans and all ... far from it.

Where a planning authority becomes aware of a breach of planning it has to look for harm, and where it perceives there is harm – notably measured against the Local Plan – it can:

- recommend that a **retrospective application** is made (which it may refuse, or grant subject to conditions);
- seek further information using a **Planning Contravention Notice**;
- issue a **Planning Enforcement Order** (which enables an authority to take action in relation to an apparent breach of planning control, notwithstanding that the time limits may have expired);
- serve a **Breach of Condition Notice**;
- serve an **Enforcement Notice**;
- serve an **Enforcement Notice** followed by a **Stop Notice**;
- serve a **Temporary Stop Notice** followed by an **Enforcement Notice** (and, if necessary, a **Stop Notice**);
- **gain entry to land** in order to take action to comply with an Enforcement Notice (and obstruction is a criminal offence)
- obtain an **Injunction** to prevent furtherance of the breach.

Planning authorities are required to publish a **Local Enforcement Plan** outlining how, and in what circumstances, it will be **expedient** to apply these remedies. The remedies are subject to tests of harm, of reasonableness, Human Rights, protection from eviction, and to appeal. Some are exercisable only subject to compensation provisions. All have to be correctly executed in order to be enforceable; and must give appropriate time to allow compliance ... but at the end of the day enforcement carries **criminal** sanctions.

The position relating to listed buildings, and also to Building Standards, is different. A breach of Building Standards is always a breach; defective works remain non-compliant; there is no period of immunity. All one can do is seek a 'letter of comfort' in respect of past breaches – a letter which confirms that, despite non-compliance with the prevailing standards, the local authority proposes no action.

No such letter is available in respect of unauthorised development at a listed building, or in respect of the demolition of an unlisted structure in a Conservation Area. Enforcement is not subject to time limits (though, where a long period has elapsed, enforcement may no longer appear to be *expedient*). There is no provision for retrospective grant ... a breach remains a breach.

It is an offence to execute, without first obtaining listed building consent, any works for the demolition of a listed building, or for its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest. Any object or structure fixed to the building or forming part of the land comprised within its curtilage is to be treated as part of the building. In rare circumstances, listed building consent can be revoked or modified, but this power is not exercised by local authorities to facilitate unauthorised works. The only exception covers emergencies – works such as temporary shoring, boarding-up, sheeting over a hole in a roof. A planning authority may serve an **Urgent Works Notice** requiring works to protect a listed building from weather, vandalism or collapse. If ignored, the authority can give seven days' notice of its intention to undertake the works ... and it may recover the reasonable cost from the owner.

Note that the offence applies to persons executing work, which may be a builder or someone instructing a builder ... i.e. **you**! No distinction is made between the different grades of listed building. The listed building includes any object or structure fixed to it; and any object or structure forming part of the land comprised within its curtilage. The test is not of harm, but of any effect on its character as a

building of special architectural or historic interest. There is no pre-application procedure to discover whether a proposal will satisfy the test. The GPDO may provide planning permission, but it does not provide listed building consent. Listed building consent is therefore necessary in circumstances where planning permission is not – for demolition, for works afforded planning permission under the GPDO (e.g. to structures within the curtilage) and for interior works ... but not for repairs.

An interesting provision that keeps planning authorities on their mettle is that, where listed building consent is refused, or is granted with conditions, or is revoked or modified, such that the owner believes the building is rendered incapable of reasonable beneficial use, he can serve a **Purchase Notice** on the planning authority, requiring it to acquire the building and any land that necessarily goes with it. This is rare, but occasionally crops up in connection with applications to demolish a listed building. The price is the market value of the asset, which takes account of its condition.

On the other hand, where a local authority perceives that an owner is unwilling to, or incapable of, making essential repairs to a listed building it may, on the basis of harm and by reference to the Secretary of State, serve a **Repairs Notice** requiring that repairs are made. If, after a suitable period, repairs have not been made the authority may, by further reference to the Secretary of State, **compulsorily acquire** the owner's interest in the building and any land that necessarily goes with it. The compensation is the market value, on the assumptions that consent would be granted for schemes of alteration and extension, or for rebuilding, or for rebuilding the interior – other than any schemes already refused; except where the building is thought to have been intentionally left to fall into disrepair to trigger this process – when minimum compensation applies (probably £1). The owner has rights of appeal on both the principle of compulsory acquisition and the calculation of compensation.

There is a separate regime for obtaining consent for works to Scheduled Monuments. They, too, may be compulsorily acquired and – an oft forgotten point – Building Standards do not apply to Scheduled Monuments. There is no provision to serve repairs notices in respect of ecclesiastical buildings or Scheduled Monuments. Cases concerning statutory interventions into properties that are part listed and part monument are, thus, very interesting!

This skip through the law on protected buildings would not be complete without a word on local listing. This potentially insidious introduction, via the National Planning Policy Framework of 2012, advises planning authorities to create a list of the non-designated heritage assets in its area, and to set out '*a positive strategy for the conservation and enjoyment of the historic environment*' in their Local Plans. Part of the drive for 'localism', it does allow interested parties to pursue private agendas through the planning process, and you should look to see whether your local authority collates a list (about half do); and whether local comment is capable of influencing your legitimate planning goals.



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