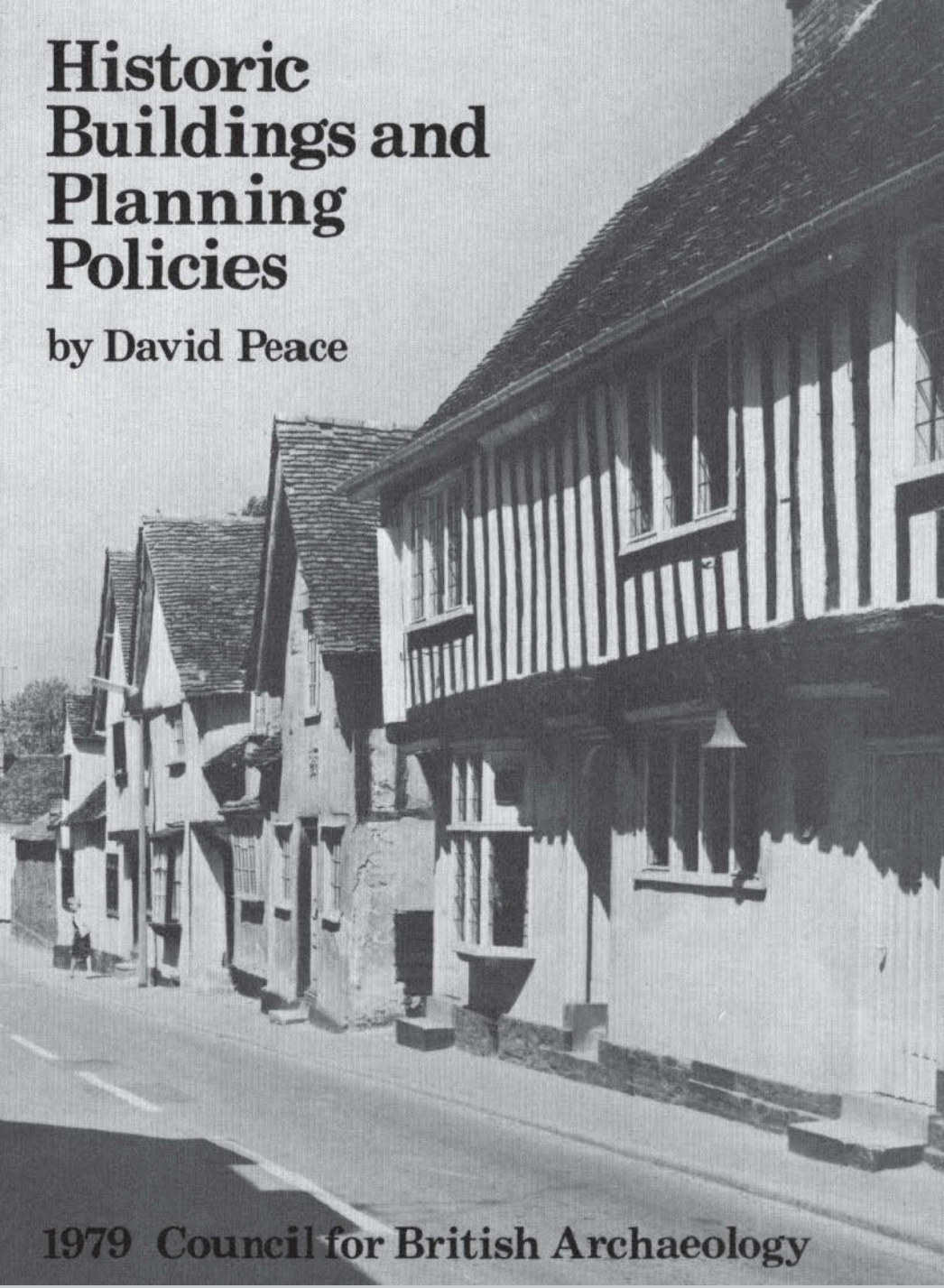
Historic Buildings and Planning Policies

by David Peace



1979 Council for British Archaeology

This document arises out of the longstanding concern of the CBA for historic buildings of all kinds. It serves as a guide to action by planning authorities, the Department of the Environment, amenity and archaeological societies, and others who can help to safeguard our heritage. Suggestions for remedying the various deficiencies in the machinery are made under eight main headings and are summarized at the end.

The CBA is one of the six national bodies which must be consulted on applications to demolish listed buildings, and whose views must be taken into account by the authorities.

David Peace has been for 30 years an architect planner in local government in the Counties of Staffordshire and Cambridgeshire. As such he has been especially concerned with conservation of the environment, and is the author of *A guide to historic buildings law.* Since 1965 he has been a coopted member of the Council for British Archaeology, and he has also served on the Council of the Royal Town Planning Institute. He is a Fellow of the Society of Antiquaries, and in 1977 was made an MBE.

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Introduction

Professor Maurice Barley MA FSA

This document arises out of the long-standing concern of the CBA for historic buildings of all kinds. It describes the legal framework within which threats to historic buildings are dealt with; it therefore serves as a guide to action for archaeological and amenity societies. It draws attention to deficiencies in the machinery and suggests remedies. It should be particularly useful to those officially involved in local planning: that is, to elected members of local authorities and to officials in planning departments. Attention should be drawn to the score of suggestions which would involve remedies by the Government.

Historic buildings are complementary to buried remains as material evidence for the past. The fact that they may also have environmental value provokes a different set of considerations. These latter may also influence members of the CBA, but should be distinguished from the strictly archaeological concern over threats to evidence.

National concern for threatened sites has led recently to the creation of organizations responsible for compiling sites and monuments surveys and for excavating those which cannot be saved. Buildings call for an equally comprehensive scheme for recording them. This is likely, in the foreseeable future, to be left largely to individuals and local groups acting on their own initiative. The CBA therefore proposes to publish a guide to recording buildings.

Acknowledgements

Among those consulted during the compilation of this document are the Civic Trust, the CPRE, the County Planning Officers' Society, the Metropolitan Planning Officers' Society, the District Planning Officers' Society, and the District Planning Officers or Conservation Officers of Durham, North Hertfordshire, Shrewsbury, Stroud, Oxford, Yeovil, and York.

The report has also had the advantage of detailed consideration by the Historic Buildings Committee of the CBA.

All the advice is gratefully acknowledged, and while the attempt has been made to incorporate the views of others wherever possible, the responsibility for the report is that of the compiler.

A Introduction

1.01 This document attempts to isolate the problems which are most common in a planning authority's work in dealing with listed building applications. However, even in relation to buildings, it does not deal with all problems: eg it does not cover:

a conservation areas, apart from control of demolition of the buildings in them;

b regional trusts for conservation finance, or revolving funds;

c criteria for listing or upgrading;

d the complex law relating to historic churches (apart from questions of demolitions of Church of England redundant churches).

For a comprehensive survey of the powers, readers are referred to *A guide to historic buildings law,* compiled by David Peace and published by Cambridgeshire County Council.

1.02 The fragmented nature of the legislation makes difficulties for the authorities, the profession, and the public. Not all legal loopholes in listed building controls can be stopped up, and some flexibility in judgement must be allowed, to both planning authorities and applicants.

1.03 The law and administration have not worked as well as was intended. But even in present economic circumstances there are several improvements which should be considered, and these are summarized at the end of the report.

1.04 Applications have to be made for Listed Building Consent to alter, extend, or demolish listed buildings or to do partial demolition. Many buildings are listed by virtue of their being within the curtilage of a listed building, whether or not they are specifically mentioned or shown on the official maps.

Alterations and extensions

1.05 Alteration means *'in any manner* which would affect its character as a building of special architectural or historic interest', and the controls extend to the interior of all listed buildings.

1.06 The Department of the Environment do not require now to be notified of applications to alter or extend listed buildings *except* (a) those in Grade I and Grade II star; (b) cases where an Historic Buildings Council grant has been made *or applied for;* (c) cases of *planning* applications affecting a listed building; and (d) buildings owned by a Planning Authority.

1.07 Before 1979 the DoE had to be consulted on all alteration or extension applications, and thus given the opportunity to intervene by calling in an application for decision by the Secretary of State. This apparent safeguard did not result in much intervention, but it at least gave the specialists a chance to make suggestions about the improvement of proposals. In 1978 the Historic Buildings Council saw no reason to propose fundamental changes in the existing system of listed building consent after considering a discussion paper prepared by DoE officials. Further advice is to be received about the listing process itself.

Demolitions and part-demolitions

1.08 In these cases planning authorities may not grant consent without giving the DoE an opportunity to intervene, and applications to demolish any listed building must be notified to six national bodies – the SPAB, the Georgian Group, the Victorian Society, the Ancient Monuments Society, the CBA, and the Royal Commission on Historical Monuments for England or Wales as the case may be.

Definitions

1.09 Listed buildings include by definition under the Act objects or structures fixed to them or within their curtilage. 'Curtilage', however, is not defined in the Act, leaving this for the Courts to decide (though the definitions in Squire's Law Dictionary can be helpful towards conservation). But it is clear, for example, that gates, gatepiers, boundary walls, cobbled courtyards, stable blocks, or outhouses within the immediate environment of a house and occupied with it would be assumed to be within the curtilage.

1.10 New buildings within a curtilage, however, if unattached to listed buildings, are not subject to listed building controls (though they may well require to be advertised). This has an important bearing on the control of the setting of a building. But if a plot division has been made, to separate part of the site of a listed building, the surviving buildings on the separated plot lose any listed status they may have had earlier; because the curtilage has changed, and no 'land charge' search on the property would reveal a previous listing, nor any survival of one.

Permitted development

1.11 While there are certain freedoms from the need for an applicant to get *planning* permission (arising from the General Development Order which provides for permitted development) he may still need *listed building consent* if he wants to alter the historic character of a building 'in any manner'. Many works to historic buildings which

need such consent would not be 'development' under planning law.

B A general philosophy for historic buildings

2.01 Action by a planning authority in controlling the saving, destruction, or alteration of historic buildings depends on a resolution of various forces: for example the legal powers, the expediency or otherwise of invoking them, the attitude of the planning officer, the advice he receives from his assistants or from a separate specialist team, the opinions held by local civic societies or national bodies, the views of a planning committee or of the DoE, the examples set by appeal decisions, and not least the requirements of the applicant. And attitudes change in the course of time. In the paragraphs which follow, the attempt has been made to set out a basic current working philosophy for dealing with historic building problems, which stems from a prime consideration of the nature of the buildings themselves. For want of such a philosophy, well-meaning ignorance can cause as much damage as vandalism.

Historic evidence

2.02 All early work should be preserved, either dating from the origins of a building or showing its later development. It may sometimes be desirable to retrieve historic structure and design, as well as to put a building into good repair. The identification of authentic historic work or rare features needs experience and scholarship.

2.03 Evidence providing criteria for dating work of any historic period should not be destroyed; if it is unavoidable, records must be kept by photographs or measured drawings, and deposited with the National Monuments Record (and if possible with a copy in local archives). The re-incorporation of old structural members in a timber-framed building is inadvisable, and usually impracticable, but if they are moulded or show interesting carpentry joints they should be kept.

2.04 It is important to prevent the destruction of historic detail. For example, it is not uncommon to find severe alterations to windows by the removal of glazing bars or leaded lights, or alterations to the facades of buildings by the removal of cornices, parapets, or urns. If a building has to be destroyed, all movable elements should be preserved, properly displayed, or even reused in an appropriate context.

Repairs

2.05 Maintenance works and repairs should be in keeping with the historic nature of the building in materials, craftsmanship, and general form. They should be as 'conservative' of original materials and craftsmanship as informed archaeological opinion would normally demand: eg medieval roof timbers should be strengthened or given new feet, and not wholly replaced.

2.06
a Repairs to walls and roofs should be done in similar materials to the existing, preferably the original, except where it is considered necessary to have clear evidence of what work is old and what is new: eg tile stitching in an old tower.

b Replacement of historic decorative details where extensive and repetitive (eg in wooden cornices) may be considered appropriate in alternative materials, but this should not apply to historic structural members or stonework.

c Any necessary replacement of special historic details embodying individual craftsmanship should be done by individual craftsmen, without necessarily attempting to copy the original – but exceptions would, for example, be the accurate reproduction of caryatids or other sculpture which was exactly conceived as part of the architecture.

Conservation

2.07 In considering applications for listed buildings the benefit of doubt ought to be given to the preservation of the building – the primary need to keep its architectural or historic interest – and the applicant's personal predilections should be regarded as secondary, ie as distinct from those ordinary development control decisions in which any benefit of doubt would be given to the applicant to do as he wishes.

2.08 On the other hand, the possible need for appropriate new uses must be borne in mind if a building is to be saved, provided that the adaptations could be suitably done. Successful new uses or adaptations depend to some extent on close consultation and understanding between planning officers, building inspectors, environmental health and fire prevention officers (and their committees): eg to agree sensible ceiling heights, staircases, and uses of basements, or to agree on rehabilitation methods.

2.09 Internal alterations need special attention. Without proper controls (however difficult these may be to enforce) internal alterations may lead to the removal of fireplaces, staircases, or good plasterwork or

severe gutting of the building and the removal of all evidence of its earlier plan form, history, or dating criteria.

2.10 Historic buildings ought to be subjected to experienced scrutiny before a case for their demolition or part-demolition is considered; ie informed opinion must be gained before they are written off as of no historic interest, allegedly uneconomic to put into order, unadaptable for new purposes, a health hazard, or structurally dangerous.

Records

2.11 Adequate records, measured and photographic, should be made of any buildings or details to be destroyed – *or those to be kept so* as to serve as basic records in the event of later changes – and the photographic records should also cover the setting. 'Before and after' photographs can provide either warnings or encouragement. Records should be accessible to the public and their location must be made generally known.

Site, setting, and scale

2.12 The setting of a listed building should be treated with special care, even outside its curtilage, particularly where the setting has survived in its historic form, or care should be taken to ensure that it is appropriately altered or retrieved.

2.13 A building should be considered in the historic context of its site. Rebuilding or complete removal falsifies the whole historic document of the site. Rebuilding or removal should only be done in the rarest cases where the building is otherwise doomed, and then only after a public inquiry which results in consent for demolition.

2.14 While design policies are needed for new buildings, especially in conservation areas, in order to guide without stultifying, policies for retrieving the design of historic buildings are also needed which recognize above all the needs of architectural scale.

C Current problems and suggested remedies

a Alterations, unauthorized

3.01 Alterations to a listed building 'in any manner' affecting its character as an historic building (eg alteration of windows, significant details, or erecting new partitions) or failure to comply with a condition of consent, constitutes an offence. This also applies to buildings in the curtilage of listed buildings.

3.02 Such alterations may be done in ignorance on the part of the owner, his agent, or the builder, or even through compliance with Building Regulations or fire precautions. There is a need to distinguish between necessary and unnecessary stipulations under Building Regulations and grant conditions.

3.03 Improvement grants can easily lead to alterations which are no improvement to the character of listed buildings, notably on account of increased window sizes. Increased room heights may also affect the character of a building, though this need not be adverse. Compliance with Building Regulations or works undertaken to get an improvement grant would scarcely be followed by a prosecution for not getting listed building consent. The requirements of housing associations or building societies may also lead to unsympathetic 'improvements'.

3.04 Painting (whatever the colour), rendering, or cleaning of the surface of buildings (eg by sand-blasting or acid-cleaning) may adversely affect the character. Even washing a building might need consent! But consent is by no means always applied for, when it is clearly required in law.

3.05 In the course of 'repairs', alterations can happen when certain features are removed and not replaced (eg cornices, mouldings, shutters, pinnacles, or urns). Substitute materials are sometimes used in the repairs, or Ill-considered brick (eg in a reconstructed parapet), or even plastic thatch. Bad work is only clear after the job is finished.

3.06 Alterations to interiors are especially difficult to control: eg the removal of staircases or plaster work of interest, or of significant elements which provide dating criteria.

3.07 The alternative legal courses when unauthorized alterations are done are prosecution or listed building enforcement. But prosecution may not result in an early decision, and the fine may be no deterrent. An enforcement notice (if 'unauthorized and damaging works' are done *and if 'expedient')* does not take effect for 28 days, and there are then further delays. Furthermore, the owner may appeal, causing months of delay before a decision.

3.08 Prosecution in the Magistrates' Court on damage to a listed building (Section 57 of the Planning Act 1971) may at present lead to a fine of £100 and, on subsequent conviction, up to £20 per day until steps are taken to prevent further damage.

3.09 But while prosecution (under Section 55) for unauthorized demolition or alteration, or failure to comply with a condition, if

taken to the Magistrates' Court, can lead to a fine of £250 or 3 months or both, the Crown Court can impose an unlimited fine or 12 months or both.

3.10 Listed Building Enforcement may, if not eventually complied with, lead to a fine by the Magistrates' court up to £400 or, if the work to the building is not done after conviction, up to £50 per day. An unlimited fine can be imposed on indictment by the Crown Court.

3.11 There are, on enforcement, many legal grounds for appeal by the owner. During the delay caused by an appeal conditions may worsen, and the authority will normally not act while the case is going through the procedures.

3.12 An Article 4 Direction (under the General Development Order) could, for unlisted buildings, bring various Important alterations of character under planning control (eg alterations to windows). Such a direction might help to draw public attention to the need for keeping historic character, but the alterations to *listed* buildings would in any case need consent, whether or not a direction was in force. Article 4 Directions, however, are not favoured by the DoE except in rare conditions, and in any case they need usually to be preceded by an explanatory programme for public information in the area.

Suggested remedies

3.13 In cases of unauthorized alterations the Authority should always consider the advantage of prosecution on indictment in the Crown Court rather than in the Magistrates' Court.

3.14 Heavier penalties should be considered in new legislation.

3.15 A circular or pamphlet for the public needs to be compiled, giving a check list on what kind of alterations need listed building consent (eg rendering or painting of brickwork, refacing or cleaning) and the need for historic work to be identified and kept. This could be issued to all listed building owners, and would serve as a useful adjunct to a design guide. It could also be made available to Parish Councils, for example.

3.16 It would be possible to speed up the process of consent for a defined range of minor alterations (eg to interiors), provided that drawings or details are merely notified, registered, and deposited, with the opportunity given to the authority to inspect before and during the work, and on completion.

3.17 Building Regulations staff, those concerned with housing improvement grants, and fire prevention officers need to be made aware of the listed building consent problems. Schemes may thus be suitably amended in negotiation, or relaxations or waivers permitted.

3.18 More grants need to be given for first aid repairs. Owners should have to undertake to ensure that historic features removed during repairs are recorded (by drawings and photographs) and replaced, or the essential details restored, perhaps from previous records. This would help to avoid the practically impossible task of trying to effect remedies by enforcement on minor but important details.

3.19 Article 4 Directions could be used more, especially linked to conservation areas and in identifying the need for certain works to require consent. This would mean a general, but also quite specific land charge, which would be brought to the notice of architects, estate agents, and solicitors on any land transaction.

b Demolitions

i Unauthorized demolitions and 'curtilage' problems

4.01 Demolition of listed buildings (or part-demolition) constitutes an offence under Section 55 of the Planning Act 1971. Even a demolition for safety or health reasons is an offence if carried out before listed building consent is given, though in any subsequent court action it would be a defence if the works were urgent for these reasons, and if the demolition is notified to the planning authority as soon as practicable.

4.02 Unauthorized part-demolition is also an offence, but it needs to be clarified whether the removal of, for example, dormers, chimneys, or parapets is part-demolition. Removal of a projecting wing would need consent as part-demolition in addition to the need for consent for the consequent alterations.

4.03 Unauthorized demolition of most unlisted buildings in a conservation area is also an offence (Sect 277A (8) of the Town and Country Amenities Act 1974).

4.04 Demolition offences are rarer than those concerned with alterations, and the destruction of parts, or of minor buildings, would not normally lead to any prosecution. Yet the loss may be important in terms of townscape, village character, or the quality of history of the building.

4.05 Demolitions of major buildings of obvious significance might well result in prosecution, but the deterrent to prosecution is the cost,

the staff time, the delay, a risk of a negligible sentence if the case is proved, and general acrimony – none of which gets the building restored. Even so, the publicity given to a prosecution is a deterrent to other owners.

4.06 In conservation areas there is a need to get listed building consent for demolition of unlisted buildings, with certain minor exceptions (in these cases, *planning* permission may be needed for alterations or extensions). Most estate agents and architects do not realize that these restraints exist, nor that buildings in a curtilage of a listed building are also brought under listed building controls. There may, moreover, be particular difficulties in defining curtilage for farms or country houses.

4.07 At present the maximum fine for unauthorized demolitions is £250 on summary conviction, or 3 months imprisonment, or both, or 12 months or a fine or both on indictment. The Court must have regard to any financial benefit likely to accrue from the offence in deciding the fine.

4.08 For enforcement difficulties, see paras 3.07 – 3.11

Suggested remedies

4.09 'Part-demolition' should be clarified (eg with regard to chimney stacks, dormers, or parapets).

4.10 The penalties need to be made more of a deterrent to demolition or part-demolition.

4.11 A circular or statutory instrument should be issued to help define 'curtilage', should stress the provisions of the Act, and should deal with the problem of buildings which have been divided off from the original listed building.

4.12 The planning authority should be encouraged to designate 'curtilage' at least informally on the planning register, or by resolution of the Committee if necessary.

4.13 Buildings or objects within the curtilage of listed buildings should be identified separately when lists are revised.

ii Demolition of redundant churches

5.01 Whereas listed churches other than Church of England need consent for demolition if not in use for worship, C of E churches do not usually need consent. By the Pastoral Measure 1968 the future of Anglican churches in England is a matter for the Church Commissioners, and not the local planning authority. The

Commissioners are advised by the Advisory Board for Redundant Churches, who in certain circumstances can veto a demolition.

5.02 Demolition is an option under Sect 51 (1) (c) of the Measure, and is the compulsory fate of such buildings for which no alternative use can be found, and which the Commissioners are unwilling to preserve.

5.03 The Church in Wales, however, has no such arrangements. When such a church is redundant and out of use for worship, the normal secular controls apply.

5.04 For the C of E, the planning authorities are consulted formally by the diocese about the redefining of parish boundaries, which may very likely lead to a redundancy, and on the future of the buildings when out of use for church purposes. The architectural or historic quality has eventually to be assessed as a factor by the Council for Places of Worship, and a report made to the Pastoral Committee of the diocese. The Diocesan Advisory Committee for Care of Churches may also be concerned, and eventually the Diocesan Redundant Churches Uses Committee.

Suggested remedies

5.05 The planning authority should make a report under the normal criteria for demolition applications. This would provide them with information on the possible uses which might well save the building. Such uses may be communal or secular, and may arise from local knowledge of which the Church Commissioners may not be aware, eg the need for a place of worship for a local group or sect. The planning authority's report should also be sent to the Diocesan Redundant Churches Uses Committee.

5.06 Such a report should be required to be sent to the DoE as in the normal way for an application, as well as to the Church Commissioners.

5.07 The law should be changed, but in the meantime arrangements on these lines should be made informally, after consideration by the national societies and local interests.

5.08 The RIBA and national societies should keep a register of acceptable conversions of redundant churches, and the names of the architects would be given in answer to enquiries. The Advisory Board for Redundant Churches should also be consulted.

c Neglect

i Neglected occupied listed buildings

6.01 If an occupied listed building (or even if it is unoccupied, though other courses would then normally prevail) is allowed to decay, the authority can purchase under 'minimum compensation' powers, but only if they can prove that the neglect was *deliberate,* and *in order to* facilitate demolition *and* to enable redevelopment to take place of its own site or an adjoining one. Such a situation would be hard to prove and clearly evidence would be needed about its condition in the past, by referring to photographs or reports. Periodic surveys, regularly followed up, would help.

6.02 Neglect may be due to inability of an owner to afford repairs to the right standards. Even grants may not help towards repairs to the kind of details which the building may demand. For example, Elizabethan chmneys may need sensitive pointing, or some reconstruction, and they may not even be needed now for their original purpose.

6.03 A Repairs Notice can be served under the Planning Act, but these are not all they seem. The authority may serve such a notice on an owner specifying the works 'reasonably necessary' for the building's preservation and explaining certain sections of the Act, including 'minimum compensation'. But the notice only specifies what works are needed; it cannot require them to be done. A Repairs Notice, however, is the normal method by which an authority may start to deal with neglect of occupied listed buildings, and it could also be used for dealing with unoccupied buildings if the circumstances led to this. (But the Housing Acts can also be used, as in para 6.08 below.)

6.04 The only method of enforcing a Repairs Notice is to purchase the building compulsorily. The authority cannot under this procedure enter and do the work. Thus a committee of a planning authority, on determining to try to get an owner to do some repairs, needs also to resolve to purchase the building if he does not. The CPO will result in a Public Inquiry, or sometimes court proceedings to get the CPO stayed, if the aggrieved owner claims he has taken reasonable steps to repair the building.

6.05 Some owners may do the repairs for fear of further action. An authority, however, in present economic circumstances may well not be able to buy the building compulsorily if the owner did not repair it. The authority may not even want the building.

6.06 Owners for various reasons may not seek new uses which would

give the building a new lease of life.

6.07 It is understood that there are not yet (1979) any cases of 'minimum compensation'.

6.08 Under the 1957 Housing Act (as amended by the 1969 Act Sect 72) a notice requiring 'substantial repairs' of a house which is not unfit for habitation can be served on the 'person having control of the house'. The repairs must bring it up to a 'reasonable standard, having regard to its age, character and locality'. If he does not do the work, or if the notice is confirmed after an appeal, the local authority can do the work, recover the cost, or set the cost as a charge on the property if the owner cannot pay.

Suggested remedies

6.09 Revised legislation should be considered, leading to a penalty for not doing the repairs required within a reasonable time, subject to an owner's right of appeal that the repairs required were unnecessary.

6.10 Revised legislation could allow compulsory purchase when the condition of any building gives reasonable grounds for concern.

6.11 A procedure could be determined for repairs between 'urgent' repairs and general neglect (or repairs notice category) which could thus put pressure on owners.

6.12 Professional institutions (eg the RICS and RIBA) could produce a booklet on the advisability of regular maintenance, with costed examples contrasting the costs of such maintenance and the major repairs which may result from ignoring regular small repairs. Advice could be given on 'conservative methods of repair.

6.13 Neglect due to inability of an owner to afford repairs to the standard required means a far greater measure of grant, even though a means test may also be required. Real encouragement needs to be offered for the repairs to be done.

6.14 If the normal Repairs Notice procedure is followed by compulsory purchase, the authority could agree to sell to a local preservation society, or a trust.

6.15 A revolving fund may be established either by the authority or through a local society or trust, and the repairs put in hand after acquisition through that fund. Properties must be saleable.

6.16 If action is taken to get repairs under the Housing Act 1957, as amended, an impecunious owner could agree with the Authority not to appeal, and to accept a charge on the property if he could not

afford the work himself. This would affect the sum he would realize on sale, but the work would be done under local authority supervision and probably be less of a worry than if he were employing a builder to do the work under pressure from the authority.

6.17 Authorities should, like the Historic Buildings Bureau, suggest appropriate new uses of buildings when owners tend to neglect them and stimulate applications.

6.18 A further remedy (requiring a change in the law) may lie in certain tax allowances, nil-rating for VAT on repair work, or differential rating to encourage more spending on maintenance of older buildings.

6.19 The concessions allowing relief from VAT by definition of new work in the course of a 'repairs' job should be made more widely known.

ii Neglect of unoccupied listed buildings

7.01 It is very necessary to ensure that vacant buildings are not deliberately neglected by owners, and that councils acting, for example, as housing authorities do not let listed houses become uninhabitable when they should be given extended life.

7.02 There is a problem for an authority to determine at what stage it ought to use its powers to do the work, followed by charging the cost to the owner.

7.03 The degree of remedial work which can justifiably be done must be fairly limited, but it must ensure that the building is at least kept watertight.

7.04 The repairs, however, do not get the building put to use, and there is thus a greater risk of vandalism and waste of effort than with occupied buildings.

7.05 The normal remedy is for the authority to enter and do the work and charge the cost to the owner. The Repairs Notice and compulsory acquisition procedure can be used, or the authority can buy by agreement. If the neglect can be proved to be deliberate for redevelopment, a court case may lead to minimum compensation.

Suggested remedies

7.06 Powers should be enacted whereby the authority, having done the repairs, could have the right to put the building to use.

7.07 The Local Authority could charge rates on unoccupied buildings with a view to ensuring they are used.

7.08 Formal or informal arrangements could be made whereby the local authority is informed of buildings becoming vacant.

d Dangerous Structure and similar Notices

8.01 A chief technical officer of a local authority, or the chief architect if so nominated, or in London the district surveyor has personal powers under the Public Health Acts (or the London Building Act (Amendment) Act) to serve a 'Dangerous Structure Notice' if in his opinion the building is dangerous, ruinous, dilapidated, or overloaded. (In certain circumstances the owner may even find it expedient to ask for a Dangerous Structure Notice to be served on him.) If reasonably practicable the authority must notify the owner and occupier before taking such steps as are necessary, and the authority can recover the expense.

8.02 The DSN can be on a part of a building; and a supplementary notice can be served.

8.03 The DSN may even just require that fencing be erected against possible danger.

8.04 The Public Health Act 1925 allows for problems of less urgency than those 'immediate action' cases covered by the Act of 1961.

8.05 But the choice whether to "take down, repair or otherwise secure' is left to the owner; the authority cannot opt for just one of these.

8.06 The owner may welcome the fact that the Act under which the notice is served would in law 'dominate' over the listed building controls, especially if the value of the cleared site exceeded that of site and building by more than the cost of demolition and clearance.

8.07 If part of a building, or some historic feature, is 'taken down', there is no requirement to replace it (unless covered by a conditional planning or listed building consent – and even then enforcement is difficult or tedious).

8.08 While a technical officer will seek to use these powers, not least because of his personal responsibility, there may be occasions when lack of knowledge of historic structures (eg timber-framed buildings) may make him unaware that there is in fact little or no danger, and consequently a listed building may be unnecessarily lost.

8.09 In similar circumstances to a Dangerous Structure Notice, a local authority (but not an officer in a personal capacity) can serve a notice on an owner to demolish, repair, or restore where the state of the building is seriously detrimental to the amenities (Public Health Act 1961, Sect 27: London Building Act (Amendment) Act,

sect 59). The options are again left open to the owner, but he could need listed building consent also.

Suggested remedies

8.10 Chief technical officers or district surveyors should be advised of the sources of advice from known experts on historic buildings, whether architects, surveyors, or engineers.

8.11 Provision should be made for the fees and expenses of these experts, and full opportunities for them to make a proper examination of the building.

8.12 The results of such surveys should be made public, whether they lead to proposals for saving a building or recognizing the need for its destruction.

8.13 National or local conservation bodies could issue a general request to authorities advising them to avoid serving DSNs on whole buildings where a notice on only a part would be enough, and to consider other minimum provisions such as fencing while consultations take place.

8.14 The training of technical officers and building inspectors should include courses on the nature of historic buildings.

8.15 On interviewing technical officers, especially in certain areas of the country with particular regional building character, questions should be put to the candidates on the nature of historic structures.

e Discovery of historic features during progress of authorized work

9.01 Discoveries can be made when carrying out approved extensions or interior alterations. In the course of stripping plaster from the walls historic features – medieval doorways or even wall paintings – may be discovered; a roof may turn out to be much more important than was expected; or old foundations may be discovered which deserve to be carefully excavated.

9.02 On some sites discoveries would not be unexpected. Some owners would welcome discoveries; others would regret them, especially if they held up the job. In the latter case there could be a risk of the old work being covered up or destroyed without delay.

9.03 While the Royal Commission on Historical Monuments or the Ancient Monuments staff of the DoE would commonly be interested in recording any discovery, this would often be impracticable owing to other commitments or staff shortage.

9.04 If the discovery causes the need for revision of the proposals, this could mean a revised application for listed building consent, with consequent readvertising, etc.

Suggested remedies

9.05 Especially where there is a likelihood of old work being discovered, a letter should be sent by the authority to the developers with the decision notice asking them to notify the authority so that records can be made.

9.06 Alternatively this might be made a condition of consent, but there is doubt about its enforceability. There should be a condition imposed that a copy of the decision notice be given to the site foreman.

9.07 If important remains were found, the Ancient Monuments Directorate should serve an Interim Preservation Notice, which would bring the site under DoE control.

9.08 The need for adequate records of historic remains should be more widely publicized, together with advice on methods of recording.

9.09 The Government should be asked to examine the question of legislation to enable development in certain circumstances to be stopped when historic remains are discovered, either for purposes of recording or for protection of historic evidence.

f Destruction of historic building materials

10.01 There is an increasing problem of providing suitable materials for repairs of listed buildings. While details such as ironwork can be replaced even in other suitable metals, modern building materials may often be inappropriate. It may be hard to match stonework if the original quarry has been worked out or abandoned.

10.02 Suitable bricks, tiles, slates, or collyweston slates may be obtainable from demolished buildings. Normally this source of supply should be discouraged, but if demolition has been permitted in the public interest, it is equally of interest that the materials should be salvaged.

Suggested remedies

10.03 Conditions of planning permission or listed building consent could be imposed in order to get materials saved, to require damage to be made good in the right materials, or to require original materials from the site to be used in the rebuilding or alteration of a building.

10.04 A ‘bank’ of such materials could be collected by the authority for

use on its own development or any other building.

g *Consultations*
i *Between planning authorities and national bodies and local interests*

11.01 Five national bodies have to be consulted about all proposed demolitions or part-demolitions of listed buildings. These are the SPAB, the Georgian Group, the Victorian Society, the Ancient Monuments Society, and the Council for British Archaeology. The Royal Commissions on Historical Monuments for England and Wales, as appropriate, have to be notified also, though not in the normal sense consulted.

11.02 These consultations usually mean that if there is a local member of the society, he is asked to examine the building without discussing with the authority, and to report back to his society, so that formal observations can be sent to the authority. This is a chancy way of getting experienced scrutiny of a building's problems and suggestions for their solution.

11.03 The local representative of a society, however, has no powers of entry such as are held (though rarely used formally) by officers of a planning authority for survey of a building.

11.04 The present method of consultation with national bodies can also cause delay, which in any case a planning authority should seek to avoid.

11.05 It also probably causes individual architects or local historians to spend a great deal of time on case work, probably at some personal expense, and may well mean duplication of work. While one person may act for two national bodies in a locality, there may be many places where a building is inspected by representatives of more than one society – or by nobody.

11.06 A formal letter of objection from a national society without experienced examination is not uncommon.

Suggested remedies

11.07 Greater coordination is needed between the national bodies.

11.08 Planning authorities should make more opportunities for early consultation with national and local society representatives to get a general understanding of the structure, usage, and other factors, and this could well speed up decisions or avoid a hasty decision being reached. Conservation Area Advisory Committees could be

brought into wider and even more specific areas of consultation, and they should be composed of both professional and informed lay opinion.

11.09 It might also be better if one central 'distributing' office could decide which national body or bodies should be asked to report. If the local 'watchdog' felt, on inspection on site, that another body should alternatively, or additionally, be consulted, he could arrange for this. In some areas it may even be expedient (though not necessarily desirable) for one person to act for several national bodies.

11.10 The authorities should help by sending photographs, adequate plans, and at least a first general appraisal of the situation by their local specialist advisers (and a follow-up report if necessary) on the structure etc.

11.11 If plans are amended in the course of negotiations or second thoughts by the applicant, a scheme should be readvertised, and the national bodies consulted afresh. This should be made a statutory requirement.

ii Between planning authorities; and between the authorities and the DoE

12.01 The powers over listed buildings are held only by District Councils, and are not concurrent with those of Counties.

12.02 At the time of local government reorganization in 1974 District Councils were required to tell the DoE by October of that year what arrangements they were making for getting specialist advice on listed building applications. A number have never yet done so, and some arrangements have been superseded. It is understood that a common way of getting such advice has been by consulting a team of specialist officers on the staff of the County Councils. But some District authorities have their own specialists, whilst others may employ consultants or submit applications to a panel of experts or representatives of local or national societies.

12.03 The specialist team, notably at County level, may include architects, surveyors, planners, specialists in, for example, timber framing or local vernacular, historians, draughtsmen, and photographers. A District 'team' would usually be very small, even non-existent, during an officer's leave or illness.

12.04 The County staff are only advisers, though they may be asked to help in giving evidence at appeals or inquiries resulting from 'call-in' by the DoE.

12.05 It is probable that a County specialist would only in very rare cases report to a District Council's planning committee, and be able thus to answer questions on the special issues when the application is being considered. Thus cases may occur in which the full facts may not be before the committee, through no fault of the Council responsible but owing to the system.

12.06 It is essential that where applications affect listed buildings owned by the authority, the reports to DoE are comprehensive. This may be particularly necessary where the authority's buildings are the responsibility of a director of technical services, who is less familiar with the listed building 'climate' and regulations than a planning officer.

12.07 The same applies to Grade I and II* buildings where the reports need to be specially comprehensive and where internal alterations of character need particular care.

Suggested remedies

12.08 Applications submitted to the DoE should be examined to see if the specialist advice is reported, particularly in the case of planning applications affecting listed buildings and buildings owned by the authority.

12.09 The DoE should prepare, and keep up to date, a record of the sources of specialist advice used by each District Council.

12.10 The quality of such advice ought to be assessed by the DoE, and if in doubt the Council should be asked to reconsider the situation.

12.11 The DoE should have default powers to direct a District Council to obtain its advice from a comprehensive team of specialists held by a County or a panel, subject to a review of the arrangements after a time.

iii Between Government departments involving listed buildings in Government ownership

13.01 Government departments must notify planning authorities about listed buildings in Government ownership (including, for example, bridges on trunk roads) where they wish to demolish, alter, or extend them. The planning authorities do not have the final say.

13.02 When the formal stage of consultation is reached' (Circular 7/77), the Department sends to the LPA a statement of their proposals 'sufficient to enable the authority to appreciate their nature and extent', with plans showing the relationship to adjoining property.

13.03 The District Council has to advertise the proposals, notify the national bodies, and send objections to the department concerned. The applicant department notifies the DoE if there are unresolved disagreements, either with conservation bodies or the LPA, and the DoE considers if an inquiry should be held.

13.04 There is a tendency for Government departments (eg the Department of Transport) to prepare very full details, not being aware of the 'conservation climate', for roads which affect listed buildings, including bridges, and this can unfortunately be done without early consultation with the planning authority or with the DoE, either as the department concerned with historic buildings or Ancient Monuments. To review the plans at this stage in the light of local or national views can cause delay, acrimony, and misunderstanding.

Suggested remedies

13.05 Developing Government departments should be advised to consult planning authorities before proposals are prepared in any detail and submitted formally.

13.06 Government departments could well consult the Ancient Monuments Directorate's architects about relevant structural issues, and get their advice made available to the planning authority without prejudice to the consultations which the LPA has to carry out later.

h Planning administration

i Pre-application

14.01 Many problems can arise in listed building controls if owners or agents become committed to detailed intentions without considering the effect on the building as a whole and before making an application. For example, sketch plans for alterations or extensions may suit the internal circulation of a building, but may be quite unsuitable for the character of the building, cause an awkward roof plan, or destroy historic details.

14.02 Owners or agents may not know of the 'curtilage' provisions of the Planning Act, and thus may well not be aware of whether a building comes under listed building or planning controls.

14.03 Problems of use or disuse frequently arise (ie inappropriate or over-intensive uses or under-use) which have a considerable bearing on the future retention of a historic building, the structural alterations needed, or its general character.

Suggested remedies

14.04 Planning authorities should publicize the fact that pre-application advice is available from the planning authority's conservation specialists, so that plans can be based on a full or detailed examination of the building in regard to disclosing (or retrieving) its historic nature, avoiding the destruction of historic elements, or ensuring that an extension or alteration is suitable in design. This helps to ensure a ready acceptance of a proposal, the avoidance of delay, and a good understanding between all those responsible. It can also help to make an owner aware of the history of his building to his own benefit.

14.05 It also gives the planning authority's officers an opportunity to stress the basic philosophies of conservation or the policies of the authority, and to determine what needs listed building consent, planning permission, or neither, and whether demolition or part-demolition is involved in the alterations. The way in which an application is expressed is legally important, and has a bearing on the advertising of it in the press.

14.06 Pre-application advice may also be obtained, preferably through the local planning department, from a Conservation Area Advisory Committee or some other local or national body. This may especially be necessary where proposed demolitions are involved, since the national body will need to be consulted when an application is formally submitted.

14.07 The authority should make surveys of the trends relating to historic buildings: eg floor space and uses, perhaps especially on upper floors. The facts can thus be made clear to the Planning Committee and at an appeal or 'call-in' inquiry. Such surveys are a form of 'preventive medicine'.

14.08 'Curtilage' needs to be defined for the benefit of the applicant (see para 4.11 and 4.12 above). He can then be made aware that some consents (and specialist advice) may be needed even if buildings are not described on the list or shown marked on the official listed building maps.

14.09 Owners should be made aware of the 'climate of opinion' of the authority as regards conservation by issue of free pamphlets etc, together with information on the grading of their buildings and the relevance of this to grant aid for repairs etc.

ii Applications

15.01 Problems frequently arise for planning authorities, statutory

consultees, and applicants when it is not clear from the application plans what is proposed to be demolished.

15.02 When substantial alterations are proposed, poor plans may make it hard to determine if part-demolition is involved and thus an amendment to the application and procedures.

15.03 Planning committees are sometimes – and understandably – unaware of the real interest in a building, or the effect of their own deliberations, especially when the planning officer is not an architect or has no architect conservation officer on his staff.

Suggested remedies

15.04 Applicants should be required to show sufficient details of the existing structure proposed to be kept or demolished, to enable new proposals to be considered properly.

15.05 Planning committees should consider coopting the chairman of a local conservation society or Advisory Committee when listed building questions are discussed.

D Summary of suggested remedies and consequent action

Summarized below for ease of reference are the various suggested remedies, and an indication in the last column of what is the best agency for implementing them.

para	**a Alterations, unauthorized**	*Action by*
3.13	Prosecute on indictment	LPA
3.14	Heavier penalties	Govt
3.15	Pamphlet advising public on need for consent etc	DoE or LPA
3.16	Minor alterations to be dealt with by notification rather than application	Govt
3.17	Building regulations, fire prevention staff, etc to be made more aware of conservation and need for waivers	LPA
3.18	More grants for first-aid repairs	DoE & LPA
3.19	More Article 4 Directions	LPA & DoE

	b Demolitions	
	i *Unauthorized demolitions and 'curtilage' problems*	
4.09	Clarify 'part-demolition'	LPA & DoE
4.10	Deterrent penalties	Govt
4.11	Define 'curtilage'	DoE
4.12	Designate 'curtilages' on planning register	LPA
4.13	Identify curtilage buildings when revising lists	DoE
	ii Demolition of redundant churches	
5.05	LPA should report as for secular buildings and other denominations' churches	Govt & LPA
5.06	Report should be sent to Church Commissioners & DoE	Govt
5.07	Similar informal arrangements as above	LPA
5.08	Register of acceptable conversions	RIBA & Societies
	c Neglect	
	i Neglected occupied listed buildings	
6.09	Penalty for not repairing in a reasonable time	Govt
6.10	CPO if condition gives reasonable grounds for concern	Govt
6.11	Procedure for repairs between 'urgent' and 'general neglect'	Govt
6.12	Booklet comparing regular maintenance and costs of major repairs	Professional institutions
6.13	More grants when owner cannot afford good standards of repair	Govt & LPA
6.14	If LPA compulsorily purchases, sell buildings to local preservation society for repairs	LPA
6.15	Revolving fund for purchase, repair, and sale	LPA or local trust
6.16	LAs to use Housing Act 1957, Sect 9 to get repairs done, and set the cost as a charge on the property if necessary	LPA
6.17	LPAs to suggest new uses and stimulate applications	LPA
6.18	Tax allowances, nil-rating for VAT on repairs or differential rating for older buildings	Govt

6.19	Identify and publicize VAT concessions on new work in 'repairs' jobs.	Govt
	ii Neglect of unoccupied listed buildings	
7.06	LPA to have right to put the building to use after repair by them	Govt
7.07	Charge rates on unoccupied buildings to get them used	LPA
7.08	LPA to be informed of vacant buildings	LPA
	d Dangerous Structure and similar Notices	
8.10	LAs to be made aware of sources of expert advice	National societies
8.11	LPAs to pay fees and expenses and assure proper examination of building	LPA
8.12	Publish results of surveys	LPA
8.13	General advice to LAs to serve partial notice or adopt other minimal action	National societies
8.14	Technical officers to be trained in historic structures	Govt & LAs National societies
8.15	Questions to candidates for interview on historic structures	LPA
	e Discovery of historic features during progress of authorized work	
9.05	LPA to request developer to notify finds so that records can be made	LPA
9.06	Conditions of consent to include requirement to tell site foreman	LPA
9.07	Interim Preservation Notice to bring site under DoE	DoE
	f Destruction of historic building materials	
10.03	Conditions of consent to get materials saved or repairs in right materials	LPA
10.04	Establish materials 'bank'	LPA
	g Consultations	
	i Between LPAs and national bodies	
11.07	National bodies to be better coordinated	National societies
11.08	LPAs to meet national and local society representatives for general discussion of important cases	LPA
11.09	National societies to have one central 'distributing' body	National societies

11.10	LPAs to send photographs etc and appraisal, and a follow-up report when necessary	LPA
11.11	If plans are amended, these to be readvertised and national bodies consulted afresh	LPA
	ii Between LPAs, and between LPAs and DoE	
12.08	Specialist advice to be reported with applications referred to DoE, especially for planning applications and for buildings owned by the LPA	DoE & LPA
12.09	DoE to keep records of source of specialist advice available to each LPA	DoE
12.10	Assess validity of this advice regularly	DoE
12.11	Default powers for DoE to direct LA to get specialist advice	DoE
	iii Between Government departments involving listed buildings	
13.05	Developing departments to consult LPAs before formal submission	Govt
13.06	Departments to consult AM Directorate about structural issues and get advice to LPA without prejudice to LPA's consultations.	Govt
	h Planning administration	
	i Pre-application	
14.04	Advise applicants before applications get finalized, and publicize availability of this advice	LPA
14.05	Stress basic conservation philosophies; determine what needs consents; get owners to express intentions clearly in applications	LPA
14.06	Get early advice from Conservation Area Advisory Committee or local or national bodies, especially on proposed demolitions	LPA
14.07	Investigate trends relating, eg, to uses of historic buildings, to provide for 'preventive medicine'	LPA
14.08	Make applicants aware of 'curtilage' provisions and need for some consents, even if building is not described in the list	LPA
14.09	Issue pamphlets to owners explaining conservation policies, gradings, and grants	LPA

ii Applications

15.04	Get applicants to show clearly all the work proposed to be kept or demolished	LPA
15.05	Planning Committees to consider cooptions from local conservation sources	LPA

Conclusion

The basic philosophy (paras 2.02 – 2.14) is not summarized here, like the ten points of the Country Code, because the wording of that section has above all been the subject of deliberation in the Statutory Planning and Preservation Sub-Committee of the CBA's Historic Buildings Committee. Any over-simplification could lead to misunderstanding.

It is hoped that the points in that general philosophy may be found widely acceptable by architects, builders, and planning authorities. Such acceptance would be the best remedy of all.