

THE PRESERVATION OF
BUILDINGS OF
HISTORIC INTEREST:

A NOTE ON THE
TOWN AND COUNTRY PLANNING ACT,
1947

Price 6d.

*Published by the Council for British Archaeology
10 Bolton Gardens, London, S.W.5*

1953

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INTRODUCTION

In 1950 the Council issued a Memorandum on the Ancient Monuments Acts. This summary of the new and extensive powers given under the Town Planning Act has been prepared in the hope that members of the Council and other interested bodies will make full use of the opportunities which this Act provides for the protection and preservation of buildings of architectural and historic interest. The purpose of this summary is primarily informative but the occasion is also taken to draw attention to weaknesses in the present position which, it is hoped, will in due course be amended.

THE LISTING OF BUILDINGS OF ARCHITECTURAL OR HISTORIC MERIT

Investigators employed by the Ministry of Housing and Local Government have been engaged, since the middle of 1946, in compiling lists for the whole country, which are issued, for convenience, in the areas of administrative district authorities. The lists are as follows :—

- (a) *Provisional Lists*. These are drawn up after careful survey of the area and comprise a brief description of each building with its position indicated on a map. The buildings are graded I, II and III:

Grade I—buildings of such importance that only the greatest necessity would justify their removal.

Grade II—buildings which have a good claim to survival.

Grade III—buildings of all types including a large number of cottages and small houses which, although not regarded as having a sufficient degree of architectural or historic interest to justify listing under the Act, nevertheless should not be destroyed without careful consideration.

The Provisional Lists are circulated by the Minister to local authorities and interested public bodies and societies.

- (b) *Statutory Lists.* After any comments or suggestions have been considered a final list is compiled and certified by the Minister and notices are served on the owners and occupiers of the properties concerned. This, the Statutory, List then becomes operative and two months' notice of any intended works on buildings incorporated in it must be given to the planning authority. These lists usually consist of those buildings graded as I and II on the Provisional Lists.
- (c) *Supplementary Lists.* The remaining buildings, usually of Grade III, are recorded separately on what are known as the Supplementary Lists and these are issued to the planning authorities concerned with the Statutory Lists. The Supplementary Lists have a reference value only: they have no statutory force, and the owners are not notified that their buildings have in fact been placed on a Supplementary List.

From the beginning of the listing in 1946 up to the end of 1952, out of the 1,470 local authority areas in England and Wales 980 had been completely surveyed and draft Lists prepared. 673 Lists had already been deposited as Statutory and Supplementary Lists and a further 143 had been issued as

Provisional Lists, making a total of 816 Lists already issued to local authorities. Ultimately there will be only Statutory Lists (with their accompanying Supplementary Lists); but at present Preliminary, Provisional and Statutory Lists all have to be taken into consideration, as they operate in different areas.

Amenity Buildings. An important class of building is that described in the Ministry's Circular No. 63, as "A street or group of buildings of special value by virtue of arrangement, architecture, materials of construction or other reason, the preservation of which as a whole is desirable." This category includes a great number of buildings which depend for their effect on mass, rhythm and balance (as in squares, terraces, crescents, etc.) or in other cases on purely pictorial value (as in a village street) rather than on the architectural value of individual buildings. Some form of protection is necessary to guard against piecemeal redevelopment of such groups. In the case of the County of London an Amenity Survey has been carried out and recorded for planning use on the lines broadly indicated in the Circular. The Ministry have welcomed this survey but have not made it obligatory on all authorities. Nevertheless it is desirable that the London example should be widely copied, since one un-neighbourly new building or an ill-considered alteration may ruin the appearance of a whole street.

THE OPERATION OF THE PRESERVATION CLAUSES OF THE 1947 ACT

The following are the main provisions of the two sections of the 1947 Act which most affect Preservation :—

- (a) *Section 30* makes provision for the compilation of the building lists, for the safeguarding of buildings listed and for the appropriate sanctions where the regulations are contravened.

Sub-section (1) "with a view to the guidance of local planning authorities in the performance of their functions under this Act in relation to buildings of special architec-

tural or historic interest, the Minister shall compile lists of such buildings, or approve, either with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved”.

Sub-Section (6) ”So long as any building is included in any list compiled or approved under this section, no person shall execute, or cause or permit to be executed, any works for the demolition of the building or for its alteration or extension in any manner which would seriously affect its character, unless at least two months before the works are executed notice in writing of the proposed works has been given to the local planning authority.”

Sub-Section (7) instructs that when notice of intention to carry out work to a listed building is given to a planning authority, a copy of such notice shall be sent to the Minister, to the appropriate local authority and to such other persons or bodies of persons as the Minister may direct.

Sub-Section (8) provides for action to be taken on contraventions.

Sub-Section (9) states that a fine, not exceeding one hundred pounds, may be imposed on conviction.

- (b) *Section 29* sets out that Building Preservation Orders may be made by the planning authority, subject to confirmation by the Minister, and that these Orders may provide for : “requiring the consent of the local planning authority to be obtained for the execution of works of any description specified in the Order, and for applying, in relation to such consent and to applications therefor, any of the provisions of this part of this Act relating to permission to develop land, and to applications for such permission, subject to such adaptations and modifications as may be specified in the Order.” (Sub-Section 2, a)

“enabling that authority, where any such works have been executed in contravention of the Order, to require the restoration of the building to its former state, and for that purpose for applying any of the provisions of this part of the Act with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the Order.” (Sub-Section 2, b)

“The payment by that authority, subject to such exceptions and conditions as may be specified in the Order, of compensation in respect of damage or expenditure caused or incurred in consequence of the refusal of any consent required under the Order, or the grant of any such consent subject to conditions.” (Sub-Section 2, c)

Building Preservation Orders are not applicable to :

“an ecclesiastical building which is for the time being used for ecclesiastical purposes.” (Sub-Section 1, a).

“a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments.” (Sub-Section 1, b)

or

“a building for the time being included in a list of monuments published by the Minister of Works under any such enactment as aforesaid.” (Sub-Section 1, c)

and

“no such order shall be made so as to affect the powers of the Minister of Works under any such enactment as aforesaid.”

- (c) *Section 100* empowers the Minister to exercise or require to be exercised powers normally vested in the local planning authority.

With the above exceptions a Building Preservation Order may be applied to any building at any time, but the necessity will usually arise when there is an immediate threat of undesirable alterations or even of demolition.

It should be clearly understood that the making of a Building

Preservation Order does not preclude approval to any works under the Order if at any time it should be considered expedient, having regard to all the circumstances, and that such consent can always be subject to conditions which may prevent harmful results in many cases.

The question of compensation only arises on the refusal of consent or the grant of consent subject to conditions. In such a case the owner would have to make good a claim based upon damage or expenditure arising as a result of the planning authority's decision. The making of a Building Preservation Order does not necessarily involve the payment of compensation.¹

SOME UNSOLVED DIFFICULTIES

Wide Powers given to owners. As has been pointed out, Section 30 requires that two months notice of intention to alter a listed building must be given to the planning authority. The second paragraph to sub-section (6) : "provided that nothing in this

(¹) Clause 3 of the Housing Act, 1949, is of some value in preventing the demolition of certain houses condemned under Part II of the Housing Act, 1936:

"Where, apart from this section, a local authority would be under a duty to make a demolition order under Part II of the principal Act with respect to :

(a) a house with respect to which a building preservation order under section twenty-nine of the Town and Country Planning Act, 1947, is in force;

(b) a house included in a list compiled or approved under section thirty of the Act by the Minister of Town and Country Planning [now Housing and Local Government]; or

(c) a house, other than as aforesaid, in respect of which there is for the time being in force a notice given by that Minister to the local authority stating that the architectural or historic interest of the house is sufficient to render it inexpedient that the house should be demolished pending determination of the question whether or not it should be made the subject of such a building preservation order as aforesaid or included in such a list as aforesaid;

they shall, instead, make a closing order prohibiting the use of the house for any purpose other than a purpose approved by them."

The value of this concession is however much diminished by the fact that buildings on the Supplementary and Amenity Lists are not regarded as being covered by it, and it is these buildings, consisting mainly of cottages and small houses, which are most likely to be affected by Demolition Orders.

sub-section shall render unlawful the execution of any such works as aforesaid which are urgently necessary in the interests of safety or health, or for the preservation of the building or of neighbouring property, so long as notice is given as aforesaid as soon as may be after the necessity for the works arises," makes it possible for an unscrupulous owner or his agent to nullify the intention of the Act by doing the work first and reporting it afterwards.

It would seem to be desirable that these overriding powers should rest with the Medical Officers of Health, District Surveyors or other similar public officers. There have been instances where valuable doorcases have been removed without notice and, as the materials have been destroyed, it has not been possible to check the statements that they were rotten and dangerous.

Repair. A Building Preservation Order can be used to prevent undesirable works being carried out or alterations made to a building but not to secure proper maintenance or repair. Ultimately, acquisition is the only answer to an owner's neglect or default.

Ecclesiastical Buildings. While these can be listed, the two months notice of intended works cannot be required, nor can a Building Preservation Order be imposed. This is a serious obstacle to any attempt to safeguard these buildings, for while the Diocesan Advisory Committee system of the Church of England does provide something of an alternative character, all other places of worship are completely unprotected, while they remain in use for ecclesiastical purposes.

The Experiment in Freedom Order. In 1950 the Minister made a General Development Order which was intended to simplify the operation of the Act and to remove some onerous controls. Unfortunately one effect has been that any dwelling house may be enlarged, improved or altered in any way, provided the height is not increased or the cubic content increased by more than 10 per cent. (with other minor qualifications) without the

approval of the planning authority. The Order applies to listed buildings as well as others (that is, as far as planning permission is concerned, though the provision for two months' notice is not affected) but its effects are most serious in the case of the "amenity buildings" since these are not subject to the two months' notice under Section 30. Already cases have occurred where the architectural character of squares, crescents and terraces, etc., has been seriously damaged by the destruction of cornices, mouldings, porches, door-cases and ironwork. External painting is also exempt : in one case of a well-kept uniform grey brick and stucco square of 39 houses, the harmony has been destroyed by one facade being painted a crude scarlet and varnished.

ACTION TO BE TAKEN TO SAVE A THREATENED BUILDING

The threat to buildings of architectural, historic or amenity value is ever-present in contemporary conditions. It can only be warded off by extreme vigilance on the part of local individuals and organisations, accompanied by prompt action to mobilise opinion on a national as well as on a local scale. It is not enough to rely on local planning officials, who, however sympathetic, are often harassed by conflicting claims. Local archaeologists and others who learn of such threats are therefore urged to take any or all of the following courses of action : -

- (a) The case should be reported to the central office of the Council for British Archaeology and a copy of the letter sent to the local town planning authority and also to the Ministry of Housing and Local Government with a request for help.
- (b) Where applicable the following Societies should be asked to collaborate:—

The Society for the Protection of Ancient Buildings
55 Great Ormond Street, London, W.C.1. (All buildings)

The Georgian Group

27 Grosvenor Place, London, S.W.1. (Buildings after 1714)

The Council for the Preservation of Rural England

4 Hobart Place, London, S.W.1.

The Ecclesiological Society

Walcot House, 139 Kennington Road, London, S.E.11.
(All religious buildings)

The Central Council for the Care of Churches

Dunster, Somerset. (for buildings of the Church of England)

- (c) In addition to the county archaeological society, regional societies (such as for London, the London Society) and other specialist bodies, numerous contacts will readily be found to suit individual cases.

Milbourne House, Barnes, Surrey, is a good example of the results which may be achieved by the energetic and persistent mobilisation of public opinion in which local and national Societies have combined. The house was the home of Sir John Milbourne, Secretary to Queen Elizabeth I, and also of Fielding. It is one of the few remaining houses of historic interest in Barnes and of particular value as a local amenity, but for the last seven years it has been threatened.

In 1946 the Barnes Council proposed to demolish the building to make way for a block of flats. An enquiry was held in that year by the Minister of Health into the application by the Barnes Council for confirmation of a Compulsory Purchase Order. In spite of considerable local agitation and pressure by the S.P.A.B. the Order was confirmed. The campaign was successful, however, insofar as a private appeal to the Minister of Town and Country Planning, resulted in the Minister requesting the Local Authority to arrange the development of the site so that Milbourne House could be preserved as long as possible. Accordingly the proposed layout was altered.

The Surrey County Council had from 1946 tried to influence the Barnes Council to preserve the building and in 1950 called upon the S.P.A.B. to furnish a further report with a view to retaining the house for housing purposes. Despite this and notwithstanding strong and widespread appeals, petitioning by the residents and even the request of the owner herself that the Compulsory Purchase Order should be rescinded as she wished to retain the house as a residence and carry out works of repair, the Barnes Council decided to proceed with their previous intention of demolishing the house.

Finally, in response to the appeal of the S.P.A.B. and the Barnes Amenities Group, the Minister of Local Government and Planning decided to use his powers under Section 100 of the Town and Country Planning Act and to make a Building Preservation Order. At this juncture the Surrey County Council renounced its interest in the building and opposed the Order on legal and financial grounds. A further enquiry was held in March, 1950, following which the Minister finally made a Building Preservation Order. It is now understood that Milbourne House is to be adapted for dwelling purposes and permanently preserved.

Dimsdale House, Hertford, is another building, of late seventeenth-century date, the fate of which is still undecided, although the Minister is considering exercising his powers under Section 100 of the Act, to make a Building Preservation Order. Here once again the Society for the Protection of Ancient Buildings and the East Hertfordshire Archeological Society and other local bodies are hard at work to prevent its destruction. The value of such efforts in cases like this cannot be over-estimated, nor should the important publicity given by the *Times* and other newspapers pass unacknowledged. Whatever may be the final outcome here or in the many other examples which could be quoted, the cooperation and coordination of the local amenity groups with the appropriate national bodies has been an invaluable example for the future.

THE POSITION IN SCOTLAND

The Town and Country Planning (Scotland) Act, 1947, contains (Sections 27 and 28) provisions for the listing and preservation of buildings of special architectural or historic interest similar to those contained in the Act for England and Wales. In Scotland the responsible Minister is the Secretary of State, and the listing of buildings is being carried out by the Department of Health for Scotland on broadly the same lines as in the other two countries.

Section 13 of the Housing (Scotland) Act, 1950, provides for the making of a Closing Order instead of a Demolition Order in the case where there is a Building Preservation Order. Section 184, sub-section (3) of this Act, as amended by Section 9, sub-section (5) of the Housing (Scotland) Act, 1952, also enables a local housing authority to approve the reconstruction of a building which is subject to a Demolition Order.

RELEVANT DOCUMENTS

* <i>The Town and Country Planning Act, 1947</i>	3s. 6d.
* <i>The Town and Country Planning Act, 1947</i>	
* <i>Explanatory Memorandum, Part 1</i>	6d.
" " Part 2	2s.
* <i>The Town and Country Planning (Scotland) Act, 1947</i> ...	5s. 6d.
* <i>Ministry Circular No. 63 (Report of the Survey)</i> ...	1s.
* <i>Town and Country Planning 1943/1951, Progress Report</i>	5s.
* <i>Town and Country Planning General Development Order, 1950</i>	9d.
* <i>Town and Country Planning General Development Order, Circular No. 87</i>	4d.
* <i>Housing Act, 1936</i>	3s. 6d.
* <i>Housing Act, 1949</i>	1s.
* <i>Housing Act, 1949 (Notes—Circular 90/49)</i> . . .	6d.
* <i>Housing Act, 1949 (Effect on Houses of Architectural or Historic Interest—Circular 98)</i>	1d.
* <i>Hot/sing (Scotland) Act, 1950</i> . . .	3s.
* <i>Housing (Scotland) Act, 1952</i> . . .	6d.
* <i>The Gowers Report on Houses Of Outstanding Historic or Architectural Interest, (1950)</i>	3s.
<i>Memorandum on the Ancient Monuments Acts (Council for British Archeology, 1951)</i>	1½d.

*Obtainable from H.M. Stationery Office.