

THE PRESERVATION OF ANCIENT MONUMENTS AND BUILDINGS OF HISTORIC OR ARCHITECTURAL INTEREST

This summary of the statutory provisions for the preservation of ancient monuments and buildings of historic or architectural interest, and of their practical application, was originally prepared by the Society's Historic Buildings Preservation Committee for the guidance of the Affiliated Societies which assist it in its work. At Council's request it is printed here in view of its general interest.

1. Statutory provisions

1. The statutory provisions regarding the scheduling of ancient monuments and the listing of historic buildings are laid down in the Ancient Monuments Acts of 1913 and 1931, the Town and Country Planning Act of 1962, the Historic Buildings and Ancient Monuments Act of 1953, and the Local Authorities (Historic Buildings) Act 1962.

2. Ancient Monument Boards, of a representative character, were set up by the Ancient Monuments Consolidation and Amendment Act of 1913,¹ and the Commissioners of Works were required to prepare and issue lists of the monuments the preservation of which was considered by those boards to be of national importance.² The Commissioners—whose duties are now discharged by the Minister of Public Building and Works—had power themselves to add to these lists.³ The act, however, provides no protection to any 'ecclesiastical building which is for the time being used for ecclesiastical purposes',⁴ nor to any building 'occupied as a dwelling-house (otherwise than by a . . . caretaker)'.⁵ We are therefore concerned in our present purpose more with those structures listed as buildings of architectural or historic interest under the 1962 Act (see below) than with those scheduled as ancient monuments under the Acts of 1913 and 1931.

3. The Minister of Public Building and Works may, under the provisions of the Historic Buildings and Ancient Monuments Act of 1953: (i), make grants for the maintenance or repair of certain historic buildings with their contents and grounds; (ii), make endowments to the National Trust to that end; (iii), acquire such buildings (with their contents and grounds) by purchase, lease, gift or otherwise, on behalf of the Ministry; or (iv), make grants towards the acquisition of such properties by local authorities or the National Trust.⁶ These provisions, however, apply only to buildings of 'outstanding historic or architectural interest', the Minister being advised in this regard by the Historic Buildings Council, established under the Act.⁷ (But see also paragraph 5, below.)

4. 'Buildings of *special* architectural or historic interest' are protected under the Town and Country Planning Act, 1962.⁸ The local planning authorities set up under the act,⁹ are given power to make a 'Building Preservation Order' to restrict the demolition, alteration or extension of any such building, provided (as in the Ancient Monuments Acts) that it is not an ecclesiastical building being used for ecclesiastical purposes.¹⁰ Although

a bill¹¹ to extend this protection clearly to adjacent and neighbouring property was refused a second reading in 1963,¹² it seems nevertheless to have been established that any building may, for this purpose, have to be considered 'in its context'.¹³ In order to guide the local planning authorities in the performance of their statutory duties under this part of the act, the Ministry of Housing and Local Government is required to compile lists of the buildings concerned, or to approve (with or without modifications) lists compiled by other persons or bodies.¹⁴ Certified copies of so much of the list as applies to any county, borough, or county district, are required to be deposited by the Ministry with the appropriate Clerk of the authority concerned. The Ministry is also required to serve a notice upon every owner and occupier concerned and see that the facts are registered in the appropriate register of local land charges.¹⁵ In all this, before compiling approving or amending any list, the Minister is required to 'consult with such persons or bodies of persons as appear to him appropriate as having special knowledge of or interest in buildings of architectural and historic interest'.¹⁶

5. The statutory list of the Ministry of Housing and Local Government contains only buildings of grades I and II, making no distinction between them. Grade III buildings appear on a supplementary list. It is on a provisional list only that the buildings are divided into three categories,¹⁷ in which they appear to be grouped as follows:

- I. Buildings of outstanding importance usually in an unaltered condition;
- II. Good buildings, perhaps altered, but well worthy of preservation; and
- III. Buildings of lesser quality than I or II, or even very good buildings, so severely altered or damaged that preservation can only be recommended.

The Local Authorities (Historic Buildings) Act 1962 gives a local authority power to contribute (subject to certain conditions) either by grant or loan, towards the repair or maintenance of any local building statutorily listed or (with the consent of the Minister) of a building of architectural or historic interest even though not so listed.¹⁸ It is the official view¹⁹ that local authorities are able, in this manner, to perform a valuable function by supplementing the action of the central authorities. For example, a particular building which could not perhaps be classified by the central authorities as 'outstanding' in the terms of the 1952 act, may yet, as part of our national heritage, merit consideration by the local authorities under the 1962 provisions.²⁰

6. So long as any building remains on the *statutory* list it is not only forbidden to demolish it, but also to alter it or extend it in any manner which would seriously affect its character, unless two months notice is given to the appropriate planning authority. There is a special provision regarding work 'urgently necessary in the interest of safety or health or for the preservation of the building or of neighbouring property', when notice has to be given 'as soon as may be after the necessity for the work arises'.²¹ Any person offending against this section renders himself liable to a fine of £100, and may be required to restore the building 'so far as may be, to its former state'.²² When a local planning authority receives notice of proposed work in relation to a listed building the authority is required to send a copy to the Minister and to 'such other persons or bodies of persons' as the Minister specifies, either generally or in regard to that particular building.²³

It is important to note that these provisions apply *only* to buildings on the statutory list (Grades I and II). Grade III buildings (all on the supplementary list) are not so protected, and the list has value merely in calling attention to these buildings.

7. Under the Town and Country Planning Act no development or works may be executed or permitted,²⁴ without the prior consent of the planning authority.²⁵ The planning authority is ordinarily the County Council.²⁶ When the County Council is itself the developer and the proposed development is contrary to the Development Plan, the planning application is automatically referred to the Minister for decision; in all other development by the County Council the County Council is still the planning authority. 'Development' is statutorily defined as any 'building engineering mining or other operation in on over or under land, or making any material change in the use of any buildings or land'. Application is made to the local planning authority which is required to keep a register of applications, kept available for inspection by the public at all reasonable hours.²⁷

8. If it appears to any planning authority that any particular building or buildings of special architectural or historic interest ought to be preserved from the proposed demolition, alteration, or extension, the planning authority may make a building preservation order.²⁸ In the County of London, however, before making such an order the Common Council of the City of London or the council of any metropolitan borough must consult with the London County Council.²⁹ The terms, etc., of a preservation order are laid down in the Town and Country Planning (Building Preservation Order) Regulations, 1948 and 1960.³⁰ The local authority must submit any proposed order to the Minister for confirmation, and give notice by advertisement that it has done so, making copies of the proposed order available locally for inspection. Notice must be served on the owner and occupier, and 28 days left for objections to the order. The Minister is required to take into consideration any objections or representations made, either in writing or at the local inquiry (if any). The Minister's decision is communicated to the local authority which is required to inform the owner, the occupier, and the council of the county district (or the planning authority as the case may be). The service and advertisement of confirmed orders is laid to the local authority.³¹ It is possible, in certain circumstances, for the Minister himself to initiate a preservation order under the terms of his default powers.

II. Statutory provisions in practice

9. Under the Ancient Monuments Acts referred to above, the Ministry of Works serves notice upon the owner (and tenant) of any proposal to include an ancient monument in a published schedule,³² and the fact of scheduling is charged upon the land in the Land Register kept by the Clerk of the appropriate local authority. The owner (or other person entitled to work it) is required under penalty to give three months notice to the Ministry of any intention to alter the monument in any way.

Upon consideration of such a notice received, the Ministry may (without reference to the appropriate Ancient Monuments Board in cases of urgency) issue an Interim Preservation Order. The effect of this Order is to prevent any alterations of any kind for

a period of 21 months without the Minister's consent. If a (substantive) Preservation Order is made it remains in force until revoked. Appeal may involve public local inquiry or parliamentary action. There is provision for the payment of compensation.

10. With regard to buildings of historic or architectural interest it will be noted that, except in cases where a Building Preservation Order is made, the sole effect of the 1947 provisions is to delay demolition, alteration or extension for a period of two months at the maximum. Even this safeguard is restricted to buildings on the statutory list (Grades I and II).

11. If the local authority (i.e., the County Council or the County Borough Council) does not appear to intend making a preservation order in respect of a building the preservation of which seems desirable, this matter can be opened (or re-opened) by writing to the Ministry of Housing and Local Government.

12. In this connexion two things are clear:

- (a) the person or body wishing to preserve such a building must be aware that demolition alteration or extension is intended;
- (b) buildings of considerable merit and importance may be on the Supplementary list or not listed at all.

The solution of (a) lies in the hands of the preservation society, and is to be achieved by a comparison of the register of applications for planning approval with the lists of buildings of historic or architectural interest, both the register and the list being available for inspection at the offices of the authority concerned.

13. As regards (b), the coverage of the lists both in time and space is relevant. Coverage of the London and Middlesex areas may be regarded as complete topographically. Chronologically however, this is not the case. Buildings down to late Georgian in date will have been considered; post-Regency, William IV and Early Victorian buildings may have been included if in the old tradition and very good examples of their class, but otherwise consideration, let alone inclusion, is doubtful. High Victorian buildings—Italianate palaces and the like—are now under consideration and some London boroughs have been examined with this period especially in mind, and some Victorian buildings have been upgraded to the statutory list. In addition an attempt is now being made to list and identify the works of 25 of the principal architects of the period 1850–1914. This work is being done on a country-wide basis and such buildings not already on the list are being added to it where possible.

It must still be borne in mind, however, that important buildings worthy of preservation may not appear on the lists. The preservation society must know its area.

NOTES

1 3 and 4 Geo. V, cap. 32, sec. 15.

2 *ibid.*, sec. 12 (1)(a).

3 *ibid.*, sec. 12 (1)(b).

4 *ibid.*, sec. 22.

- 5 *ibid.*, sec. 8.
- 6 1 and 2 Eliz. II, cap. 49, sec. 4–6.
- 7 *ibid.*, sec. 1.
- 8 10 and 11 Eliz. II, cap. 38.
- 9 *ibid.*, sec. 3.
- 10 *ibid.*, sec. 30 (2).
- 11 Commons 22, 21st November, 1962.
- 12 Hansard, Commons, vol. 672, No. 63 (22nd February, 1963), coll. 771–842
- 13 Lord Ivegh v. Minister of Housing (1961) 3 All ER. 98.
- 14 No building however, belonging to the Crown or to a government department, may be so listed except with the consent of the appropriate authority (sec. 199 (2)).
- 15 *ibid.*, sec. 32 (3).
- 16 *ibid.*, sec. 32 (5).
- 17 The draft list (showing the buildings duly graded I, II or III), prepared by the Minister and circulated to local authorities and other interested bodies, is termed the ‘Provisional List’; the list later certified under the Act by the Minister (usually consisting of buildings graded as I or II), is termed the ‘Statutory List’; the list showing the remaining buildings (usually those of grade III), which is *not* statutory is termed the ‘Supplementary List’.
These categories are clearly rather subjective, and the class into which a building is put is to some extent governed by its period, locality, and the part it plays in its immediate setting — i.e. if it is part of a *group* (see note 13).
- 18 10 and 11 Eliz. II, cap. 36, sec. i.
- 19 Ministry circular 68/62.
- 20 See note 7, above.
- 21 10 and 11 Eliz. II, cap. 38, sec. 31(3).
- 22 *ibid.*, sec. 52(1). Amendments to the appeal procedure were cunningly concealed in the Caravans Act, 1960 (8 and 9 Eliz. II, cap. 62, sec. 45, and sch. 3).
- 23 *ibid.*, sec. 32(5).
- 24 One ‘permits’ works if one is in a position to forbid them (Goodbarne v. Buck (1940) 1 All ER 613).
- 25 10 and 11 Eliz. II, cap. 38 sec. 12 and 13.
- 26 *ibid.*, sec. 2(1).
- 27 *ibid.*, sec. 15(2).
- 28 *ibid.*, sec. 30.
- 29 S.I. 1948 No. 1766, p. 3(2).
- 30 S.I. 1948 No. 1766, as amended by S.I. 1960, No. 1539.
- 31 *ibid.*, p. 6.
- 32 *Ancient Monuments in England and Wales*, 1961 (1962), and subsequent *Supplements* (H.M. Stationery Office).