



Best Practice Guidance on Listed Building Prosecutions

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Foreword



I am delighted that Communities and Local Government is publishing this guidance for local authorities on listed building prosecutions. The historic environment is a valuable resource, contributing to the development of sustainable communities, to the development of communities with a real sense of identity and uniqueness.

Listed buildings are, by definition, landmarks of national importance. The measures we put in place to protect them are a reflection of the importance we place on our past, and on how much we want to learn from it. And those measures can only be as effective if they are enforced.

Evidence suggests that whilst the mechanisms are in place for listed building enforcement, they are not widely used. This guidance is aimed at providing a step-by-step guide to taking forward a prosecution. It draws on best practice examples to help illustrate what can be done. I hope that you will make use of this resource and help to ensure that listed buildings – important pointers to our past – are maintained for future generations to enjoy.

BARONESS ANDREWS

Parliamentary Under Secretary of State
Department for Communities and Local Government

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CHAPTER 1

Introduction

The Department for Communities and Local Government has commissioned this Best Practice Guidance Note on Listed Building Prosecutions following a study in 2004 by Oxford Brookes University¹ which identified a consensus among practitioners in favour of greater advice on listed building prosecutions in order to increase awareness of the powers held by local authorities and other prosecuting bodies.

Target audience

The Guidance is aimed principally at local authority conservation and planning officers, and others involved in a decision to prosecute. It is recognised that planning lawyers may not regularly conduct prosecutions, while prosecution lawyers may not have much experience of heritage offences. Similarly, many councils do not have a sufficient volume of heritage cases to warrant a dedicated heritage enforcement officer and this investigatory role in heritage offences often falls to conservation officers.

The Guidance aims to give all of these target audiences an overview of the interaction between conservation and criminal proceedings both to encourage best practice in heritage prosecutions and to give authorities the confidence to investigate and conduct heritage prosecutions where criminal proceedings are considered to be warranted.

It is recognised that the Guidance may also be of use to other bodies involved in monitoring listed buildings and notifying local authorities of unauthorised works, including local amenity groups. It may also be of use to property owners, developers and members of the public.

Content of guidance

The Guidance focuses mainly on s9 offences under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the “1990 Act”) for unauthorised alterations or demolition of a listed building. Where space permits, consideration is also given to the offences of deliberate damage (s59) and failure to comply with a listed building enforcement notice (s43). There are a variety of other heritage offences which are outside the scope of this Guidance but will be relevant when considering what offences may have been committed. A list of relevant heritage offences is contained in **Appendix 1** of the Guidance.

¹ Oxford Brookes University, 2000, Local Authority Practice and PPG15: Information and Effectiveness

Readers should note that the appendix **does not** provide any definitive interpretation of statutory or common law powers, which is a matter for the courts. Where a prosecution is being considered in an individual case, legal advice should be sought.

The Guidance is not meant to be prescriptive. Prosecutions bring serious consequences for defendants and it is important that authorities consider whether the Guidance applies on a case by case basis, having regard to the facts of each case.

The Guidance is also not intended to be a complete guide on either listed buildings or criminal proceedings but merely an overview of the interaction between these two spheres. Authorities are reminded that it should be read in conjunction with more detailed texts and it remains the responsibility of each local authority to maintain awareness of all relevant legislation, case law and duties.

The Guidance is merely an accumulation of best practice produced to assist authorities who may not be best equipped to take forward prosecutions. It is not intended that the guidance will be updated, and it is for local authorities to ensure that they are informed of the current legal position. In criminal proceedings, the Criminal Procedure Rules 2005 and any other Court Rules in force at the date of the proceedings will take precedence.

Structure of guidance

Part 1 of the Guidance sets out the interaction between criminal prosecutions and the listed building enforcement regime.

Part 2 considers overarching pre-investigation action that authorities can take to prepare for criminal investigations and proceedings. Discussed here are prosecution policies, designating statutory roles and monitoring.

Part 3 deals with the investigation itself, including what evidence needs to be gathered to establish an offence, interviews under caution and the duties of both the investigating officer and disclosure officer.

Part 4 provides guidance on the decision to prosecute, taking into account the Council's own prosecution policy and the Code for Crown Prosecutors.

Parts 5 and 6 of the Guidance deals with court proceedings.

Part 7 of the Guidance considers the role of the prosecution in sentencing, costs applications and Newton hearings.

Part 8 of the Guidance provides guidance on publicity.

CHAPTER 2

Interaction between enforcement and prosecutions

2.1 The options open to a local authority

Local authorities faced with works to a listed building which are believed to be unauthorised are faced with several possible courses of action, as follows:

- (a) Do nothing – this is unlikely to be a desired course of action in most cases for a variety of reasons;
- (b) Negotiate with the owner to either:
 - (i) remedy the works to the satisfaction of the authority or,
 - (ii) where the works are considered to be acceptable, to apply for listed building consent to retain those works already carried out (NB. Such consent is not retrospective in that it does not remove the potential criminal liability that may have arisen under s9 of the Act);
- (c) Issue a listed building enforcement notice;
- (d) Seek an injunction to stop on-going works (this can also be used to prevent anticipated breaches) or to require works to be carried out (although such mandatory injunctions, which require a person to carry out works, will only be granted by the courts in exceptional circumstances);
- (e) Consider whether the tests for commencing a prosecution are met (see section 5 regarding the decision to prosecute). At this stage, the option of a formal caution may also be considered.

There is much debate as to when a prosecution should be commenced in preference to the use of an enforcement notice or, indeed, whether the use of one precludes the use of the other. However, local authorities will note that the two regimes have been established for very different reasons and are capable of co-existing without conflict.

Enforcement enables an authority to require remediation of unauthorised works to a listed building to either bring a building either back to its former state or, where that is not practical or desirable, to alleviate the unauthorised works. The focus of enforcement action is clearly the building itself. Prosecutions, meanwhile, cannot remediate the building but will, where appropriate, both punish a perpetrator of unauthorised works and act as a deterrent, both to others and to the commission of repeat offences.

Whether prosecution or enforcement action is taken, or indeed both, will depend on careful consideration of the tests set out in the Council's enforcement and prosecution policies and other appropriate guidance (see section 5 below).

In addition to these two courses of action, officers should also be aware of the range of alternative actions in the enforcement tool-kit which offer flexibility to authorities to better meet their conservation objectives. Detailed consideration of these alternatives is outside the scope of this guidance although further consideration should be given to the full range of responses considered in the Cabinet Office Study "Regulatory Justice: Sanctioning in a post-Hampton World"

2.2 Planning Policy Guidance 15 ("PPG 15")

One of the backdrops to heritage prosecutions which renders it different from other prosecutions is Government advice on the use of local authority powers under PPG15.

PPG15 provides guidance at paragraphs 3.12 to 3.15 on the balance to be struck between the special interest of a listed building and proposals for alteration, extensions. Consideration is also given at paragraphs 3.16 to 3.19 to the circumstances in which demolition of a listed building may be appropriate. This guidance is likely to form part of an authority's decision-making process in relation to whether action should be taken under either the enforcement or prosecution powers.

In relation to prosecution powers PPG 15 states at paragraph 3.47 that:

"Local planning authorities will obviously need to consider, when faced with a breach of listed building control, whether to take enforcement action or to prosecute or both. Enforcement may be intrinsically desirable for the benefit of the building in question, while the work entailed by enforcement may also represent a sufficient response to the offence. However, unauthorised work may often destroy historic fabric the special interest of which cannot be restored by enforcement. Moreover, well-publicised successful prosecutions can provide a valuable deterrent to wilful damage to, or destruction of, listed buildings, and it is the Secretary of State's policy to encourage proceedings where it is considered that a good case can be sustained"

It is anticipated that the reasons cited here in PPG15, for bringing proceedings will guide an authority's decision to prosecute and may also form part of the authority's listed building prosecution policy, if the authority has one (see section 3.3 below).

Further guidance contained within PPG15 may also be relevant to the decision to take either enforcement action or prosecution or both and officers should ensure that regard is had to this document in its entirety.

NB. As a result of the ongoing review of heritage legislation PPG15 may be superseded in the future by a new Planning Policy Statement on heritage issues.

CHAPTER 3

Pre-investigation – policy and procedure

3.1 The Team

Local authority investigations into suspected heritage offences often number only a few a year, with those officers involved in such cases also responsible for a variety of other roles. Notwithstanding the low volume of cases, authorities are recommended to have a procedure in place for establishing the investigation and prosecution team at the outset of an investigation to ensure that correct procedures are followed from the start, thus increasing the prospects of success in any subsequent proceedings.

The four core roles that should be established at the outset are set out in more detail in The Criminal Procedure and Investigations Act 1996 s23(1) Code of Practice at paragraph 2.1 (for those investigations commenced after 4 April 2005). Local authority officers conducting criminal investigations are required to have regard to this Code of Practice by virtue of paragraph 1.1 of the Code. Briefly, the roles are:

The Investigating Officer(s) – will include any officers involved in the conduct of the investigation. These officers are *“responsible for carrying out the duties imposed on them by the Code, including in particular recording information and retaining records of information and other material”*

The Officer in Charge of an Investigation – the officer *“responsible for directing a criminal investigation”*. Also responsible for *“ensuring that proper procedures are in place for recording information, and retaining records of information and other material, in the investigation”*

The Disclosure Officer – responsible for *“examining material retained... during the investigation; revealing material to the prosecutor during the investigation and any criminal proceedings resulting from it, and certifying that he has done this; and disclosing material to the accused at the request of the prosecutor.”*

The Prosecutor – responsible for *“the conduct... of criminal proceedings resulting from a specific criminal investigation.”* (Para 2.1 of the Code)

It is generally advisable to have four different officers responsible for these roles although it is acknowledged that, in some smaller authorities, one officer may need to be responsible for both investigation roles and may also have

responsibility for disclosure also. However, where possible additional help should be sought to ensure separation of these functions.

North Wiltshire District Council's Development Control team underwent a reorganisation in 2003, in order to increase the level of enforcement action undertaken in the District. Responsibility for investigating listed building offences is now spread across a specialist team which includes conservation officers, enforcement officers and planning officers. Investigations of listed building complaints are led by enforcement officers experienced in handling criminal investigations, with expert advice and support being provided by conservation and planning officers.

Listed building complaints are prioritised and usually require a site visit within 24 hours of officers receiving a complaint. While negotiations to seek rectification of remediable works remains a priority, the early involvement of experienced enforcement staff who retain responsibility for the case and act as Investigating Officers and Disclosure Officers, means that cases are conducted to the procedural requirements of the criminal courts from the outset, reducing the number of cases which do not proceed to prosecution due to evidential difficulties. As a result, the level of general enforcement action has increased from an average of 6 enforcement notices per year to 38 notices per year.

3.2 Monitoring

One of the key problems highlighted by authorities is the problem of obtaining evidence of the state of a listed building prior to unauthorised works having been carried out, particularly where works are internal or have been carried out on buildings with poor list descriptions.

Authorities should be aware that list descriptions are indicative only and the special interest of the building will usually therefore need to be defined at the time that works were carried out, having regard to the context of those works.

However, there are a number of measures open to authorities to reduce the risk that a prosecution cannot proceed due to lack of evidence. Monitoring will be an important part of this process and the following case studies set out some of the monitoring schemes and procedures that are already used by authorities to enable data to be recorded and properties at risk to be monitored.

The Royal Borough of Kensington and Chelsea have a variety of systems which enable enforcement officers to monitor the listed buildings in the borough, including:

- Regular walk-about with Ward Members to discuss any works that are of concern to Councillors or residents. These are valuable not just for enforcement officers but also in assisting Members' understanding of planning issues.
- Automated monitoring of Building Regulation applications and notices. A weekly list of all buildings for which Building Regulation Notices have been given is sent to area enforcement officers, who then bear responsibility for identifying and monitoring any listed buildings featured on the list. Building Regulations require applicants to give two clear working days notices before commencement of works, enabling enforcement officers to identify listed buildings at risk, often before works have been commenced.
- Standard automated letter to all Building Regulation notice applicants, advising of the potential need for planning/listed building/conservation area consents, if not already obtained.

At Ipswich Borough Council, conservation officers are also sent a weekly list of listed buildings against which Local Land Charge Searches have been made. When such buildings are being sold, this can be a danger point, particularly where new owners are not aware of the full implications of a listing. A standardised single sided A4 Information Sheet is now attached to the Local Land Charges Form setting out the fact that the building is listed and the consequences of listed status. In this way, neither conveyancer nor owner can claim to be unaware of the special status of the building. The format of this note is set out at **Appendix 2**.

Where Listed Building Consent is sought, pre-application discussions include a site visit wherever possible. During these visits, conservation officers will record the state of the building and features of particular merit via digital photographs.

Ipswich Borough Council has also used a volunteer initiative, coordinated by conservation officers, to produce a photographic listed building record. Volunteers were taught how to use photographic equipment and were then asked to visit listed buildings in the Borough and take photographs of the external features, as visible from public rights of way. The photographic evidence was recorded so that it can be used in future proceedings, ensuring that, as a minimum, the authority has at least one dated photographic piece of evidence relating to the external features of each listed building in the Borough. Where owners have consented, internal photographic records were also taken as part of this initiative.

3.3 Prosecution Policy

Prosecuting officers will be aware of the need to observe the Code for Crown Prosecutors in taking any decision to prosecute. This section of the guidance relates to additional heritage specific prosecution policies to be read in conjunction with the Code during the decision to prosecute, copies of which can be found on the Crown Prosecution Service website at:

<http://www.cps.gov.uk>

Prosecutions can be, and often are, brought without regard to a specific heritage prosecution policy. In these scenarios, officers are strongly advised to follow both general adopted prosecution policies within the authority and the Code for Crown Prosecutors.

However, where a listed building or heritage prosecution policy is available, local authority prosecutors must have regard to this during the decision to prosecute (see section 5 below).

LISTED BUILDING PROSECUTION POLICIES

The low number of listed buildings in some areas may not justify a specific heritage prosecution policy. However, where suspected listed building offences are common, clear adopted criteria setting out the basis on which an authority will prosecute has the following advantages:

- a policy will set out clear, relevant factors that the Council will take into account in deciding whether or not to commence a prosecution, ensuring consistency in the decision-making process;
- these factors, combined with the early involvement of the prosecuting officer, can also guide the investigation stage, reducing time spent on investigations that do not warrant further action.
- an adopted and published policy will provide certainty for members of the public as to the nature of offences that will be prosecuted. This will reduce the authority's exposure to abuse of process arguments based on the authority's failure to follow policy in taking the decision to prosecute (see section 4 below).

If a specific listed building or heritage prosecution policy is used, it is important not to be overly prescriptive as to the matters included in the policy. The policy should continue to permit that the specific factors arising in each case can still be looked at on a case by case basis during the decision to prosecute. It is also recognised that different areas may need to take different factors into account, in accordance with the history and prevailing architecture of the area.

Suggested additional public interest test factors, specific to listed buildings, that authorities may wish to include in a prosecution policy, in addition to those included in the Code for Crown Prosecutors, include:

- How long the building has been listed
- Whether the feature that was altered or destroyed was historically or architecturally important or unique
- Whether or not the feature can be replaced or replicated
- The extent to which the overall architectural or historic importance of the building has been affected
- The importance of the building as a whole
- Whether listed building consent was sought and the extent to which such consent was complied with
- The extent of compliance with any Listed Building Enforcement Notice (although this of itself does not automatically mean that a prosecution should not proceed)

By way of example, Ipswich Borough Council's policy is attached at Appendix 3. The Council has relied on this policy in a number of recent investigations, of which seven have proceeded to successful prosecution.

Authorities should also note that, in addition to considering specified factors, as set out in a prosecution policy, they also have a duty under s6 of the Human Rights Act to act in a manner which is compatible with the European Convention on Human Rights. Reference to this duty can be made on a case by case basis or in the prosecution policy itself. Further details on this duty are contained in section 4 below.

CHAPTER 4

The investigation

4.1 Elements of the offence – what needs to be established?

The elements of each of the offences under the 1990 Act are set out in Appendix 1. Attention is focussed here on s9(1), for unauthorised alteration or demolition to a listed building. However, it is recognised that the offence under s59 (deliberate damage) may also arise and consideration should be given as to whether Informations should be laid in relation to one or other or both offences. The offence under s59 of deliberate, or criminal, damage is outlined in Appendix 1 but essentially covers damage or destruction of a listed building by the owner or occupier. An example of where s59 might be used is set out at 4.3 below.

Once a complaint has been received regarding a suspected listed building offence, Investigating Officers will need to consider how best to investigate the offence and what evidence should be gathered. Officers should restrict their evidence gathering to the elements of the offence and should stop gathering evidence once there is enough evidence to bring a successful prosecution, i.e. evidence on which a conviction is more likely than not.

The elements of the offence under s9 may include the following:

- the building is listed
- works have been carried out
- by the defendant
- without authorisation
- which, if alterations, affect the historic or architectural character of the building

Authorities should also note that s9 is a “strict liability” offence, i.e. the intention of the defendant is not relevant to whether an offence has been committed. Indeed, in the *R v Sandhu* case the Court of Appeal held that, where evidence of the defendant’s motive was introduced by the prosecution, this was inadmissible evidence which prejudiced the defendant’s right to a fair trial. This would suggest that prosecutors must therefore ensure that evidence at trial is restricted only to establishing the elements of the offence outlined in *Sandhu*, and does not go beyond these points to the question of intent.

However, once a defendant has been found guilty of a s9 offence by the court, the court is, at that stage, entitled to consider the financial gain that has or is likely to accrue to the defendant in deciding the sentence given to the defendant. In some circumstances, therefore, intent may become relevant at this stage. Sentencing is considered further at section 8 below.

Investigating Officers should also be aware of the different evidential requirements for trial and sentencing from the outset. Evidence as to intention to seek financial gain should be separated from trial evidence – if necessary, witnesses can produce one statement for the trial and a second for any subsequent sentencing hearing.

4.2 The building is listed

S9 applies to listed buildings, except those which are also Scheduled Ancient Monuments – in those cases where both regimes apply, the Scheduled Ancient Monuments legislation takes precedence (see Appendix 1)

It will generally be sufficient to establish this element of the offence for an investigating officer to exhibit a copy of the current published list description for the building. For the purposes of certainty, the officer should inspect the published list and certify in his/her statement that he/she has inspected the public list and that the copy taken is a true and complete copy of the original.

There has been some debate as to whether proof of service of the original list description on the owner at the time was required in order to establish an offence under this section. However, it is generally accepted that the list description is not required to be served for criminal liability to arise under section 9.

Section 9 does not require a prosecuting authority to prove that the defendant was aware of the fact that the building was listed and therefore, generally, such evidence will not be adduced as part of the prosecution case. However, there may be cases where the defendant asserts that he/she was not aware of the fact that the building was listed. In these cases, evidence to the contrary (for example, correspondence with conservation officers or Local Land Charge searches conducted by the defendant which reveal the listing) may be relevant to the credibility of the witness and, if so, the prosecution should consider whether to adduce this evidence in court.

4.3 Works have been carried out for alteration to or demolition of a listed building

To establish this offence, it is necessary to show that positive acts have been done to the building either to alter or demolish it. This element is unlikely to be established if the damage to the building arose as a result of an accident, such as a lorry collision, or the use of the building for a particular purpose, such as the use of part of the building as a steam room, resulting in damage to historic plasterwork. In those cases, officers may wish to consider whether an intention

to damage the building on the part of the owner or occupier can be established – if so, the offence under s59 of criminal damage may apply.

DEMOLITION

In relation to demolition, authorities should be aware of the House of Lords decision in *Shimizu (UK) Limited v Westminster City Council*², in which it was held that the phrase “listed building” referred to the whole of a listed building for the purpose of the 1990 Act. Officers who suspect that demolition of a listed building has taken place should therefore be careful to ensure that the entire listed building has been demolished. Where parts of the building remain, it may be appropriate to consider laying a further Information in the alternative for works of alteration. Where the defence agree demolition as fact (see section 6.3), the alternative Information for unauthorised alterations can either be discontinued or no evidence offered in this respect.

ALTERATIONS

Establishing beyond reasonable doubt that works have been carried out can often prove to be one of the more troublesome aspects of s9 offences, particularly where the list description of a building is not detailed.

Most authorities will only investigate suspected listed building offences on the receipt of complaints from concerned neighbours, passers-by or other informants on seeing items removed from a listed building. By the time officers arrive on site, it is often the case that items such as fireplaces, doors and plaster work have been removed and the evidence disposed of. In these cases, it can be difficult to prove beyond reasonable doubt precisely what works have been carried out unless other records exist of the building prior to those works.

Where items remain in a skip on site, officers should seek to record this evidence, ideally via photographs. Where appropriate, statements could also be taken from informants. However, it is recognised that neighbours may be reluctant to become involved and this could discourage future complaints. Such statements, if they stand as the only proof of the works carried out, will also face a further difficulty in that these witnesses are unlikely to be qualified to comment on whether the items removed were of historic or architectural merit. Officers should therefore seek alternative routes to establish the state of the building prior to works having been carried out wherever possible.

Some evidence may be available as a result of earlier listed building consent applications and officers should check the authority’s records to see if any such applications have been made. If so, plans of the building, photographs and other information may be available to help establish the state of the building before the works were carried out.

² [1997] 1 W.L.R 168

Evidence may also be available from amenity societies, some of whom keep written and photographic records of local historic buildings.

In a recent prosecution, South Staffordshire District Council was able to prove what the building had looked like before the works had been carried out, due to the fact that a listed building application had previously been made in the 1990s, in the course of which photographs of the building had been submitted to the authority.

These photographs, combined with pictures taken by the Royal Commission of Historic Monuments and later photographs of the building taken by the conservation officer after the offences had been committed, were sufficient to establish that the works alleged had been carried out.

Officers may also be able to gather evidence via a formal interview under caution, in accordance with the terms of the Police and Criminal Evidence Act 1984. “PACE” interviews are considered further at section 4.9 below.

WHEN WERE THE WORKS CARRIED OUT?

In order to be able to progress a prosecution, it is important to know when the works were carried out. Often, it will be impossible to establish a precise date but officers may be able to work out, from previous site visits, a range of dates during which the works must have been carried out, e.g., between visits on 1 February 2006 and 3 March 2006.

If officers are unable to ascertain a date prior to which works could not have been committed, this may affect whether a prosecution can be brought for two reasons. Firstly, an Information must be laid with the court alleging the date of the offence. If a precise date, or a reasonable range of dates, cannot be given, it may not be possible to draft an Information which gives the defendant reasonable details of the nature of the offence(s) alleged. Secondly, where the works could have been carried out over a long period of time, it may not be possible to prove beyond reasonable doubt that the defendant, as opposed to some other person, such as a previous owner, carried out the works. This is a particular concern if the listed building has recently been sold as it may not be possible to determine whether the current or previous owner carried out the works.

In the scenario where the perpetrator cannot be identified and, thus, no prosecution can be brought, authorities should continue to consider alternative options from the enforcement toolbox. Where appropriate, a listed building enforcement notice may be served against the current owner, even where that person did not carry out the unauthorised works.

4.4 If works are alterations, that those works affect the historic or architectural character of the building

If the works carried out to a listed building amount to demolition, the Court of Appeal has held that this element does not need to be independently established. The loss of a listed building is presumed to have affected the historic or architectural merit of that building. (*Shimizu*).

The fact that a listing description does not mention a feature does not of itself mean that that feature is not of historical or architectural merit as list descriptions are intended to be indicative only, rather than a prescriptive list.

However, where a feature is not included on the list description, the authority will require expert evidence to establish that the alterations to that feature have affected the historic or architectural merit of the listed building. Even where such features are included on the list description, authorities are advised not to be overly reliant on this evidence but to, again, produce expert evidence.

The need for expert evidence does raise a number of difficulties for authorities considering prosecution. In many authorities, the officers involved in the investigation, may not have the experience required to give expert evidence in a criminal court. Even experienced conservation officers will have more expertise in relation to some periods or certain features than others.

Where experience is lacking in relation to the period of building and type of features which are the subject of the investigation, the authority will need to consider obtaining specialist external advice. This can often be costly and this factor in itself may discourage some cases from proceeding to prosecution. However, if such evidence is not obtained, authorities may find that they are unable to establish that the works to the building affected its historic or architectural merit beyond all reasonable doubt.

Authorities should be aware of the expertise available from other sources, including local and national amenity societies, which may be drawn upon where internal expertise does not match the period or features of the listed building in question.

In Huntingdon the Gables, a listed building in Spaldwick, came to the attention of the local authority following unauthorised works carried out after the grant of Planning Permission and Listed Building Consent for extensions and alterations. The unauthorised works included the removal of paint from the front elevation of the listed building, subject to a condition requiring the method to be approved in writing beforehand and by the provision of a sample panel. The work was carried out without this condition having been discharged and, in the view of the Conservation Officer, the bricks were irrevocably damaged as a result of the works, such that the works had compromised their longevity.

He produced a witness statement under section 9 of the Criminal Justice Act 1967 to this effect. The works were being supervised by an architect and carried out by a builder who was in turn using sub-contractors. The owners, architect, and builder were interviewed in accordance with the provisions of PACE 1984 and, as a result, a decision was taken to prosecute the owners. They pleaded guilty and were each fined £2500 with full costs of £2000 being awarded to the Council.

CONSISTENCY IN INVESTIGATIONS

Due to the subjective nature of this element of the offence, consistency in s9 prosecutions can be difficult. What one conservation officer considers to be of merit may not necessarily coincide precisely with the views of another conservation officer. In these circumstances, it may be open to defendants to challenge the decision to prosecute if it can be shown that, in a similar case, a different view was reached on the evidential requirements of whether the unauthorised works affected the historic or architectural character of the building.

Conservation and design officers in the Royal Borough of Kensington and Chelsea hold regular team meetings at which various matters relating to alterations of listed buildings are discussed. The aim of these sessions is to achieve a consistent approach among the conservation officers to preserve or control changes to their listed building stock through the LBC procedure and during enforcement investigations and in the information provided to legal officers to guide the decision to prosecute. In addition, conservation and design officers hold weekly 'design surgeries' which area enforcement officers, who have responsibility for all planning enforcement including listed building cases, can attend and discuss on-going and new cases with the conservation team. This provides the enforcement officers who may have no specialist design or listed building qualification with the expert advice required for listed building investigations and, again, ensures consistency across the authority. The conservation and design officers accompany the enforcement officers at the site investigations in listed buildings.

Where unauthorised works to a listed building are suspected, conservation officers will often accompany enforcement officers on a site visit. This provides an opportunity for the conservation officer to conduct a full inspection in preparation for any expert evidence that may later be given as to the affect on the historic or architectural character of the building. Where plans area available, conservation officers will take these to the site visit to make contemporaneous notes of any differences between the plans and the actual building.

4.5 Works caused or permitted by the defendant

In listed building cases there are often a number of potential defendants who may have carried out the works and it can sometimes be difficult to ascertain precisely who carried them out and whether such works were permitted by the owner or occupier. Authorities should be aware that the wording of section 9 enables prosecutions to be brought against either those who carried out the works, or those who permitted the works to be carried out, or both.

Potential defendants include contractors (builders and installers) and agents (surveyors and architects), as well as owners and occupiers. Authorities will need to decide whether sufficient evidence exists in relation to some or all of these individuals to bring a prosecution. During the decision to prosecute (see section 5 below) the authority will also need to consider whether it is in the public interest to prosecute some or all of these individuals.

Difficulties often arise where properties have exchanged hands several times in a short space of time as current owners may allege that the unauthorised works were carried out by previous owners. Previous owners may, similarly, allege that the current owner, or another previous owner, carried out the works. In these situations, in the absence of other evidence, it can often be extremely difficult to prove who the correct defendant is. While listed building enforcement notices can be served on current owners in relation to works carried out by previous owners, prosecutions can only be brought against those who actually caused or permitted the works.

Authorities are recommended to conduct site visits as soon as possible after receiving a complaint. This not only gives officers an opportunity to formally request that works cease but will also allow them to identify those carrying out the works. Photographs can be taken at this point and it may be appropriate to ask for names and addresses of those working on the site. Officers should be aware that, where questions are asked, the requirements of PACE Code C in respect of interviews under caution may have been triggered and, if so, these should be observed (see 4.9 below).

Where the owner/occupier is being investigated on an allegation of having permitted works to be carried out, officers may be able to obtain evidence of invoices and payment details to establish that works were carried out with the owner's authorisation. The presence of the owner on site during a site visit may also provide evidence that works have been done with his authority.

In some cases, members of the construction profession will notify authorities where they are asked to carry out works to a listed building without consent to avoid criminal liability themselves. In these cases it may be possible to stop the works proceeding before any damage is done.

4.6 The works are unauthorised

Whether works can be shown to be unauthorised will depend on whether the works carried out would have required listed building consent.

In the case of demolition, it will usually be straightforward to establish that the works were unauthorised since demolition automatically requires listed building consent. A search of listed building consents for the building will reveal whether or not consent has been granted for the demolition and the officer carrying out this search should provide a statement to this effect. However, the definition of "demolition" has been limited by the ruling in Shimizu to meaning the demolition of all, or substantially all, of a building (see 4.3 above) and authorities should be alert to the possibility that unauthorised works of partial demolition are legally a form of alteration rather than demolition.

Alterations, particularly minor alterations, may prove more troublesome since these works may not always require consent. Section 7 of the Act provides that listed building consent will be required where the works "*would affect the character of the listed building as a building of special architectural or historic interest*". Thus, in each case, an objective view must be taken as to whether the works affect the character of the building.

The report "Streamlining Listed Building Consent"³ provides guidance on when consent is required:

"What constitutes effect on the character of a listed building is at the heart of the issue of what needs consent. It is...a qualitative term. It clearly does not include all physical work to fabric contributing to special interest; but will

³ The Paul Drury Partnership for English Heritage and ODPM, 2003, Streamlining Listed Building Consent: Lessons from the use of management agreements, page 41

include work to fabric (or the addition of fabric) that, whilst not of itself of special interest, would affect perceptions of the character of the building as a whole.”

Some examples are given in the Report as to ways in which works may affect the character of a listed building as one of special architectural or historic interest so as to require consent. These include works to a listed building which would:

- “change the form, appearance or integrity of any element or aspect, including spatial character, that contributes to its character as a building of special interest
- affects the structural integrity of the building, or in any way likely to reduce its lifespan, or that of any element that contributes to its character as a building of special interest
- destroy a relationship between a building and its site that contributes to its character as a building of special interest, for example by moving the building.

The scale of the works is not necessarily indicative as to whether consent is required. In some cases, listed building consent may be needed for what would usually be regarded as *de minimis* works under the planning regime, which, being too minor to constitute development, do not require planning permission. However, in other cases substantial works to a listed building may have only a neutral impact on those aspects of its character which contribute to its special historic or architectural character. In these cases, it may be argued by the accused that the works did not affect the special character of the building and thus did not require consent.

Particular care should be given to works which affect only fabric not of special architectural or historic interest, and do not affect perceptions of the character of the building as one of special architectural or historic interest as a whole as, again, these are unlikely to require listed building consent.⁴

Investigating officers should be prepared to address the issue of whether consent is required in some detail. It is not sufficient to presume that, because the building is listed, consent is automatically required. Rather, officers should provide detailed witness evidence on the special historic or architectural character of the building and should explain how this has been affected by the works carried out.

Authorities are recommended to pay particular regard to the guidance contained in Appendix B of the Streamlining Listed Building Consent when considering whether this element of the offence, that the works are unauthorised, is made out.

4 Streamlining Listed Building Consent, page 41.

4.7 Financial gain

Investigating officers are reminded of the wording of s9(5) which enables a court, on sentencing, to consider the level of financial gain that has or may accrue as a result of the offence. This is not an element of the offence and evidence on this point must not be brought during the trial itself.

However, financial gain can be relevant to the decision to prosecute and Investigating Officers are reminded that expert evidence on financial gain should be sought at the earliest opportunity, both to inform the decision to prosecute and in the event of an early guilty plea. This point is considered in further detail below at section 8.

4.8 Site visits and powers of entry

Investigating Officers will need to conduct a site visit in most cases of suspected unauthorised works to gather evidence as to the works carried out. When doing so, officers are reminded of the need to comply with the requirements of all relevant legislation such as the Regulation of Investigatory Powers Act 2000 (“RIPA”).

Evidence gathered in breach of RIPA may be in breach of the authority’s duty under s6 of the Human Rights Act 1998 (see 5.5 below) and is unlikely to be admissible in court.

Most site visits are likely to be conducted with the consent of the owner/ occupier of the property. However, there may be occasions where consent to entry is refused and, in these cases, Investigating Officers should be aware of the power of entry set out in sections 88, 88A and 88B of the 1990 Act. There are stringent restrictions on the use of the power set out in the Act and legal advice should be sought before a warrant is either applied for or exercised.

4.9 Interviews under caution

Officers should be aware, when investigating a listed building offence of the requirements of all relevant legislation, including PACE Code C on the conduct of interviews under caution.

PACE Codes are regularly updated by the Home Office and latest versions can be checked on the Home Office website at www.homeoffice.gov.uk

CHAPTER 5

Taking the decision to prosecute

5.1 Delegated authority

The decision to prosecute should be taken by the Prosecutor, in accordance with the Code for Crown Prosecutors which can be found at www.cps.gov.uk.

In most cases, authorities will have delegated authority to commence legal proceedings to the Head of Legal Services who will then be responsible for the decision to prosecute. Other legal officers may also have delegated authority to take this decision.

Some authorities may still retain the power to recommend that proceedings relating to listed buildings to either a planning committee or the Head of Planning Services. However, in such circumstances, the legal officer with responsibility as Prosecutor is advised to retain a final veto as to whether proceedings are commenced.

There is no requirement obliging Prosecutors to make a written note of the decision to prosecute. However, Prosecutors will be aware of the risk that an abuse of process submission may be made by the defence where the authority is unable to show that the decision to prosecute was made in the light of the authority's own prosecution policy or, in the absence of such a policy, in the light of the Code for Crown Prosecutors. It is therefore considered good practice to prepare a written note, setting out the factors to which the Prosecutor has had regard. Such a document is likely to be disclosable and should be drafted accordingly. A sample decision is enclosed at Appendix 4.

5.2 The decision to prosecute

The Code for Crown Prosecutors sets out the classic statement on public interest, made in 1951 by Lord Shawcross, who was Attorney General, which has been supported by Attorneys General ever since: *“It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution”*.⁵

The two-stage test for all Prosecutors to consider when taking the decision to prosecute arises from this test. Local authority Prosecutors should also be aware

⁵ House of Commons Debates, volume 483, column 681, 29 January 1951

of the requirements of the Human Rights Act 1998 which require authorities to act in a manner compatible with the European Convention on Human Rights 1950 (see 5.3 below).

5.3 Human rights considerations

S6 of the Human Rights Act 1998 renders it unlawful for a “public authority” to act in a manner which is incompatible with a Convention right.

S6(3) defines public authority as “*any person certain of whose functions are functions of a public nature*”. And will include local authorities exercising prosecution powers.

The rights which are most likely to be relevant to heritage prosecutions are:

- **Article 1, Protocol 1** – protection of property
- **Article 6** – right to a fair hearing
- **Article 8** – right to respect for private and family life and a home

None of these rights are “absolute” rights, which means that certain interferences with these rights may be justified, provided that the interference:

- is lawful;
- pursues a legitimate aim; and
- does not involve discrimination infringing Article 14 (right to non-discrimination)

Legitimate aims are set out in the individual Articles. For example, Article 8 stipulates that the interference must be necessary in a democratic society while Article 1 of Protocol 1 requires proportionality between the private rights interfered with and the justification for the interference.

In the context of listed building prosecutions, Prosecutors should consider:

- whether bringing a prosecution
- which would, on the face of it, constitute an infringement of the accused convention rights
- strikes a fair balance between the public interest in conserving listed buildings and the defendant’s personal rights to respect for family life and a home and protection of his property?

In justifying such an interference, it is the local authority’s responsibility to show what its reasons were and that they were relevant and sufficient and so a Prosecutor should consider whether the decision to prosecute is:

- not arbitrary or unfair (hence the need to act consistently and in accordance with policy)
- based only on relevant considerations;
- capable of achieving the required objectives (e.g. PPG15 on the use of prosecution as a deterrent, internal prosecution policy and Code for Crown Prosecutors on other reasons for prosecution); and
- is no more than is necessary to achieve that objective (i.e. it strikes a fair balance between the public interest in conserving listed buildings and his own personal rights to respect for family life and a home and protection of his property)

Prosecutors will need to satisfy themselves that the tests above are met in each case. To ensure that the decision can later be proved to have been taken, prosecutors are recommended to record this process in the decision to prosecute. An example of such a decision is shown at Appendix 4.

5.4 Formal cautions and informal warnings

When deciding whether to proceed with a prosecution, local authority prosecutors should also consider the alternatives to prosecution, including formal (or simple) cautions and conditional cautions. Information on these two forms of caution may be found on the Crown Prosecution Service website.

The Home Office has issued guidance on the use of formal cautions and Prosecutors should have regard to this (Home Office Circular 30/2005). Formal cautions may be cited in court in relation to subsequent similar offences provided that they have been formally administered in accordance with the Code, including entry onto the Police National Computer.

It should be noted that formal cautions should only be used where the tests set out in the decision to prosecute are met. Cautions are not an appropriate tool in cases where there are evidential reasons which would prevent a case from proceeding to court. Cautions form an admission of guilt and should therefore only be used where the defendant has admitted guilt.

Historically, local authorities have also issued informal warnings. Such a warning, issued by local authority officers, does not have the same standing as a formal caution and will not be recorded on the Police National Computer. Such warnings cannot be cited in court in relation to subsequent offences and, for this reason, informal warnings are unlikely to be considered as an alternative to prosecution.

However, it is accepted that informal warnings have a deterrent value and may be appropriate in some circumstances.

5.5 Continuous review

Prosecutors should note the guidance in the Code for Crown Prosecutors on case review. Although the decision to prosecute is a discrete decision, review is a continuing process and prosecutors “must take account of any change in circumstances” (the Code, section 4.2). A decision to prosecute may therefore need to be reviewed if new evidence comes to light or, for example, on the receipt of a defence statement.

CHAPTER 6

Commencing proceedings and preparing for trial

A full analysis of prosecution and trial procedure is outside the scope of the Guidance and readers are referred to criminal law texts, as well as their own legal advisors, in this respect. However, in recognition that conservation officers and planning lawyers may not regularly be involved in criminal proceedings, some of the procedures which are most often encountered in listed building prosecutions are outlined here.

6.1 Drafting the information/summonses

Most Informations are laid at the Magistrates' Courts in writing for convenience and cost-efficiency and should contain the following:

- name and address of the accused
- name and title of the person laying the Information (e.g. Head of Legal Services)
- description of the offence in non-technical terms
- particulars of the offence(s) alleged – the Information must give the accused reasonable details of the nature of the offence(s) alleged. In a s9 case, this is likely to include the name of the building, the date on which, or a range of dates between which, the offence is alleged to have taken place, a description of the works of alteration or demolition that are alleged to have been carried out, and the absence of authorisation for the works. The Information does not need to contain reference to every element of the offence but it is common practice to do so.
- as the offence is created by statute the Information must also include and a statement that this constitutes an offence under s9 Planning (Listed Buildings and Conservation Areas) Act 1990 (CPR 7.3).

Informations will usually be signed and laid by the person with delegated authority to commence criminal proceedings under the 1990 Act on behalf of the local authority. Prosecutions under the 1990 Act are not required by statute to be laid by any one officer but, where this is the case, if the correct person does not sign the Information, it may be invalid.

The Court of Appeal have previously held that, in practice, the courts will not intrude in the arrangements of local planning authorities for decision-making unless the decision itself is irrational. However, these decisions have related to civil proceedings and it is unclear whether the same test applies equally in criminal proceedings. Authorities are advised to check that any Information is signed in accordance with the Scheme of Delegation set out in the authority's Constitution.

In the case of listed building offences, and s9 offences in particular, the Prosecutor drafting the Information will need to give careful consideration to a number of matters:

- whether demolition or alteration is alleged. The decision in *Shimizu* would indicate that these two acts are likely to be regarded as two alternative offences.
- Whether the works that have been carried out amount to one offence or multiple offences. Prosecutors should consider whether two or more separate criminal acts may be alleged in one Information if the accused's conduct comprised a single activity. However, works to listed buildings are often carried out over a period of time and can involve a number of different activities and trades. In these cases, the Prosecutor may take the view that these acts, potentially carried out by different defendants at different times, constitute separate offences. It is important to give careful consideration to this point since an Information may be invalid if it alleges more than one offence in a single Information. In this scenario, the prosecution may be asked by the court to pick one offence only on which to proceed, with the remainder being struck out but, alternatively, the case may be dismissed.
- Choice of defendant. It is, of course open to the authority to lay Informations against both those who carried out the works (usually contractors etc) as well as those who caused them to be carried out (agents, owners and occupiers). The Prosecutor will need to apply the decision to prosecute in respect of each potential defendant and should only proceed to draft Informations in those cases where the evidential and public interest tests are met. Prosecutors should be aware that it is open to them to prosecute both private individuals and companies. In relation to companies, prosecutions can be brought both against the company as a whole and, either in addition or in the alternative, against individual employees of that company (see s331 Town and Country Planning Act 1990, as applied by Planning (Listed Buildings and Conservation Areas Act) 1990 s89(1)).

In addition to the Information(s), the Prosecutor will also need to prepare a Summons for issuing by the court. In practice, however, Informations are often combined with Summons into a single document.

Example of combined Informations/Summons used in recent section 9 proceedings for demolition and alterations are set out at **Appendix 5**. These set out the most simple form, with one offence being prosecuted only.

South Staffordshire District Council recently prosecuted a case where a tenant of a listed building carried out unauthorised works to the building, including:

- re-rendering the outside of the building;
- removal of all original windows and replacement with double glazed timber units

The Council was notified of the works by the owner’s agent, concerned that the owner might be held liable. Prosecution was considered appropriate due to the loss of historic fabric and the fact that some of the damage could not be rectified.

In order to ensure that the offences would be made out, the Council opted to serve 8 separate Informations/Summonses. By progressing 8 separate offences, the authority ensured that, even if an offence was not made out in relation to one set of works (or a defence successfully argued) the remaining offences would still stand on their own. This removed the risk of having to withdraw the entire prosecution because the elements of the offence were not made out in their entirety in relation to each set of works.

In fact, the prosecution succeeded on each offence and 8 sets of fines and costs were awarded.

6.2 Service and advance information

Service of the Summons may be effected by the court although it is common for officers to request that the Summons is returned to the authority which then assumes responsibility for service. In cases where service is anticipated to be problematic, personal service on the defendant should be considered, either by enforcement officers or external service processors.

6.3 Advance information

Where an Information is laid in respect of an offence triable either way (i.e., liable in either the Magistrates’ Court or the Crown Court), such as a section 9 offence, the prosecution must, upon request, supply the defendant with what is commonly known as “advance information”, setting out the evidence on which the prosecution intends to rely. This can either be copies of prosecution witness statements or a summary of the facts and matters about which evidence will be adduced during the course of the prosecution case. In anticipation of such a request, many authorities now supply advance information, usually in the form of copy witness statements, together with the Summons. Copies of these documents must also be forwarded to the Court. (see Criminal Procedures Rules section 7.9)

The early service of advance information ensures compliance with Article 6(3)(a) of the European Convention on Human Rights which provides that defendants have a right to be informed promptly and in detail of the nature and cause of the accusations against them.

6.4 Use of written statements

Certain elements of listed building offences are unlikely to be contentious. The fact that a building is listed, for example, is often undisputed by the Defendant. Similarly, in many cases, whether alterations or demolition took place may be common ground.

In these cases, Prosecutors may wish to seek the defence's agreement to these elements be formally admitted in the proceedings under s10 Criminal Justice Act 1967 in order to save court time and reduce the number of points to be argued at trial. An admission under s10 by either the defence or prosecution is conclusive evidence of the fact admitted so no evidence on this point will need to be adduced at trial.

Similarly, where the evidence of Prosecution witnesses is of a formal nature and/or is unlikely to be disputed, Prosecutors may wish to consider serving witness statements under s9 Criminal Justice Act 1967. where s9 is used, written statements will be admissible in Court. However, Prosecutors should always consider whether it is in the interests of justice before using this procedure.

6.5 Disclosure

Investigating and disclosure officers should have regard to the statutory requirements governing disclosure and supplemental Codes of Practice in relation to the retention of materials and information gathered or generated during the investigation. They should work with their legal team to ensure that Prosecutors are provided with all relevant unused material.

For investigations commenced after 4 April 2005, disclosure of unused material is a process of continuous review, having regard to the following objective test:

“any prosecution material which has not been previously disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused”

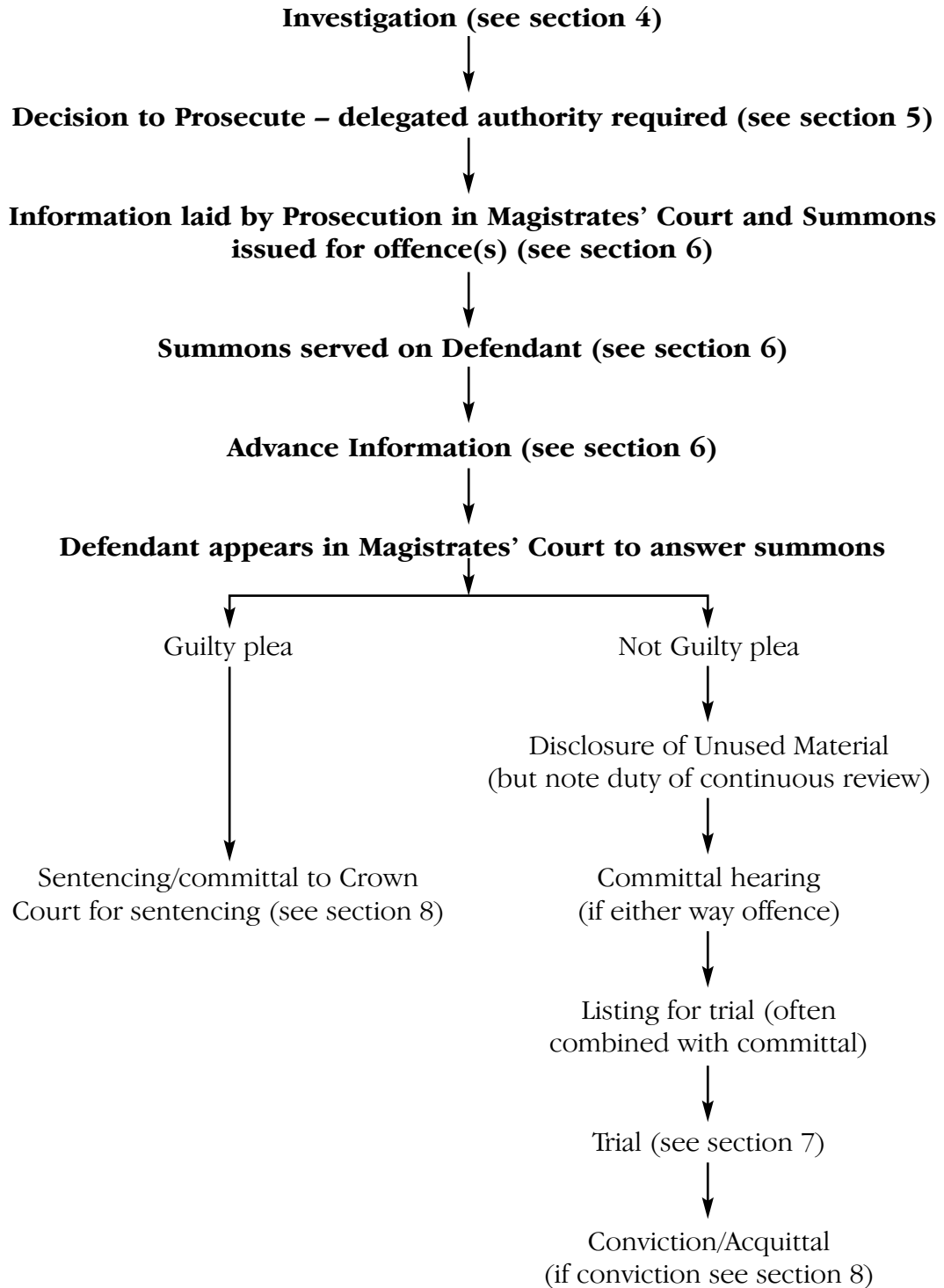
Prosecutors will usually expect to receive full copies of unused material, together with schedules of sensitive and non-sensitive information where appropriate. It is likely in listed building prosecutions that there will be either limited or no sensitive information (material, the disclosure of which, would give rise to a real risk of serious prejudice to an important public interest) but disclosure officers should be aware of the test and apply it where appropriate.

Disclosure of unused material should take place:

- immediately after committal to the Crown Court; or
- as soon as possible after a not guilty plea in the Magistrates' Court.

However, officers should be aware of the duty of continuous review. In particular, where new information regarding the defendant's defence is made known, the Prosecution should consider whether further disclosure is required.

COMMENCEMENT OF CRIMINAL PROCEEDINGS



CHAPTER 7

The trial

SPECIALIST GUIDANCE

Trial procedure is a complex and specialist area extending far beyond the scope of listed building prosecutions. Comprehensive guidance would require a lengthy Guidance Note far beyond the scope of this publication. The following points are therefore pointers for advocates and witnesses and are not intended to be comprehensive. If further information on trial procedure is required, readers should refer to specialist texts on the subject.

PRE-TRIAL HEARINGS

Most listed building offences will be heard in the Magistrates' Courts although, in relation to certain offences, committal to the Crown Court with a resulting jury trial is a possibility. All officers involved in an investigation should be aware of pre-trial hearing procedures, including committal hearings and on-going duties of disclosure (see section 6). Officers should also be aware of the possibility of an early guilty plea and consideration should therefore be given to the matters raised in section 8, in relation to sentencing and costs, before the first hearing.

EXPERT WITNESSES

It will often be the case that conservation, planning and building officers will be required to give witness evidence in an expert capacity. As such, certain rules apply to their evidence and their presence in court. These are dealt with in the Criminal Procedure Rules 2005 and, again, all such witnesses should be fully briefed by their legal team. For example, all witnesses should be fully informed of their duty to the court and the overriding objective of the criminal courts, as set out in Rule 1 of the Criminal Procedure Rules.

REPRESENTATION IN COURT

Local authority officers, whether legally qualified or not, are authorised to represent their authority in the Magistrates' Courts (s223 Local Government Act 1972). However, the complexity of court proceedings and the role of advocacy in the outcome of the prosecution would militate towards the use of legally qualified officers in all but the most straightforward of hearings. Authorities should be realistic about the role good advocacy plays in the success of prosecutions. For many authorities this will mean looking at training for in-house legal staff and resources where use of external legal representation is chosen.

CHAPTER 8

Sentencing and costs

8.1 Sentencing – general guidance

The Prosecution's role in sentencing is, in essence, a neutral one. It is the Prosecution's job, particularly in the case of an early guilty plea, to set out the facts of the case and how the offence was committed. It is not the Prosecution's role to suggest any particular sentence or to advocate a severe sentence. However, the Prosecution should assist the court by drawing to the attention of the court any limits on sentencing powers and also any guideline case law.

Once the Prosecution has put forward the background facts of the case and how the offence was committed, the defence will put forward mitigation to the court.

The Code for Crown Prosecutors sets out the basic duties of the prosecuting authority during sentencing.

While the Prosecution role is a neutral one, the prosecution should not accept the defence version of events if it is not the same as the prosecution version. Where there is a conflict between the two sides on questions of fact, a Magistrates' Court has two options. The bench can accept the defence evidence as far as that is possible or it can give both parties an opportunity to call evidence about disputed matters. This form of hearing, known as a Newton hearing, is discussed further at section 8.6 below. What the Court cannot do is accept the prosecution version of events without hearing evidence since the benefit of any doubt must weigh with the defendant.

In Crown Court cases, the judge will have the additional option of putting any disputes of fact to the jury to decide although it is rare that listed building prosecutions are heard in full in the Crown Court.

8.2 Previous convictions

Prosecutors may cite previous convictions where relevant.

Relevant formal cautions are generally not included on the list of previous convictions but are retained on the Police National Computer and may be cited in court. (Home Office Circular 30/2005).

8.3 Pre-sentence reports

Pre-sentence reports are required where the court is considering a custodial sentence and will be prepared by the probation service. In listed building cases, custodial sentences are rare and given in exceptional circumstances only and, in most cases, it is likely that sentence will be passed without a pre-sentence report.

However, authorities should be aware of the possibility that a report may be required. In these cases, an adjournment may be needed before sentencing to enable the probation service to prepare a report.

8.4 Factors specific to heritage offences

In heritage offences, Prosecutors will need to have particular regard to the relevant aggravating and mitigating factors relating to the listed building. The age of the building, the age of the listing, the Grade of listing, the extent of the damage caused, the extent to which such damage is reversible or not and the extent to which the damage has harmed the historic fabric of the building will all be relevant.

Such factors may require additional expert evidence where these points are disputed by the defence and the prosecution should be prepared for the possibility of a Newton hearing in this case (see below).

8.5 Section 9 – sentencing factors

FINE/PENALTY

Section 9(4) sets out the penalties that a court can impose in relation to each section 9 offence committed by a defendant:

*“A person who is guilty of an offence under this section shall be liable—
on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both; or
on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.”*

SENTENCING FACTORS

The factors relevant to sentencing in a section 9 offence can be summarised as follows:

- the degree of damage that has been done to the historic structure;
- The degree of financial gain that the defendant has attempted to achieve;
- The degree of culpability of the defendant;

DEGREE OF DAMAGE

Previous judgements suggest that the purposes of the 1990 Act are the preservation of historic monuments and other similar structures that are protected by the legislation. In light of the fact that the offence is one of damaging or altering one of those structures without permission, the degree of damage caused is relevant.

In this context, the prosecuting body may wish to adduce expert evidence of the intrinsic worth of the building and the effect on the historic fabric of the works undertaken. Where loss is permanent and irretrievable this point should be drawn to the court's attention.

DEFENDANT'S CULPABILITY

The Prosecuting authority may, during the course of its investigations, have obtained evidence as to the defendant's knowledge and intention in carrying out the works. Where such evidence is available, this should be drawn to the court's attention.

FINANCIAL GAIN

S9(5) states that:

“In determining the amount of any fine to be imposed on a person convicted . . . of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

In s9 cases, therefore, the prosecution must consider whether the defendant has made, or is likely to make, any financial gain as a result of the works, and should draw this to the courts attention accordingly at sentencing. It is important that this evidence is not considered until after a guilty finding has been made as introducing this evidence during the trial could render the process unsafe and, thus, appealable.

The most common form of financial gain in such cases will be the profit made by the defendant on the market value of the listed building as a result of the unauthorised works. Such profit may be reduced, of course, by the potential for enforcement action against future owners, but often remains a substantial sum.

Again, it may be necessary to obtain expert evidence as to actual or potential financial gain from a qualified valuer. Prosecuting authorities are advised to obtain such evidence as part of the investigation process since it may have a bearing on the likely fine to be awarded and, thus, the decision to prosecute. Obtaining this evidence at an early stage also means that it can be used if an early guilty plea is entered, thus reducing the likelihood of a low penalty due to lack of evidence of financial gain.

Where expert evidence is obtained, authorities are reminded of their duty to disclose such evidence to the defence, in accordance with Part 24 of the Criminal Procedure Rules.

DEFENDANT'S MEANS

Where the prosecution has knowledge of the defendant's means, this can be put before the court. The prosecution should be careful to maintain its neutral stance in this respect but where the authority does have knowledge, for example because it is aware of the value of the defendant's property, this should be raised. Similarly, where the defendant is a corporate entity then company accounts may be relevant to the company's means.

8.6 Newton hearing

The factors relevant to sentencing in a section 9 offence are somewhat complicated and may rely on expert opinion, particularly in relation to the degree of damage caused. As a result, there may be cases where the evidence brought by one party on sentencing factors is disputed by the other and, in these circumstances, a separate hearing may be held to enable the court to hear evidence from both prosecution and defence. This form of mini-trial, often known as a Newton hearing will involve evidence from relevant witnesses for both the prosecution and defence, either after trial or as a result of an early guilty plea.

The rules relating to Newton hearings are complex and beyond the scope of this guidance. However, generally it is for the defence to alert both the prosecution and the court to the need for a Newton hearing.

During the hearing, the same burden and standard of proof apply as in the trial of a not guilty plea. In other words, the court will only pass a sentence based on the prosecution version of events if it is satisfied beyond reasonable doubt that the defence version is wrong.

8.7 Costs

Local authorities are entitled to recover costs incurred by it in bringing a prosecution. To recover its costs, a local authority will need to provide a costs schedule to the court. This should have been previously disclosed to the defence in order to allow the defendant time to prepare representations as to the reasonableness of the costs incurred.

Where costs are internal, officer should keep records of the time spent on the case and a full breakdown given to the Prosecutor at the earliest opportunity in order to give the Prosecutor an opportunity to prepare submissions where required.

CHAPTER 9

Publicity

Local authorities should be careful of issuing publicity in relation to specific listed buildings where criminal proceedings are contemplated. Prejudicial pre-prosecution publicity can lead to submissions as to whether the defendant will receive a fair trial and the case could potentially be halted by the court as an abuse of process.

There are certain restrictions that apply to the reporting of committal hearings (s8 Magistrates' Court Act 1980 (s8 MCA 1980)) but, once the matter reaches trial, proceedings will generally be conducted in open court, with the press being free to report all that is openly communicated in court, subject to the rules on contempt of court. Most listed building prosecutions will follow this procedure with the press being free to report the case, as heard in court.

However, the prosecuting authority is advised to maintain its independence in the proceedings. Generally, therefore, any publicity regarding the details of the case should not be issued by the prosecuting authority until the matter has been disposed of by the court.

CONTEMPT

There are two forms of contempt of court relevant to publicity in criminal proceedings. The first, strict liability contempt of court, will only apply where proceedings are active at the date of publication by virtue of s1 of the Contempt of Court Act 1981. Under the 1981 Act, conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

Officers should also be aware, however, that where proceedings are either imminent or ongoing, any publicity which creates a substantial risk of prejudice to the course of justice, where there is intent to interfere with or impede the course of justice, may also represent a contempt of court at common law. A criminal case is ongoing until the proceedings are concluded and no further appeal is possible, either because the rights of appeal have been exhausted or because the time for giving notice of appeal has elapsed.

The law on contempt of court does not prevent authorities from seeking and obtaining expert witness evidence from external sources. However, where external assistance is sought, those involved will also be subject to the provisions relating to contempt and should conduct themselves accordingly.

POST-CASE PUBLICITY

Once proceedings are concluded, however, publicity is recommended. PPG15 notes the deterrent value of listed building prosecutions and this value will be maximised if the outcome of the case is well publicised.

There is no obligation on authorities to report listed building prosecutions. However, authorities may also wish to consider notifying the Institute of Historic Building Conservation which keeps an information register of cases. Details of the IHBC can be found at its website:

<http://www.ihbc.org.uk/>

Authorities may also wish to consider notifying the local Historic Environment Record of the nature and extent of offences committed. There are currently 88 Historic Environment Records, maintained by county councils, unitary authorities and national park authorities. Each Record is intended to be an holistic record of the local environment and a variety of bodies, including the Department for Media, Culture and Sport and English Heritage, are working with local records to make them more relevant both to the needs of conservation officers and to future enforcement action.

APPENDIX 1

Heritage Offences

Introduction

This note is a brief overview of the powers of prosecution that may be available in relation to suspected heritage offences. Whether it is appropriate for an offence to be brought will depend on the facts of each case. Detailed legal advice should be sought where it is suspected that an offence has been committed.

The Government's Heritage Protection Review is intended to create a new designation system, so that every historic site has a single designation, encompassing the current separate systems of listed buildings, scheduled monuments and registered parks, gardens and battlefields. This may impact on some of the provisions referred to in this Annex.

1 Offences under the Planning (Listed Buildings and Conservation Areas) Act 1990

1.1 UNAUTHORISED WORKS TO A LISTED BUILDING

S9(1) Planning (Listed Buildings and Conservation Areas) Act 1990 creates an offence if s7 of the Act is contravened. Section 7 provides:

Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

1.2 FAILURE TO CARRY OUT WORKS IN COMPLIANCE WITH CONDITIONS

A further offence is set out at s9(2):

If a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.

Elements that may require consideration include:

- (a) the building is listed;
- (b) works are being carried out for its demolition, alteration or extension;
- (c) those works are executed or are caused to be executed by the defendant;
- (d) the works are authorised by the grant of a consent; and
- (e) the conditions attached to that consent are not complied with.

1.3 DEFENCES TO SECTION 9 OFFENCES

Subsection (3) goes on to specify a statutory defence available to offences committed under s9. The defence will apply if:

- (a) works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- (b) it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
- (c) the works carried out were limited to the minimum measures immediately necessary; and
- (d) notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.

See also comment below on defences generally.

1.4 FAILURE TO COMPLY WITH A LISTED BUILDING ENFORCEMENT NOTICE

Under s43(1): Where at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.

If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence (s43(2)). Whoever owns the building when the time for compliance expires, together with any subsequent owner for as long as the works remain incomplete, can be held liable under this section.

The elements of the offence are:

- (a) an enforcement notice has been served;
- (b) the time for compliance has passed;
- (c) the steps required for compliance have not been taken; and
- (d) the defendant was or is the owner.

Section 43(4) lays down two statutory defences: that the owner did everything he could be expected to do to secure that all the steps required by the notice were taken, or that he was not served with a copy of the notice and was not aware of its existence.

Significantly, in determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence (s43(6)). Section 9(5) sets out an equivalent provision in respect of section 9 offences. Note however, that financial benefit as a motive is inadmissible in proving commission of the offence itself, as suggested by the *Sandhu* case which concerned section 9.

1.5 DAMAGE TO A LISTED BUILDING

Section 59(1) states:

If, with the intention of causing damage to a listed building, any relevant person does or permits the doing of any act which causes or is likely to result in damage to the building, he shall be guilty of an offence.

“Relevant person” means someone who, but for section 59, would be entitled to do or permit the act in question, i.e. the owner or occupier of the land.

The elements of the offence are:

- (a) the building concerned is a listed building
- (b) a person does or permits the doing of any act which causes or is likely to result in damage to the building;
- (c) that person has the intention of causing damage to the building; and
- (d) that person would be entitled to do or permit the doing of the act but for this section.

Section 59(1) does not apply to acts for the execution of works authorised by planning permission granted/deemed to be granted, or by listed building consent (s59(3)).

One of the difference between this offence and an offence under s1 of the Criminal Damage Act 1971 (see below) is that here, intention to cause damage has to be proven. Under the 1971 Act, recklessness as to whether damage is caused is sufficient. In addition, s1 can also be used where the damage has been caused otherwise than by a “relevant person”.

1.6 COMMON LAW DEFENCES TO STRICT LIABILITY OFFENCES

Some of the offences discussed here are strict liability offences, in that the defendant’s state of mind is not a factor to be taken into account. The offences under sections 9 and 43 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are all strict liability offences. The lack of any reference to the defendant’s belief, knowledge, intentions or motive in the definition of the offence is what makes the offence is one of strict liability. As a consequence, any general defence which relates to the state of mind of the defendant, such as insanity, intoxication, or mistake cannot be relevant either. However, a defendant’s state of mind may be relevant in sentencing.

2 Scheduled ancient monuments (Ancient Monuments and Archaeological Areas Act 1979)

The offences provided for by the 1979 Act are beyond the scope of this Guidance except to note that many listed buildings are also scheduled. In such cases, the ancient monuments legislation takes precedence and the listed building legislation ceases to apply (section 60 of the 1990 Act).

3 Offences under the Dealing in Cultural Objects (Offences) Act 2003

The 2003 Act is of relevance because offences committed under Listed Building legislation may give rise to further offences in relation to cultural objects. For example, a cultural object removed from a listed building where it formed part of that building would be considered a tainted cultural object.

A person is guilty of an offence if he dishonestly deals in a cultural object that is tainted, knowing or believing that the object is tainted (s1(1)).

It is immaterial whether he knows or believes that the object is a cultural object (s1(2)). “Dealing” is defined and includes the acts of as well as both agreement to, and arranging for: buying, hiring, borrowing, accepting, selling, letting on hire, lending and giving (s3).

A “cultural object” is defined as object of historical, architectural or archaeological interest, and it is “tainted” if it is removed from a building, structure or monument of historical, architectural or archaeological interest

(and in the case of a building or structure, where the object formed part of that building or structure) or excavated, and that removal or excavation constitutes an offence. It is immaterial whether the removal or excavation was committed in the UK or elsewhere in the world, or whether the offence was committed under the law of any part of the UK or any other country or territory.

The elements of the offence therefore are:

- (a) The object is of historical, architectural or archaeological interest;
- (b) The object has been
- (c) removed from a building or structure of historical, architectural or archaeological interest, where that object formed part of the building or structure; or
- (d) removed from a monument of historical, architectural or archaeological interest; or
- (e) excavated
- (f) the removal or excavation of the object constitutes an offence
- (g) A person arranges for or agrees to the buying, hiring, borrowing, accepting, selling, letting on hire, lending or giving of that object;
- (h) The person dealing with the object is acting dishonestly.

4 Ecclesiastical considerations

Ecclesiastical buildings which are for the time being in ecclesiastical use (i.e. they are used for an ecclesiastical purpose) are exempt from the listed building regime (P(LBCA)A 1990, section 60). The exemption will apply to the church building itself and to any object or structure within it, or fixed to it, or within its curtilage, unless that object or structure is itself a separately listed building (Article 5(1) of the Order).

The exemption does not apply to total demolition of an ecclesiastical building, as such buildings are no longer used for an ecclesiastical purpose (although see the Pastoral Measure 1983 (as amended)), and listed building consent would be required in such circumstances.

Works to listed churches containing human remains (in crypts or in graveyards) may also require further licences/consents under the Burial Act 1851 (which includes a criminal offence) and the Disused Burial Grounds (Amendment) Act 1981 for example.

APPENDIX 2

Notice to New Owner

This is a Listed Building Important Information for New Owners

Your estate agent or solicitor should have told you that the property you are buying is a 'Listed' (specially protected) building.

Although you will have much paperwork to read, you should read this Note as it accompanies the Local Land Charges Search.

What Listing means for you as the new property owner is as follows:

- *The whole of the building **is protected*** and specifically includes the inside as well as the outside and all architectural features and structures within the grounds.
- A Listed building may not be demolished or altered in any way unless you have first obtained LISTED BUILDING CONSENT from the Borough Council. Applications are decided by the Borough's Planning Committee, advised by its officers (and English Heritage if the building is Grade 1 or 2*). Note particularly that among other works, CONSENT may be required for cleaning or painting (or re-painting of the interior or exterior) if this would affect its character.
- It is a *criminal offence* to carry out works to a Listed building without Consent. The Borough may take action against you and any contractor working for you if unauthorised work is done before consents have been obtained.
- All grades of Listed buildings are equally protected. The grade simply reflects the importance of the building on a nationally adopted scale.

This does not necessarily mean that your building has to be preserved exactly as it is now but alterations and extensions must be carried out in a sympathetic manner using appropriate materials and techniques after due consideration of all the implications. If you are in any doubt about the particular merits of any part of the building it is advisable to discuss this with us.

The Borough's Planning and Development Service at the Civic Centre, Civic Drive, Ipswich Tel: Ipswich 432626 will be happy to advise you about the full implications of owning a listed building and be pleased to discuss any proposed

alterations or other works you would like to do. In some cases grants may be available for certain types of appropriate *repair*.

Advice is available from the Council's website www.ipswich.gov.uk/services/conservation and a range of free advisory leaflets are also available on sympathetic methods of repair and alteration to historic buildings.

NOTE: This is not a definitive statement of the relevant legislation. Solicitors and Agents should make this clear when passing this advice to purchasers.

APPENDIX 3

Draft Planning (Listed Buildings) Prosecution Policy

1 Introduction

Listed buildings are a finite resource and an irreplaceable asset and Ipswich Borough Council is committed to protecting our historic environment. One of the ways that the Council can achieve this is to prosecute offenders as a deterrent to others.

This document sets out the Council's policy in respect of prosecutions and cautions and ensures that everyone knows what principles the Council applies when carrying out its work.

The aim of this policy is to ensure fair, proportionate and consistent treatment to those persons who may have committed an offence.

2 The evidential test

The first matter the Council will look at when considering a caution, administrative penalty or a prosecution is whether there is enough evidence to prosecute the matter. This is *the evidential test*. If the case does not pass the evidential test **it must not go ahead** no matter how serious or important the case may be.

In order for a case to pass the evidential test there must be enough evidence to provide a **“realistic prospect of conviction”** against each defendant on each charge.

As part of the process the Council must consider what the defence case is and how it is likely to affect the prosecution case.

Note: *A realistic prospect of conviction is an objective test; it means that a jury or a bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction officers should have regard to whether the evidence can be used in court and also whether or not it is reliable.*

If the evidential test is satisfied then the most appropriate way of dealing with the matter will be assessed, these options are outlined below.

3 The options

3.1 CAUTION

The purposes of a formal caution are:

- to deal quickly and simply with less serious offenders
- to divert them from unnecessary appearance in the criminal courts; and
- to reduce the chances of them re-offending.

The following conditions should be met before a caution can be administered:

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction
- the offender must admit the offence
- the offender must understand the significance of the caution and give informed consent to being cautioned

(Note: these guidelines reflect National Standards for Cautioning (Revised)).

3.2 PROSECUTION

The Council can also institute criminal proceedings against a claimant. Prosecution will be considered in the most serious cases.

The Council can prosecute for a number of different offences. When deciding what a defendant should be charged with, the Council will select charges which:

- reflect the seriousness of the offending;
- give the court adequate sentencing powers; and
- enable the case to be presented in a clear and simple way.

The Council will not charge more offences than are necessary.

When considering which course of action is the most appropriate the Council will consider the factors outlined below. This is called “the Public Interest Test”

4 The public interest test

The more serious the offence is the more likely it is that a prosecution should take place however the Council will weigh public interest factors carefully.

The following lists of public interest factors are not exhaustive. The factors that apply will depend on the facts in each case.

4.1 PUBLIC INTEREST FACTORS IN FAVOUR OF PROSECUTION:

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest.

A prosecution is likely to be needed if:

- a conviction is likely to result in a significant sentence
- the defendant was in a position of authority or trust
- the evidence shows that the defendant was a ringleader or organiser of the offence
- there is evidence which shows that the offence was premeditated
- there is evidence that shows that the offence was carried out by more than one person acting alone
- the defendant's previous convictions or cautions are relevant to the present offence
- the evidence shows that there was an element of corruption
- there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- the defendant is alleged to have committed the offence whilst under an order of the Court
- the offence, although not serious in itself, is widespread in the area where it was committed
- the offence was committed over a significant period of time
- the feature that was altered or destroyed was important
- the feature cannot be replaced or replicated

4.2 PUBLIC INTEREST FACTORS AGAINST PROSECUTION

A prosecution is likely to be less needed if:

- the court is likely to impose a very small or nominal penalty
- the offence was committed as the result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- there has been a long delay between the offence taking place and the date of the trial UNLESS the offence is serious, the delay has been caused in part by the defendant, the offence has only recently come to light or the complexity of the offence has meant that there has been a long investigation
- a prosecution is likely to have a very bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- the defendant is elderly or is, or was at the time of the offence suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated; or
- the defendant has put right the loss or harm that was caused (but the defendant must not avoid prosecution simply because they have repaired the damage)

Conclusion

This policy is designed to ensure that everyone knows the principles the Council applies when carrying out its work in relation to prosecution of listed building offences.

The policy is intended to ensure that defendants involved in the criminal justice system are treated fairly but prosecuted (or dealt with in other ways) effectively.

APPENDIX 4

Sample Decision to Prosecute

[Case name, building details and name of accused.]

1 Evidence and the public interest test

I have read and considered in detail the publication “Code For Crown Prosecutors” (Crown Copyright 2004) (“the Code”). [This authority] does not have a prosecution policy as its powers are rarely used. I therefore believe the Code to contain the appropriate guidance to assist me in coming to a decision as Prosecutor whether or not to proceed with a prosecution in this case.

I have considered the Full Code Test in Section 5 of the Code:

- *The Evidential Test*: I have considered all the evidence available in this case, its admissibility and its reliability. I am satisfied that there is a realistic prospect of conviction in that I consider it more likely than not that a court would convict in the event of a prosecution being brought.
- *The Public Interest Test*: I have carefully considered the public interest factors set out in the Code together with what I consider to be public interest factors in the particular circumstances of this case. In particular, I have taken account of the statement in Department of the Environment Planning Policy Guidance Note 15 that it is Government policy to secure the preservation of historic buildings; of the profit the accused stands to make from the alleged offence; of the likely deterrent effect of a prosecution in this case and the age and state of health of the accused. Balancing all these factors, I conclude that the public interest test is passed.

I have considered the option of administering a caution as an alternative to prosecution. However, given particularly the seriousness of the offence, the potential profit the accused stands to make from the alleged offence and the desirability in the public interest of deterring others from demolishing listed buildings, I do not consider that option appropriate in this case.

Subject to a consideration of the accused’s human rights, I am satisfied that a prosecution should be brought under s.9(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 alleging unlawful demolition and in the alternative unlawful alterations.

HUMAN RIGHTS ISSUES

I have also considered the accused's Human Rights.

I am satisfied that this authority is a "public authority" for the purposes of s.6(3) of the Human Rights Act 1998. As such, it must not act in a manner incompatible with the accused's human rights.

I have considered the following rights in the Convention:

- **Article 1 Protocol 1** – protection of property
- **Article 6** – right to a fair hearing within a reasonable time
- **Article 8** – right to respect for private and family life
- **Article 14** – prohibition of discrimination

In particular I have considered whether, prima facie, a prosecution may infringe Art 8 and/or Art 1 of protocol 1. I do not consider that the accused is deprived of his property by the listed building controls over his property. The Courts have held (in *Sporrong and Loonroth v Sweden*⁶) that the planning system does not breach human rights provided that the land is not rendered worthless by the restriction. In this case, the evidence indicates that the property had a substantial positive value (in excess of £1 million) even taking account of the need for works to be done to it.

I have gone on to consider the position if there is, prima facie, an interference with the accused's rights under Art 8 and Art 1 Protocol 1. Neither of these Articles is absolute. Therefore interference with them may be justified in terms of the rules of proportionality. An interference may be justified provided it is

- Lawful
- Pursues a legitimate aim (in this case of securing the preservation of listed buildings at large) and
- Does not involve discrimination under Art 14.

I am satisfied that the decision to prosecute (above) is:

- Lawful
- not arbitrary or unfair
- is based only on relevant considerations set out in detail above
- is capable of achieving the objective of securing the preservation of listed buildings generally and

⁶ (1985) 7 E.H.R.R. CD256

- is no more than is necessary to achieve that objective
- does not involve discrimination of the kind envisaged by Art 14. (I am aware that the accused argues that listed building controls discriminate against the owners of listed buildings vis a vis owners of unlisted buildings. That amounts to an argument that the 1990 Act is incompatible with the Convention. I consider that a matter for Government not for me.)

Finally, I have considered Article 6. I have had regard to the guidance in the Code on delay and consider that given the seriousness of the offence and the fact that much of the delay has been occasioned by the defendant deciding whether or not he would submit to an interview under caution are factors which weigh heavily in favour of proceeding.

Taking all these matters into account, I have decided to commence prosecution proceedings by signing the Informations and Summonses prepared for me.

.....

Head of Legal Services

Date:

APPENDIX 5

Sample Informations

INFORMATION AND SUMMONS
MAGISTRATES' COURT ACT 1980, s.1
MAGISTRATES' COURT RULES 1981, r.4 and r98
***** MAGISTRATES' COURT

Date:

To the Accused: Mr ***** *****

Of: ADDRESS

Information has this day been laid before me the undersigned Justice of the Peace/ Clerk to the Justices by ***** *****, [*Head of Legal Services*], for and on behalf of and duly authorised by the [***** *District*] Council of [*address*] who states:

THAT, at some time between the **th August 20** and the **th September 20**, you did execute, or cause to be executed, works for the alteration of the Grade II listed building [*known as ******,] located at [*address*], in a manner which affected its character as a building of special architectural interest by [*description of alteration*], without having first obtained listed building consent from the local planning authority, contrary to Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Such breach constitutes an offence by virtue of Section 9(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

.....
INFORMANT

The Information of: [Head of Legal Services or other officer authorised to commence a prosecution]

Address: [Local Authority Address]

Who states that the accused committed the offence of which particulars are given above.

YOU ARE THEREFORE SUMMONED to appear before the **** Magistrates' Court sitting at *****, on the day of 200* atam/pm to answer the said Information.

DATED THIS DAY OF 200*

.....
Justice of the Peace/ Clerk to the Justices

DEMOLITION

INFORMATION AND SUMMONS
MAGISTRATES' COURT ACT 1980, s.1
MAGISTRATES' COURT RULES 1981, r.4 and r 98
***** MAGISTRATES' COURT

Date:

To the Accused: Mr ***** *****

Of: ADDRESS

Information has this day been laid before me the undersigned Justice of the Peace/Clerk to the Justices by ***** ***** , [*Head of Legal Services*], for and on behalf of and duly authorised by the [***** *District*] Council of [*address*] who states:

THAT, at some time between the **th August 20** and the **th November 20**, you did demolish, or cause to be demolished, the Grade II listed building [*formerly known as ******], located at [*address*], without having first obtained listed building consent from the local planning authority, contrary to Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Such breach constitutes an offence by virtue of Section 9(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

.....
INFORMANT

The Information of: [Head of Legal Services or other officer authorised to commence a prosecution]

Address: [Local Authority Address]

Who states that the accused committed the offence of which particulars are given above.

YOU ARE THEREFORE SUMMONED to appear before the ***** Magistrates' Court sitting at ***** , on the day of 200* atam/pm to answer the said Information.

DATED THIS DAY OF 200*

.....
Justice of the Peace/ Clerk to the Justices

APPENDIX 6

Checklist for Listed Building Prosecutions

Pre-Investigation

- Adopted prosecution policy and/or Code for Crown Prosecutors
- Delegated authority to appropriate officers to commence criminal proceedings
- Assigned roles for Investigation and Prosecution team members
- Monitoring of listed building works via, for example, Building Regulation notices, Local charge searches, walk-about with members and public complaints
- Prioritisation of listed building complaints for enforcement officers

Investigation

- Evidence required that:
 - The building is listed
 - Works have been carried out
 - The works are unauthorised
 - The works have affected the historic or architectural character of the building
 - The defendant carried out the works or caused the works to be carried out – who is the defendant?
- Evidence re sentence – degree of damage, financial gain, defendant's culpability, defendant's means
- Consider whether RIPA authorisation required for directed surveillance
- Consider whether interviews should take place under caution (PACE Code C)
- Duty to retain materials gathered in the investigation (CPIA 1996)

Prosecution

- Delegated authority
- Decision to prosecute – Prosecution policy and/or Code for Crown Prosecutors
- Information/Summons
- Advance Information
- Disclosure – continuous review
- Advocacy and trial preparation
- Sentencing and Costs – consider whether Newton hearing required