

Listed buildings and private owners

Fine buildings are one of the glories of a nation. There are always protests when such buildings are altered or demolished, and many of us aspire to live in an historic house. Government has therefore decreed that a list of buildings of special architectural or historic interest be prepared by the Historic Buildings and Monuments Commission – these are “Listed Buildings”.

“Consent is required for works to associated buildings”

Implications

But what are the implications? The recognition that a building is special brings restrictions and responsibilities. Firstly, where a listed building is not being properly preserved the local planning authority has power to acquire it by compulsory purchase. This is very rare since most authorities do not have the funds available to acquire a building and maintain it.

out of any works (including demolition) that affect the character of a listed building as a building of special architectural or historic interest.

What is affected by the obligation to obtain listed building consent?

Any works affecting the character of a listed property as a building of special architectural or historic interest must have listed building consent before they are carried out. Most obviously, works to the listed building itself require consent. Consent is also required for works to buildings associated with listed buildings: in one case timber window frames of a stable block some way from a listed hotel were replaced with STET double glazing. The court held that consent was required. Further, works or installations proposed in the grounds, such as new fencing, might require consent. A particular point to watch is where a seller of property wishes to remove items such as statues: even if they are not listed consent is probably required.



This possibility is ignored for the purposes of this article. Secondly, it is necessary to obtain consent from the local planning authority to the carrying

“Failure to obtain consent is a criminal offense”

What works need consent?

While listed buildings are graded in three categories (Grade I, Grade II* and Grade II) the grade is irrelevant when considering how works affect the character of a building. For any grade, consent may be required for both internal and external works.

Examples of works that the courts consider may affect the character of a listed building include new shutters, new double glazing, the replacement of stained glass by clear glass, the painting of previously unpainted stonework, and using different coloured paint or plaster. Repairs using new materials may affect the character of the building. In one case a roof of asbestos slates only replaced a mixture of welsh and asbestos slates: consent was required. If the materials are



“authentic” or “traditional” then consent might not be necessary. Conservation officers certainly favour this approach. At the extreme, Government Planning Guidance indicates that listed building consent may be required for the cleaning of a listed building.

Penalties and enforcement

It is easy to overlook, and tempting to ignore, the need to obtain consent, especially for more trivial works. However, a failure to obtain consent where necessary is a criminal offence. Further, enforcement action can be taken at any time, however long ago the original works were carried out.

The owner of a listed building can be required to reinstate the building to the state it was in before the works were undertaken, even if the original works were carried out by someone else. The only crumb of comfort is that in many cases local authorities do not have detailed records of the condition of the building at the time of listing, especially records relating to the interior

Advantages

Are there compensating advantages to owning a listed building? One is that it



may be possible to recover VAT charged on the costs of owning a listed building. It may also be possible to claim compensation where the listing prevents a proposed use or development. But the owner's real compensation is that they own a piece of history.

Macfarlanes advise on all legal issues relating to property. If you would like any further advice then please contact [Tristan Ward](mailto:Tristan.Ward@macfarlanes.com) on 020 7831 9222 or tristan.ward@macfarlanes.com