



2011 CHAPTER 25

PART 4

ADDITIONAL PLANNING CONTROL

CHAPTER 1

LISTED BUILDINGS AND CONSERVATION AREAS

Listed buildings

Lists of buildings of special architectural or historic interest

80.—(1) The Department—

(a) shall compile lists of buildings of special architectural or historic interest; and

(b) may amend any list so compiled.

(2) In considering whether to include a building in a list compiled under this section the Department may take into account not only the building itself but also—

(a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and

(b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building which consists of a man-made object or structure fixed to the building or which forms a part of the land and which is comprised within the curtilage of the building.

(3) Before compiling or amending any list under this section, the Department must consult with the appropriate council and the Historic Buildings Council.

(4) As soon as may be after any list has been compiled under this section, or any amendments of such a list have been made, the Department must cause a copy of so much of the list, or so much of the amendments, as relates to the district of a council to be deposited with the clerk of that council.

(5) As soon as may be after the inclusion of any building in a list under this section, whether on the compilation of the list or by its amendment, or as soon as may be after any such list has been amended by the exclusion of any building from it, the Department must serve a notice in the prescribed form on every owner and occupier of the building, stating that the building has been included in, or excluded from, the list, as the case may be.

(6) The Department must keep available for inspection by the public at all reasonable hours copies of lists and amendments of lists compiled or made under this section.

(7) In this Act “listed building” means a building which is for the time being included in a list compiled under this section; and, for the purposes of the provisions of this Act relating to listed buildings, the following shall be treated as part of the building—

- (a) any object or structure within the curtilage of the building and fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st October 1973.

Temporary listing: building preservation notices

81.—(1) If it appears to a council that a building in its district which is not a listed building—

- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

it may serve on the owner and occupier of the building a notice (in this Act referred to as a “building preservation notice”).

(2) A building preservation notice served by a council must—

- (a) state that the building appears to the council to be of special architectural or historic interest and that it has requested the Department to consider including it in a list compiled under section 80; and
- (b) explain the effect of subsections (3) to (5) and section 83.

(3) A building preservation notice—

- (a) comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and

- (b) subject to subsection (4), remains in force for 6 months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice ceases to be in force if the Department—
 - (a) includes the building in a list compiled under section 80, or
 - (b) notifies the council in writing that it does not intend to do so.
- (5) While a building preservation notice is in force with respect to a building, the provisions of this Act (other than section 103) shall have effect in relation to the building as if it were a listed building.
- (6) If, following the service of a building preservation notice, the Department notifies the council that it does not propose to include the building in a list compiled under section 80, the council must immediately give notice of that decision to the owner and occupier of the building.
- (7) Following a notification by the Department under subsection (4)(b) no further building preservation notice in respect of the building shall be served by the council within the period of 12 months beginning with the date of the notification.

Temporary listing in urgent cases

- 82.—**(1) If it appears to a council to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.
- (2) The affixing of a notice under subsection (1) shall be treated for all the purposes of section 81, this section, section 83 and sections 86 to 101 as service of the notice.
- (3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

Lapse of building preservation notices

- 83.—**(1) This section applies where a building preservation notice ceases to be in force by virtue of—
- (a) the expiry of the 6 month period mentioned in subsection (3)(b) of section 81; or
 - (b) the service of a notification by the Department under subsection (4)(b) of that section.
- (2) The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 85 or section 147 (as applied by section 157(6)) committed with respect to the building while it was in force.

(3) Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.

(4) Any listed building enforcement notice served by the council while the building preservation notice was in force shall cease to have effect.

(5) Any proceedings relating to a listed building enforcement notice served by the council while the building preservation notice was in force shall lapse.

(6) Notwithstanding subsection (4), subsections (1) and (2) of section 146 (execution and costs of works required by enforcement notice), as applied by section 157(6), shall continue to have effect as respects any expenses incurred by the council or the owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.

Issue of certificate that building is not intended to be listed

84.—(1) Where—

- (a) an application has been made for planning permission for any development involving the alteration, extension or demolition of a building; or
- (b) any such planning permission has been granted,

the issue by the Department, on the application of any person, of a certificate stating that it does not intend to list the building shall—

- (i) preclude the Department, for a period of 5 years from the date of issue of the certificate, from exercising in relation to that building any of the powers conferred on it by section 80; and
- (ii) preclude a council for that period from issuing a building preservation notice in relation to it.

(2) An application for the issue of a certificate under subsection (1) must be made to the Department in writing and section 42 shall apply, with the appropriate modifications, in relation to an application for the issue of a certificate under subsection (1) as it applies in relation to an application for planning permission.

(3) Before issuing any certificate under subsection (1), the Department must consult with the Historic Buildings Council and the council for the district in which the building is situated.

Control of works for demolition, alteration or extension of listed buildings

85.—(1) Subject to this Part, if a person executes or causes 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, and the works are not authorised under subsection (2), that person shall be guilty of an offence.

Status: This is the original version (as it was originally enacted).

(2) Works for the demolition, alteration or extension of a listed building are authorised under this Part if—

- (a) written consent for the execution of the works has been granted by a council or the Department and the works are carried out in accordance with the terms of the consent and any conditions which may be attached to the consent; and
- (b) in the case of demolition—
 - (i) a person duly authorised in writing by the Department has been afforded reasonable access to the building for a period of at least one month following the grant of listed building consent and before the commencement of the works, for the purpose of recording it; or
 - (ii) the Department has stated in writing that it has completed its recording of the building or that it does not wish to record it.

(3) If written consent is granted by a council or the Department for the retention of works for the demolition of a listed building, or for its alteration or extension, which have been executed without consent under subsection (2), the works are authorised under this Part from the grant of the consent under this subsection.

(4) Consent under subsection (2) or (3) is referred to in this Act as “listed building consent”.

(5) Without prejudice to subsection (1), 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 that person shall be guilty of an offence.

(6) A person guilty of an offence under subsection (1) or (5) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both,

and in determining the amount of any fine imposed on a person convicted of an offence under subsection (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to that person in consequence of the offence.

(7) In proceedings for an offence under this section it shall be a defence to prove the following matters—

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- (b) that 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) that the works carried out were limited to the minimum measures immediately necessary; and
 - (d) that notice in writing justifying in detail the carrying out of works was given to the council as soon as reasonably practicable.
- (8) This section shall not apply to works for the demolition, alteration or extension of—
- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works; or
 - (b) a building for the time being included in the schedule of monuments compiled and maintained under Article 3 of the [Historic Monuments and Archaeological Objects \(Northern Ireland\) Order 1995 \(NI 9\)](#);
- and for the purposes of this subsection, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of that office shall be treated as not being an ecclesiastical building.
- (9) Subsection (8) shall cease to have effect on such date as the Department may by order appoint.

Applications for listed building consent

- 86.—**(1) Any application to a council for listed building consent—
- (a) must be made in such form and in such manner as may be prescribed; and
 - (b) must include such particulars, and be verified by such evidence, as may be required by the regulations or by any direction given by the council under the regulations.
- (2) Regulations must require an application for listed building consent of such description as is prescribed to be accompanied by such of the following as is prescribed—
- (a) a statement about the design principles and concepts that have been applied to the works in relation to which the application is made;
 - (b) a statement about how issues relating to access to the building have been dealt with.
- (3) The form and content of a statement mentioned in subsection (2) is such as is prescribed.
- (4) Provision may be made by regulations with respect to—
- (a) requirements as to publicity in relation to applications for listed building consent;
 - (b) the time within which such applications are to be dealt with by councils or the Department;
 - (c) requirements as to consultation in relation to such applications;

- (d) prohibiting the determination of such applications during such period as is prescribed;
- (e) requirements on the council or, as the case may be, the Department to take account of responses from persons consulted and to notify the persons responding of the decision of the council or the Department on the application.

(5) Subsections (1) and (4)(b) shall apply to applications to a council or the Department for any approval of the council or, as the case may be, the Department required by a condition imposed on a grant of listed building consent as they apply to applications for listed building consent.

Notification of applications for listed building consent to certain persons

87.—(1) Section 42 shall, with appropriate modifications, apply to applications for listed building consent in relation to any building as it applies to applications for planning permission in relation to any land.

(2) In the application of section 42(7) by virtue of subsection (1) for the words “specified in a development order” and “form so specified” there shall be substituted the words “prescribed” and “prescribed form”.

(3) References in the following provisions of this Part to section 42 are to that section as it applies by virtue of this section.

Call in of certain applications for listed building consent to Department

88.—(1) The Department may give directions requiring applications for listed building consent to be referred to it instead of being dealt with by councils.

(2) A direction under subsection (1) may relate either to a particular application, or to applications in respect of such buildings as may be specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for listed building consent is an application to which section 235 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) An application in respect of which a direction under this section has effect shall be referred to the Department accordingly.

(5) For the purpose of considering representations made in respect of an application for listed building consent to which section 235 applies which has been referred to it under this section, the Department must, subject to any rules made under section 235(2) or (5), cause a public local inquiry to be held by—

- (a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(6) For the purpose of considering representations made in respect of an application for listed building consent referred to it under this section, other than an application mentioned in subsection (5), the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) Where a public local inquiry is not held under subsection (6), the Department must, before determining the application, serve a notice on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(8) In determining an application for listed building consent referred to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(9) The decision of the Department on an application for listed building consent referred to it under this section shall be final.

Duty to notify Department of applications for listed building consent

89.—(1) If a council to which an application is made for listed building consent intends to grant listed building consent it must first notify the Department of the application, giving particulars of the works for which the consent is required.

(2) The Department may within the period of 28 days beginning with the date of such a notification—

(a) direct the reference of the application to it under section 88; or

(b) give notice to the council that it requires further time in which to consider whether to require such a reference.

(3) The council must not grant listed building consent until—

(a) the period mentioned in subsection (2) has expired without the Department directing the reference of the application to it or giving the council notice under paragraph (b) of that subsection; or

(b) the Department has notified the council that it does not intend to require the reference of the application.

Directions concerning notification of applications, etc.

90.—(1) The Department may direct that, in the case of such descriptions of applications for listed building consent as it may specify, section 89 shall not apply.

(2) Where a direction is in force under subsection (1) in respect of any description of application, councils may determine applications of that description in any manner they think fit, without notifying the Department.

(3) Where a direction is in force under subsection (1), the Department may direct a council that section 89 shall nevertheless apply—

- (a) to a particular application for listed building consent; or
- (b) to such descriptions of application for listed building consent as are specified in the direction;

and such a direction has effect in relation to any such application which has not been disposed of by the council by its granting or refusing consent.

(4) Without prejudice to sections 86, 88 and 89, the Department may give directions to councils requiring councils, in such cases or classes of case as may be specified in the directions, to notify the Department and such other persons as may be so specified—

- (a) of any applications made to the councils for listed building consent; and
- (b) of the decisions taken by the councils on those applications.

(5) Directions under subsection (1) or (4) may be given to councils generally or to particular councils or descriptions of councils.

Decision on application for listed building consent

91.—(1) Listed building consent may be refused, or granted either unconditionally or subject to conditions.

(2) In considering whether to grant planning permission for development which affects a listed building or its setting, and in considering whether to grant listed building consent for any works, a council or, as the case may be, the Department must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

(3) Without prejudice to sections 94 and 98, any grant of listed building consent shall (except in so far as the consent otherwise provides) have effect for the benefit of the building and of all persons for the time being having an estate therein.

(4) Without prejudice to the generality of subsection (1), the conditions subject to which listed building consent may be granted include conditions with respect to—

- (a) the preservation of particular features of the building either as part of it or after severance from it;
- (b) the making good, after the works are completed, of any damage caused to the building by the works; and
- (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.

(5) Listed building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the council or, as the case may be, the Department.

(6) Listed building consent for the demolition of a listed building may be granted subject to a condition that the building shall not be demolished before a contract for the carrying out of works of redevelopment of the site has been made, and planning permission has been granted for the redevelopment for which the contract provides.