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STATUTORY INSTRUMENTS

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**1991 No. 1220**

**The Planning(Northern Ireland) Order 1991**

**PART V**

**ADDITIONAL PLANNING CONTROL**

*Buildings of special architectural or historic interest*

**Lists of buildings of special architectural or historic interest**

**42.**—(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 Article 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 Article, the Department shall consult with the Historic Buildings Council and with the appropriate district council.

(4) As soon as may be after any list has been compiled under this Article, or any amendments of such a list have been made, the Department shall cause a copy of so much of the list, or so much of the amendments, as relates to the area of a district 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 Article, 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 shall 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 shall keep available for inspection by the public at all reasonable hours copies of lists and amendments of lists compiled or made under this Article.

(7) In this Order “listed building” means a building which is for the time being included in a list compiled under this Article; and, for the purposes of the provisions of this Order 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.

### **Issue of certificate that building is not intended to be listed**

43.—(1) Where—

- (a) 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 preclude the Department, for a period of five years from the date of issue of the certificate, from exercising in relation to that building any of the powers conferred on it by Article 42.

(2) An application for the issue of a certificate under paragraph (1) shall be made to the Department in writing and Article 22 shall apply in relation to an application for the issue of a certificate under paragraph (1) as it applies in relation to an application for planning permission.

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

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

44.—(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 paragraph (2), he shall be guilty of an offence.

(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 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 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 paragraph (2), the works are authorised under this Part from the grant of the consent under this paragraph.

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

(5) Without prejudice to paragraph (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 he shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (1) or (5) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine and in determining the amount of any fine imposed on a person convicted on indictment the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence.

(7) In proceedings for an offence under this Article 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 the works was given to the Department as soon as reasonably practicable.
- (8) This Article 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 which is the subject of a guardianship or protection order under the Historic Monuments Act (Northern Ireland) 1971; or
  - (c) a building for the time being included in a schedule of historic monuments published by the Department under that Act;

and for the purposes of this paragraph, 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 his office shall be treated as not being an ecclesiastical building.

- (9) Paragraph (8) shall cease to have effect on such date as the Department may by order appoint.

#### **Provisions supplementary to Article 44**

**45.**—(1) 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, the Department shall 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.

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

(3) Without prejudice to the generality of paragraph (2), 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 therefrom;
- (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.

(4) 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 Department.

(5) 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.

(6) Schedule 1 shall have effect in relation to applications for listed building consent and appeals against decisions on such applications.

### **Duration of listed building consent**

46.—(1) Subject to the provisions of this Article, every listed building consent shall be granted subject to the condition that the works to which it relates must be begun not later than the expiration of—

- (a) five years beginning with the date on which the consent is granted; or
- (b) such other period (whether longer or shorter) beginning with the said date as the Department may direct, being a period which the Department considers appropriate having regard to any material considerations.

(2) If listed building consent is granted without the condition required by paragraph (1), it shall be deemed to have been granted subject to the condition that the works to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.

(3) Nothing in this Article applies to any consent to the retention of works granted under Article 44(3).

### **Revocation or modification of listed building consent**

47.—(1) If it appears to the Department, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify listed building consent in respect of any works to a building, being consent granted on an application made under this Part, the Department may, subject to paragraphs (2) to (4), by order revoke or modify the consent to such extent as (having regard to those matters) it considers expedient.

(2) Before making an order under this Article the Department shall serve notice on the owner and occupier of the building affected and on any other person who in its opinion would be affected by the order; 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 thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(3) The power conferred by this Article to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

(4) Where the Department makes an order under this Article it shall serve a notice on any person mentioned in paragraph (2) stating the general effect of the order.

### **Applications to determine whether listed building consent required**

48.—(1) If any person who proposes to execute or cause to be executed any works to a listed building wishes to have it determined whether those works would involve the alteration or extension of the building in any manner which would affect its character as a building of special architectural or historic interest, he may apply to the Department to determine that question.

(2) The provisions of paragraphs 1(1), 7 and 8 of Schedule I shall, subject to any necessary modifications, apply in relation to any application under this Article, and to the determination thereof, as they apply in relation to applications for listed building consent and to the determination of such applications.

(3) Where an application for listed building consent is made to the Department and it appears to the Department that the execution of the works specified in the application does not involve the alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest, the Department may treat the application for listed building consent as an application under this Article and may make an appropriate determination.

### **Acts causing or likely to result in damage to listed buildings**

**49.**—(1) Where a building, not being a building excluded by paragraph (8) of Article 44 from the operation of that Article, is included in a list compiled under Article 42, then, if any person who, but for this Article, would be entitled to do so—

- (a) does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works); and
- (b) does or permits the act with the intention of causing such damage;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In paragraph (1) “excepted works” means—

- (a) works authorised by planning permission granted in pursuance of an application under this Order; or
- (b) works for which listed building consent has been given under this Order.

(3) Where a person convicted under this Article fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues.