IHBC GUIDANCE NOTES

Use of injunctions in heritage cases in England and Wales

GN2015/2
Jun 2015

This is one of a series of occasional Guidance Notes published by The Institute of Historic Building Conservation (IHBC). IHBC Guidance Notes offer current and recent guidance into topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice. The Notes necessarily reflect knowledge and practice at the time they were developed, while the IHBC always welcomes new case examples, feedback and comment to research@ihbc.org.uk for future revisions and updates.

Executive Summary

1. This Note aims to assist conservation specialists in England understanding the mechanism of injunctions in more detail in order to enable a more effective dialogue with their legal colleagues. [1]

2. It has immediately come to light that unauthorised works to a listed building are taking place. A request to stop work has been ignored. A Listed Building Stop Notice does not exist. What can be done as a matter of urgency?

3. Local authorities are often reluctant to use injunctions in relation to inappropriate and illegal works to listed buildings because the powers available seem draconian and a last resort when all other conventional enforcement remedies have been exhausted. It would appear however, that the Courts are quite willing to grant injunctions when supported by cogent and convincing evidence. Consequently an injunction may be the quickest, most effective way to seek compliance in heritage cases under some circumstances where urgency is paramount and where it may represent the most economic and expedient use of scarce resources.

© IHBC Copyright 2015

Introduction

4. Where there has already been a breach of listed building control, a local planning authority will usually consider options requiring the breach to be regularized by a retrospective application for consent; or by serving a Listed Building Enforcement Notice (LBEN); or by instituting proceedings for a criminal prosecution. Because these alternatives are available, heritage legislation does not currently provide for a Listed Building Stop Notice in England and Wales.

5. Where action against the breach is urgent and may be continuing, or where there is good reason to suppose one is about to occur; authorities should consider seeking an injunction to promptly halt or prevent it from happening.

6. For listed building cases, powers to allow this were created specifically in the Planning and Compensation Act 1991 in order to replicate such provisions in planning legislation.[2] It remains uncommon for injunctions to be used in planning cases and even less so in heritage enforcement but the powers could be used more often in future as an effective heritage compliance tool if their purpose was more widely understood by conservation specialists.

7. Use of injunctions was clearly recommended in paragraph 3.48 of PPG 15 dealing with enforcement. [3] The fact that this advice was withdrawn in 2012 without being replaced by any equivalent text does not in any way invalidate the soundness of that original advice.

8. Although authorities may find a written warning may be sufficient a deterrent, a judgment has to be made about the likelihood of this having the desired effect. Injunctions can be obtained from the Courts speedily and without the actual or expected offender being required to be present (and there may be some cases where the offender is not known, see Section **Cases where the identity of the person is unknown** below).

9. Local planning authorities may not be the only parties in the planning process to initiate injunctions, and there have been cases where the authority itself has been subject to an injunction from, for example, an amenity society (see **Some case examples** below).

The alternative to an Injunction: A worst-case scenario for a local planning authority regarding heritage enforcement action

10. Where a local planning authority identifies a breach of listed building

© IHBC Copyright 2015

control it may consider it appropriate to serve a LBEN. This will usually require a written report and a Council committee resolution prior to the preparation and service of the Notice. There recipient has a wide variety of grounds on which to appeal against the Notice and it is not an uncommon for the appeal process to be deliberately delayed until the last possible moment. [4]

11. Proofs of evidence are then produced by both sides, followed by a further hiatus until the Planning Inspectorate deals with the appeal against the Notice. Written submissions, informal hearings, or inquiries all operate to different timescales, none of which are very prompt. Finally the appeal process ends with the Inspectorate's issuing of a decision letter dismissing the appeal and upholding the Notice.

12. The LBEN will have specified a timescale within which it would be considered reasonable for the recipient to resolve the breach, but this deadline expires without the necessary works being done.

13. As a criminal offence may have been committed, a warning is then issued stating that the local authority will commences proceedings for lack of compliance. When the case eventually comes before magistrates, the defendant pleads 'not guilty' and to delay matters further elects for a Crown Court trial before a jury. There is another delay while the case is scheduled. Months later the defendant is convicted but the fine is only modest.

14. By this stage, a considerable amount of time will already have elapsed and the local authority will have committed significant resources to the case but the breach of listed building control will have continued unabated. Further court action is initiated because the Notice remains un-complied with, resulting in conviction for second and subsequent offences. Theses also take some time to come to court and the defendant, having received only a modest fine for the first offence, receives further unexceptional penalties from sympathetic magistrate until, after a period of attrition and further court appearances, the breach is finally resolved.

15. While this scenario may be untypical, it demonstrates how protracted the resolution of listed building breaches can be. The administration of justice must be balanced and impartial but the current legislation allows the transgressor to draws out the process to its maximum permissible extent.

© IHBC Copyright 2015

IHBC
INSTITUTE OF HISTORIC BUILDING CONSERVATION

Legislation

16. The statutory basis for bringing an application for an injunction is found in S.44A of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. [5]

17. This provides:

(a) where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
(b) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
(c) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
(d) The references in subsection (1) to a local planning authority include, as respects England, the Commission. [6]
(e) In this section 'the court' means the High Court or County Court. [7]

Initial considerations

18. Potentially urgent cases by their nature do not allow much time for 'mature reflection' [8] but before going too far in the direction of an injunction, officers of the local planning authority should quickly consider whether:

(a) account has been taken of what appear to be all the relevant considerations, including the personal circumstances of those affected;
(b) that clear evidence of a breach of listed building control exists, has already occurred, or is immediately likely to occur; and,
(c) the imposition of an injunction is a proportionate remedy in the particular circumstances.

19. It is therefore good practice for the authority to make its own best assessment (obtaining Counsel's opinion if necessary) of the likely outcome before deciding to initiate proceedings so as to minimized exposure to the possible incurring wasted costs from abortive proceedings. This risk however, also needs to be weighed against the necessity for speed if the threat to the integrity of the listed building is urgent. [9]

© IHBC Copyright 2015

IHBC · INSTITUTE · OF · HISTORIC · BUILDING · CONSERVATION

Types of injunction

Ex parte injunctions

20. These are appropriate when the potential threat of harm to a heritage asset (typically a listed building or scheduled monument) is so immediate and so severe that even giving the other party notice of the application for the injunction and an opportunity oppose it in court is not practical and risks damage to or loss of the heritage asset in question.

21. *Ex parte* literally means one-sided. An authority seeks an *ex parte* injunction without the involvement or even notification to the other most directly affected party. Courts' rules require judicial safeguards to operate and a judge must be convinced that such immediate action is clearly warranted - as by definition there will not be even minimal due legal process afforded to the other side. An *ex parte* injunction hearing is rarely an *actual* hearing as such but a judge, in permitting such an application to be presented in Chambers, is entitled to expect a full and clear presentation of the evidence (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7710/321538.pdf).

22. If a local planning authority has good reason to suspect that works may for example be done to a listed building or a building subject to a Building Preservation Notice over a bank holiday, it is likely to be prudent to make the application *ex parte* and then serve it on the owner(s) of the site very promptly. The injunction will only be temporary allowing the defendants to return at a later date (possibly chastened by the service of the injunction) where they can make their case as to whether the injunction was properly granted or should continue.

A preliminary injunction

23. This is the most common form of restraint in less urgent cases. It differs from an ex parte injunction by giving the affected party notice that the application has been made and the opportunity to appear and be heard at a formal Court hearing where both parties may present evidence.

24. These are sometimes referred to as *'inter partes'* proceedings. Unlike *ex parte* injunctions, a preliminary injunction will almost always involve presentation of evidence in open court. This is not a trial as such but the hearing is of critical important because it sets the scene for any subsequent potential litigation. In some cases, these hearings (and the

© IHBC Copyright 2015

judges' responses to them) constitute the entirety of the case.

25. In listed building cases where urgency is usually the principal consideration, the hearing will in all likelihood take place without the luxury of a significant amount of preparation time or the benefit of full documentation or testimony from respondent. An authority seeking the injunction therefore needs to ensure clarity about the issues of the case and completely prepared to present it at the hearing. If for any reason some of the issues are not clear-cut, consideration could also be given to securing a Court Order, enabling further evidence to be extracted (sometimes as late as the day before the hearing) so enable the case to be conducted expeditiously.

Procedure

26. For local authorities, obtaining an urgent injunction itself should be relatively straightforward. Drafting of an injunction application needs to be done with care as well as speed to ensure it can be enforced; and can be issued to the Court as a witness statement articulating clearly the local authority's concerns about the fundamental nature of the breach of listed building control and the material harm that is being caused or it is anticipated will be caused, so that the Court is satisfied that the application is soundly based. [10]

27. In preliminary injunction cases, each defendant must personally be served with a copy of the witness statement and notice of the hearing by the local authority. The presiding Judge will expect to see evidence that this has been done, giving enough time (usually about 14 days) between the service and the hearing to enable the recipient to seek legal advice and prepare a defence. Where the case is urgent a shorter time might be considered appropriate to ensure no further damage to the heritage asset in question.

28. If urgency is brought about by prior inaction on the part of the local planning authority, this is unlikely to attract much sympathy with the Court. Furthermore proceeding without notice should not be confined to bare assertions just because a proper analysis of the problem and a reasoned explanation supported by references to the evidence has not been done.

29. An authority making an application without notice is under a 'compelling duty' to make full and frank disclosure. [11] In summary this amounts to:

© IHBC Copyright 2015

(a) showing the utmost duty of good faith and presenting the case fully and fairly;
(b) the witness statement in support of the application ensuring it summarises the case and the evidence on which it is based;
(c) the key points for and against the application are identified (not reliance on general statements) nor the mere presentation of un-informing documents;
(d) explaining the nature of the alleged (or proposed unauthorised work to the listed building; the facts being relied on by the local authority before the injunction application was made, and the identification of any likely defences;
(e) disclosure of all the facts, or matters, which reasonably could be taken to be material by the judge deciding whether to grant the application; (what matters are material to the application being a matter for the Court, not the applicant).

30. It is the particular duty of the Council's advocate to see that the correct legal procedures and forms are used; that a written witness and a properly drafted order are prepared by him personally and lodged with the Court before the oral hearing; and that at the hearing the Court's attention is drawn by him to any unusual features of the evidence, to the heritage legislation under S.44A and to the formalities and procedure to be used.

31. Furthermore, it is incumbent on the Council to provide full notes of the hearing to the recipient affected by the injunction, as soon as reasonably practicable. This enables the respondent to ascertain whether or not the duty of full and frank disclosure has been complied with and helps remedy (as best it can), the absence of the respondent at the initial hearing. It also provides the respondent with the chance to attend any subsequent hearing with the best possible knowledge.

32. As note in regard to the key aspects of initial consideration (**Types of Injunction** above), at a hearing, the onus will be on the planning authority to convincing the judge (who is sitting without a jury) that:

(a) the matter is urgent and there is therefore no adequate conventional (and administratively much slower) remedy other than an injunction;
(b) irreparable harm to a statutorily protected heritage asset is occurring or will occur in the absence of an injunction;
(c) that if the case were to be taken further, the action of the authority will prevail;

© IHBC Copyright 2015

(d) the public interest and the thrust of national and local heritage legislation and policy outweigh the individual personal considerations and preferences of the respondent;

(e) the authority's right to seek the imposition of an injunction is clear.

33. Although it might be argued that the criteria involve a certain degree of ambiguity or flexibility, the judge must be satisfied that all five criteria have been satisfactorily proven before granting an injunction. Needless to say, it is easier for the respondent to attempt to argue that one or more of these five criteria *has not* been satisfactorily met than for the authority to argue that all five *have* been proven. The procedures need to be exacting because the consequences of an injunction can be so serious.

34. It can probably be anticipated that Circuit Judges who hear injunction applications, will hardly ever have encounter heritage-related cases and will probably be inexperienced in the workings of the heritage protection system. A common-sense, generalist approach by a judge will therefore be likely to be adopted if the local authority can demonstrate a flagrant breach of heritage protection and/or the reasons for the urgency. [12]

35. The Judge will invariably weigh up a number of matters. Before granting an injunction the local authority will need to be clear that the public interest and the intentions of government heritage legislation and policy should be taken into consideration along with the local planning authority's statutory role in upholding and maintaining the integrity of the heritage protection system. Furthermore, the justification for abating or preventing damage to the listed building should be made explicit along with an injunction being considered the most appropriate action for the case under consideration versus the private interest of the freedom of the respondent to use the heritage asset without constraint, and that the individual respondent's human rights would not be infringed. [13]

36. A penal notice accompanying the injunction will notify the defendant of the consequences of failing to abide by the terms of the injunction – hence the need for careful drafting – and that this could result in a jail sentence of up to two years (see also paragraph 41). This aspect of the injunction is therefore a cost-effective way of ensuring that its requirements are likely to be adhered to.

37. The decision whether to grant an injunction is always in the absolute discretion of the Court and in exercising that discretion a judgment will need to be made as to as whether it could be inferred that the

© IHBC Copyright 2015

unauthorised (and by implication damaging and irreversible) works to the heritage asset would continue unless and until effectively restrained by the law, and that nothing short of an injunction would therefore be effective.

38. In granting an interim injunction, the local planning authority needs to bear in mind that the Court might decide to allow a period for compliance or suspend the injunction to enable the defendant for example to make alternative arrangements or provisions (for example if living accommodation had been lost) and if this would be likely to result in further damage to the significance, the local authority should make its concerns explicit to the Court.

39. It should also be noted that the local authority is entitled to recover the costs of investigating the breach of listed building control and the bringing of the application for the Injunction if it succeeds. [14]

The need for personal service and contempt of court

40. The injunction takes effect as soon as it has been made. Anyone refusing or failing to comply with an injunction would be in contempt of Court and could be fined or face imprisonment (or both). Contempt cannot be enforced if the respondent has not had notice of the order with a penal notice endorsed on it.

41. In cases where the injunction is solely prohibitive in nature (for example, stopping any further work to a heritage asset) contempt proceedings cannot be brought (unless the Court orders otherwise) unless the respondent is in Court when the order is made or has been notified of its terms by telephone, e-mail or in person. To avoid the risk of any further argument, it is best to ensure that personal service is undertaken if the respondent is not present in Court when the order is made.

42. For contempt of Court to be proved, the Court must be satisfied that the defendant knowingly breached the terms of the injunction and will apply the test of 'Can it easily be shown when the defendant has failed to comply with each paragraph (of the order)?' Drafting is therefore important to ensure there is no ambiguity allowing the defendant to wriggle out of contempt proceedings.

43. Committal proceedings for contempt are tightly regulated and should not be issued lightly. As long as the defendant has capacity to understand the requirements, all the authority has to do is demonstrate beyond

© IHBC Copyright 2015

reasonable doubt that the recipient has breached the terms of the injunction.

44. The recipient may have a valid defence if it can be established there was an honest belief at the time the actions complained of could be done. The Court has the power to impose a prison sentence of up to two years, but this would require very serious and sustained breaches. Representatives for the defendant accused of contempt may take account of the ability to apply to the Court to purge the contempt effectively a plea for forgiveness) to avert imprisonment, especially when coupled with other evidence of co-operative behaviour.

Cases where the identity of the person is unknown

45. Section 44A effectively enables the Court to grant an injunction against a person whose identity is unknown although the local authority will need to consider the practicality of identifying, to the best of its ability, the person or parties against whom the injunction is sought.

46. This also needs to be supported by:

(a) photographic evidence if practicable, of the person[s] concerned;
(b) an affidavit of evidence sworn by the relevant Council officer[s] to make explicit that they have been unable to ascertain the identity of the person[s], within the time reasonably available, and the steps they have taken to attempt to do so;
(c) reference to any associated chattels on the land, known to belong to, or be used by, that person or persons (for example, a registered motor vehicle); or
(d) other relevant evidence (such as a name by which the person or people is/are commonly known, even though not the proper name).

Costs

47. In the case of an interim injunction the Court would normally ask the local authority as the applicant, to compensate the perpetrator of the breach (the restrained party) for any costs the latter might incur if subsequently the Court refuses to grant a final injunction - although it is unlikely that that such an undertaking would be required if the authority could clearly demonstrate it is properly exercising its lawful enforcement functions in respect of the 1990 Act.

© IHBC Copyright 2015

IHBC
INSTITUTE OF HISTORIC BUILDING CONSERVATION

Some case examples (in no particular order)

48. In *Derby City Council v Anthony,* the Council was granted an injunction under S.44A to prevent further collapse of Derby Hippodrome Theatre a Grade 2 Listed building where the defences of urgent necessity argued under S.9(3) were held not to apply. The Hippodrome had been designed by Newcastle architects Marshall & Tweed in 1914 and was seen as a model for other theatre designs in the late 1920s being purpose-built variety house with a 2,300 capacity and converted in 1930 into a 1,800 seat cinema. It became a theatre again for nine years until 1959 and was later used as a bingo hall owned by the Mecca Group.

49. The owner Christopher Anthony had claimed that the building had become unsafe and posed a danger to the public.

50. Delivering his judgment, Justice Wyn Williams said Derby City Council's measures to protect the public by including an exclusion zone around the Hippodrome were sufficient. 'In the absence of an injunction… the building will very soon cease to exist in any meaningful sense and the prospects of renovation, repair and refurbishment will in reality be lost for all time.'

51. The Judge was not satisfied that it was necessary to undertake immediate demolition work in the interests of public health and safety and ordered the owner to pay the Council about £20,000 in legal costs. This was the first time an injunction had been used to protect a theatre in this way.

52. In *Fenland District Council v Reuben Rose (Properties) Ltd*, [20001 EGCS 46] Listed Building Consent had previously been granted for demolition in 1993 but the authority had omitted to notify the Secretary of State as required under the Act prior to issuing the decision notice. This omission came to light four years later when the authority then sought to argue that that the consent was therefore not valid. The developer tried to argue that the council could not challenge the validity of the consent except by way of an application for judicial review, the time for which was long past. The council responded with an application to the county court seeking a declaration that the consent was void; and meanwhile an injunction was obtained to restrain the developer from demolishing or altering the building.

53. The county court decided, on a preliminary point of law, that it did have jurisdiction to determine the matter; and the developer appealed. The Court of Appeal agreed with the county court; it determined that the

© IHBC Copyright 2015

power to serve an injunction under the 1990 Act was available notwithstanding that the authority was challenging its own original decision and the issue had arisen from negligence or incompetence on the part of the council. Once the council had discovered its error, it was entitled, even bound, to act. [15]

54. Charles Mynors noted at the time that:

> 'Normally the courts are loath to overturn earlier decisions after a long period of time has elapsed; and the developer in this case could, it might appear, have entirely reasonably relied on the decision which had, apparently, been issued perfectly properly the defect only came to light in the course of conversations with the council's Conservation Officer.
>
> The moral for developers is that it sometimes does not pay to enquire too closely as to how a decision was reached - if there was a procedural flaw, it may be best not to discover it.
>
> For an authority, on the other hand, this decision suggests that it may be able to serve an injunction to dig itself out of a hole, even years after an earlier mistake invalidating a consent which it now regrets having granted.'

55. In (*Barratt v Ashford Borough Council* [2011] EWCA Civ 27), Ashford Borough Council applied for an injunction in 2010 in the Canterbury County Court (sitting at Chatham), to resist proposals by the owners of a listed eighteenth century cottage. Although listed in 1979 the owners argued that the Secretary of State had not listed the cottage at all, because it had used the wrong name and the wrong address in the statutory list. The Council drew attention to the list entry also referring to an annotated OS map, showing all the listed buildings in each area. Additionally the description made it clear that the building that the Secretary of State had sought to list was undoubtedly the cottage in question. The County Court accepted this argument, and dismissed the application; the owners appealed. The Court of Appeal held that, in deciding whether a building is listed, it is necessary to consider the entry in the list as a whole, including the description and - in particular - the map reference, along with the map there being referred to. It accordingly dismissed the appeal.

56. In May 2005 the Northern Ireland Department of the Environment Planning Service obtained an urgent interim High Court injunction restraining the owner of 6 and 8 Main Street, Limovardy from undertaking

© IHBC Copyright 2015

additional unauthorised works of demolition to the listed buildings. This action was based on new legislation that had been introduced in November 2003 which significantly strengthened the powers in relation to breaches of listed building control. The owner had already demolished the listed stable block to the rear of the buildings and the rear return of No 6 Main Street and laid foundations and block-work for a large new building for which no planning permission or Listed Building Consent had been obtained.

56. In 2013 SAVE Britain's Heritage and the Victorian Society were granted an injunction in the High Court against Sheffield University, after the University's solicitors revealed they were not prepared to delay demolition until the outcome of a judicial review was reached. Sheffield City Council had granted permission for the demolition of Grade II listed Edwardian Jessop Building but this was halted by the injunction pending a judicial review into the City Council's approval of the University's intention to proceed with redevelopment to construct a new engineering block. The University was unsuccessful in its attempt to prevent the injunction, arguing that the matter should be decided in Court. Although SAVE Britain's Heritage and the Victorian Society subsequently lost the case of a judicial review in the Court of Appeal, the correct interpretation of the crucial and controversial paragraph 133 of the NPPF was established. [16]

57. A further SAVE injunction in Lancaster, concerned the proposed redevelopment of the eighteenth century Mitchell's Brewery, unlisted and outside a conservation area. A public inquiry into a retail scheme proposed by a developer with the support of Lancaster City Council collapsed when the heritage impact of the scheme could not be justified and the Secretary of State subsequently called in the proposal. Having been involved with the public inquiry, SAVE Britain's Heritage and local amenity groups became concerned that if the prospective statutory protection was not confirmed, peremptory demolition might ensue. English Heritage was refused permission to inspect the building and were unsuccessful in requesting the Secretary of State to extend the conservation area. SAVE was unconvinced by reassurances from the council that demolition would not be allowed to take place until certain obligations had been discharged. In fact, demolition work suddenly commenced on the same day that the council confirmed by letter they were satisfied the demolition was lawful. SAVE secured an injunction by the following morning to permit the submission of a Judicial Review of the council's proposed conservation area boundary review, predicated on the fact that the key building likely to be affected by the boundary changes

© IHBC Copyright 2015

was being demolished.

58. An older and, it might be argued, bolder SAVE injunction was obtained in the High Court on 31 December 1994 to prevent Arfon Borough Council from demolishing 6 Palace Street, Caernarfon, a neglected Grade II listed building within the Caernarfon World Heritage site, having taken the view that the legality of the Planning and Listed Building Consents for the demolition were dubious. The High Court clearly agreed.

59. The building was thought to be one of the oldest in Caernarfon after the castle. It had a number of unique features that made it a site of importance including medieval timberwork dating from the fifteenth-century and roof timbers that indicated the building had been part of a medieval solar cross-wing to a lost hall. Additionally, the layout of the site denoted a double burgher's plot, which is the only original site laid out in medieval times in Caernarfon. Despite this the property was to be demolished on 2 January 1995. After the success at court, SAVE needed to phone the local authority to inform it of the legal situation, but the authority had closed down for the seasonal holiday. Eventually the demolition contractor was telephoned directly. SPAB determined that the house was not yet so dangerous as to collapse and considered it could still be rescued and restored. After extensive negotiation with the Council SAVE undertook to purchase and restore the building for new use and established Ymddiriedolaeth Treftadaeth Caernarfon (Caernarfon Heritage Trust). Following renovation the building was sold in December 1998 to new owners.

Bob Kindred MBE BA IHBC MRTPI

Endnotes

[1] Stop Notices, Stop Orders and Temporary Stop Notices have been introduced in Scotland through the Historic Environment (Amendment) (Scotland) Act 2011.

[2] S.44A(1) of the Planning and Compensation Act 1991 inserted into the Planning (Listed Buildings and Conservation Areas) Act 1990 to replicate the powers under S.187B of the Town and Country Planning Act 1990.

© IHBC Copyright 2015

[3] Planning Policy Guidance Note 15: Planning and the Historic Environment, September 1995, withdrawn March 2012 and replaced by the National Planning Policy Framework.

[4] There are 11 grounds for appeal under S.39 (1) of the 1990 Act, and a twelfth ground is in effect from 1 October 2014 relating to urgent work required to address issues of health and safety.

[5] As amended by the Planning 1991 Act.

[6] That is, Historic England.

[7] So far as county courts are concerned, S.38 of the County Courts Act 1984 confers a general power, subject to regulations, for a county court to make any order which could be made by the High Court of the proceedings were in the High Court.

[8] As with Urgent Works Notices, the process does not always allow for 'mature reflection' and this is implicit in the inclusion of the powers under S.44 as a 1991 amendment to the 1990 Act.

[9] As Injunctions imply urgency; there may not have been time to visit the site if the location is remote (for example, in a large rural district but maps and colour photographs may be of great assistance and it may be possible to extract images including aerial shots from Google Earth);

[10] Rather than some technicality or minor indiscretion.

[11] This principle goes back to *Castelli v Cook* (1849) 7 Hare 89, 94 and *Rex v Kensington Income Tax Commissioners, Ex parte de Polignac (Princess)* [1917].

[12] This is particularly where the defendant has made clear an intention to carry on regardless (with the potential loss of the heritage asset) or to ignore or fail to rectify work that will be cumulatively damaging.

[13] European Convention on Human Rights Article 8 - right to a private life.

[14] As with all good heritage enforcement, keeping a methodical record of officer-time expended is essential to ensure the local authority's costs are recovered.

[15] See Context No 66, June 2000, p30-31.

© IHBC Copyright 2015

[16] One useful outcome was that the Court of Appeal reinforced the need for local planning authorities to consider whether there are substantial public benefits that justify the exceptional course of authorising the demolition of a listed building when compared with the benefits of a scheme, which would retain it, and to consider the public benefits of options other than the exceptional action of total demolition.

© IHBC Copyright 2015