



# IHBC GUIDANCE NOTES

## Emergency Works

GN2024/1-Feb 2024

*Application of s.9 (3) of the Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended)*

*Similar provisions are provided in s.8 (3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.117 (4) of the Historic Environment (Wales) Act 2023 and s.85 (7) of Planning Act (Northern Ireland) 2011. This guidance note is relevant to all these provisions.*

*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](mailto:research@ihbc.org.uk) for future revisions and updates.*

### Introduction

1. This guidance note has been prepared in response to questions about the status of emergency works, undertaken to listed buildings, as follows:

- can they remain indefinitely if the owner chooses, rather than being rebuilt, if appropriate, providing they have complied with the statutory criteria;
- can a Local Planning Authority (LPA) require a subsequent Listed Building Consent, to retrospectively approve the emergency works and, where appropriate, ensure subsequent reinstatement to regularise the works;
- could enforcement measures be taken by the LPA to require reinstatement?

### Legislation

2. Section 9 of the Planning (Listed Buildings and Conservation Areas Act) 1990, establishes that unauthorised works to a listed building or failing to comply with any conditions attached to a Listed Building Consent when executing authorised works are criminal offences.

3. S.9(3) and of the English Act and the commensurate provisions within Scotland, Wales and Northern Ireland identifies defences to prosecution where emergency works are carried out in the interests of health and safety or the preservation of the building. This Guidance Note focuses on issues around these sections with respect to legitimising the works undertaken, and whether a

retrospective Listed Building consent can be sought to regularise the works, after the event, and possibly cover any reinstatement.

4. S.9 (3) of P(LBCA) Act 1990 provides:

**'S.9 Offences**

*S.9 (3) 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 the works was given to the local planning authority as soon as reasonably practicable.*

*Near identical provisions are provided by s.8 (3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.117 (4) of the Historic Environment (Wales) Act 2023 and s.85 (7) of Planning Act (Northern Ireland) 2011.'*

5. In many cases harm to health and safety can often be prevented simply by preventing access to the site, therefore, it should be very rare that undertaking significant works without consent relying on these grounds and Local authorities should be consulted even in urgent cases.

**Establishing the defence**

6. To benefit from the defence in respect of emergency works to a listed building it is necessary to meet all four tests, as follows:

- the works are essential to the preservation of the building or in the interests of health and safety;
- it is not possible to secure the building by temporary support measures;
- the works undertaken are the minimum immediately necessary; and
- that the local planning authority have been notified of the detail of the works and the justification for undertaking them.

7. These provisions provide a defence to criminal charges, where brought under, under s.9 (1) of Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), s.8 (1) the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, s.117 (1) of the Historic Environment (Wales) Act 2023 and s.85 (1) of the Planning Act (Northern Ireland) 2011. However, even if an owner successfully invokes a statutory defence, it does not provide authorisation of the works by effectively granting retrospective Listed Building Consent, nor does it necessarily indicate that the Local Planning Authority considers the works acceptable. Furthermore, paragraph 196 of the National Planning Policy Framework in England provides that 'where there is evidence of deliberate

neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision'. If all the four tests were not met the defence cannot be relied on and the perpetrator remains potentially liable to a criminal prosecution.

### **Subsequent Approval**

8. The works, even if they fall within s.9(3) et al, still need authorisation. Section 8 of English Act (as amended) and similar provisions in the other acts are clear that works of alteration to a listed building can only be authorised by 'written consent' by means of a Listed Building Consent granted by the LPA or Secretary of State. Therefore, the owner needs to apply for Listed Building Consent if he wishes to regularise the works. Conditions can be imposed in the usual way. Alternatively, the LPA can issue a listed building enforcement notice under s.38 of the English Act and similar sections in the other Acts.

9. There is no power in the legislation that enables a local planning authority to insist on an application for listed building consent. If the owner chooses not to make an application and the LPA does not consider it expedient to serve an enforcement notice, then the works remain unauthorised. It may be helpful for a LPA to point out to an owner that failure to obtain listed building consent in such a situation may well result in problems in a subsequent sale of the property, should the lack of consent be revealed in the legal search process.

### **Subsequent Enforcement Action**

10. The defence against proceedings for an offence under Section 9(3) also does not provide immunity from a listed building enforcement action should the owner fail to regularise them through a subsequent Listed Building Consent. Should a local planning authority consider the urgent works carried out to be unacceptable and harmful to the special interest of the listed building in question, the authority retains the option to serve a listed building enforcement notice under section 38 of the English Act and the corresponding home nations legislation.

11. In cases where it has not been possible to negotiate a solution to regularise the works undertaken, it may be expedient for a LPA to issue a Listed Building Enforcement Notice (LBEN) to provide a clear route to regularisation as consent can be secured by means of a successful appeal against the LBEN.

### **Preventative measures**

12. It is also important to note that while there is no statutory duty to maintain a listed building in good repair Local Authorities have powers to intervene where the condition of a building is allowed to deteriorate under Ss 47 (compulsory Purchase, 48 (Repairs Notices) and 54 (Urgent Works), for information on these powers see IHBC Guidance Note [Urgent works in advance of a Listed Building Consent](#).