

13

The Repairs Notice

1 Introduction

Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 enables local authorities to serve a notice (the Repairs Notice) on the owner of a listed building specifying those works which it considers reasonably necessary for the proper preservation of the building. If, after a period of not less than two months, it appears that reasonable steps are not being taken for its proper preservation, the local authority can begin compulsory purchase proceedings under section 42 of the Act. A Compulsory Purchase Order (CPO) requires the Scottish Ministers' confirmation. Scottish Ministers also have powers to acquire and must consult Historic Scotland before exercising them, or confirming a CPO made by a local authority.

A Repairs Works notice cannot be served in relation to:

- **Crown property.**
- **Ecclesiastical buildings** in use as such where there is an exemption from the need for listed building consent under section 54 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- A listed building which is also a **scheduled monument**, for which there are separate legal provisions.
- An **unlisted building in a conservation area.**

The building, or parts of the building, need not be unoccupied before a notice is served. Also, there is no right of appeal against a Repairs Notice.

2 The scope of the Repairs Notice

In requiring that the owner carries out the works considered reasonably necessary for the proper preservation of the building the repairs specified can go beyond those allowed in an Urgent Works Notice which is limited to immediately required works (Toolkit text 12 *The Urgent Works Notice*).

The term 'proper preservation' is not defined but can be interpreted as positive action designed to keep a property in good repair fully appropriate to it as a building of special architectural and historic interest and to prevent it from being exposed to harm. The circumstances of each case will be different. Most will involve a range of necessary physical works to effect repairs or to bring or maintain the building in full beneficial use. The condition of the building at the date of listing can be crucial in determining the extent of repairs that might be specified. 'Proper

The Buildings at Risk Toolkit 13

preservation' also suggests that the Repairs Notice is intended to secure works for the long-term preservation of a listed building.

Promotion of Repairs Notice will require to be authorised by the appropriate council committee and there may be a need for considerable explanation and negotiation within the authority to get to that stage. The input of legal services and planning service managers will be crucial as will the support of elected members for the communities where the affected buildings sit. Experience has shown that support, co-operation and pressure from outwith the authority by local residents, community councils, amenity groups and the press, have been highly important in moving cases forward within the administration. Similarly, representations from such interests have carried considerable weight with Reporters considering whether a Compulsory Purchase Order should be confirmed.

3 Compulsory Purchase

The Council can compulsorily acquire a listed building that is not being properly conserved if this will facilitate its repair. Repair could be by the council itself or through development by an appropriate repairing owner to which it is subsequently passed. A common arrangement for this is via a 'back to back agreement' with a building preservation trust. If the Council is satisfied that the listed building has been deliberately allowed to fall into disrepair to try and justify its demolition and redevelopment of the site, it may seek a 'direction for minimum compensation' meaning the compensation would not include any consideration of development value. Compulsory purchase is considered in more detail in Toolkit text *16 Compulsory Acquisition of Buildings at Risk*.

Balintore Castle, Angus

Angus Council acquired this listed building by compulsory purchase in 2006 as it was in need of repair. The building was sold on to a restoring purchaser who is now repairing and restoring the property.

4 When is a Repairs Notice appropriate?

A Repairs Notice should be considered when a building is neglected and the need for permanent repair accumulates to the point where there is potential for serious harm. If an Urgent Works Notice is unsuccessful in persuading an owner to carry out at least emergency works, then it would seem unlikely that the owner has any interest in preserving the building and the council should consider using its compulsory purchase powers to bring about a change in ownership.

The notice must specify the works considered reasonably necessary for the proper preservation of the building, and must point out that if the requirements of the Repairs Notice are not carried out, proceedings to acquire the building compulsorily may be started. This would suggest that planning authorities should only serve such notices where they are firmly committed to compulsory acquisition failing satisfactory action by the owner. For this reason and the fear that a council will end up burdened by a costly liability the frequency of use of the facility would appear to be limited. Councils can also be reluctant to use the power on account of a preference to negotiate with owners, a lack of in-house expertise or confidence, and a fear

The Buildings at Risk Toolkit 13

of press or political attention. However, research in England by the Association of Conservation Officers (Now IHBC) showed that where a Repairs Notice was authorised by a council this resulted in nearly 50 per cent of owners commencing repair or selling, while actual service of a Notice resulted in nearly 50 per cent of the remaining owners commencing repairs or selling on. Only a few cases (around one in fifty) reached the stage of a CPO inquiry and a very small proportion of these were eventually confirmed. Therefore, by simply authorising a Notice and advising the owner of the committee decision, a Council signals its clear intent that it intends to enforce full repair and this appears to have a motivating impact on owners. Compulsory purchase, in practice, is a rare last resort.

Cases relying on a Repairs Notice for resolution can take a considerable period (typically several years). If the building is likely to continue to deteriorate in the interim consideration should be given to serving an Urgent Works Notice in parallel with the Repairs Notice to enable the execution of any works that are urgently necessary for the building's preservation. If necessary these notices can be repeated as required. See Toolkit text 12 *The Urgent Works Notice*.

The Old Schoolhouse, Cottown, Perth and Kinross

Cottown is located in one of the largest concentrations of mudwall structures in Scotland, centred around the parish of Errol. The Old Schoolhouse is thought to have been constructed between 1745 and 1770, its rubble plinth possibly being the remains of an earlier sandstone building destroyed by fire in 1766. It was abandoned in 1985 and quickly fell into a state of disrepair, having been vacant ever since. In 1993 the Local Authority issued a Repairs Notice for the building. This action prompted the National Trust for Scotland to purchase it and undertake its conservation with the aid of grant assistance from the National Heritage Memorial Fund, Historic Scotland and Perth and Kinross Heritage Trust.

Blackburn House, West Lothian

Concerned at the condition of this abandoned farm complex the council authorised the serving of a Repairs Notice with the intention of acquiring the property and passing it to a specially constituted building preservation trust. On advising the owner, who had previously expressed no interest in restoring the property, the property was passed to the trust by agreement without the need to follow through to a Compulsory Purchase Order.

5 The Schedule

The necessary works should be presented in a separate schedule comprising a concise set of numbered instructions and written in layman's terms where possible. The instructions should clearly describe appropriate techniques, materials and safeguards, particularly where there could be ambiguity or risk of damage to the historic fabric or to the character of the listed building. Reference should be made to relevant British Standards and Codes of Practice. It should be made clear which works apply to which areas and annotated plans accompanying the schedule can be used to highlight this. While the schedule should be confined to the works, supplementary informatives can be used. The schedule should specify the use as far as practicable of appropriate matching materials, methods of construction and current best conservation practice in order to preserve the character, appearance and integrity of the building. Reference can be made to published guidance, principles and methods.

The Buildings at Risk Toolkit 13

It is not possible to appeal against the works specified, in total or in degree, nor is there a requirement that the owner's means be taken into account by the authority in specifying the works.

The works included in a Repairs Notice might typically include any of the following:

- Essential preliminary works to comply with health and safety including decontamination and removal of toxic materials;
- Comprehensive structural repairs to the building envelope, roof structure, roof covering, chimney stacks and flues, masonry, timber work, door and window frames, external finishes, cladding, rainwater goods and flashing;
- Measures to secure general structural stability in accordance with specialist structural engineering and other advice;
- Repair and reinstatement of joinery, ironwork and architectural features;
- Internal structural repairs to floors, ceilings, walls and partitions;
- Repair and reinstatement of internal finishes, features, fixtures and fittings including plasterwork, staircases, joinery, and flooring;
- Basic internal and external redecoration;
- Works to allow the building to be returned to beneficial use, such as repair and reinstatement of missing services;
- Repairs to boundary walls, gates, railings and associated fittings, surfaces, pathways, entrance steps and areas; and
- Installation of additional security measures to prevent vandalism and unauthorised access following completion of the works.

In many circumstances it will be essential that specialist advice is obtained before certain works in a notice commence. In such cases the clause in the schedule should instruct the work to be undertaken *in accordance with the recommendations/specifications of* [state specialist].

It is likely that some items in the Schedule will require listed building consent, planning permission or a building warrant. This is particularly likely where substantial reinstatement or reconstruction is specified or where there are works of a specialist nature. Such would normally require an application accompanied by the supporting drawings, specifications etc. and would most likely be consented subject to conditions. Where it is considered that consent is required for a specific item this should be stated in the schedule.

Every schedule will, of course, be different and tailored to the needs of the case. English heritage has included an instructive specimen schedule of repairs in its 2011 guide *Stopping the Rot*.¹

6 Implementation

Often, an informal written communication of council authorisation of a Repairs Notice which may lead to compulsory purchase will be sufficient to encourage the owner to repair the property, or to sell it on to another party who might undertake the repairs. Where the owner is unresponsive to initial informal approaches it is recommended that a formal letter is sent setting

¹ <http://www.english-heritage.org.uk/publications/stoppingtherot>

The Buildings at Risk Toolkit 13

out the relevant provisions of the Act, the intention to follow through with a notice and requesting a site meeting and access to the building to allow a proper assessment and preparation of a draft schedule. Any resulting meeting and site visit should be followed by a second formal letter with the draft schedule of repairs considered necessary for the proper preservation of the building and setting a date for formal service of the Repairs Notice if the works are not carried out.

A repairs notice may be withdrawn at any time. Having served a notice, planning authorities should always follow this up as quickly as possible, lest owners be left uncertain as to whether or not the planning authority intend to proceed to compulsory purchase. Negotiations should also continue in order to attempt to secure the preservation of the building in question with the minimum of anxiety and uncertainty for the owner.

It is important that great care is used in drafting and serving the notice as failure to do so could render it invalid and prevent subsequent compulsory purchase. While there is no prescribed format beyond the need to specify the works reasonably necessary for proper preservation, it is recommended that the notice should comprise:

- A summary of the provisions of sections of the Act;
- A separate itemised schedule of repairs as described above with any accompanying plans, illustrations and supporting material;
- A location plan highlighting the property and labelled *For identification purposes only*. This should encompass any adjacent land intended for inclusion in a compulsory purchase order; and
- An appropriate local authority contact name, email address and telephone number.

The notice should be served on ‘the owner’ but this could be any of a range of persons with a legal interest in the land including the leaseholder, mortgager, receiver, mortgagee or tenant. Copies can also be sent to other parties such as managing agents and factors clearly marked as *for information only*. Failure to serve the notice on all persons with an interest in the land could invalidate any subsequent CPO and therefore care should be taken to identify all parties using professional services if necessary.

The notice should be delivered by a recorded delivery method or by a council officer. Where it has not been possible to trace the owners and it can be shown that all reasonable steps have been taken to do so the notice can be served by fixing a copy to the front of the property. Where this is done there should be a signed certificate of service and photographs of the notice *in situ* to confirm that the notice was posted. Regular checks should be made that they are in place and, if missing, they should be re-posted, signed and photographed.

In cases where an Urgent Works Notice and Repairs Notice are being served in parallel or in close succession, a covering letter should be provided to clarify that the two actions are discrete and that compliance with one does not relieve the recipient of the requirement to comply with the other.

Once the specified period after service of a Repairs Notice has expired, the planning authority is entitled at any time to make the Compulsory Purchase Order. Information on this stage is contained in Toolkit text *16 Compulsory Acquisition of Buildings at Risk*.

7 Steps towards an effective Repairs Notice

The English Heritage guide *Stopping the Rot* includes in Appendix 1 (p. 67) a 'Repairs Notice Checklist' which is summarised here:

Repairs Notice Checklist

- Write to the owner setting out the provisions of the Act, requesting a site meeting and access to the building.
- Consider also writing to the owner at the same time requesting a site meeting and access to the building under the terms of the Act.
- Carry out a site visit with other relevant professionals, including an architect/building surveyor, quantity surveyor and engineer (this may be their only opportunity to visit the property). Take a comprehensive set of internal and external, dated photographs and make a sketch plan of the building.
- Consider if any of the works are urgent and would require a parallel Urgent Works Notice.
- Draw up a draft schedule of repair.
- Obtain an estimate of cost from the quantity surveyor for work to be carried out.
- Obtain a market valuation of the property in its current condition and if the building were repaired.
- Carry out financial option and feasibility assessments or residual valuation.
- Obtain appropriate local authority permission for action.
- Confirm details of owners and those with an interest in the property through the Land Registry.
- Discuss handing over the building in a back-to-back agreement with potential purchasers if intending a compulsory purchase.
- Serve a Requisition for Information Notice or equivalent.
- Follow up the site visit with a second letter to the owner setting out a draft schedule of repairs and a date for formal service of a notice if the repairs are not carried out.
- Draw up Repairs Notice to include:
 - a summary of the provisions of the relevant sections of the Act;
 - a separate schedule of repairs with any accompanying plans/illustrations; and
 - a location map highlighting the property and any adjacent land which it is intended to include in a Compulsory Purchase Order (CPO).
 - local authority contact details.
- Serve Repairs Notice in person or by attaching to the property.
- At expiry of notice period, review and decide whether to pursue CPO action.

The Buildings at Risk Toolkit 13

The above guidance was prepared by The Architectural Heritage Fund for Historic Scotland and is published by the Buildings at Risk Register for Scotland as part of the Buildings at Risk Toolkit. <http://www.buildingsatrisk.org.uk/>

The text contains references to legislation and its interpretation that may contain inaccuracies or be out of date. Ensure you take appropriate professional advice before making decisions relating to property. Feedback, relevant case studies and suggested changes are welcomed.

Principal Author: Stuart Eydmann DipTP PhD MRTPI IHBC
This version: April 2014
