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IHBC RESEARCH NOTES

Listed Building Enforcement Notices

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This one of a series of occasional Research Notes covering topics that we consider crucial to the promotion of good building conservation policy and practice.

The IHBC welcomes feedback, comment and updates on our Research Notes to our consultant editor Bob Kindred, at *research@ihbc.org.uk*

Executive Summary

1. This is a research note regarding the scope and content of Listed Building Enforcement Notices [LBEN]. It is intended to assist in the identification and specification of works of restitution and reinstatement or amelioration.

2. The note does not deal with the separate but sometimes related procedural question of prosecution (either as complimentary action to a Notice or where a LBEN has not been complied with). However it does look at the outcomes of LBEN appeals to the Secretary of State or their equivalent in devolved administrations and the useful lessons that can be drawn from them, and results of prosecutions for non-compliance. Separate advice regarding listed building prosecutions is accessible elsewhere via the IHBC website. [1]

3. This Research Note looks has examined a random sample of approximately eighty LBEN cases including the outcome of eleven appeals and twenty-four prosecutions for non-compliance with a Notice and draws some provisional conclusions.

4. This Research Note does not necessarily represent a formal legal opinion from the Institute and professional legal advice related to any particular case should

always be sought.

5. Information about similar LBEN cases, outcomes (including any cases determined by the Planning Inspectorate on appeal) would be welcome for a further iteration of this Note.

Limitations of the applicability of LBENs as an enforcement tool

6. It is axiomatic that for works of reinstatement to be specified and implemented, there must be clear evidence of the historic fabric altered or destroyed to return it to a known former state.

7. The vast majority of cases of unauthorised works concern the external parts of the building as these are much more likely to come to the attention of the local planning authority than works solely to interiors.

8. Where the unauthorised works are internal, resolution by the service of a LBEN appears much less commonplace, as the key issue is likely to be the available evidence. Interiors will be much less likely to be covered by a statutory list description; much less readily documented and unauthorised works will inevitably be more concealed. There is anecdotal evidence from practitioners to suggest that a great deal of unauthorised internal alteration goes on unobserved and unreported and therefore unenforced. [2]

9. IHBC members have raised particular concerns about the scope for enforcement regarding interiors in circumstances where it is evident that unauthorised works have taken place, such as partial or complete gutting but where the pre-existing situation is not known and there is no clear documentation. Unless there are photographs, measured drawings or detailed descriptions it may not be possible to effect the full and complete reinstatement beyond basic works to enable re-use, such as the reinsertion of a floor structure, the re-plastering of walls and ceilings without enrichment and basic fire surrounds where chimney pieces were formerly suspected to exist.

10. Some terraces of dwellings constitute a complete ensemble carried out in a single build and with generally identical interior fixtures, however if unauthorised works have been undertaken to the interior of one property the intactness of which is unknown, full reinstatement can be encouraged (with enhanced property value as a potential incentive), but the local planning authority cannot require those fixtures or features to be put back simply because they exist elsewhere.

Evidence and record making

11. Where unauthorised internal work comes to light while still in progress it is important that a prompt record is made to inform the potential Notice and for it to be effective, but there is no time limit within which the authority is required to act. General guidance on the practicalities of early intervention is covered by the IHBC's guidance on prosecutions. [3]

12. Good photographic records always greatly assist sound day-to-day heritage management but for effective enforcement they are essential. In the modern era of digital cameras, photographic records of listed buildings should be taken as a matter of course at every opportunity. They should be indexed and dated particularly if unauthorised works have been identified but are not yet well advanced. These records may become vital for specifying the content of a subsequent LBEN.

13. It is worth bearing in mind in researching the unauthorised works that archival records may have been deposited locally with the relevant County or Metropolitan Record Office or may have been taken during an assessment for listing. In England these would now be held by the Historic England Archive (formerly the National Monuments Record) and in Wales and Scotland by the archives still known as the National Monuments Record. Some but not all of these images may be accessible on-line. Images of England and eventually the Enriching the List initiative may also prove a useful source of evidence for listed buildings in England. Another increasingly useful source for evidence is the internal photographs and plans provided in on-line sales particulars.

Registration of LBENs

14. Although local planning authorities are obliged to keep a publicly accessible Enforcement Register, research by IHBC in 2016 showed that only 10% of English local planning authorities provided an online accessible register that clearly differentiated heritage enforcement cases including LBENs. [4] Not only does this inhibit statistical analysis, it does not aid transparency or public accountability about the workings of the enforcement system.

15. Some unauthorised works are resolved without resort to the formality of a LBEN, and Registers may only indicate that a Notice was operative over a specific period but not necessarily the scope and the remediation works required. Furthermore some authorities delete the details of a Notice once it has been satisfactorily complied with. Consequently determining the level and type of heritage enforcement activity in relation to the potential level of heritage offences over any given period is somewhat difficult to establish.

Nature of the works – exteriors v. interiors

16. The overwhelming majority 69 (85.2%) of the sample of the LBENs dealt with external works only. Only 3 cases (3.7%) dealt with internal works only, while a further 5 (6.2%) dealt with both. A further 4 (4.9%) were unspecific about the works needing to be rectified although surprisingly this did not seem to invalidate them. None of the LBENs in the sample appeared to have involved cases where the Notice obviously followed on from a successful prosecution for unauthorised works although more will be said about this below (in paragraphs 131 to 139).

17. In some respects the above figures are not surprising in that unauthorised works to exteriors may often become known promptly to the local planning authority either by direct observation or by an alert from a member of the public. In the handful of cases where unauthorised internal works came to light it would be instructive to know if these were uncovered only after the external works had already been identified.

18. The very small number of cases only involving internal works is worthy of note and a possible cause for concern. It is considered highly unlikely that unauthorised work is confined to exteriors alone and that similar internal works are not also taking place. It is much more likely these are going undetected and/or not being pursued by the service of a LBEN because of a lack of evidence of the prior state of the interior.

<u>Types of offences addressed – external works</u>

19. The largest issue tackled by LBENs was unauthorised uPVC windows (with a handful of others dealing with inappropriate windows of other types). About 40% of all the Notices were served against the installation of one or more plastic windows - although in two cases the number of unauthorised replacements acted against was for 59 and 22 windows respectively.

20. The other notable categories of unauthorised works in terms of frequency were those requiring the reinstatement of boundary walls and railings; the removal of minor extensions and associated alterations; and the removal of satellite dishes. Each of these categories accounted for a little under another 10% of cases.

21. As the nature of potential alterations to historic buildings is so wide, the range of other LBEN external works noted in the sample was equally wide and included for example action against security shutters, external painting, signage, rendering, cleaning and repointing of facades, the wrong selection of slates and thatching materials, mechanical extraction, flues and air conditioning equipment ,lead canopies, glazed canopies, fabric canopies (eyebrow blinds) and valeting canopies, gates and hard-standings, and uPVC bargeboards, soffits and guttering.

22. In one instance a LBEN was served simply for 'deviation from the approved plans' and another required all fixed items of residential occupation and all residential chattels in a listed barn to be removed.

Types of offences addressed – internal works

23. As noted above, LBENs for internal works alone were uncommonly encountered and required either reinstatements: fireplaces, plasterwork or roof timbers; or the removal of inappropriate works: a staircase in one case and suspended ceilings, new doors and boxing in of openings (for fire protection) in another.

Timescales for compliance

24. Enforcement Register entries did not always state the timescale for compliance but of the 58 Notices where one was given; 54 gave a specific period in days or months by which compliance was required; while three required the works to be carried out in three or four phases and in one case various dates were imposed by the Planning Inspectorate on appeal [q.v. paragraphs 104-111 and 121-123].

25. Generally Notices specified the timescale in months, e.g. within three months, rather than in days, e.g. within 175 days and although there appears to be no particular reasoning behind the choice, it seems that monitoring of the deadline in months is slightly easier but less precise than a deadline in days.

26. Bearing in mind that one of the grounds for appeal against a LBEN under S.39(1)(h) is that the timescale needed to rectify the matter is too short to be reasonable, local planning authorities will need to make a judgement about the likelihood of appeal on this and on other grounds [q.v. paragraph 65 et seq.]; the circumstances of the defendant, the scale of the works required, and whether any external works are dependent on the seasons such as lime re-rendering or the reinstatement of a substituted roofing material.

27. About 60% of LBENs required the works to be undertaken within three months and nearly 90% within 6 months. Where the removal of a fixture or feature, or straightforward external redecoration was required the timescale would usually be one month.

28. Three LBENs required a period of 12 months; one specified 36 months where Collyweston stone slate was required to be reinstated in place of Welsh slate; and one specified 120 months for the replacement of uPVC windows and doors because of the personal circumstances of the defendant.

The legal position

29. What action, if any, is taken by the local planning authority is of course entirely at its discretion, but enforcement may be intrinsically desirable for the benefit of the building in question, while the work entailed by enforcement may also represent a sufficient response to the offence. This approach to good practice was made explicit PPG 15 paragraph 3.37 and although the government has now withdrawn that succinct but explicit advice, it does not make it any less relevant for practitioners.

30. An authority cannot be forced to take action of any kind if it chooses not to do so, unless the refusal can be shown to be unreasonable or arbitrary but where these is demonstrable inaction there is always the question of reputational risk and the possibility of a complaint to the Ombudsman, particularly as many complaints originate from amenity groups and members of the public. Nevertheless the local authority must actually consider what action is expedient and not issue LBENs merely because listed building consent has not been obtained.

31. The authority should also consider carefully the possibility that a LBEN once issued might be appealed against and what counter-arguments would be advanced. A baseline position should always be to ask the self-referencing questions whether the works actually needed consent, and if so whether it would have been granted.

32. The Notice is required to state clearly:

- the nature of the alleged contravention;
- what the authority wishes to see done about it;
- the timescale within which it must be done; and
- the date on which the LBEN is to come into effect.

33. In essence the test that must be satisfied is the one applied to any enforcement notice: 'does it tell the recipient what has been wrongly done and what must be done to remedy it?' Another test could be to consider whether the case is sufficiently strong to be won in the event of an appeal. [5]

34. The contravention must be clearly set out so that the recipient can decide whether to argue that the specified works have not been done or, if they had been done that listed building consent had already been granted.

35. The authority can require the remedy of unauthorised works including steps for restoring the building to its former state, or if that would not be reasonably

practicable or would be undesirable, such steps as necessary to alleviate the effect of the unauthorised works.

36. The “former state” refers to the state immediately before the allegedly unauthorised works were carried out and accordingly the wording of the Notice needs to be carefully drafted to avoid a requirement to return the building to its “original state”. This could be potentially problematic where a building is of considerable antiquity, or has a complex evolutionary history, or the state of the relevant part of the building was unknown.

37. Where restoration or remediation will be either impracticable because it is irreversible; or undesirable because the former state was even worse; the local planning authority can require alleviation of the effects. If this is the intention, whatever further works are specified, if carried out correctly and in full are deemed to be granted listed building consent [q.v. paragraphs 126 to 130 on nullities].

38. Where a building has been subject to both specific unlawful alterations and general decay, a LBEN can legally be issued to rectify the unauthorised works even if in doing so the effect is also to make the owner carry out some general repairs. None of the cases in the survey addressed this specific issue and examples where this has been specified would be welcome for a future iteration of this Note.

39. The remedial works required by a LBEN need careful drafting so as not to be open to a successful appeal [q.v. paragraph 65 et seq.]. Where a specific historic feature has been removed the authority can require the return of the original item - if its whereabouts are known; the insertion of an exact facsimile - if the details of this are known; and the making good of the damage caused by the removal of the item (either on its own or in combination with one of the above alternatives).

40. Given the general need for firm evidence for the pre-existence of the features forming part of the listed building, care will be needed where the works required involve the insertion of a similar item of the same period, such as missing studwork or of a modern item performing the same function. Case examples where this has been specified would be welcome.

41. Remedial works must be specified with sufficient precision to obviate the need for the defendant to have to gain any further or subsequent approval from the council; i.e. a LBEN that requires some form of later approval will nullify the Notice because it will be incapable of correction by the council or by PINS should the defendant choose to appeal [q.v. paragraphs 50 and 102].

42. Unlike planning enforcement notices, LBENs are not required to state the reasons why they have been issued nor the relevant local plan policies. This is something of a legal anomaly but it is considered good practice to include them nonetheless and in about 65% of cases examined, the relevant policy was stated.

Specification clauses

43. Section 38(2) of the 1990 Act states that the LBEN "shall specify the alleged contravention and require such steps as may be specified in the notice". The interpretation of what constitutes 'specification' and whether this common parlance for 'state' (or spell-out) appears to vary widely in terms of detail.

44. It is considered unlikely that in drafting the Act, the legislators would have intended the word 'specification' to be interpreted in any way other than its commonly understood general usage. This seems evident from the LBENs scrutinized in this note but it is worth stating that as the specification has to be sufficient to form the basis of a grant of LBC, those conservation specialists with an architectural training or background may well, entirely legitimately take this to be a lot more detailed than has apparently been used in many of the cases so far examined.

45. It is also worth saying in this context that as a local planning authority would not grant listed building consent purely based on the submission of photographs, there would be an understandable hesitation to provide a LBEN specification for detailed remedial works based on photographs alone.

46. For simple minor works, many LBENs merely require for example: 'removal and make good' or 'removal and reinstatement' or 'replacement based on…' e.g. a photograph, sketch or prior agreed specification but careful consideration should be paid to whether specifying the works in such simple terms in anticipation of a satisfactory final outcome will guarantee the quality of reinstatement commensurate with the statutorily protected status of the building.

47. From the varying degrees of detail of the works required in LBENs in the cases scrutinised, it is evident that there is no consensus about what level of detail is appropriate. Heritage specialists should bear in mind that the works required to be undertake need to be explained clearly and under some circumstances this may need to be expressed in simple layman's terms for some recipients.

48. Consideration may need to be given to the distinction between specifying the nature of the remedial works that are required and the actual design and

specification of them. On the basis of the research, no clear best practice is evident on the matter.

49. It is the practice of some local authorities to devolve responsibility to the recipient or their agent for the specification of the works and requesting this be forwarded for comment with an indication of its likely acceptability. In some cases the advice of an accredited architect or surveyor or other acknowledge body of expertise may be required.

50. Some practitioners suggest appending a precautionary statement to the Notice in addition to setting out the requirements for remedial works under the legislation but making it explicit that this is not a formal design or specification of works. The onus is therefore placed on the recipient to employ a suitably qualified advisor to agree the detail with the LPA before works are commenced. It should be cautioned however that this approach is not without risk as a successfully challenge may be made that the Notice has insufficiently clarity. If recipient has no recourse other than to agree further details with the LPA, this would be likely to lead to a successful appeal [q.v. paragraphs 41 and 102].

51. As noted above, photographic evidence can be vital to ensure an accurate and precise reinstatement, but reliance on a crude sketch by a council employee (as was the case for one LBEN requiring the reinstatement of a mullioned window) is a more questionable practice and in such circumstances a proper scaled drawing should be the norm and might avoid a challenge by the recipient because of insufficient clarity. Where redecoration is involved, for the avoidance of doubt it may be useful for repainting works to specify British Standard colours.

52. The objective of the local planning authority is to ensure the works to be undertaken are appropriate and are carried out in full, but there appears to be no particular mechanism for clarifying what the frequently cited LBEN phrase ‘making good’ might mean in practice in terms of quality or extent. In the interests of the special interest of the building in question it would clearly be better to spell this out in more detail. If recipients or anyone acting on their behalf are unsure what is required they may appeal against the notice or do works other than those the local authority anticipates.

53. One aspect of specification not dealt with under Section 38(a) is the question (for more complex or intricate works in particular) of how the works will be supervised on site, particularly if phased, and once commenced the LBEN will be invalid if the local planning authority attempts to impose a requirement for the submission of any further details beyond those already specified in the Notice.

54. Some examples of specification clauses are given in Appendix 1.

Listed building consent

55. One difficult issues concerns works authorised through the granting of listed building consent that cannot be the subject of a LBEN unless the conditions imposed through the consent have not been complied with in full.

56. Local planning authorities should avoid requiring the removal of the unauthorised works only without the appropriate commensurate reinstatements where this would leave the building vulnerable to deterioration. The Planning Inspectorate has determined that such a Notice would be determined to be invalid (q.v. paragraphs 127 and 128).

57. The intention of the local planning authority should always be that listed building consent could be granted for the implementation of appropriate works of reinstatement such that they would be carried out properly and in full (with appropriately worded conditions where necessary).

58. It would be good practice to ensure wherever practicable that the information submitted and approved for LBC is clear enough to obviate the need for conditions but the difficulty to overcome is to ensure that the appropriate works of reinstatement are then done in a way that ensures that the unauthorised works are removed within an acceptable timeframe.

Indemnification

59. In defining more complex or more detailed works an issue that is sometimes raised relates to a specialist officer's legal liability for the detail of the works specified. Local authority heritage and/or enforcement specialists may have delegated authority to initiate and implement LBENs without recourse to the relevant council committee - although in contentious cases it may be considered sensible to keep the committee informed of progress.

60. The Institute is aware that some local authorities have informed their specialist officers that the councils' insurance will not cover any liabilities should the specified works fail because this aspect is not specifically included in the post holder's job description. Given that it is standard practice to include the all-inclusive phrase: "and such other duties as shall be required from time to time'' (or similar) in job descriptions, it is understood that local authority insurers accept that this is quite adequate but further evidence on this point for a future iteration of this Note would be welcome.

61. Under delegated powers, the local authority can indemnify its officers for any personal liability arising from actions or decisions taken by them in the course of their official duties. These provisions go back to the late 19th century [6] but Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that permit them to indemnify officers in relation to particular decisions or acts if to do so would facilitate or would be incidental to or conducive to the discharge of a function such as a LBEN.

62. Regulations made under the Local Government Act 2000 in the form of the Local Authorities (Indemnities for Members and Officers) Order 2004 granted discretionary powers to permit local authorities to provide indemnities to officers in certain circumstances either through the local authority's own resources or funded by an insurance policy.

63. An indemnity can be granted to cover "*any act or omission by the (…) officer which is authorised by the Council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the (…) officer at the request of, or with the approval of, or for the purposes of the Council*".

64. This would not protect any officer acting in a private capacity but would cover situations where the council has given delegated authority to prepare, specify and serve a LBEN.

Appeals

65. An appeal can be made to the Secretary of State against a LBEN by anyone who has an interest in the building (including a relevant occupier) under S.39 of the 1990 Act on any of the following eleven grounds:

(a) that the building is not of special architectural or historic interest;

(b) that the matters alleged to constitute a contravention of Section 9(1) or (2) have not occurred;

(c) that those matters (if they occurred) do not constitute such a contravention;

(d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, 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, and that the works carried out were limited to the minimum measures immediately necessary;

(e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;

(f) that copies of the notice were not served as required by section 38(4);

(g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;

(h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;

(i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;

(j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;

(k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

66. The number of appeal cases under S.39 unearthed in the research was quite small [7] and the conclusions can only be tentative but the approach to the adjudication by the Planning Inspectorate (and the Reporter in Scotland) on the individual grounds for appeal are illuminating and instructive and may be helpful in reviewing procedural and policy issues that have been outlined above.

67. Nine cases in England and one each in Scotland and Wales have been scrutinised. Six of the appeals in England were dealt with by the same architect/planner Inspector. [8] Only four of the appeals cited a single ground for appeal but separate comments are made on each of the grounds under S.39.

68. In seven cases the appeal was dismissed outright but one was considered faulty and corrected by the Planning Inspector, one was varied, one was quashed and one was considered to be a nullity (q.v. paragraphs 126-130). Some of the lessons to be drawn from these matters are considered separately in paragraphs 121 to 130.

Appeal Ground (a)

69. Four of the eleven appeals were based on the ground of the building not being of special architectural or historic interest. One appeal involving ground (a) was held to be a nullity.

70. In one appeal decision letter, the Inspector described the characteristics of the building in rather greater detail than appears in the somewhat perfunctory 1977 listing description concluded it to be worthy of its Grade 2 listed status. In dismissing ground (a) the appellants were deemed not to have substantiated their claim that the building did not warrant listing, and there was no justification for removing it from the statutory list.

71. In another case from 2015 the Inspector noted that the appeal under ground (a) effectively challenged the Grade 2 listing of 1985 and noted the appellant's view that 'the original features of the building have now disappeared and that the building cannot be maintained as a listed building due to the high maintenance cost' and was no longer worthy of being listed. The relevant 'Principles of Selection for Listed Buildings' had clearly indicated that this early 19th century house standing in large grounds exhibited the symmetry, proportion, stucco finish and detailing typical of country houses of its time.

72. Notwithstanding conversion to a school in the 1950s and eventual near encirclement with 20th century buildings, the Inspector found in another case that the building was still distinctly recognizable from its list description and remained worthy of listing in 1985. Some architectural and historic features might have 'disappeared' but it was still evident that this was once a significant country house of merit. The only elements not recognizable as original were those subject to the LBEN (uPVC windows and satellite dishes) and its significance lay in the overall symmetrical design to its frontage proving an excellent example of its type and date.

73. In a case where the building in question was curtilage listed the Inspector noted the building (a coach house) while not physically fixed to the main house, had been in place since well before 1st July 1948 and was definitely within the curtilage even though it was not specifically mentioned in the list description. The curtilage status itself was not disputed, only the relative architectural merits.

74. In dismissing the ground (a) of the appeal, the Inspector concluded that the building had significant special historic interest due to its association and physical relationship with the main house. He concurred with the planning authority that it possessed a certain degree of architectural detail similar to those found in the main house including the uniform arrangement of doors and windows; the details of door and window surrounds and the uses of curved arches.

75. It may be concluded that the perfunctory nature of some 'legacy' listing descriptions notwithstanding, the Planning Inspectorate rightly attach compelling weight to the statutory listed status of the building and it will assist the local authority's case if care is taken to describe the building in greater physical detail than may be set out in the listing description.

Appeal Ground (b)

76. Only one appeal was based on the ground that the works were not unauthorised under Section 9(1) or (2). The appeal did not cite any other grounds.

77. The appeal from 2015 concerned one of a row of twenty-one 19th century listed buildings where the appellant initially appealed on the basis that the Notice had been issued under S.172 of the Town and Country Planning Act 1990 using the wrong form and pleading grounds (b) and (d). The correct form was then submitted pleading only ground (b) but there is no equivalent provision to plead ground (d) under S.174 as there is no time limit in relation to any unauthorised works to a listed building.

78. The LPA referred to the works (of extension) having been built between 1998 and 2006 but the appellant confirmed the dates as between 1998 and 2004 prior to his ownership. The Inspector concluded that other unauthorised works (a uPVC window) appeared to be much later.

79. It appeared that when the property was purchased there was no Listed Building Consent in place for the extension and the appellant had inherited the contravention but as the new owner, was also responsible for the uPVC window.

80. The Inspector concluded that it could not be a defense that the owner was unaware that the extension was not authorised and this would, or should, normally have been established during the conveyance of the property. An appeal under ground (b) appeal could therefore only succeed if the contravention of Section 9(1) or (2) had not occurred, i.e. that what was alleged in the LBEN has not taken place, as a matter of fact.

81. There was no dispute that the works had been executed. The fact that a previous owner and not the appellant had carried out part of this was not relevant. The Inspector agreed with the appellant that this may have seemed unfair and sympathized with his predicament but the action of the council was not time-limited.

82. The Inspector considered whether or not the appeal could be dealt with on the basis of ground (e) - whether or not LBC should be granted, but this ground has not been pleaded and the appellant had not advanced any reasons that LBC should be granted.

83. The Inspector concluded that in these particular circumstances, to deal with this case under ground (e) would not be appropriate and could cause injustice. Any application relating to whether or not LBC should be granted would need to go out to consultation and the Council would need to be given an opportunity to respond to any reasons put forward either in favour of, or against, any granting of LBC. However, despite the submissions by the council of the effects of the unauthorised works carried out, the appellant was not precluded even at that stage from applying for retrospective LBC.

84. It is worth noting in this case that the initial unauthorised works appear to have been carried out over a period of ten years during which time the appellant did additional unauthorised works. The Inspector's remarks about foreknowledge informed by the conveyancing of the property are also noteworthy.

Appeal ground (c)

85. Two of the eleven appeals were based on the ground that the unauthorised works matters (if they occurred) do not constitute such a contravention (under S.9(1) or (2). One of the two appeals involving ground (c) was held to be a nullity.

86. The Inspector took the view that for it to be successful on ground (c) it must be conclusively shown that the works carried out did not constitute a contravention of the Act because they already had been given consent or that there were features of a similar or identical character in place at the time of listing. Had this been the case the Inspector's view was that an appeal on this ground would be successful.

87. As listed building consent is required for any works that affect the character of the building as one of special architectural or historic interest, then irrespective of whether the impact is found to be negative or positive, the works affect the architectural and historic character of the building. As no consent was in place for the works, a contravention has occurred and the appeal on ground (c) failed.

Appeal ground (d)

88. This ground for appeal relates to urgently necessary works in the interests of safety or health or for the preservation of the building that could not be achieved by temporary support or shelter and limited to the minimum measures immediately necessary. The only appeal citing this ground was held to be a nullity. Other examples of appeals under ground (d) would be welcome.

Appeal Ground (e)

89. This was the most common ground for an appeal, i.e. that listed building consent ought to be granted for the works, or that any relevant condition of such consent, which has been granted ought to be discharged, or different conditions substituted. This ground was cited in nine of the eleven appeals including the one held to be a nullity and one that was quashed [q.v. paragraphs 124-125].

90. All but two of the appeal decisions post-date the introduction of the NPPF and it is interesting to note that the Inspectorate were no longer able to cite the technical advice on appropriate alterations in Appendix C of Planning Policy

Guidance Note 15 [PPG15] that had proved so helpful to the sector hitherto. For example in one case from 2009 involving uPVC windows, the Inspector summarily dismissed the appeal citing the relevant paragraph (C.49) of PPG 15 on the importance of retaining and repairing traditional windows, as well as local planning policy.

91. After May 2012 Planning Inspectors became increasing reliant on the NPPF, referring frequently to paragraphs 128, 132 and especially paragraph 134 and whatever development plan policy was most relevant, but with an absence of national technical guidance. In one case the Inspector also emphasised that the unauthorised works appealed underground (e) were contrary to policies relating to the NPPF requirement for good design (Section 7) as well as the conservation and enhancement of the historic environment (section 12) – a point worth bearing in mind.

92. With particular reference unauthorised works that were defined as 'less than substantial' (paragraph 134 of the NPPF) it was usually concluded that there were no public benefits against which the harm can be balanced and that listed building consent should therefore not be granted and an appeal on ground (e) would fail.

93. The NPPF did not always take primacy in Inspectorate decisions and in another case from 2015 also involving uPVC windows the architect/planner Inspector described the harmful visual impact in considerable detail but cited firstly local planning policy and then the NPPF, both only incidentally in support of the decision. In relation to satellite dishes also enforced against under the same Notice the same Inspector remarked that: "They are randomly placed and to quote a well-known saying in relation to buildings *'they appear as carbuncles on the face of a good friend'*. [9] I do not consider, therefore that these elements should be granted listed building consent. "

94. Another appeal case highlights two notable issues regarding ground (e) also raised in relation to other grounds of appeal above: the extended times scales permitted to address unauthorised works, and what might be seen as rough justice for those who might unwittingly inherit the responsibility for correcting the transgressions of previous owners.

95. The appellants' representations under ground (e) related largely to a period of two decades between the works being carried out and the Notice being issued. The Inspector considered it perhaps remarkable that the removal of the feature (a missing gate pier and finial) did not come to light and no action was taken for over 20 years, even though the building was re-surveyed during that time. That did not mean, the Inspector stated, that the loss was not significantly harmful; that the planning authority did not properly police the initial refurbishment carried out (in 1988); that it was aware of the removal of the gate pier and finial at that time, or that the Notice was not appropriately served.

96. The Inspector considered that it was unfortunate that the burden of replacement fell on persons who were not responsible for removing the original gate pier and finial. However, it has not been shown that this would cause hardship, or that a more general problem of persons being unwilling to take on the responsibility for listed buildings would arise.

97. Notwithstanding all these considerations, it was not considered that this justified the grant of listed building consent or that this outweighed the special regard required from S.16 (2) of the Act and so it was concluded that the appeal on ground (e) should fail.

Appeal Ground (f)

98. This was only cited in one case, based on incorrect service of the Notice as required by Section 38 (4).

99. The appellant cited ground (f) because the Notice had not been served in person on the owner, but it had been served upon the appellant who clearly had an interest in the listed building, had made the retrospective application and had then appealed the Council's decision and the LBEN. Even if a Notice is not served correctly, Section 41(5) of the Act allows for this fact to be disregarded if there has been no substantial prejudice to an appellant.

100. In this case the appellant was clear about what was being enforced against and has had every opportunity to appeal the Notice. Thus, even though the owner might not have been served with the notice, the Inspector did not consider that the appellant has been prejudiced in any way and in accordance with Section 41(5) the fact that the owner was not served with a copy of the Notice was therefore disregarded and the appeal ground (f) failed.

Appeal ground (g)

101. This ground for appeal relates to a contention that the requirements of the notice would exceed what is necessary for restoring the building to its condition before the works were carried out. This was cited in four appeals one of which was held to be a nullity.

102. As noted elsewhere [q.v. paragraphs 46-50] where the unauthorised works involve 'removal and making good' or remove and reinstate' appellants have been known to contend that there are no permanent works or fixings that have affected the character of the building. Inspectors tend to disagree, noting that whilst minor fixings such as screw holes can easily be remedied by simply filling them in, it is not unreasonable to require in some detail the making good of any damage, however minor, that may have been caused to the building to restore it

to the condition before the works were carried out. When the unauthorised works are removed the extent of the making good works will almost always be quite evident and appeals on ground (g) will usually fail.

103. Where the core of a structure is camouflaged by external stucco or render in imitation of stone it may not be clear what the core construction comprises and in one case the local planning authority accepted that the exact core material used was not known. Under such circumstances a requirement that the works be of similar rather than the same construction was considered by the Inspector to be acceptable. A Notice requiring, for example, use of natural stone would therefore be inappropriate and possibly excessive and an appeal on ground (g) would succeed. A lesser and more appropriate requirement could be substituted that stated that the materials were to match existing construction while also ensuring the same precision of detail. This would be no more onerous and would not cause the appellant injustice. [10]

Appeal ground (h)

104. This ground for appeal relates to timescales and whether the period specified in the Notice is sufficient to undertake the steps required by the Notice. Length of timescales was referred to in paragraphs 24 to 28 above. Only three appeals queried the deadline for compliance specified.

105. In one case involving the removal of twenty-two uPVC windows the appellants were stated to be deeply aggrieved by the sheer waste involved in the removal and discarding of modern windows of a relatively high specification and quality, considering the level of investment they had made to rehabilitate the building. They further drew attention to the windows being effective in insulating the building for their tenants, thus reducing fuel costs, energy consumption, and therefore carbon emissions. The council had set a deadline of a year to remove and replace the windows but the appellants requested removal be deferred until the end of their expected life of twenty years. A careful balancing assessment was therefore required between important competing considerations of lower carbon emissions, and historic interest.

106. The Inspector acknowledged the expenditure made on the buildings and the significant contribution the appellants have made to the continued use and therefore survival of the building but the effect of the new windows was severely adverse to the architectural and historic interest.

107. Given the duty under S.16 (2) of the Act the Inspector concluded that any environmental advantages of the uPVC windows, even restricted to a temporary period did not outweigh a justification for the windows to remain in place for a longer period than required by the Notice and further noted national technical advice that energy efficiency can be achieved in traditional style windows if they are well constructed and installed, and further measures such as internal

secondary glazing or the use of curtains could assist regarding insulation and/or noise protection. The council's stipulation of replacement within a year was held to be reasonable and the appeal on ground (h) accordingly failed.

108. In cases where uncommon construction techniques, seasonal factors or specialist contractors might influence timescales, it has been held by the Inspectorate on appeal that a period of 12 months for competitive tendering, commissioning and completion should be achievable and would not be unreasonable. Where a longer timescale was insisted under these circumstances an appeal on ground (h) would be likely to fail.

109. It will be noted in paragraph 27 above that 60% of Notices required compliance within three months. Where a shorter time was specified, it might be anticipated that this would be appealed, particularly for anything more than simple requirements.

110. Where commercial premises are involved, the Inspector may be sympathetic to the appellant's arguments regarding the impact on the business where for example advanced bookings need to be honored, and the loss of future business that could lead to a detrimental impact on the general upkeep of the listed building. In some circumstances the appellant might need to find alternatives, negotiate with the authority and to prepare the necessary submissions.

111. Compliance may take much more than the short period allowed and as the Inspector may vary the Notice under ground (h) to extend the timescale. The authority may therefore wish to consider a more flexible view of the deadline for compliance notwithstanding any history previous broken promises to comply.

Appeal ground (i)

112. This ground for appeal relates to the steps required by the Notice not serving the purposed of restoring the former character of the building. Only three appeals queried the purposed of the LBEN.

113. To be successful on this ground it must be conclusively shown that the steps required by the notice for the purpose of restoring the building to its former state would not serve that purpose. The onus would be on the appellant to submit evidence to show that the requirements would not serve their purpose. The local authority's submission should be clear about the steps and should ensure clarity of purpose.

114. It is recommended that unless the works required are very simple in nature, wording confined to, for example, 'remove and restore' should be

avoided and the examples in Appendix 1 may be helpful in thinking through the wording. Planning Inspectors will make their own inspection and from this it should be clear that if the requirements are all followed then the character of the listed building will be restored. If this is the case an appeal under ground (i) will fail.

115. Given the frequency of LBEN served on uPVC windows it is interesting to note that appellants may contend that there has been no change to the appearance as new windows are the exact same size with the same profiles as the ones removed. This is almost never the case and the local authority needs to make clear that while windows are the same size in that they fit within the structural openings, the component sizes and profiles of the UPVC windows are usually completely different.

116. Plastic mullions, thick frames and even thicker opening frames will all result in a distinctive difference to the pre-existing windows. It will usually be readily apparent that the appealed windows will have taken on a different character by being heavier looking and clearly of a different material to traditional sash and casement windows and as such they will contrast markedly with timber windows and look distinctly uncharacteristic on the listed building in question. The special architectural and historic interest will therefore have been changed in such a way that listed building consent is required. Under these circumstances an Inspector is likely to conclude that the steps specified by the local authority (with the proviso in paragraph 103) would restore the character of the building to its former state and that an appeal on ground (i) would fail.

Appeal ground (j)

117. Only one case has come to light where the ground for appeal relates to the works exceeding what is necessary to alleviate the effect of the works executed to the building. Other examples of LBEN appeals on this ground would be welcome.

118. Section 34(2)(b) provides that if the planning authority consider that restoration of the building to its former state is not reasonably practicable or undesirable, they may specify in the notice the execution of further works which they consider are required to alleviate the effect of the unauthorised works. Section 16(2) of the Act requires the authority to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses. The logic and judgment that applies will be similar to that as under appeal ground (i). What may be important however, may be the physical or archival evidence (see paragraphs 11 to 13) especially where the list description may be old and perfunctory. Local authorities should therefore try to avoid getting into a dispute with the appellant as to whether the listing description may be wrong or defective but it is advisory not definitive in any event.

119. In the one case cited in relation to ground (j) - yet another window case - the local authority knew the appearance of the more significant windows before the unconsented works as they had photographic evidence. Accurate restoration to its previous state could not be stated with complete certainty but the council applied an evidence-based strategy to specify a range of traditional windows, which the Inspector agreed would be the minimum necessary to alleviate the effect of the damaging works. The appellants suggest the installation of mock glazing bars, or replacement units with decorative patterns, but these would not have resolved the highly problematic issue of the thickened casings and frames and the Inspector rejected this proposed mitigation, considering that the councils approach was reasonable and not excessive and the appeal on ground (j) therefore failed.

Appeal ground (k)

120. No appeal cases came to light where the steps required to be taken under the Notice exceeded what was necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with. The Institute would appreciate other examples of LBEN appeals on this ground to be forwarded for a further iteration of this note.

Variations, quashed appeals and nullities

Variations

121. Planning Inspectors have the ability to vary faulty LBENs where this would cause no injustice. Clearly it would be preferable if the Notice was accurate in the first place but in two of the cases the Inspector dismissed the appeal and upheld but altered the Notice.

122. In one instance there was an un-numbered paragraph on the first page of the notice, giving notice pursuant to the provisions of S. 38 of the Act, incorrectly referring to steps specified in the Third Schedule when it should have referred to the Fourth Schedule. The Inspector considered this to be a simple but significant drafting error but could be corrected without injustice.

123. In the second instance the Inspector dismissed the appeal overall but found that it succeeded to a limited degree only on ground (h) and varies the Notice to extend the time for compliance from two to six months.

Quashed appeals

124. In one case the LBEN was quashed. The case revolved around works to a barn within the curtilage of a listed building where the Notice had required the removal of a single storey front extension, two new rooflights in set within an elevation and where all the metal rainwater goods had been replaced in plastic.

125. The Inspector concluded that the barn made no contribution to the residential use of listed house at the time of listing and there were no functional links between the two. The barn was not considered listable in its own right and had become further visually separated from the house by development erected before listing took place, reducing any perception that the buildings were part of a single unit. The buildings were also in different ownerships and the combination of all these factors indicated that the curtilage of the house had ceased to include the neighbouring farm property before listing occurred. Consequently, the Inspector found that the barn was not a curtilage listed structure. The appeal on ground (c) therefore succeeded and the listed building enforcement notice was quashed and no other appeal grounds required further consideration.

Nullities

126. This case is instructive in illustrating the need to consider all the requirements of a Notice and instances where an Inspector is unable to correct a fundamental error.

127. The Notice required the removal of all of the uPVC framed windows and doors from the building and all the materials associated with it from the land but it failed to explain how the breach of listed building control was to be remedied. Complying with the requirements of the Notice would grant consent for removal but not for any alternative windows to be inserted. This would technically leave the listed building open to the elements and would not be in the interests of preserving it. The Inspector concluded that no reasonable planning authority would normally grant consent for such works.

128. The courts have held that enforcement notices must be sufficiently precise for the recipient to know what must be done to remedy the matter. While removal of an element may usually be sufficient, it is not enough where the purpose of a LBEN is to preserve the special architectural and historic interest. The Notice would require works, which would be contrary to the statutory purpose of the 1990 Act with no ready means of correcting it.

129. The Inspector considered whether the Notice could be varied to include a process and timescale for approving details of replacement windows but case law establishes the need for certainty and to vary the Notice to require the approval of details would expand its scope too far to lie within the Inspector's powers. The Notice was therefore a nullity.

130. The various grounds of appeal did not fall to be considered but the Inspector stated that if the local planning authority had kept a record of this

LBEN on any register, they should consider reviewing it and were not precluded from taking further enforcement action if considered expedient to do so.

Prosecutions for non-compliance

131. Although the outcomes of prosecution cases have been notified to the Institute on a voluntary basis since 1996 and currently comprise details of about 240 cases, only twenty-two of these specifically relate to proceedings for the failure to comply with one or more LBENs. Over half of these cases have been brought within the last ten years and only one of the cases was also the subject of an appeal included in the analysis above.

132. It was noted that the range of works to be corrected was more diverse than those included in the sample of Notices and appeared to involve a greater number of internal works although the reasons for this are not entirely clear.

133. Prosecutions for non-compliance included action against an owner to secure the removal of temporary scaffolding on a building after a six year period of inactivity; a case of failure to rebuild a demolished listed post-war building by the architect Erno Goldfinger based on his original deposited plans; [11] and, the removal of a passenger lift, and precise replication of internal joinery fixtures based on record photographs.

134. In some instances the works required under the LBEN were quite modest: the reinstatement of leaded lights to a window; the reinstatement of a doorcase, the removal of solar panels and vinyl advertising panels and it seems surprising with the opportunity to appeal the Notices that compliance was not met. In one case involving urgent works where the local authority had specified works at a cost of £1,000, non-compliance resulted in a fine of £3,000 with local authority costs of £1,000 and the work still had to be carried out at further cost to the defendant.

135. In all the reviewed cases bar two, the prosecution was brought for failing to comply with a single Notice, but in these other cases the charges related to non-compliance on three and seven notices respectively.

136. Almost all the cases predated the Historic England ‘Heritage Crime Guide for Sentencers’. [12] This publication aims to improve the consistency of sentencing. Prior to this there had been no sentencing guidance in existence that could be referred to by the courts and their legal advisers, to assess the seriousness of the offences so that non-compliance could be properly reflected in the sentence.

137. The maximum fine per offence in the magistrates court is £20,000 but it is difficult to comment on the range of fines levied regarding LBENs given the outline detail of most of the unauthorised works involved; however the highest fine so far recorded by the national database has been £22,000 with £25,000 costs (to which the further costs of carrying out the works would need to be added).

138. The above case related to a Grade 2 listed late 18th or early 19th century dwelling listed in August 1983. The defendant, the owner, had failed to comply with three LBENs for which a fine of £3,000 was levied and for cutting of main roof timbers (fine £5,000); removal of a historic staircase (fine £5,000); insertion of new staircase (fine £5,000); and, removal of 2 doors and doorways (fine £4,000) i.e. £22,000 overall plus costs. The fines would have been higher had the magistrates not taken account of the guilty pleas.

139. Court action is not without its frustrations and in one case, the defendant (the owner) claimed that the problems were due to vandalism prior to his ownership. He was fined £5,000 with £5,000 costs but appealed to the High Court who rejected an appeal to the House of Lords and referred the matter back to the magistrates for sentencing where the fine was upheld. The costs to the owner in the appeal was thought to be substantial but the overall costs of the local planning authority in fighting the appeal had risen to £11,000 not all of which they were then able to recover.

Summary

140. When they are prepared and served correctly as described above, Listed Building Enforcement Notices can be an effective enforcement tool for the removal of unauthorised works and the reinstatement of structures or features more in keeping with the special character of the listed building. In addition to this Research Note there is a substantial amount of legal precedent that can usefully inform local authorities considering serving the appropriate Notices.

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Endnotes

1. For guidance on day-to-day procedural matters see: GN2017/1 Practical Guidance on bringing Listed Building Prosecutions accessible at: http://ihbconline.co.uk/toolbox/guidance_notes/prosecutions.html

For guidance on the court fines levied for non-compliance with a LBEN see: http://www.ihbc.org.uk/resources_head/index.html

2. Discussions with delegates at each of the regional training on heritage enforcement under the auspices of HELM conducted by the author for English Heritage 2015-16

3. ibid paragraph 11

4. For IHBC's Research Note on Heritage Cases on Enforcement Registers in England see: RN2016/3 accessible at http://ihbconline.co.uk/toolbox/research_notes/enforcement.html

5. Miller-Mead v. Minister of Housing & Local Government [1963]

6. Section 265 of the Public Health Act 1875, provided a limited exclusion of liability. The exclusion in the 1875 Act does not extend to liability for the results of negligence but provides a statutory bar for the liability of officers if they are acting in pursuance of a statutory function or power of the authority and they acted in good faith.

7. Several LBEN appeal outcomes have been posted on the web but the Historic England Heritage Planning Case Database does not categorize LBEN appeals and these have to be searched for more generically.

8. Qualifications stated as BArch RIBA RIAS MRTPI

9. This is something of a curiosity as it relates to a remark made over 30 years before in a speech by HRH The Prince of Wales at the R.I.B.A. 150th anniversary Royal Gala Evening at Hampton Court Palace in May 1984. What Prince Charles said was: "What is proposed is like a monstrous carbuncle on the face of a much loved and elegant friend."

10. In this instance the Planning Inspector varied ground (g) in the Notice.

11. The defendant had already been fined £8,000 for the unauthorised demolition and the fine for non-compliance with the LBEN plus the council's costs brought the overall total to £24,000. See also http://ihbconline.co.uk/prosecutions/ (pages 46-47)

12. Historic England 1st edition April 2015, 2nd edition February 2017 Ref: HEAG054a

Appendix 1

Listed Building Enforcement Notice Specification Clauses

The following nine examples are not in any particular order and are presented as an aide memoire to specification writing.

The requirements show a variety of approaches to dealing with uPVC windows in particular as this is the most frequently encountered LBEN issue. The alternatives given below are all considered to be a more rigorous and effective approach to resolution than simply specifying 'remove and replace'.

Note: These examples are provided for information but should not be reused without ensuring that the wording fits the precise circumstances of the case. To

do otherwise might be to invite an appeal against the Notice or a further unsatisfactory outcome.

The format and wording have been adjusted slightly for consistency of presentation but the wording of the works has not been altered. It should be noted that not every LBEN refers to the fact that prior listed building consent had not been obtained.

1.) **Unauthorised works:** Installation of uPVC window frames and door.

What you are required to do: Install wooden window frames and door that exactly match the originals, making, especially sure the materials and design are the same. Examples of such windows can be found on the neighbouring property at 28 Princess Road.

Note: Reference to a matching local exemplar would make compliance easier to confirm. As well as materials and design, finish should be specified.

2.) **Unauthorised works:** Installation of uPVC window frames and door.

What you are required to do: [a] remove all the UPVC windows and doors from the building; [b] replace the doors on the front and rear elevations to the building with white painted timber 16 pane single glazed Georgian style doors complete with 'lambs tongue' glazing bars 25mm thick; [c] replace the windows on the first floor of the rear elevation to the building with white painted timber 12 pane timber single glazed Georgian style sliding box sash windows complete with 'lambs tongue glazing bars 20mm thick (single glazed obscure glazing is to be used in the bathroom window); [d] replace the window on the ground floor of the rear elevation to the building with a white painted timber 18 pane single glazed Yorkshire sliding sash window complete with 'lambs" tongue' glazing bars 20mm thick.

Note: Differentiation of window sizes and types but not the type of obscure glazing

3.) **Unauthorised works:** The erection without the required listed building consent, of an unauthorised single storey extension to the southwestern side gable of the building and the rendering of the upper part of the original southwest gable.

What you are required to do: [a] demolish the unauthorised single storey extension; [b] remove the unauthorised render on the south west side gable without damaging the stonework; [c] reinstate the south western side gable to a wall with the stonework exposed and finished with a lime-based flush pointing. The pointing shall consist of lime putty or hydraulic lime mixed with sharp sand which matches the colour of the stonework in the following proportions: 1 part lime to 2.5 parts sand. The final finish of the pointing is to be tamped with a stiff brush after the initial set, not smeared or dragged along the joints when wet.

Note: In terms of quality control, this is a useful example of the expected finish to the mortar joints.

4.) **Unauthorised works:** The removal of a natural Collyweston stone slate roof covering to the principal rear roof slope and replacement with Welsh slate.

What you are required to do: [a] remove the Welsh slates and associated battening and felting; [b] completely recover the principal rear roof slope of the property with new natural Collyweston stone states by:

(i) re-felt the roof with a breathable felt to conform with the relevant part of the British Standard [now BS 8217];

(ii) re-batten the roof with pressure treated, softwood battens fixed with galvanised steel nails;

(iii) lay the new Collyweston stone slates in diminishing courses from eaves to ridge. (These shall be fixed with non-ferrous, clout- headed nails and spot bedded using a non-hydraulic lime based mortar that does not include any Portland cement);

(iv) finish the roof with hogs-back clay ridge tiles without ventilation. (These shall be bedded on and pointed in non-hydraulic lime-based mortar that does not include any Portland cement);

(v) all lead flashing to be of milled sheet lead to BS 1778.

Note: The timescale for compliance with LBEN was 36 months and at the time new Collyweston stone slates were becoming less easy to obtain.

5.) **Unauthorised works:** The removal without the benefit of listed building consent of three historic fireplaces (including surrounds & inserts/grates) from their original locations within the house. Subsequent to the removal of these three fireplaces, the following works have also been undertaken: [a] the relocation of one of these historic fireplaces to a different position within the house; and [b] the installation of two new replica fireplaces within the house in the position of the former historic fireplaces.

What you are required to do: Remove the two modern replica fireplaces (including surrounds and inserts/grates) currently in situ from their locations within the house.

Remove the one historic fireplace (including surround and insert/grate) that has been relocated within the house and reinstate it in its original position.

Reinstate the two historic fireplaces (including surrounds and inserts/grates) to their original positions within the house.

Note: This is a rare example of a LBEN dealing with internal works but in undertaking the works no requirement to make good was made.

For the avoidance of doubt the wording of the Notice would be improved by stating that the reinstatement should be "*precisely* in its original position" i.e. in the correct place within the original room. Some reference that the act of removal and reinstatement must result in no damage to the historic fireplaces would also be useful.

6.) **Unauthorised works:** The removal of the internal skin of masonry to the external flank wall and chimney breast to the ground floor rear reception room along with the partial removal of the internal wall dividing the front and rear reception rooms and associated plaster; removal of sections of timber flooring and skirting to the ground floor rear reception room; creation of apertures through the external flank wall.

What you are required to do: Reinstate the inner masonry skin of the external flank wall, chimney breast and internal ground floor dividing wall with the original bricks that remain on site. Where additional bricks are required, they should be of the same size, composition and finish as those used in the original build. Re-plaster the reinstated brickwork using a lime-based plaster finish. Reinstate the timber flooring and skirting using materials and profiles to match those remaining in the building. Re-fill the apertures through the external flank wall using brick dust from damaged salvaged bricks on site that cannot be re-used in the reconstruction of the walls and chimney and finish with render to match the external finish of the flank wall. Make good any damage caused to the building during these works.

Note: A slightly ambiguous use of bricks not considered reusable for reconstruction.

7.) **Unauthorised works:** Removal of the gate pier and stone pineapple finial on the south (side) elevation closest to the subject building.

What you are required to do: Reinstate the gate pier and stone pineapple finial in the area outlined in blue on the attached plan (Appendix 1).

The gate pier shall be constructed in line with the following: the gate pier shall be constructed to exactly match the mouldings, design and style of the existing gate pier, as per the attached photographs (Appendix 2).

It shall be constructed out of natural stone and the area between the moulded coping and moulded plinth shall be in lime render consisting of a mixture of 1 part hydraulic lime to 3 parts sand. The render shall be appliedin the traditional manner to a smooth even finish. Once rendered the replacement gate pier shall be painted in a colour to match the existing gate pier.

The stone pineapple finial shall be reinstated to sit on top of the gate pier and shall be in line with the following: the decorative stone pineapple finial shall be constructed out of stone to exactly match that used to construct the existing pineapple finial. The design of the pineapple finial and mouldings to the base shall replicate precisely the existing pineapple as per the attached photographs (Appendix 3). The pineapple finial shall be set on top of the reinstated gate pier in a secure fashion.

Note: the precise detail for a listed structure and cross-reference to photographic evidence.

8.) **Unauthorised works:** Partial removal of listed curtilage wall by removing the top courses of brick, followed by their reconstruction and increase in height to between 1.17 to 1.45 metres using new brick and copings, and then finished with new coloured render to the front facing elevations. On top of the new walls new obscure glazed screens approximately 1 to 1.2 metres high with supporting black framework have been added, bringing the total height of the walls and screen to between 2.17 and 2.65 metres high.

What you are required to do: [a] Within 3 months of this Notice taking effect - take down and permanently remove from the site the obscure glazed screens and their supporting framework; [b] within 3 months of this Notice taking effect – using small hand-held tools, and not power tools or sledge-hammers, take down the curtilage walls and separate and store on site all original bricks for inspection by the local planning authority. Remove all new bricks and other debris arising from the demolition of the walls from the site; [c] following the local planning authority's inspection of the stored original bricks in compliance with step [b] above, within 4 months of this Notice taking effect - reconstruct the curtilage walls to their former height with re-useable stored original bricks, making up any shortfall using shortfall matching reclaimed red brick, and finish the top of the walls with stone copings. The re-construction of the walls shall be in Flemish bond using a hydraulic lime mortar, and their finished appearance shall match as closely as possible their original appearance as shown in photographs A and B attached to the Notice.

Note: This is a detailed specification for a curtilage structure and noteworthy for the phased approach and approval at interim stages and the requirement for careful demolition to ensure preservation of salvageable material.

9.) **Unauthorised works:** Six unsuitable windows were installed.

What you are required to do: Remove all existing white uPVC windows from the property; 4 from the south elevation, 2 from the east elevation.

Within south elevation replace the existing 4 uPVC windows with timber sash and case windows of six pane design (in a 'three-over-three' pattern consisting of three panes in the upper sash and three in the lower sash), with both sashes of equal proportions and vertically sliding to open. The astragals must be structural and should be no wider than 22mm. The glazing must be fixed into the frames and astragals using putty.

Double-glazing can be used provided that Slimlite double-glazed units or equivalent are used. The windows should not have horns. Any trickle vents should not be visible externally. The windows should have a painted finish, white in colour.

Within east elevation (2 x windows): replace the existing uPVC windows with timber sash and case windows of six pane design (in a 'three-over-three' pattern consisting of three panes in the upper sash and three in the lower sash), with both sashes of equal proportions and vertically sliding to open. The astragals must be structural and should be no wider than 22mm. The glazing must be fixed into the frames and astragals using putty. Double-glazing can be used provided that Slimlite double-glazed units or equivalent are used. The windows

should not have horns. Any trickle vents should not be visible externally. The windows should have a painted finish, white in colour.

Note: An interesting description of the unauthorised works from Scotland where the unsuitability is not elaborated, but a very detailed requirements for the remedial works including allowance for potential double glazing and trickle-ventilation. It is also unusual to be so specific about the use of a specific commercial product (Slimlite) rather than a more generic description of the appearance and method of manufacture.