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**Manchester City Council  
Report for Information**

**Report to:** Communities and Neighbourhoods Overview and Scrutiny  
Committee – 8 March 2011

**Subject:** Planning Enforcement Action to Prevent Deterioration of Listed  
Buildings

**Report of:** Head of Planning

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**Summary**

Listed Buildings are a designated heritage asset and have statutory protection. This report sets out the background and various powers available under current legislation as well as the significant financial implications and consequences of their use.

**Recommendations**

Members are recommended to note the report and its content.

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**Wards Affected:**

All

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**Background documents (available for public inspection):**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

## **1.0 Introduction**

- 1.1 Manchester has 889 listed buildings across the City, many of which are in use and maintained by occupiers and owners. The approach by Planning and Building Control officers has been to work proactively with owners and/or developers to help bring vacant buildings back into use. This can involve introducing creative and innovative solutions, including new uses, to ensure that they continue to contribute to the City's well being.
- 1.2 Under planning legislation, listed buildings are designated heritage assets and afforded statutory protection. Although there are powers available to Local Planning Authorities, which can help to protect the historic environment, these are not straight forward. These powers, in the form of statutory notices, are intended to assist where negotiation is unlikely to deliver a satisfactory outcome. However, there are significant financial implications in pursuing such routes which limits this type of formal action from being taken (and therefore reserved for exceptional circumstances) and emphasises the importance of continuing to work with owners, where possible, to bring buildings back into use .
- 1.3 Whether formal or informal action is considered appropriate, the key objective is to try to intervene at an early stage. Keeping historic buildings in sustainable use is clearly important as when they become vacant or are underused, without proper maintenance they can very quickly fall into disrepair.. Once they become vacant, they are vulnerable to the weather and vandalism, and deterioration can be rapid, resulting in escalating costs for their repair and reuse.
- 1.4 Securing a new use for a listed building can present a challenge and the cost of implementing a scheme can increase dramatically if the building is left to deteriorate, the result is a significant effect on economic viability. Therefore, it is important that efforts are made to make buildings secure and weather-tight in order that they can be protected until a new and viable use can be developed and implemented.
- 1.5 Some progress has already been made in identifying and monitoring the condition of Manchester's listed buildings and categorising them in terms of risk. This report outlines the background to this approach in addition to the formal enforcement actions available to the City Council through the Planning and Building legislation.

## **2.0 Background**

- 2.1 The Planning Service, in partnership with English Heritage, has adopted a collaborative approach to 'buildings at risk'. This is shorthand for 'historic building at risk through neglect and decay' as defined in English Heritage's own strategy. This term originated over twenty years ago and risk is defined by occupancy and condition.

- 2.2 In recent years, as a result of proactive action, the number of buildings at risk within Manchester has reduced and is reflected in the number of buildings on the English Heritage National 'At Risk Register'. The 2001 National Register had 21 entries for Manchester compared with 15 on the 2006 Register. On the most recently published Heritage at Risk Register (which identifies both Grade 1 and Grade 11\* listed buildings) there are just 7 for Manchester.
- 2.3 In addition, a register is held internally of Grade II listed buildings at risk and, as these make up the majority of the City's listed building stock (circa 790 entries); the number of buildings at risk is higher in this group. Currently there are 20 such buildings identified and these are monitored on a quarterly basis.
- 2.4 Activity has focussed on attempting to safeguard those at high risk and this has been most effective where this has involved: working with other services within the Council; working with private owners and developers; and, working with other public organisations and partners such as English Heritage.
- 2.5 In this context the use of enforcement powers is considered to be only one element of the strategy for dealing with neglected buildings and consideration is reserved to exceptional circumstances where there is deliberate neglect and unwillingness by owners to carry out necessary repair works.
- 2.6 The process of dealing with listed buildings that have been neglected is unfortunately not instant especially where they have been neglected for some considerable time. As such, enforcement powers may be considered as an interim measure until a new and / or willing owner comes forward or a successful reuse can be found or be negotiated.

### **3.0 Enforcement Powers Available**

- 3.1 The following section outlines the powers available to local authorities established to assist where buildings are falling into disrepair or deemed to be dangerous.. As already noted the use of these powers are not straightforward and as there are financial implications caution is required before embarking on such action.

#### **Planning (Listed Building & Conservation Area) Act 1990 - Sections 48 & 54**

- 3.2 Where reasonable steps are not being taken to properly preserve a listed building, S47 of the Act authorises the local authority to compulsorily purchase the building but not until at least two months after service of a section 48 Repair Notice. The Notice served on the owner of a listed building must specify works, which it considers reasonably necessary for the proper preservation of the building.
- 3.3 If the building has not been repaired in accordance with the notice and compulsory purchase procedures are commenced, the owner may apply to the Magistrates' Court to suspend the compulsory purchase if reasonable

steps have been taken for preserving the building. If the Council disagrees with any order suspending the CPO, it would need to appeal to the Crown Court in order to restart the CPO procedure.

3.4 There are clear implications for an authority seeking to acquire a listed building who may simply inherit a problem. The CPO process is very resource intensive and it is also noted that this is very different process to other CPO procedures which do not include an owner's right to apply to the Magistrates' Court. S47 CPOs are in themselves therefore more risky than other CPOs in terms of potential cost and delay.

3.5 A section 54 Urgent Works Notice, by virtue of the same Act, enables the Council to execute works which appear to the Council to be urgently necessary for the preservation of the building, including works of temporary support or shelter for the building. The notice may not be served on occupied building or require works in parts of the building that are occupied. Service of such a notice is essentially a statement of intent in that the local authority will carry out these works (as described in a schedule) within a reasonable period of time, not less than 7 days if the owner does not undertake the necessary repairs and that he will be charged for doing so. The major drawback with this notice is that if works are carried out in default and the Council serves notice of the amount due, the building owner may trigger a public inquiry into whether the expenses should be recovered. The grounds for challenging the Council's right to recover the costs are:

- Some or all of the works were unnecessary for the preservation of the building
- Temporary works of shelter or support have continued for an unreasonable time
- The amount paid for the works is unreasonable
- Recovery of the amount paid would cause the building owner hardship

If the amount due is confirmed after a public inquiry, then it must be recovered as a civil debt

3.6 Sometimes alteration or demolition may be carried out to listed buildings which harms their special architectural or historic interest. If this occurs without listed building consent then the Council has powers under S38 of the Act to serve listed building enforcement notices requiring the owner to restore the building to its former state giving at least 28 days notice of the need to start work. The cost of works carried out by the Council in default of the owner's action may be recovered as a local land charge.

### **Buildings Act 1984 - Sections 77, 78 & 79**

3.7 Section 56 of the Listed Buildings and Conservation Areas Act 1990 limits the applicability of the Building Act 1984 to listed buildings and requires the Council must to consider whether its urgent works or repairs notice powers would be more appropriate than the powers available under the Building Act.

- 3.8 Under the Buildings Act, a section 77 notice enables the local authority to apply to the Magistrates Court to make a building safe. Following non-compliance the local authority can execute the works in default. A section 79 Notice works in a similar manner to a section 77 Notice, however, there is no need to apply to the Magistrate, although the owner is made aware that their building is in a ruinous and dilapidated condition and that works are required to improve its condition subject to planning requirements.
- 3.9 A section 78 notice relates to imminently dangerous buildings. There is a need to exercise caution when using this notice as buildings subject to these notices are an imminent danger to the public. There may be ways of removing the 'danger' and this can give time for negotiations with an owner about the optimum solution. However, there is not always an opportunity to do this and works will need to be carried out to make the building safe by removing the danger which can mean significant works, for example, taking the roof off. The primary objective of the legislation is that the danger is to be removed, yet this does not mean that wholesale demolition is acceptable but is purely to remove the danger and is used to make the building in question as safe as possible.

### **Town & Country Planning Act 1990 - Section 215**

- 3.10 This notice enables a local authority to serve notice on the owner/occupier of land whose condition is adversely affecting the amenity of an area. The notice specifies the works necessary to remedy the condition of the land (including the exterior of buildings). Following non-compliance after a set timescale, the works can be carried out in default. There is a right of appeal against the serving of a section 215 Notice which takes place in the Magistrates Court.

### **Recovery of Monies**

- 3.11 The implications of pursuing a Section 47 Notice have already been set out above and would require an authority to seek to acquire a building where an owner fails to undertake the necessary work. The responsibility for the building, would, if successful through CPO, fall to the acquiring body. In addition, works carried out in default under a Section 54 Urgent Works Notice cannot be dealt with as a land charge, only as a civil debt between the Council and the building owner. The section 54 Notice is unlike other notices for maintenance of land (section 215 Notices under the 1990 Town & Country Planning Act) and dangerous buildings (sections 77, 78 & 79 of the 1984 Building Act) where costs can be sought through a charge on the land/property.
- 3.12 The issue with section 54 notices requiring civil debt recovery has been raised in evidence to past Select Committees on the historic environment and it is hoped that changes will be made to provide local authorities with a regime that is more supportive in keeping with the City's duty of stewardship to protect the historic environment through notice service.
- 3.13 A Draft Heritage Bill was published in April 2008 and there are provisions would place a much stronger duty on the owner of a heritage asset to maintain

and protect it. Unfortunately the Draft Bill has not progressed and there is some uncertainty about if and when it will be enacted.

#### **4.0 Implementation**

- 4.1 The key to securing repairs and the reuse of listed buildings at risk is to pursue a number of potential actions, on a case by case basis, including the following.

##### **Partnership**

- Liaise and build links with Building Preservation Trusts, English Heritage, other agencies such as the Architectural Heritage Fund, and community groups.
- Link the strategy with other strategies or initiatives including Corporate Property's Heritage Asset Strategy and link in with regeneration led schemes or initiatives.
- Contribute toward securing the future of those buildings on the Buildings at Risk Register.
- Actively promote the repair, refurbishment and reuse of buildings at risk in partnership with property owners and developers.

##### **Legislation & Negotiation**

- Use Urgent Works and Repairs Notices (sections 54 and 48 respectively) action particularly where the required works can be secured without committing the Council to irrecoverable expenditure where prospective new users can meet the cost.
- Work with Building Control (following service of section 77, 78 & 79 notices) in line with the policy on dangerous buildings that are listed or within conservation areas.
- Consider the possibility of using section 215 Notices in specific circumstances where such action can be justified as being economically viable.
- Use enforcement action and prosecution where it is necessary to protect the City's built heritage.
- Adopt a pro-active approach aimed at encouraging owners to undertake repairs before the onset of decay; endorsing the approach that prevention is not only better than cure but also more economical in the long term. (In the first instance this is to be achieved through negotiation rather than resorting to service of notices).

##### **Resources**

- Secure financial support from grants or other funding agencies where these have a conservation or regeneration focus.

- 4.2 There are several examples which can be used to demonstrate the approaches outlined above.

**Ancoats Dispensary** – the City Council have engaged with the owners, English Heritage and a building preservation trust, 'Heritage Works' to try and secure repairs and re-use of this Grade II listed building. This includes supporting an application to the Architectural Heritage Fund for feasibility work to secure a new use.

**White Lion, Withington** – Shortly after becoming vacant this Grade II listed building became derelict, suffering from vandalism as well as theft of lead from the roof resulting in water ingress. After much discussion with the owner (including reference to notices) they agreed to undertake some urgent repairs and mothballing works. Officers worked closely with the owner to secure a new use and, following planning permission and listed building consent; works are now on site to convert the building into a supermarket.

**All Souls Church, Every Street** – Building Control became involved with this property as a consequence of a rear retaining wall being in a very poor condition. As part of investigations an issue was also identified with the rear boundary treatment as an original wall had been replaced with an unauthorised palisade fence. Dangerous building legislation was used to repair the building's retaining wall and also to remove the unauthorised fence and reinstate the boundary wall.

**384 Cheetham Hill Road** (former Snooker Hall) - Following various environment health notices and the threat of a planning enforcement notice because of an unauthorised use, the owner applied for planning permission and listed building consent to change the building's use to storage for an adjacent supermarket business. The work also included repair and recovery of original features.

**23-25 Shude Hill** – This property was brought to the attention of Building Control as a potentially dangerous building. Although not a listed building it is of some historic value and is in a conservation area. The building was monitored and following significant concerns a section 78 notice was served. As a consequence the owners applied for planning permission and conservation area consent to rebuild the front elevation and carry out complementary remedial works. The ground floor shops are now back in use and the upper floors are used for residential accommodation.

## **5.0 Conclusion**

- 5.1 Addressing the deterioration of listed buildings is not a straightforward matter, but there are informal approaches and some legal mechanisms that can be used to try and safeguard their future. Whilst it is believed negotiation has delivered successful Outcomes in relation to listed buildings, formal action cannot be taken lightly as there are implications in terms of cost recovery and an authority having to take on the responsibility of the asset.

## **6.0 Key Policies and Considerations**

**(a) Equal Opportunities**

- 6.1 Action in respect of enforcing repairs to historic buildings has no known impact on equal opportunities.

**(b) Risk Management**

- 6.2 The main risk in allowing buildings to deteriorate is that they become unsightly and a much greater problem in terms of securing a new use as well as the increased cost associated with their repair. There is also a risk in terms of their affect on the wider regeneration of an area, as redundant, poorly maintained buildings can have a negative effect on the environment. In addition there are also risks associated with reclaiming the monies following enforcement action as outlined in this report.

**(c) Legal Considerations**

- 6.3 Legal advice will be required on enforcement cases that involve the serving of enforcement notices including Urgent Works and Repair Notices due to the need to give significant details of the works and to assess the risk of non recovery of the costs of each case.