

Design and historic environment



Katharine Elliot

Levelling Up Heritage Asset Protection: ‘*Special Regard*’

- TCPA 1990 amended to insert (at s.58B) requirement for LPA/SoS to have “*special regard to the desirability of preserving or enhancing*” any designated heritage asset / its setting affected by proposed development.
- Covers scheduled monuments, registered parks and gardens, protected wreck sites and World Heritage Sites.
- Includes preserving/enhancing any feature/quality/characteristic of asset/setting which contributes to asset’s significance.

Levelling Up Heritage Asset Protection: ‘*Special Regard*’

- Impact: to secure same level of consideration as for conservation areas (s.72 P(LBCA)A 1990).
- Listed buildings also secured same level of consideration via amendment to s.66 P(LBCA)A 1990 to cover “*preserve and enhance*”.
- Wealth of case law on s.66 and s.72 to refer to on approach to be taken to assessments (e.g. *Safe Rottingdean Ltd v Brighton and Hove CC* [2019] EWHC 2632 (Admin) (considering both)).

Levelling Up Heritage Asset Protection: HERs

- LPAs obligated to maintain Historic Environment Record ('HER') for their area (clause 185).
- System for storing / making available information about designated heritage assets / any local site of relevant interest / investigations or studies in the local area *etc.*
- LPA must take reasonable steps to obtain information / keep HER updated.
- SoS to put in place regulations about fees LPAs can charge those wishing for advice/assistance/copies of HER records.

Levelling Up Heritage Asset Protection: TSNs

- Introduction of temporary stop notices ('TSNs') in England (s.44AA P(LBCA)A 1990)
- Authority to LPAs to issue TSN where it appears that:
 - Works have been/are being executed r.e. a listed building in contravention of s.9(1) (breach of s.7 prohibition on unauthorised demolition/alteration/extension) or s.9(2) (breach of listed building consent condition under s.8); and,
 - Having regard to effect of works on the character of the building they consider it expedient that works/part of them be stopped immediately.

Levelling Up Heritage Asset Protection: TSNs

- Subject to various procedural requirements as to content/service/publication/display of TSN.
- Effective from date of first display at property for a maximum of 56 days.
- Post-expiry, LPA can only issue fresh TSN if have taken alternative enforcement action first (e.g. injunction under s.44A).
- Criminal liability imposed for breach of TSN (subject to limited defences (e.g. reasonable lack of knowledge)) (s.44AB).

Levelling Up Heritage Asset Protection: TSNs

- Right to compensation for those with interest in building for any loss/damage (inc. breach of contract) directly attributable to TSN if:
 - Works not found to be in breach of s.9(1) or (2); or
 - LPA withdraws TSN other than after granting listed building consent.
- Unless C required to provide information under relevant provision and loss/damage could have been avoided by providing it/otherwise co-operating with LPA.

Levelling Up Heritage Asset Protection: Other Changes

- Urgent listed building works - amending s.54 P(LBCA)A 1990 to allow works to be carried out on buildings in residential use if would not unreasonably interfere with use, subject to giving 7 days' written notice.
- Compensation for building preservation notices – amends s.29 P(LBCA)A 1990 to apply to Wales only (i.e. no longer right to claim compensation in England).

Securing 'Good Design'

- Amending PCPA 2004 so LPAs required to put in place design code(s) for every part of their area as part of development plan (s.15F).
- Does not need to be exhaustive for all development categories / design aspects but must include steps for compliance in local plan timetable (s.15B).
- Powers to SoS to intervene in event of LPA non-compliance (s.15HB) (including temporary directions (s.15HE)).
- SoS entitled to seek reimbursement from LPAs for costs incurred (s.15HC).

Thank you for listening

© Copyright Landmark Chambers 2022

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
📘 Landmark Chambers
📺 Landmark Chambers