

# ENVIRONMENT CABINET MEMBER MEETING

**Agenda Item 34**  
Brighton & Hove City Council

<b>Subject:</b>	<b>Maintenance of Historic Buildings</b>		
<b>Date of Meeting:</b>	<b>4 July 2008</b>		
<b>Report of:</b>	<b>Director of Environment</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Tim Jefferies</b>	<b>Tel:</b> <b>29-3152</b>
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<b>Key Decision:</b>	<b>No</b>	<b>Forward Plan No. N/A</b>	
<b>Wards Affected:</b>	<b>All</b>		

## FOR GENERAL RELEASE

### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 The report sets out current and future priorities for the enforcement of repair works to historic buildings in the city. It includes a register of those listed buildings considered to be 'at risk'. The report further seeks approval of the proposed arrangements for the service of notices under delegated powers.
- 1.2 The report and Appendix 1 are intended to update the council's adopted Conservation Strategy (2003).

### 2. RECOMMENDATIONS:

- 2.1 That the priorities for current and future action to secure the maintenance and repair of historic buildings in Brighton & Hove are noted and agreed.
- 2.2 That the updated list of historic buildings that are considered to be 'at risk' is endorsed (Appendix 1).
- 2.3 That the proposed arrangements for the service of notices under delegated powers, as set out in paragraphs 6.1 and 6.2 of this report, are agreed.

### 3. RELEVANT BACKGROUND INFORMATION

- 3.1 Over the past 20-30 years the appearance of the city's historic areas has steadily improved, as a result of successive historic building grant schemes, enforcement action and an increased public appreciation of, and commitment to, the conservation of the city's historic fabric.

- 3.2 Because many of the city's historic buildings have a painted finish requiring a regular maintenance cycle and are exposed to an aggressive marine environment, there will at any one time be a proportion of buildings that require redecoration. However, there are now no historic areas that, taken as a whole, are considered to be in especially poor condition. Those problems that remain generally fall into one of two types: certain owners who neglect their properties; and major listed buildings for which a new use has proved difficult to find and/or have suffered unforeseen structural problems.
- 3.3 Government guidance encourages the timely use of urgent works and repairs notice powers but stresses that local authority resources are used to best effect if some are also devoted to identifying buildings at risk as early as possible and providing advice and encouragement to building owners.
- 3.4 The adopted Conservation Strategy includes the council's approach to dealing with the maintenance of historic buildings (see extract at Appendix 2). That approach remains valid but requires updating and prioritising.

### **Legislation**

- 3.5 Various powers are open to the council under the Planning Acts to address historic buildings in poor repair. Each power has particular implications, which must be taken in to account in deciding on an appropriate course of action.
- 3.6 Under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") the council may issue a notice advising that urgent works are to be carried out to preserve an unoccupied listed building. If the owner does not volunteer to do the specified work, the council may carry out the works itself and recover the costs from the owner. This action is generally appropriate for temporary works to stabilise a building and make it weather tight whilst a long term solution is sought.
- 3.7 The Act does not include powers that require owners of listed buildings to keep them in good repair. Section 48 of the Act allows the council to serve a Repairs Notice on any listed building, as a preliminary to compulsory purchase, where it considers that reasonable steps are not being taken to preserve it. However, if that notice is not complied with, the only power open to the council is compulsory acquisition (under Section 47). Consequently such action would be used in exceptional cases only and it would be necessary, before doing so, to enter into agreement with a potential new owner for the building, in order to ensure that the council is not left with long term liability and costs. This therefore requires a corporate approach.
- 3.8 The above powers cannot be used on unlisted buildings in conservation areas, although Urgent Works notices, equivalent to the section 54 power referred to above, can be served on such buildings by the Secretary of State in exceptional circumstances.

3.9 A more general power is available to the council under Section 215 of the Town and Country Planning Act 1990. This allows the service of a Notice if it is considered that the condition of a building or land is adversely affecting the amenity of an area. Failure to comply with a Notice brings liability to prosecution, which may lead to a fine. Alternatively, the council may carry out the works and recover the costs from the owner. As 'amenity' is the key test, the scope of such notices is confined to visible parts of buildings and they cannot be used to require substantial restoration or structural repairs. They can, though, be particularly useful in drawing attention to neglected listed buildings in a bid to halt decay before it falls within the scope of an Urgent Works or Repairs Notice. They are already commonly used in the city to secure redecoration works and localised repairs to stucco, ironwork and joinery on street façades.

### **Priorities for Action**

- 3.10 There are three categories of work for future priority. The first priority is those listed buildings that are considered to be 'at risk'. The second is other historic buildings in need of maintenance. The third priority is for proactive schemes of area improvements.
- 3.11 With regard to listed buildings 'at risk' (the first priority), these are assessed having regard to criteria set down by English Heritage regarding occupation and condition. Buildings that are capable of beneficial use are at risk if they are in very bad or poor condition and vacant or partially occupied. Buildings not capable of beneficial use are at risk if in very bad or poor condition. It is considered that using the English Heritage criteria will ensure a consistent and recognised methodology is applied.
- 3.12 The Conservation Strategy included those listed buildings considered to be at risk. These have been reviewed and a more comprehensive assessment undertaken. The revised list is set out at Appendix 1. In most cases discussions have already taken place with the building owners or their agents and in some cases works are already in progress.
- 3.13 With regard to the second priority, historic buildings in need of maintenance, Appendix 3 sets out the current cases being pursued (listed buildings and unlisted buildings within conservation areas). This area of work is largely reactive and involves responding to concerns raised by local amenity groups and the public. In these cases the most appropriate form of action, where necessary, will normally be a Section 215 Notice.
- 3.14 In all such cases the following criteria will be applied in judging whether such a notice is appropriate:
- The prominence of the building within the street or area;
  - The length of time since the property was repaired or decorated; and
  - The extent of decay.
- 3.15 Such action will focus on works of minor repair and redecoration and is considered inappropriate if it would simply mask more serious problems.

- 3.16 The scope of works appropriate to a Section 215 Notice will vary in each case. Relevant factors will include whether or not the building is listed and whether or not it forms part of a uniform group or terrace. A standard schedule of works is set out at Appendix 4. The extent of restoration works that can be achieved to any architectural features of a building, such as decorative mouldings or iron railings, will depend on their degree of prominence in the street scene.
- 3.17 The third priority category is area improvement schemes, where proactive enforcement will have a role alongside the funding of enhancement works. No such schemes are currently in operation but the two future priorities will be: (a) the Valley Gardens conservation area, as set out in the Conservation Strategy and the LDF Core Strategy; and (b) the Old Town conservation area in order to support enhancements identified in the forthcoming conservation area appraisal document. English Heritage has indicated that it would encourage bids for joint grant schemes in both areas.

### **Delegation**

- 3.18 The existing scheme of delegation allows officers (after consultation with the Head of Law) to take enforcement action, including service of formal Notices, and to authorise the institution of legal proceedings where necessary. It is expected that Section 215 action will be taken under delegated powers having regard to the criteria set out above. But any cases where the council proposes to carry out the works itself will be reported to the relevant cabinet member.
- 3.19 In view of their financial implications, all proposed notices on listed buildings under either Section 48 (full Repairs Notice) or Section 54 (Urgent Works) will be brought before a cabinet member meeting for approval of the appropriate course of action.

## **4. CONSULTATION**

- 4.1 The Assistant Director, Property & Design has been consulted on the report and supports it. She has provided additional information for Appendix 1 in respect of council owned properties. The Environment Improvement Team has also been consulted but has made no comment.
- 4.2 The proposals in this report do not represent matters of new policy or introduce any new schemes. Rather they are intended to clarify future priorities so that resources can be used most effectively. Therefore it is not considered that external consultation would be appropriate in this case.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### **Financial Implications:**

- 5.1 The enforcement action as set out in the report can usually be covered within existing resources. In cases where additional costs may be incurred due to the

council having to undertake the repair work or compulsory acquire a property, a separate report would be presented to this meeting for approval.

*Finance Officer Consulted: Patrick Rice*

*Date: 28 May 2008*

Legal Implications:

- 5.2 The council has a legal duty of stewardship for listed buildings. The relevant legal powers open to the council to secure the maintenance of listed buildings are set out in paragraphs 3.5-3.9 of the report.

*Lawyer Consulted: Alison Gatherer*

*Date: 25 May 2008*

Equalities Implications:

- 5.3 An Equalities Impact Assessment has not been carried out because the report does not concern matters of new policy.

Sustainability Implications:

- 5.4 The proposals in this report have no substantial impact upon the four priorities of the UK's Sustainable Development Strategy. But in terms of Sustainable Consumption and Production, the retention and timely repair of existing buildings reduces construction and demolition waste.

Crime & Disorder Implications:

- 5.5 None have been identified.

Risk and Opportunity Management Implications:

- 5.6 The failure to retain and maintain listed buildings could lead to significant adverse publicity for the council.

Corporate / Citywide Implications:

- 5.7 The proposals accord with the priority to protect the environment whilst growing the economy and also accord with the priority of fair enforcement of the law, by ensuring that any future formal action is based upon open and transparent criteria and priorities. The Sustainable Community Strategy contains a commitment to implement the Conservation Strategy.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 None considered.

**7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 The report recommendations will allow resources to be directed to those historic buildings that are most in need of repair and to ensure consistent and transparent approach to future enforcement action.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Register of Buildings at Risk
2. Extract from the Conservation Strategy
3. Buildings in need of maintenance – current cases
4. Standard Schedule of Works under Section 215

### **Documents In Members' Rooms**

None

### **Background Documents**

1. The Conservation Strategy (2003)
2. Scheme of Delegation to Officers (September 2005)