

## 14

### The Amenity Notice

#### 1 Introduction

The outward appearance of a vacant, deteriorating, derelict, abandoned or only partially restored historic building can have a highly detrimental effect on the amenity of the surrounding area, discouraging investment and maintenance by others, reducing property values, frustrating regeneration and working against local civic pride. This can be true of both rural and urban properties where flaking paint, broken windows, gutters full of vegetation etc. can be taken as symptoms of lack of care and indicators of more serious problems within the structure.

Land and buildings in such condition can attract unauthorised entry and vandalism. They are often the sites of dumping or temporary storage, whether sanctioned or unauthorised, of refuse, building and other materials and items such as abandoned vehicles. Such situations generally develop slowly over time as part of the 'downward spiral' associated with a building at risk. Where a listed building is involved, there can also be an adverse effect on its setting and character and there may also be unauthorised works which require enforcement action.

If a planning authority considers that the amenity of any part of land in their district is adversely affected by the condition of neighbouring land, they may serve a notice (an Amenity Notice) under section 179 of the Town and Country Planning (Scotland) Act 1997 requiring that steps be taken to tidy up the site. The use of such notices is not limited to *land* but can be applied to buildings and structures although not to a scheduled ancient monument. While not specifically designed for dealing with building at risk cases, the use of this notice can be highly effective in removing 'infectious' blighting effects and stressing to the owner the seriousness of a situation and the unfortunate consequences it is having for the wider community. If used early enough it can proactively help prevent a building's decline and, in cases of advanced loss of amenity, it can be part of a range of sanctions that might be applied.

The concept of *amenity* is broad and not formally defined in the legislation or procedural guidance. It is therefore a matter of fact, degree and common sense. Each case is different and what would be considered amenity in one area might not be considered so in another. Effective gathering and presentation of evidence and the reasoning that amenity is affected is therefore an important element in serving an effective notice.

#### 2 The scope of the Amenity Notice

A notice under Section 179 of the 1997 Act specifies and requires the steps to be taken by the owner to abate the adverse effects on amenity and the period in which they should be undertaken. The planning authority may withdraw such a notice at any time before it takes effect. If they do so they must notify those upon whom the original notice was served.

# The Buildings at Risk Toolkit 14

Withdrawal of a notice does not prevent the subsequent service of another. Where the notice fails to achieve the necessary improvement by the owner the council can undertake the work and claim the costs from the owners.<sup>1</sup>

Scottish Borders Council served nine notices between 2007 and 2012 and did not have to undertake direct action works as the owners addressed the matter themselves, leaving no outstanding issues with respect of recovery of costs<sup>2</sup>. During the same period Moray Council served one notice (in 2007) and £1250 in costs had still not been recovered by March 2012<sup>3</sup>. While most councils are at ease in the use of the notice in relation to routine cases of untidy sites with unauthorised dumping and storage, some are less comfortable in applying it to buildings and their settings. The fact that it is seen as an ‘enforcement’ rather than a ‘conservation’ tool and that responsibility for its implementation is often in the hands of the development monitoring officer rather than specialist conservation staff helps explain this. If it is to be used successfully in buildings at risk cases there is a need for specialist staff to work closely with their enforcement colleagues in scoping, drafting and implementing the notice. Also, some local authorities are not prepared to risk or budget for the expenditure and potential use of resources in reclaiming costs. The provisions for recovery of works is detailed in section 135 of the Town and Country (Planning) Scotland Act 1997.

Despite the reluctance of some councils, there have been cases involving the successful use of the notice in built heritage situations. The notice can be used to address problems outwith the scope of Urgent Works Notices, which are restricted to unoccupied property, or in situations involving listed buildings which are not sufficiently serious to warrant a Repairs Notice. It can also be used in conjunction with both the Urgent Works and Repairs Notice powers as part of a concerted effort to achieve improvement. The Amenity Notice has also been found to be effective in Conservation Area Regeneration, Townscape Heritage Initiative schemes and other situations where the improvement of local amenity, backed by public money and planning policy, is the goal. For example, in developing a bid to the Heritage Lottery Fund (HLF) for funding to set up the City of Brechin Townscape Initiative (THI), Angus Council identified the building at 83-87 High Street, Brechin<sup>4</sup> as having a major blighting effect on the area. The building was too far out of the central area to justify identification as a ‘Priority Project’ that could attract substantial grant assistance. Nevertheless, it was deemed important enough to remove the blight and in awarding funds for the THI, the Heritage Lottery Fund made it a condition of grant that statutory powers be used to achieve this. This was to be done through service of an Amenity Notice.

Some authorities are anxious not to interfere in owners’ rights to enjoy their own land. Angus Council, for example, has recognised that the service of an Amenity Notice might have potential implications for the owners of property in terms of alleged interference for the privacy, home or family life (Article 8 European Convention on Human Rights) and for peaceful enjoyment of their possessions (First Protocol, Article 1). However, in giving council authority for action, it has determined that any actual or apprehended infringement of such rights is justified as it is in accordance with powers under the Planning Acts to protect public amenity. Also, the necessary work is justified on the basis that any actual or alleged

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<sup>1</sup> The Department for Communities and Local Government published in 2005 a best practice guide for local authorities on section 215 of The Town and Country Planning Act 1990 which contains some material of direct relevance here. The document can be downloaded at <https://www.gov.uk/government/publications/town-and-country-planning-act-1990-section-215-best-practice-guidance>

<sup>2</sup> [http://www.scotborders.gov.uk/directory\\_record/26575/amenity\\_notices](http://www.scotborders.gov.uk/directory_record/26575/amenity_notices)

<sup>3</sup> [http://www.moray.gov.uk/moray\\_standard/page\\_78839.html](http://www.moray.gov.uk/moray_standard/page_78839.html)

<sup>4</sup> <https://www.angus.gov.uk/ccmeetings/reports-committee2008/infrastructure/1141.pdf>

infringement is not significant or material when balanced against the need to protect amenity in the wider public interest.

Anyone on whom an Amenity Notice is served, or anyone with an interest in the land covered by the notice, can appeal to Scottish Ministers against the notice before the date on which the notice is due to take effect. An appeal suspends the notice and it does not take effect until the appeal is determined and then only if the notice is upheld. It is possible to view the decisions of previous appeals to the Scottish Ministers<sup>5</sup> and this can give some comfort on the appropriateness of the tool's use. The following cases should also prove helpful.

## 3 Examples of Amenity Notices served

### **Example: Amenity Notice, Argyll Hotel, Oban, Argyll & Bute<sup>6</sup>**

The council considered that the condition of the vacant listed property was adversely affecting the centre of the town and served an Amenity Notice requiring that the front façade, gutters and downpipes of the building be painted and that the ground floor window covers be replaced, all within three calendar months of the notice taking effect. It also required that demolition rubble be removed from the rear courtyard within four calendar weeks of the notice.

In response, the owners appealed against the notice arguing that the steps required were excessive (an earlier Amenity Notice was complied with by the then owner) and that the action was premature as the appellant planned to redevelop the hotel. It was argued that the current building was beyond economic repair and that the appellant expected to commence redevelopment works involving the demolition of the building and its replacement with a new-build hotel, in due course.

The Reporter noted that the majority of the buildings in the vicinity of the appeal site, and indeed those like the hotel facing the Oban seafront generally, were maintained in remarkably good order. The subject of the Amenity Notice was clearly a notable exception. The painted finish to the front façade and also to the gutters and downpipes was showing marked signs of deterioration, no doubt partly due to the exposed position of the building. The boarding to the ground floor windows was also found to be unsightly, but to a lesser degree. Demolition rubble located in the rear courtyard was clearly visible from the road frontage through the open ground floor pend and this was found to be adding to the general impression of neglect. The impact of the rubble on the internal amenity of the courtyard, shared and overlooked by other buildings, was deemed to be even more significant.

In conclusion, the Reporter found that the condition of the building and courtyard detracted from the appearance and setting of the listed building and from the amenity of the area generally, and considered that the steps required by the notice were appropriate to remedy that adverse impact.

The appellant's stated intention to commence redevelopment works in the near future was also found to be wholly unrealistic, given the listed status of the building and the absence, at the

<sup>5</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/planning/Appeals/whatwedo/planningandrelatedappeals/amenitynoticeappeals>

<sup>6</sup> Appeal reference: P/ANA/130/6  
<http://www.dpea.scotland.gov.uk/Documents/qJ9027/J95163.pdf>

# The Buildings at Risk Toolkit 14

time of the exchange of written submissions on the appeal, of any application for planning permission or listed building consent. However, the period for compliance specified by the council in relation to the works to the building façade, gutters, downpipes and window covers was not upheld as it was agreed that this would require the appellant to carry out a potentially abortive but expensive exercise. A period of six calendar months was thus allowed for the carrying out of the works to the building façade to allow the appellant reasonable time to establish the acceptability or otherwise of his redevelopment proposals. In the event that the redevelopment had not commenced by the coming spring this would have still ensured that those works are carried out in time for the main tourist season. The timing requirement relating to the removal of rubble from the site was not adjusted.

A notice<sup>7</sup> was served in another case concerning a former hotel:

**Example: Amenity Notice schedule, The Grapes Hotel, 10-12 George Street, Whithorn, Dumfries & Galloway**

- The removal of vegetation growth from the walls, gable skews and chimney heads on the building;
- The repair or replacement of boarding/plywood to the first floor window openings;
- The preparation and re-painting of the external stone walls on the Castlehill elevation or, alternatively, implementation of any other wall treatment agreed in writing with the Council;
- The preparation and re-painting of the external rendered walls on the George Street elevation white;
- The preparation of all the window and door surrounds, corner and wallhead margins and rainwater goods on both elevations and re-painting these black; and
- The painting of all the closures to window and door openings on both elevations in black, or any other agreed colour.
- The period for compliance is 28 days from the date on which the notice was due to take effect.

The Category C(s) listed building is prominently located in the town centre in an Outstanding Conservation Area, fronting the main road through the town. The council used photographs to confirm that, when the notice was served, the building had a seriously neglected appearance. These clearly showed unsightly weed growth disfiguring the walls, skews and chimney heads; boarding on the first floor window openings that was in obviously poor condition; paintwork on the walls facing the street that was discoloured and flaking; and in similar condition on the window and door surrounds, corner and wallhead margins and rainwater goods. Following an appeal, the Reporter agreed that the condition of the building in these respects caused it to have an adverse effect on the amenity of the area and that the notice was therefore appropriate.

The appellant took exception to the requirement to paint the walls facing Castlehill. However, the notice had provided for an alternative treatment being negotiated with the planning authority and this, in the form of brushing off and patch pointing, had already been agreed and preparatory work carried out. Accordingly, the appeal also failed in this regard.

<sup>7</sup> Appeal reference: ANA/170/3

<http://www.dpea.scotland.gov.uk/Documents/qJ2040/J69825.pdf>

# The Buildings at Risk Toolkit 14

The time scale of eight weeks from the date the notice as served was, however, considered to fall short of what should reasonably have been allowed, particularly as the period occurred in the winter. Also, the requirements encompassed a wide range of works, some dependent on good weather and likely to require specialist equipment and skills. The time for compliance was therefore extended by the Reporter to allow the appellant a reasonable period to complete the outstanding works, potentially in good weather.

In a case at Elgin, Moray<sup>8</sup> the Amenity Notice related to land surrounding a Category B listed water mill, ancillary buildings and water channels. The complex contained attractive stone structures and water courses and was located in a semi-rural environment comprising a cluster of houses and farmland in the west of the town. Neighbouring houses were stone walled and slate roofed with attractive and well-maintained gardens.

## **Example: The Old Mills, Oldmills Road, Elgin, Moray**

The notice listed a vast number of items, including a doubledecker bus, cages, gas canisters, whisky barrels, a fridge/freezer, building materials, and a boat in a schedule which should be removed from the identified land within three months of the notice taking effect. The council backed the Amenity Notice with over 50 photographs taken prior to the notice being served and these clearly showed the problematic items listed in the schedule.

The Reporter noted there was material distributed throughout the site in various untidy piles and that the arrangement of the items gave the appearance of irresponsible dumping that was in stark contrast to the attractive appearance of the neighbouring gardens and farmland. As a consequence they clearly harmed the visual amenity of the site, the neighbouring area and setting of the listed building.

The appellant argued that many items were required for the repair and restoration of the mill complex, and for the eradication of Japanese knotweed. While it was agreed that some items, such as the timber sheeting, ladders, bricks, rubble, slates, scaffolding and planks might have fallen into this category, others including fishing nets and carpets did not. It was not the possession of these items nor their intended use that was at issue but rather the unsympathetic manner in which they were stored which has a harmful impact on visual amenity. It was also found that while whisky barrels were also located in neighbouring gardens these were presented as decoration within attractive bedding areas. Similarly, a neighbouring owner's boat was suitably covered and capable of being stored in garaging with no adverse impact on the visual amenity of the area. These differed to the unattractive chaotic positioning of the whisky barrels adjacent to the mill and floating in the water channels, and the casual placement of the boat in an upturned fashion on a pile of other items. This situation was quite different to that found in neighbouring gardens and was having a negative impact on the visual amenity of the area. It was concluded that the appeal should fail as the items on the site had an adverse impact on the amenity of the site, its surroundings, and the setting of the listed buildings. The Reporter added that this conclusion was supported by the level of public response to the condition of the site and the previously unsuccessful attempts by the council to resolve the situation.

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<sup>8</sup> Appeal reference: ANA-300-2000

<http://www.dpea.scotland.gov.uk/Documents/qA307376/A3940085.pdf>

# The Buildings at Risk Toolkit 14

By way of further illustration of how the Amenity Notice might apply to buildings at risk and the type of detailed requirements that might be applied, the following table contains examples from actual cases:

## **Example: Sample requirements from other Amenity Notices served**

- Apply 2 no coats of masonry paint in colour RAL 9016 (White) as necessary to all masonry from ground level to the top of the fascia. Place 18mm Sterling Board over all window openings by screwing to existing frames or by forming batten frame firmly wedged within openings. Leave continuous 5mm gap at sill level on ground floor boards and at lintel and sill level on all openings above ground floor.
- Repair 2 no existing doors and form dead panel at lintel height in 18mm Sterling Board to fit within centre door opening on wedged batten frame, panel to come as far down as top rail of doors.
- Check condition of existing plywood door in northmost opening and replace to match existing materials and details if surface is incapable of taking an exterior gloss paint system.
- Replace fascia boards and other timbers to match if the existing timbers are incapable of taking an exterior quality gloss paint system.
- Cut 2 No Sycamore trees and saplings adjacent to rear wall down to ground level and apply proprietary stump killer designed to prevent re-growth. Do not remove stumps from ground. Remove cut tree boles from site.
- Clear garden of all vegetation and remove from site.
- Remove timber sheeting from all window openings and door opening and place within building.
- Place 18mm Sterling Board over all window openings and door opening by screwing to existing frames or by forming batten frame within openings. Allow for ventilation by leaving continuous 5mm gap at lintel and sill heights.
- Apply exterior quality oil-based gloss paint system to exterior of all Sterling Board in colour 05 E 53 (Black).
- Remove all vegetation from chimney heads using hand tools, taking care to avoid damage to masonry surfaces and joints as necessary.
- Clear rhones, seal any leaking joints, replace defective sections to match and repaint all metal rainwater goods and vent pipes in exterior quality gloss paint system in colour 05 E 53 (Black). Ensure repaired and repainted rainwater disposal system is fully functional and test drains to ensure they are free flowing as necessary.
- Remove from the land all boats, vehicle parts, tyres, timber, metal, bikes, machinery and other items of scrap or waste material.
- Restore the land to and thereafter maintain the land in a reasonably neat and tidy condition such that it does not adversely affect the amenity of any adjacent residential properties or public areas.
- Repaint the external walls of the building's façade in white.
- Repaint the window bands and sills and the basecourse of the façade in black.
- The restoration of the front elevation of the building by the removal of the existing paint and the application of fresh paint (the same colour as previously applied) to the satisfaction of the Council as Planning Authority.
- Paint the lettering "XYZ Hotel" on the façade of the building in red.

## 4 Steps towards an effective Amenity Notice

The local planning authority will generally consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice. For buildings, this usually means that any remedial works should be restricted to the appearance of parts that are visible. While they may contribute to the preservation of a structure such works will probably address the symptoms rather than the problems behind the deterioration of a building at risk. As always, the first consideration should be whether it is possible to remedy the situation through negotiation with the owners although this may not always be possible or successful:

- Attempt to negotiate first.
- Keep records of all attempted negotiated solutions and any evidence of lack of co-operation by the owners to support the notice and for use in any subsequent appeal.
- Take photographs and gather evidence to record and illustrate how the amenity of neighbouring land is affected.
- Prepare written reasoning as to how the amenity of neighbouring land is affected.
- Prepare written reasoning as to how the setting of any listed building or character and appearance of a conservation area is affected.
- Prepare written reasoning as to how investment in and the regeneration of the area are being adversely affected by the situation.
- Record and make available all public complaints recording the site as evidence that amenity is being affected.
- Gather and make available the views of local and national amenity and conservation bodies.
- Note any related unauthorised planning and listed building works and make reference to any adverse effect on the setting, character and appearance of the listed building they might have.
- Ensure that only steps appropriate to the exterior of the building and necessary to remedy the situation are included in the notice.
- Ensure that the time periods for remedial actions are realistic, appropriate and reasonable.
- Be satisfied that the condition of the land is not the ordinary results of a continuing lawful use of or from continuing lawful operations.
- In preparing the notice obtain appropriate technical conservation advice as to the works required to confirm that they are necessary and appropriate.
- Take care to ensure that that the notice is properly worded and served.
- Accept that the use of the Amenity Notice is unlikely, in itself, to be the sole solution to a building at risk problem and consider other notices and actions included in this Toolkit as part of a strategy to address the problem.

# The Buildings at Risk Toolkit 14

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

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

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