

SECTION 55 OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

GUIDANCE NOTE ON PROCEDURE FOR THE SECRETARY OF STATE TO ISSUE A DETERMINATION

- A. This guidance note is for an *owner* of a property which has been the subject of an urgent works notice under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990, who has now been served with a notice under section 55 for the recovery of some or all of the costs of those works.
- B. This guidance note is also for the *local authority/English Heritage/the Secretary of State*, whichever undertook the urgent works and has now served a section 55 notice in order to recover the costs of those works from the owner. For the purposes of this guidance note, the party seeking recovery of the costs is referred to below as the "authority".

N.B. It is open to the parties to have legal representation in the procedure outlined below, but the section 55 procedure has been designed to allow parties to represent themselves.

The owner's first representations

1. The owner may within 28 days of the service of the section 55 notice represent to the Secretary of State:
 - a) that some or all of the works were unnecessary for the preservation of the building;
 - b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;
 - c) that the amount specified in the notice is unreasonable; and/or
 - d) that the recovery of that amount would cause him hardship.
2. Planning Policy Guidance (PPG) 15: Planning and the Historic Environment provides that the use of section 54 should be restricted to emergency repairs, for example works to keep a building wind- and weather-proof and safe from collapse, or action to prevent vandalism or theft. The steps taken should be the minimum consistent with achieving this objective, and should not involve the owner in great expense. PPG 15 should be borne in mind when making representations to the Secretary of State.
3. The representation(s) may be set out in a letter addressed to the Secretary of State at 2-4 Cockspur Street, London SW1Y 5DH.
4. The owner should confirm in the letter that he was the owner of the building as at the date of the section 55 notice and state if any other person had an interest in it at that date. He should also state whether or not the building or a part of the building was occupied at the time when the urgent works were undertaken. The owner should provide with his letter copies of the relevant section 54 and section 55 notices that were served by the authority.

5. The owner must provide evidence to support his representations. Evidence that is likely to be appropriate in relation to each of the four representations described above might include the following (although these are only examples and it is open to the owner to submit whatever evidence he wishes):
- a) copy report(s) from a quantity surveyor or structural engineer; photographs of the condition of the building prior to the works being carried out;
 - b) copy report(s) from a quantity surveyor or structural engineer; photographs of the temporary arrangements;
 - c) copy quote(s) from builders' firms of comparable experience to the contractor that undertook the works, which indicate lower rates, prices, expenses or profit margin;
 - d) copies of the owner's recent bank statements for all his bank and savings accounts; details of the value of other assets owned by the owner and of any charges on those assets; a copy of a recent valuation of the building to which the works were carried out; details of any loan agreements; details of any debts and outstanding credit card payments; details of any recent County Court judgments against the owner; copies of company accounts.

Copies of previous correspondence between the owner and the authority may also be helpful, but only if it is relevant to the above grounds.

6. It is appreciated that it may take some time to gather such evidence. It is therefore acceptable for the owner simply to notify the Secretary of State of the representations he wishes to make within the 28 day time limit, and to provide full details of those representations together with supporting evidence within 28 days of the notification. Officials acting on behalf of the Secretary of State will consider a request for an extension of time, if there are good reasons for it.
7. The owner should be aware that the onus in the section 55 procedure lies on him and it is important that he provides as much information to support his representations as possible.
8. Following receipt of the owner's representations, officials will copy them to the authority.

N.B. All the owner's representations will be copied to the authority. They will be copied to it on the basis that they can only be used for the purposes of the determination. This is not repeated below but this principle applies during the whole section 55 procedure.

The authority's first representations

9. The authority will then have the opportunity to send to the Secretary of State its representations, responding to the owner's representations. The normal period for responding is 28 days from the date on which the owner's representations were sent to the authority.

10. Following receipt of the authority's representations, officials will copy them to the owner.

N.B. All the authority's representations will be copied to the owner. They will be copied to him on the basis that they can only be used for the purposes of the determination. This is not repeated below but this principle applies during the whole section 55 procedure.

The owner's second representations

11. The owner will then have the opportunity to send to the Secretary of State further representations, responding to the authority's first set of representations. The normal period for responding is 14 days from the date on which the authority's representations were sent to the owner.
12. Following receipt of the owner's second set of representations, officials will copy them to the authority.

The authority's second representations

13. The authority will then have the opportunity to send to the Secretary of State further representations, responding to the owner's second set of representations. The normal period for responding is 14 days from the date on which the owner's second set of representations were sent to the authority.
14. Following receipt of the authority's second set of representations, officials will copy them to the owner.

Closure of representations

15. After each party has had the opportunity to make two sets of representations to the Secretary of State, the representations will be closed.
16. The parties cannot make further representations to the Secretary of State, unless they arise from information that was not known by the representing party, and could not have been known by the representing party, prior to the date on which the representations were closed. The Secretary of State will not normally consider any other representations made after the close of representations.
17. Please note that, prior to closure of representations, officials will not screen representations to determine what is or is not relevant to the determination. The Secretary of State will only consider what is or is not relevant to her determination once representations have been closed. It is open to either party to represent that evidence put forward by the other is not relevant to the determination.

Further information

18. Officials may request clarification of the representations from either or both parties. Copies of the letters of request and their responses will generally be copied to the other party. Parties should note that the Secretary of State's

determination will of necessity be delayed if the representations are incomplete and clarification is required.

19. Officials may consider it necessary to instruct an expert to conduct an inspection of the building. Both parties will be informed if this step is to be taken, and both parties, or representatives of both parties, will be able to attend any such inspection if they wish.

Determination

20. Once the Secretary of State is satisfied, she will make a determination as to what extent the representations of the owner are justified.
21. The Secretary of State will give notice in writing to the owner and to the authority of her determination, the reasons for it and the amount (if any) which is recoverable.

Public inquiry

22. Whilst the Secretary of State does have the power to hold a public inquiry, her policy is that public inquiries should only be held in exceptional circumstances in order to determine to what extent the representations of the owner are justified.

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