



Gagged development = stunted growth = stagnation

by Simon Tolson

1. It has always frustrated me that the planning, conservation approval and the listed building consent process¹ is not unlike it once was for a Romanian applying for a visa to go to the USA before the days of Glasnost. Much form filling, sucking of teeth, silent stares, backroom talk, interrogation, inordinate waiting, and then more often rejection. If you are very lucky, you pass to go but even then on a qualified ticket with a stack of conditions to shake your stick at. This I have been through via my experience of planning and conservation authorities in practice as a construction solicitor and through changes made to my own house. Of course, it surprises me that it is a common misconception in the industry even that listed buildings cannot be altered or demolished but perhaps this is not startling given how the dynamic of effecting 'change' is so difficult to get through. Listing simply means that a statutory authority must approve all such proposals before work commences. Indeed, some element of alteration is inevitable because of ordinary conservation and repair work, and in some cases, even the demolition of some part may be required in order to ensure the survival of the building as a whole. Surprised? You shouldn't be. Conservation of our building fabric is a very broad church.
2. Of course, the word 'conservation' includes all actions that are required to ensure the survival of the building in the long term, including, where necessary, sensitive alterations. The term 'preservation', on the other hand, is much more restricted in scope, describing only those actions, which prevent change or protect a building from change, and therefore excludes all alterations, no matter how essential. The third term regularly used in the same context is 'restoration' as opposed to 'refurbishment', which is to refresh what, was there. Restoration describes action taken to undo alterations that are more recent and is thus very much a course of change, removing later alterations and often reinstating features based on the design of elements removed in the past. Refurbishment is more often a polite word for 'tart up'.
3. I do not question that we must protect our heritage, our ancient monuments have had laws protecting them and from damage through poor building and attempts to control builders since ancient days. In earliest times, builders were even put to death² if buildings collapsed. The fear of loss of life and property from fire brought about the first formal controls after the Great Fire of London 1666 destroyed 4/5ths of London. This led to the London Building Acts³ 1667 and 1774, quaintly the preamble said, "An Act to control the construction of new buildings in London" this led to various sine qua non like all external walls to be brick or stone, rules for foundations, wall thicknesses, timber sizes and types, chimneys, etc. Then followed laws on listed buildings (from 1932), conservation areas (1967), then World Heritage sites (1984), and now locally listed buildings too, we have reached a point where we are expected to consider not just these designations, but the setting of everything. Concern for the settings⁴ of listed buildings and conservation areas, as opposed to their fabric, have gone far too far. In many cities, there is now virtually no significant development that is not said to affect the setting of some designated 'heritage asset'⁵ (as the Heritage Protection Bill was again missed from the Queen's speech on 18 November 2009). However, where do draw a line in the sand? There is I detect a trend for proselytizing nimbys in many local authorities making any new development virtually impossible particularly in conservation areas, and it is time a serious stand was taken. All the more worrying in an industry suffering its worst recession since world war two.
4. Some of the headaches stem from lack of skills and resources in local authority conservation departments, lack of integration and poor communication between conservation and other local authority departments and disproportionate responsiveness to community (and nimby) concerns that are really nothing to do

¹ Through the auspices of the Planning (Listed Buildings and Conservation Areas) Act 1990, shortly to be amended.

² In 1760 B.C., King Hammurabi of Babylon's First Dynasty, provided in Articles 229 and 233 of his code (1) that: "229. If a builder builds a house for a man and does not make its construction firm and the house which he has built collapses and causes the death of the owner of the house that builder shall be put to death.

233. If a builder builds a house for a man and does not make its construction meet the requirements and a wall falls in, that builder shall strengthen the wall at his own expense".

³ London Acts copied by other major cities such as the 1840 Bristol Building Act. The designs in the Acts were used to by builders throughout the country to produce better buildings. The Surveyors Oath from the Bristol Act said: "Being one of the Surveyors appointed in pursuance of the Act of Parliament, passed in the twenty eighth year of the Reign of King George the Third, for regulating Buildings and Party Walls, do swear that upon receiving Notice of any building - to do the utmost of my ability - to cause the Restrictions to be strictly observed without Favour or Affection, Prejudice and Malice".

⁴ An important external constraint on the development of land occurs when it is deemed to fall within the "setting" of an important historic building or site. The setting of a building has been defined as the environs of a building or other feature which directly contribute to the atmosphere or ambience of that building or feature (Inspector's definition in a Listed Building Appeal - Leeds City Council, 8 February 1996). Consideration of the setting of listed buildings is one of the few material considerations to be embodied in planning law.

⁵ Following the abandonment last year of the Heritage Bill, the new Planning Policy Statement (PPS15) on which the Government (Department of Communities Media and Sport together with the Department for Communities and Local Government) published a consultation paper on 24 July 2009 seeking views on a proposed new PPS 15 on the historic environment combines PPG15: Planning and the Historic Environment and PPG16: Archaeology has been rather hastily produced. The new PPS15 introduces the counterproductive polarities of, streamlining as well as over complicating the management of the heritage environment. In fact the over complication reaches deep into the world of uncertainty. It declares that unlisted buildings outside conservation areas will all be considered as potential 'heritage assets' and that local authorities will have the power to take away the owner's permitted development rights, without consultation! Every where we turn liberty is being strangled by regulation in Orwellian proportions. PPS15 adopts this terminology in defining a heritage asset as "a building, monument, site or landscape of historic, archaeological, architectural or artistic interest whether designated or not".

with heritage at all. I sight one case I know where an MDF pub kitchen was argued to be a heritage issue in a pub in Twickenham. The crass nonsense sometimes uttered is alarming.

5. Many clients and practitioners suffer at the hands of overzealous bigoted conservation officers which if you are lucky have good historic knowledge but poor judgement about new architecture, who are able to form an unholy pact with the forces of nimbyism⁶. This state of affairs is not universal by any means, but it is sufficiently common to be a general problem, and to need addressing as such.
6. One sees it too in the waste to energy field, which I know well, and from my client interests in wind farms, the former of which are no more tin shed like than a Royal Mail depot with a large CHP and the latter things of real beauty and grace. Yes huge wind turbine masts erected 180 feet high, made of shining steel tower above all nearby. Yes they will cast a long shadow at a certain time of day, as will their brothers and sisters but people's tastes differ and beauty is in the eye of the beholder. But science is incontrovertible and good industrial design can and should serve to make things of function beautiful.
7. Taste and provinciality are not something we can allow to get in the way of absolutely vital renewable energy development. You may not like their powerful design, sleek perspectives and awesome capacity to connect with the gales, but wind turbines must not be defeated by nimbyist bad taste.
8. The architectural journals are full of articles my architects bemoaning how schemes are thrown in the trash can by those that cannot often judge what is good or bad or indifferent. The problem of interpretation will only get worse with PPS15, the trouble is existing delegated legislation leaves a lot open to interpretation and the issue is how it is interpreted, moving to a policy that is less clearly framed would make things worse. Not that different to how equity varied with the Chancellor's foot⁷ in the 17 century. Commentators have rightly said 'A lack of precision in a regulation always gives more discretionary power to the regulator.'
9. In this, I do not chastise Prince Charles for his behind scenes influence on London landmarks since his speech 25 years ago condemned modern architecture as 'a carbuncle' and this year his recent broadside against Richard Rogers when he waded into a fresh controversy over Chelsea Barracks site, as at least he has something to say from a valued historical heritage viewpoint and has bothered to study the subject far more closely than most.
10. In my experience, many of those working in local authorities today as officers know little about building materials, the technology and craft of construction, genuinely good design and what fits and what does not are so often missed or not appreciated. Often one is passed from dilettante to dilettante and none a master of his or her subject. I appreciate that subjective matters like much in life require an eye, which must be trained and good taste, but such attributes together with a sense of proportion, juxtapositional tolerance, and a feel for complementation escapes many officers to the detriment of our built environment, to wealth generation and good building design.
11. To sentient adult human beings this is maddening. Such intolerance is also often based on the vaguest concept of what might have been appropriate winding the clock back 150 years to a current age.
12. As all building professionals know buildings do not maintain themselves, no matter how well built. Most materials are liable to fail when they remain damp for long periods particularly where frost freeze cycles apply: ferrous fixings rust and can 'blow' the stone into which they are built; antique oak beams can be disemboweled by deathwatch beetle; and good old *serpula lacrymans* aka dry rot can encroach far from

the nearest source of damp. Nevertheless, old buildings have lasted hundreds of years perfectly well with little more than general maintenance, and arguably, the greatest threat to their future comes from ill-considered intervention by their owners and poor decisions made by planning and conservation folk.

13. It is tragic that many of our nations Medieval structures suffered at the hands of Victorian architects who 'restored' features by the application of details, which had never existed in order to craft a Gothic aesthetic. In the finest conservation schemes, restoration is limited to the bare minimum, to ensure authenticity of the building is not compromised. For example, where crumbling stonework has to be replaced, the new stonework might be worked/hewn to its original profile where it is clear what this would have been: where the original form is uncertain, however, often a new design may be preferable to conservationists since work which imitates the original can appear bogus, casting uncertainty on the authenticity of original elements and detracting from their historic value. On the other hand, repairs which stand out can also detract from the 'touch and feel' and enjoyment of original architecture, so a balance must be struck where new work can be distinguished from the old without disparaging its character. In these matters, one needs both a good measure of common sense, proportionality and clear regulation by the authorities, which is not open to a 100 meanings.
14. However, I think there may be light at the end of the tunnel.
15. The planning Minister, John Healey has now promised to 'redraft' PPS 15 after the design professions, conservation and heritage bodies labelled the planned document a serious risk to the nation's historic buildings and development control processes.
16. Healey has said 'To put it beyond doubt, there is no question of downgrading the protection of historic buildings. The current language in the planning policy statement is not clear enough. We will redraft it to make clear that the protection of heritage buildings will not be reduced.'
17. Duncan McCallum, English Heritage's policy director, said: 'we are confident that a revised document can be produced that will address the key concerns and clarify some policy wording and are keen to see the final version emerge before Easter 2010.'
18. A final version of the guidance is set to emerge before Easter 2010. Let us hope it brings a change in the right direction.
19. In the mean time you folk in the employ of local authorities, wake up, you serve us and are not born in life simply to stifle enterprise in construction under the label of protecting the vernacular. Look up "structural polychromy" think outside your box. I will leave you with this, in his blackest novel, *Our Mutual Friend* (1864-65); Charles Dickens refers disparagingly to "the national dread of colour". A couple of years earlier, GE Street, the gothicist whose largest if not greatest work is the Law Courts in the Strand, made the same complaint.
20. Unlike the novelist, Street was in a position to do something about it and, with a handful of kindred architects, he sought to introduce colour to English buildings. For a few years, "structural polychromy" (more structural than polychromatic) was all the rage, along with a gamut of genuinely structural devices notable for their counter-intuitive perversity, a wish for originality at all costs, a distaste for harmonious "beauty" and an enthusiastic espousal of sinewy vigour! After about the mid-1870s, however, the fashion for unaccommodating, audaciously assertive architecture waned. In-yer-face buildings were right off the menu. Politeness reigned.

⁶ 'Not In My Back Yard' - or 'NIMBY'-ism - is the term given to local opposition to 'development' proposals that are seen as a threat (such as landfill sites, incineration plants, chemical works, or even prisons). NIMBYism can be viewed in terms of social versus private costs (or risks) and benefits. It may occur when, in order to provide a public good (aggregate social benefit), a facility is located in such a way as to concentrate costs (or risks) in the hands of those who live nearby (private costs borne by a few).

⁷ John Selden, an eminent seventeenth century jurist, declared declared, "Equity varies with the length of the Chancellor's foot".

21. It was not until the '60s came around the next time that the quality the Victorians had called "go!" was glimpsed again. Go! means dash, daring; it implies strength and lack of compromise.
22. I say get the balance right guys!

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