

# Development Control

## CHAPTER 6



## 6.1 Development Control Policies and Objectives

6.1.1 Each development plan must include policy objectives to protect the architectural heritage in its functional area.<sup>1</sup> A primary policy should be to take the necessary steps to ensure the protection of the architectural heritage when exercising the development control function so that these structures retain their character and special interest and continue to contribute to the social and economic mix of the planning authority's functional area.

6.1.2 Suggested general policies to aid development control may include the following:

- a) identification of potential structures for protection within the functional area as a whole or within specified parts of the area, particularly where the NIAH has not yet been completed. This may be particularly appropriate in known areas of accelerated change;
- b) identification and designation of ACAs or ASPCs where areas of special interest exist within the functional area or where it is appropriate to protect the setting of a protected structure or protected structures;
- c) promotion of the reuse of redundant protected structures for their own economic benefit as well as that of the area in which they are located;
- d) requirement for development proposals to take account of the impact on protected structures, even where these are located outside the development site.

6.1.3 Policies to assist owners of protected structures and proposed protected structures, or buildings within ACAs at pre- and post-planning stage could include:

- a) offering pre-planning advice to owners and prospective owners of protected structures and proposed protected structures to complement formal development control policies;<sup>2</sup>
- b) promoting good standards of conservation in maintenance and development works including to protected structures in the planning authority's ownership;
- c) collating a database of conservation practitioners and craftworkers who operate within the functional area of the authority, to be available to owners and occupiers of protected structures or of buildings within ACAs;
- d) setting out the type of repair works or works to restore character that would be prioritised by the planning authority in disbursing grant-aid for protected structures;
- e) anticipating and encouraging, with financial support, the repair or redevelopment of those protected structures which are not obviously economically viable;



*Development plan policies could be used to encourage the repair and reuse of protected structures or buildings in areas not otherwise economically attractive to private developers, through schemes such as Living over the Shop or LOTS*



*Policies could require that the impact on any protected structures adjacent to a development site be taken into account in development proposals*



*A best practice guide based on the experience gained in the restoration of these terraced buildings was subsequently published by the planning authority*

<sup>1</sup> Section 10 (2) (f) and (g), 2000 Act

<sup>2</sup> Section 247, 2000 Act



*Well-targeted financial assistance can mean the difference between the survival or gradual decay of vulnerable buildings*

- f) setting out the appropriate use of modern design and materials in works to protected structures;
- g) establishing, when making an inventory or where queried, the extent of the curtilage of all protected structures and attendant grounds, if any, and mapping this information at an appropriate scale;
- h) building up a comprehensive database of information on protected structures and ACAs as an aid to development control.

## 6.2 Planning Applications Step by Step

### Pre-application consultations

6.2.1 Arrange these to provide general advice to developers regarding:

- a) the availability of conservation expertise;
- b) policy on, and standards for, conservation works for protected structures, proposed protected structures and the exteriors of buildings within ACAs and
- c) the standard of documentation required for planning applications.

It would be useful to the planning authority to keep minutes of such meetings so that there is clarity on the matters discussed.

### Requirements for planning applications

6.2.2 Ensure planning applications for protected structures and proposed protected structures are valid. By definition, this includes development within the curtilage of a protected structure or proposed protected structure. Planning applications should refer to the protected status on the public notices

and adequately describe the potential impact of the proposals on the character of the structure by way of plans, photographs and any other necessary particulars.<sup>3</sup>

### Notification to prescribed bodies

6.2.3 Send notification to the relevant prescribed bodies<sup>4</sup> as early as possible of applications that involve works to a protected structure, a proposed protected structure or a building in an ACA and also of applications for development which might detract from the appearance of any of these structures.

### Consideration of application

6.2.4 Consider all written submissions or observations received within 5 weeks of the date of receipt of the application.<sup>5</sup> Take account of relevant information in RPS, declarations files and these guidelines. Consult with the conservation officer, where one is employed by the planning authority.

### Consideration of impact on architectural heritage

6.2.5 Consider the potential impact of the development on the character of the protected structure, proposed protected structure or ACA when determining the application. Where demolition is proposed, consider whether exceptional circumstances apply.<sup>6</sup>

### Further information

6.2.6 Seek further information where necessary to determine application.

### Notification of decision

6.2.7 Issue the planning authority's decision to the applicant and notify the decision to all who made valid submissions.

### Post-planning compliance

6.2.8 Assess submissions made in compliance with conditions of the permission. Refer to conservation officer for technical advice as necessary.

<sup>3</sup> Article 23 (2), 2001 Regulations

<sup>4</sup> Article 28 (1) (c), 2001 Regulations

<sup>5</sup> Article 29 (1), 2001 Regulations

<sup>6</sup> Section 57 (10) (b), 2000 Act

### Enforcement

- 6.2.9 Inspect the development site to ensure that works are being carried out in accordance with the permission granted. Take appropriate action if unauthorised works or revisions have taken place that affect the character of the structure or endanger it.

### 6.3 Pre-Application Consultations

- 6.3.1 Planning authorities are encouraged to engage in pre-application consultation with owners and occupiers of protected structures and proposed protected structures in relation to proposed development.<sup>7</sup> This will offer an opportunity to direct an applicant's attention to the special requirements relating to the architectural heritage, including the type of information that must be submitted with the application and the resources that are in place to assist an applicant.
- 6.3.2 The conservation of historic buildings is a specialised discipline. An applicant should be advised that a level of specialised expertise may be necessary to guide on best practice in dealing with works to a protected structure. This will be increasingly important depending on the scale and complexity of works proposed to the structure or when considering the design and scale of new structures within the curtilage.
- 6.3.3 If the structure or site involved is also protected under the National Monuments Acts, it would be beneficial if both the planning authority and the applicant could apprise themselves of the fact at this stage.



*If a protected structure is also a recorded monument under the National Monuments Acts (which may not always be obvious from its outward appearance), there are separate notification requirements under those Acts regarding proposed works*

### 6.4 Information to Accompany Planning Applications

- 6.4.1 The 2000 Act provides for greater control over development that would affect the character of protected structures, proposed protected structures and the exterior of buildings within ACAs. Even apparently minor alterations to the fabric of these structures can impact on their character and special interest. But it is recognised that, over the lifetime of a structure, it may be necessary to accommodate appropriate change or new uses for a variety of reasons. In order to ensure that these changes have the minimum adverse impact upon the architectural heritage, the legislation requires additional procedures and information as part of the planning process.
- 6.4.2 The following guidance may aid in assessing the acceptable standard of planning applications relating to the architectural heritage, depending on the complexity and degree of intervention proposed to the structure.

#### Documentation to accompany an application

- 6.4.3 The level of documentation required to accompany a planning application works to a protected structure, a proposed protected structure or the exterior of a building within an ACA will depend on the scale, extent or complexity of the works involved. For example, works proposed to a confined area of a protected structure or works within the curtilage should not normally require extensive documentation regarding unaffected parts of the structure.
- 6.4.4 In the case of structures which have previously undergone inappropriate changes and which are now to be restored, emphasis should be put on describing the details of the proposed replacement elements and their interface with the historic fabric.
- 6.4.5 As indicated in the 2001 Regulations, a planning application for works to a protected structure or proposed protected structure must include (in addition to the normal requirements to supply maps and drawings) 'such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.'<sup>8</sup> The same requirements also apply to applications for permission for works to the exterior of a structure which is located within an ACA or an area it is proposed to designate as an ACA.

<sup>7</sup> Section 247, 2000 Act

<sup>8</sup> Article 23 (2), 2001 Regulations

### Public notices

- 6.4.6 Public notices for any planning application that relates to a protected structure or a proposed protected structure are required to indicate this fact on public notices.<sup>9</sup> This includes both the required newspaper notice and the site notice.

### Drawings

- 6.4.7 Additional drawings to those required under Article 23 (1) of the 2001 Regulations may be necessary to describe proposed works to a protected structure, or proposed protected structure. These drawings should be clear, comprehensible and may need to be to a larger scale. Where possible, drawings should be based on actual measurement and not on pre-existing plans. Except where the proposal involves little material alteration, separate annotated survey and proposal drawings can more clearly describe the changes.
- 6.4.8 The drawn information accompanying a planning application should concentrate on describing those parts or elements of the structure which will be impacted upon by the proposed development. The drawings should clearly indicate the location of works and the extent of alteration of the existing fabric. All works comprising proposed reconstruction, alteration or extension must be marked or coloured on the drawings to distinguish clearly between the existing structure and the proposed work.<sup>10</sup> Where interior works are proposed, every room or space to be affected should be annotated for ease of reference. Where there are separate survey drawings and proposal drawings, these should be set out and labelled for easy comparison.
- 6.4.9 It is a general requirement of planning applications that drawings of elevations should show the main features of any contiguous buildings.<sup>11</sup> The level of detail available may be dependent on access issues in specific cases. Ideally, in the case of a protected structure or a proposed structure, buildings and other features of interest within the curtilage should also be indicated on elevational drawings.
- 6.4.10 Planning authorities could consider requesting up to four additional copies of drawings to accompany an application relating to a protected structure or a building in an ACA; a total of ten sets of drawings for circulation to the prescribed bodies.

### Photographs

- 6.4.11 While some general photographs will be necessary to set the context for the proposals, the photographs accompanying a planning application should concentrate on describing those parts or elements of the structure which will be impacted upon by the proposed development rather than provide an exhaustive survey of the development site.



*Photographs accompanying a planning application should show the areas or elements proposed for alteration and be clear, focussed and legibly printed*



- 6.4.12 All photographs should have clear captions identifying what they depict and, if necessary, should be cross-referenced to floor plans. The location and direction of the camera when the image was taken should be indicated on the survey drawings. Again it may be appropriate to seek additional copies of the photographs from the applicant for circulation to the prescribed bodies.

<sup>9</sup> Article 18 (1) (d) (iii), 2001 Regulations

<sup>11</sup> Article 23 (1) (d), 2001 Regulations

<sup>10</sup> Article 23 (1) (e), 2001 Regulations

**Other particulars**

6.4.13 Article 23 (2) requires planning applications to be accompanied by 'other particulars as are necessary to show how the development would affect the character of the structure'. These other particulars are not specified but, depending on the circumstances and the nature of the proposed development, may include one or more of the following:

**Written statement**

6.4.14 A brief written statement is a useful tool as part of a planning application to help explain the rationale for the proposed development. This written statement could take the form of a cover letter. The statement could summarise the principal impacts on the character and special interest of the structure or site and describe how it is proposed to minimise these impacts. It may also describe how the works have been designed or specified to have regard to the character of the architectural heritage.

**Architectural heritage impact assessment**

6.4.15 For more extensive or complex works with a potential to have a major impact on the architectural heritage, a planning authority may require an applicant to submit a more detailed impact statement. This may be necessary to allow the planning authority to assess the full implications of the proposals and allow an informed decision to be made on the appropriateness of the development. An outline of the type of information that could be included in such an architectural heritage impact assessment is found in Appendix B of these guidelines.

**Method statement and specification**

6.4.16 A method statement and specification could be required for all works to the protected structure and any features of interest within the curtilage of the site which could affect their character and special interest.

**Fire risk analysis**

6.4.17 Works carried out in accordance with a fire safety certificate are not necessarily exempted development in the case of a protected structure or a proposed protected structure. Therefore careful consideration should be given in a planning application to any requirement for works to enhance fire safety. This could be done by way of a written summary describing the proposed works

and setting out the way compliance with fire safety requirements could be achieved without adversely affecting the character of the structure, or how unavoidable impacts could be mitigated. In some cases, where the planning authority considers works proposed to enhance fire safety may necessitate an excessive amount of loss or disruption of historic fabric, the submission of a fire risk analysis could be required to accompany the application.<sup>12</sup>

**6.5 Applications Required to be Accompanied by an EIS**

6.5.1 Where a planning application is required to be accompanied by an Environmental Impact Statement, the EIS is required to include 'a description of the aspects of the environment likely to be significantly affected by the proposed development, including... the architectural and archaeological heritage, and the cultural heritage'.<sup>13</sup> The effect of this provision is to require that the architectural heritage, regardless of whether it has statutory protection or not, be taken into consideration when assessing the impact of these developments.

6.5.2 *Guidelines on the Information to be Contained in Environmental Impact Statements* were published by the Environmental Protection Agency in 2002. Those guidelines were followed by more detailed *Advice Notes on Current Practice in the preparation of Environmental Impact Statements* published in September 2003. The guidelines and advice notes are designed to assist developers in meeting the detailed requirements and to assist consent authorities in considering the adequacy of EISs submitted to them.

6.5.3 Note should also be taken of *Guidance for Consent Authorities regarding Sub-Threshold Developments* published by the Department of the Environment, Heritage and Local Government in August 2003.

6.5.4 The legislation relating to Environmental Impact Assessment is contained in Part X of the Planning and Development Act 2000.

<sup>12</sup> See also Chapter 16 below

<sup>13</sup> Schedule 6, 2001 Regulations

## 6.6 Notification of Prescribed Bodies

- 6.6.1 Planning authorities are required by regulation to send notification to certain prescribed bodies when they receive planning applications which the planning authority considers would:
- involve the carrying out of works to a protected structure or proposed protected structure, or to the exterior of a structure which is located within an ACA or a proposed ACA;
  - detract from the appearance of such a structure.<sup>14</sup>
- 6.6.2 It may not always be obvious when considering if notice should be sent to the prescribed bodies that the development site might be located within the curtilage of a protected structure or a proposed protected structure. A proposal might also detract from the appearance of a protected structure even if the protected structure is outside the lands under the control of the applicant and therefore is not itself identified in the submitted documents.



*Adjoining buildings that are protected structures may be impacted upon, either directly or visually, although not actually part of the development site. This will be particularly obvious in the case of terraced buildings as in this example which has an important surviving mediaeval chimney stack on a party wall*

- 6.6.3 Ideally, the notification to the prescribed bodies should include a copy of the planning application (including any EIS) together with submitted drawings, plans, photographs or other particulars.
- 6.6.4 The prescribed bodies for the purposes of Part IV of the Planning and Development Act 2000 are the Minister, the Heritage Council, An Taisce, the Arts Council and Bord Fáilte.<sup>15</sup>

## 6.7 Making Decisions on Planning Applications

- 6.7.1 A planning authority, or An Bord Pleanála on appeal, may impose any conditions relating to the protection of a protected structure or proposed protected structure without attracting compensation.<sup>16</sup> Any development that would materially affect the character of a protected structure or a proposed protected structure may be refused without attracting compensation.<sup>17</sup> Compensation is also excluded where a proposed development would adversely affect the character of an ACA.<sup>18</sup>

### Framing conditions in a planning permission

- 6.7.2 A properly detailed planning application, as originally submitted or revised and/or clarified through submission of requested information, should obviate the need for the attachment of extensive planning conditions to a permission. However, where required, conditions could be attached with regard to:
- agreement in writing with the planning authority of particular specifications which would be required in order to carry out a development in accordance with good conservation practice;
  - approval of samples of materials or workmanship prior to construction;
  - repair and retention of existing fabric and surviving material that contribute to the character of the structure, regardless of their age or condition;
  - recording or retention of concealed features or fabric exposed during works;
  - site supervision and project management by personnel suitably qualified in conservation during the progress of the works;
  - architectural salvaging;<sup>19</sup>
  - reinstatement of features in the curtilage after temporary works;
  - protection of specified structures or features during the course of the works;
  - recording of the condition of building prior to development<sup>20</sup> (if not already requested as part of assessment process), or submission of an architectural heritage impact assessment to the planning authority for lodging with the Irish Architectural Archive;
  - monitoring of the works by an architect with conservation expertise and certification on completion that the works have been carried out in accordance with good conservation

<sup>14</sup> Article 28 (1) (c), 2001 Regulations

<sup>15</sup> Article 52, 2001 Regulations

<sup>16</sup> Fifth Schedule para. 34, 2000 Act

<sup>17</sup> Third Schedule para. 3, 2000 Act

<sup>18</sup> Fourth Schedule para. 13, 2000 Act

<sup>19</sup> Section 34 (4) (p), 2000 Act and paragraphs 6.7.6 and 6.7.7

<sup>20</sup> See paragraphs 6.7.3 - 6.7.5

practice and in line with the conditions of the planning permission;

- k) reinstatement of previously removed features to restore the character of the structure (with accurate detailing to be agreed if not already resolved);
- l) phasing of work in a large-scale development so as to ensure that work to the protected structure is underway or will be completed in tandem with, or prior to, completion or occupation of new buildings.

#### Recording as a condition of permission

6.7.3 The demolition of a protected structure, or of elements which contribute to its special interest, may only be permitted in exceptional circumstances.<sup>21</sup> Where the dismantling or demolition of all or part of a protected structure is permitted, it may be a condition of permission that a record be made of the structure prior to the commencement of any works.<sup>22</sup> It should be considered that this is a permanent record which will have to substitute for the structure itself and should be capable of detailed analysis and interpretation.

6.7.4 Such archive-standard drawings should be produced on polyester film, linen, acid-free or rag paper, using permanent black ink. In these circumstances, dye-line prints are not acceptable, nor are copies of computer-aided design files. In addition to the full set of drawings, copies of original survey notes should be included with the report, as should copies of relevant earlier drawings, photographs with negatives (preferably dated), plans and maps.

6.7.5 Where a photographic record is to be made of all, or part of, a structure, the photographs should be of high quality. The use of a professional photographer should be considered and, where appropriate, the use of recording techniques such as rectified photography could be required. Black-and-white photography should be used when creating a permanent archive-quality record. Where it is essential to make an archive record of the colour of features, such as old or interesting wallpapers or painted decoration, colour slide film should be used and should be considered to be a supplement to, not a replacement for, black and white photography. Historic photographs should be identified by their archive name and negative number. One or more sets of legibly-sized prints should be included (for example, 20cm x 25cm).

#### Architectural salvaging as a condition of permission

6.7.6 The Act provides for making a condition of planning permission, where appropriate, the salvage of elements of special interest of a protected structure, or any element of a protected structure that is about to be altered or removed.<sup>23</sup> The removal of important or decorative elements should only be permitted where the developer has indicated how these elements will be used or maintained in the future, which, in order to mitigate the impact, should be relocated within the structure wherever possible. In such a case, the state of the structure or of the relevant interior spaces before dismantling should also be recorded, and two copies of the report sent to the planning authority (one for forwarding to the Irish Architectural Archive). All items permitted for removal and reinstatement should be tagged, photographed and stored securely, preferably on site.

6.7.7 In the case of the industrial heritage this may present particular problems, and expert advice should be sought, for example from the Industrial Heritage Association of Ireland.

### 6.8 General Types of Development

#### Extensions

6.8.1 It will often be necessary to permit appropriate new extensions to protected structures in order to make them fit for modern living and to keep them in viable economic use. Where the existing exterior appearance of a structure is of special interest, and its interior is of sufficient size, it may be possible to incorporate new functions or services within the existing envelope of the structure. With flexibility and imagination, it may be possible to use secondary spaces within the building, obviating the need to extend, where there would be minimal impact on fixtures and features of special interest. The cumulative effect of minor additions can compromise the special interest of a structure and the character of an ACA. The planning authority should consider this when assessing a proposal for even small extensions.

<sup>21</sup> Section 57 (10) (b), 2000 Act

<sup>22</sup> Section 34 (4) (p) (i), 2000 Act

<sup>23</sup> Section 34 (4) (p) (ii), 2000 Act

6.8.2 If planning permission is to be granted for an extension, the new work should involve the smallest possible loss of historic fabric and ensure that important features are not obscured, damaged or destroyed. In general, principal elevations of a protected structure (not necessarily just the façade) should not be adversely affected by new extensions. The design of symmetrical buildings or elevations should not be compromised by additions that would disrupt the symmetry or be detrimental to the design of the protected structure.

6.8.3 Generally, attempts should not be made to disguise new additions or extensions and make them appear to belong to the historic fabric. The architectural style of additions does not necessarily need to imitate historical styles or replicate the detailing of the original building in order to be considered acceptable. However, this should not be seen as a licence for unsympathetic or inappropriate work. Careful consideration of the palette of materials with which the works are to be executed can mediate between a modern design idiom and the historic fabric of the structure. Extensions should complement the original structure in terms of scale, materials and detailed design while reflecting the values of the present time.

6.8.4 In general, modern extensions to a protected structure do not have protected status themselves unless they contribute to the character of the structure. Therefore works to such an extension which do not affect the character of the protected structure itself, for example to the interior of the extension, would come within the normal rules relating to exemptions. However, new openings proposed from the principal structure into the extension would affect it. Care should be taken where works are proposed to extensions to ensure that they do not have an adverse effect on the character of the structure or its curtilage.



*The size of new extensions should be in keeping with the scale of the protected structure*



*Well-considered extensions can be successfully integrated with a protected structure whether designed in a modern contrasting style (top) or in a matching historicist style (bottom)*

6.8.5 In urban areas, careful consideration needs to be given to proposals for the construction of rear extensions to protected structures and buildings within ACAs. Rear elevations sometimes contain fabric that is useful in reading the history of the structure, for example surviving older windows or doors. The effect of extensions may have considerable impact on the appearance of buildings or on the setting of neighbouring buildings, or indeed on the appearance of the structure when viewed from a distance (or a set of similar structures such as in a terrace), and this should be considered by the planning authority when assessing applications.

6.8.6 The planning authority should discourage the infilling of gardens, lanes or courtyards of architectural or historical interest. Open spaces such as these have a function in the natural illumination and ventilation of a densely developed urban area. Where surviving plot-divisions remain in the older areas of towns, these can be of historic interest as indicators of the original layout of the area, for example the original burgage plots or defensive walls of mediaeval settlements (or line of the wall). They may even contain historic fabric and these structures and their precise alignment should be respected by any new development.



*Extensions to the rear of a protected structure can have an impact on views of the building and also have the potential to affect the character of an ACA*



*Historic plot divisions can be an important aspect of the character of an area as with these burgage plots at Trim which survive from mediaeval times*

6.8.7 There may be cases where the planning authority considers that additions cannot be permitted without seriously compromising the architectural significance of a protected structure or its setting; alternatively that they would be detrimental to the character of an ACA.<sup>24</sup> In such cases the proposals should not be permitted.

**Material change of use**

6.8.8 On the whole, the best way to prolong the life of a protected structure is to keep it in active use, ideally in its original use. Where this is not possible, there is a need for flexibility within development plan policies to be responsive to appropriate, alternative uses for a structure. A planning authority should carefully consider any proposed change of use and its implications for the fabric and character of the structure. A new use may have many implications for the structure which may not be immediately obvious, for example with regard to compliance with the Building Regulations.

<sup>24</sup> See also paragraph 7.13 'Avoiding Incremental Damage'

- 6.8.9 In considering an application for the material change of use of a protected structure, the planning authority will have to balance its continuing economic viability if the change is not permitted, with the effect on the character and special interest of its fabric of any consequent works if permission is granted. Where, having considered these issues, a planning authority considers that the alterations required to achieve a proposed change of use will not have an undue adverse effect on the special interest of the structure, the proposals may be granted subject to conditions as appropriate.



*A material change of use can involve a large amount of alteration to the structure but may sometimes be necessary to ensure its future viability*

- 6.8.10 Changes of use may lead to subsequent incremental proposals to change subsidiary features such as shopfronts, external signs, requirements for enhanced fire safety and the like. Impacts may arise to the curtilage of a protected structure from a change of use proposal, such as creating or increasing the need for car parking, creating or altering gateways or entrance arches for vehicular access. As many of these potential impacts as are foreseeable should be included as part of the planning application. If clarification is required of the implications of a change of use, this should be ascertained by way of a request for further information.



*Some changes of use may lead to subsequent incremental changes. As many of these as possible should be anticipated and dealt with as part of the planning application. For example, extra storage space may be required (top) or additional entryphones (bottom). Any new signage should be kept to the necessary minimum (middle)*



### Demolition

- 6.8.11 The Act provides that permission may only be granted for the demolition of a protected structure or proposed protected structure in exceptional circumstances.<sup>25</sup> Where a proposal is made to demolish such a structure, it requires the strongest justification before it can be granted permission and will require input from an architect or engineer with specialist knowledge so that all options, other than demolition, receive serious consideration.
- 6.8.12 It may happen that the special interests of a protected structure have been damaged or eroded to an extent that demolition is permissible. In such cases, in order to avoid setting a precedent of permitting the demolition of a protected structure, it would be preferable to first remove it from the RPS. Any such cases should be carefully considered, as deliberate erosion of character or endangerment may be more appropriately tackled by enforcement action rather than permitting demolition.

<sup>25</sup> Section 57 (10) (b), 2000 Act

6.8.13 Caution should be used when considering proposals to demolish parts of protected and proposed protected structures as these parts may be of importance to the cumulative historic interest of a building. Where partial demolition of a protected structure is proposed, the onus should be on the applicant to make a case that the part – whether or not it is original to the structure – does not contribute to the special interest of the whole, or that the demolition is essential to the proposed development and will allow for the proper conservation of the whole structure.



*The demolition of a building's return can impact on neighbouring buildings also*



*Later extensions of little interest can be carefully demolished without adverse impact on the protected structure as with this later stair tower added to the rear of an eighteenth-century villa*

6.8.14 There may be cases where an existing addition is of little architectural quality, or is even damaging, to the original architectural design. This may arise, for example, where a porch addition has obscured a fine entrance doorway or where a poor-quality extension has unbalanced a good symmetrical façade. Partial demolition may be permitted in such cases, providing it can be achieved without any adverse structural or architectural impact on the protected structure.

6.8.15 Where a protected structure has suffered fire or other accidental damage and substantial demolition is necessary, the elements that contribute to its special interest that have survived should be retained in any reconstruction or repair.<sup>26</sup>

6.8.16 The demolition of a protected structure or a proposed protected structure may be permitted if it has become a dangerous structure. However, if a protected structure has become dangerous, every effort should be made to retain its special interest by specifying works that limit, as far as possible, material damage or alteration to the character of the structure.

#### Façade retention

6.8.17 Façade retention, or the demolition of the substantive fabric of a protected structure behind the principal elevation, is rarely an acceptable compromise, as only in exceptional cases would the full special interest of the structure be retained. Such cases may occur if the building had previously been redeveloped behind the façade, in which event proposals for new redevelopment behind the façade could be favourably assessed, subject to receiving adequate assurances on how the historic fabric would be protected during the works.



*The preservation of a façade, while permitting the demolition of the remainder of the building, is rarely an acceptable approach to conserving the architectural heritage*

6.8.18 Any such permitted redevelopment should relate floor levels and room sizes to the fenestration of the façade, for example to avoid having open-plan office space behind a Georgian façade that would be visibly discordant seen from the exterior.

<sup>26</sup> See also Chapter 16

**Outline planning permission**

- 6.8.19 Outline planning permission cannot be granted for works to a protected structure or proposed protected structure.<sup>27</sup> This does not preclude an outline application for change of use, so long as such change of use does not require any consequential works or otherwise have a material effect on the character of the structure.
- 6.8.20 If outline planning permission was granted prior to 1 January 2000 for works that would have a material effect on the character of a protected structure, the planning authority should, in so far as possible, conform with the current legislative requirements to protect the special interest of the structure when a subsequent application for approval is being considered.

**Permission previously granted**

- 6.8.21 If full planning permission was granted for development relating to a structure that became a protected structure on 1 January 2000, and it is still valid and all other relevant permissions, certificates or licenses have been secured, the developer has the right to proceed with development. In cases where such development has not been commenced, but would have an adverse effect on the character of a structure that has become a protected structure, and the developer is prepared to consider it, the planning authority could facilitate devising alternative development proposals that would have a less negative effect. This may require a further application for planning permission.

**6.9 Development by a Planning Authority within its own Functional Area (Part 8 Developments)<sup>28</sup>**

- 6.9.1 Where a planning authority proposes to carry out works to a protected structure or proposed protected structure in its ownership and within its own functional area, it must take the same considerations into account as those expected of private developers. Regard should be had to these guidelines when preparing proposals for Part 8 developments and other works. In addition to indicating on the site notice and the development proposal document that the development is to a protected structure or proposed protected structure or the exterior of a building in an ACA,<sup>29</sup> the planning authority should ensure that information

on the impact of the proposed development on the structure is included in the information available to the public and the prescribed bodies<sup>30</sup>. It should be noted that planning authorities cannot carry out works that would contravene their development plans, including objectives to protect the architectural heritage.<sup>31</sup>

- 6.9.2 Works of maintenance and repair are not subject to the public consultation requirements under Part 8 of the Regulations, providing they would not materially affect the character of a protected structure or proposed protected structure.<sup>32</sup> However, planning authorities should ensure that where such works are being carried out to a protected structure or a proposed protected structure, they are done in a sensitive and appropriate way. In such cases the detailed guidance given in Part 2 of these guidelines may be of assistance, or the planning authority could seek the advice of the prescribed bodies, for example the Heritage Council. The Heritage Council has a particular role in this regard by virtue of Section 10 of the Heritage Act 1995.



*A planning authority should promote good standards of conservation in development works to the protected structures in their ownership. This example shows the junction between a successful modern addition and the original local authority building*

<sup>27</sup> Article 21 (b), 2001 Regulations

<sup>28</sup> Section 179, 2000 Act and Part 8, 2001 Regulations

<sup>29</sup> Article 81 (2) (c), 2001 Regulations

<sup>30</sup> Article 82 (2), 2001 Regulations

<sup>31</sup> Section 178, 2000 Act

<sup>32</sup> Section 179 (6) (a), 2000 Act

### 6.10 Development by Certain State Authorities (Part 9 Developments)<sup>33</sup>

- 6.10.1 Certain classes of development carried out by state authorities are not subject to the normal requirements of planning permission. The classes of development specified in Part 9 of the Regulations, such as the provision of prisons, Garda stations, barracks etc. are excluded from the normal planning process for reasons of public safety or order, the administration of justice, national security or defence. The state authority may instead be required to give notice of the proposed development, asking for observations, which it must take into account in deciding whether or not to modify or carry out the development. The Regulations specify that the consultation procedures must be followed in cases where the proposed works are to a building that is a protected structure or proposed protected structure, even where it would not otherwise be required.<sup>34</sup>
- 6.10.2 In addition to the normal notification requirements of Part 9, where the development includes works to a protected structure or a building in an ACA, the authority concerned must, in addition, send notice to the Minister.<sup>35</sup> The plans and particulars must, in the case of works to a protected structure or proposed protected structure, include drawings and particulars showing how the proposed development would affect the character of the structure.

- 6.10.3 Where state authorities are proposing to carry out works to a protected or proposed protected structure, it is advisable to consult in advance with the Architectural Heritage Advisory Unit of the Department and, where appropriate, with the conservation officer of the planning authority.

### 6.11 Exempted Works to Monuments

- 6.11.1 The Minister may carry out works under the National Monuments Acts 1930 - 2004 in relation to national monuments or any particular monuments as before, without seeking planning permission, whether or not such structures are protected under Part IV of the 2000 Act.<sup>36</sup>

### 6.12 Compliance

- 6.12.1 In many cases it is acceptable to allow particular, small-scale aspects of a permitted development to be clarified after a grant of permission is made, by attaching a condition requiring the submission of drawings or other documents. Such matters could include details which would not have a substantial impact on the nature or extent of the development, as those should be resolved prior to deciding the case.



*Certain building types such as Garda Stations, subject to the provisions of Part 9, are also protected structures*

<sup>33</sup> Section 181, 2000 Act and Part 9, 2001 Regulations

<sup>35</sup> Article 88 (2), 2001 Regulations

<sup>36</sup> Section 260, 2000 Act

<sup>34</sup> Section 181, 2000 Act and Part 9, 2001 Regulations

- 6.12.2 The submission of some architectural details may be necessary at compliance stage if, for example, they could not be finalised prior to gaining full access to the property or if selected areas had first to be demolished or made safe. All drawings should, as normal, be sufficiently legible and well annotated to show clearly the appearance and materials, with samples of materials submitted or sample elements constructed as necessary. If architectural details are meant to copy previous or original elements, supporting visual information might be necessary to confirm the accuracy of the new work. Specifications or method statements should follow recognised conservation procedures. The Department of Environment *Conservation Guidelines* or Part 2 of these guidelines may help to establish if the proposed works are appropriate. Agreement should not be given until it is clear that the character of the protected structure will be protected in the work.
- 6.12.3 Where works commence on receipt of planning permission, the planning or conservation officer should visit the site whenever feasible to ensure that the project is proceeding in compliance with the permitted plans and conditions. If it is a condition of permission that a conservation specialist is to oversee the project on site, this person should be on hand to discuss progress and answer queries. Where reports have been required to set out progress at specified stages of the project, these should be submitted and approved. Not all of the personnel who are involved in even a relatively small contract may be aware of the significance of the structure being modified; however, an ongoing relationship with the planning authority officials should improve communications.
- 6.12.4 A developer may seek discussions on the procedures to take if concealed features have come to light during initial works.<sup>37</sup> The best way to proceed depends on the importance of the features, how their retention would affect the development, whether or not a small-scale redesign would require a further grant of permission or could be resolved by writing a declaration and if the features could be satisfactorily recorded or relocated within the structure. The conservation officer, where available, should be involved in these decisions.

## 6.13 Enforcement

- 6.13.1 The Act gives new and clarified powers of enforcement to planning authorities.<sup>38</sup> The consistent enforcement of the legislative and regulatory provisions and conditions attached to planning permissions are intended to effect a positive change in the public perception of the impacts of development, and to assure the credibility of the system of planning and development control.
- 6.13.2 A quick response to complaints about the nature of the works by members of the public during the course of development projects affecting protected structures is desirable.
- 6.13.3 It is of course impossible to replace lost historic fabric. Damage to or demolition of protected structures therefore irredeemably damages our architectural heritage. In cases where an owner or occupier of a protected or proposed protected structure has knowingly and unlawfully demolished or damaged that structure, or a part of that structure that contributes to its special interest, immediate consideration should be given to enforcement action by the planning authority, and the site closed down if necessary.
- 6.13.4 The seriousness of the infringement and the willingness (or not) of the owner to respond should guide the planning authority as to the most appropriate step to take. Relatively small-scale unauthorised works such as inappropriate window replacement can often be mitigated by their removal and replacement by correctly detailed elements. This can be achieved by the owner or occupier applying for retention permission or by the planning authority issuing a notice requiring the restoration of character of the structure.<sup>39</sup> If an owner is unwilling to comply, enforcement action should be considered. Where retention permission, or a Section 60 restoration notice, would be inadequate to remedy the damage immediate enforcement action is advisable. This may arise, for example, where a protected structure, or a substantial part of it, has been demolished or altered without consent, where ongoing development is not being carried out to the approved standards such that it is endangering the structure, or where important fixtures and features have been damaged or removed during the works.

<sup>37</sup> See also paragraphs B5.14 and B5.15 in Appendix B

<sup>38</sup> Part VIII, 2000 Act

<sup>39</sup> See also paragraph 6.16 'Restoration of Character'

### 6.14 Retention Permission

- 6.14.1 Some protected structures have been previously altered in an unauthorised and unsatisfactory way. In some cases it will be desirable and possible to restore structures to their original character by identifying their previous design from careful inspection of the fabric and from historical evidence such as old photographs. In cases where some or many of the external features of the structure (such as original doors and windows) have been removed, or an unauthorised extension or new structure has been built within the curtilage of the structure, retention permission with mitigating conditions attached could be acceptable, depending on the individual circumstances.
- 6.14.2 Where an application for retention of unauthorised works to a protected structure is lodged, a planning authority should apply the same consideration to the works as for planning applications and should, if considering granting permission, seek to ensure that the works for which retention permission is granted have the minimum possible impact on the character of the structure.
- 6.14.3 Where in a particular case inappropriate works have been carried out, and in the opinion of the planning authority it is possible to restore its character by the carrying out of works, the authority could also consider refusing permission and using the enforcement provisions to require removal of the unauthorised works. Alternatively the planning authority could consider issuing a notice to require restoration of character.<sup>40</sup>
- 6.14.4 It should be noted that the planning legislation has been found to make no provision for applications to be made to 'retain' the demolition of a structure, that is, after an unauthorised demolition has taken place. Therefore, a planning authority that receives an application for the retention of the demolition of a protected structure should not consider that application. Consideration instead should be given as to whether enforcement action is appropriate.

### 6.15 Endangerment

- 6.15.1 'Endangered' is defined by the Act as 'exposed to harm, decay or damage, whether immediately or over a period of time, through neglect or through direct or indirect means'.<sup>41</sup> Protected or proposed protected structures that appear to be endangered may come to the attention of the planning authority in the course of normal planning duties or if informed by a member of the public. The state of a structure may also be brought to notice of the planning office by the sanitary authority prior to the issue of a notice in relation to a dangerous structure under the Local Government (Sanitary Services) Act 1964.
- 6.15.2 A structure may be endangered by structural interventions such as the removal of internal floors and/or partition walls, breaking new openings in external walls, removal of or damage to roofs and chimney stacks, removal and boarding up of windows and doors, excavation of the ground in close proximity to the structure without adequate shoring up or other protection for the structure, or the demolition of parts of a structure without shoring or protecting it. Indirect endangerment could include allowing a building to fall into disrepair, leaving structures open to the elements and possible vandalism, or the removal of temporary safeguards which had secured a vacant structure, such as temporary roof-coverings, security fencing or blocked openings.



*Derelict buildings can become targets of vandalism if not properly safeguarded*

<sup>40</sup> Section 60, 2000 Act

<sup>41</sup> Section 2, 2000 Act

- 6.15.3 Immediate action should be taken to require the owner to stabilise or secure the structure, using either Section 59 (which may be a quicker option if the owner is amenable to carrying out the works) or the regular enforcement procedures in Part VIII of the Act. Either way, the planning authority should specify the works that are required to prevent continuing endangerment. The detailed guidance given in Part 2 of these guidelines or the Department of Environment *Conservation Guidelines* should, where necessary, be reinforced by advice from an engineer or architect with conservation expertise.

### 6.16 Restoration of Character

- 6.16.1 A Section 60 notice can be served on the owner or occupier of a protected structure to require the restoration of its character where unauthorised removal, alteration or replacement of particular elements has taken place and where the original character (or a documented previous state) can be restored without needing retention permission. This solution is limited to works that would not otherwise require planning permission as they would not materially affect the character of the structure. For example, unauthorised and inappropriate windows or doors could be replaced with correctly profiled windows or doors, the details based either on surviving fragments or examples measured from a directly comparable structure. The restoration of character is best achieved by the agreement of all parties on the details of the necessary works and a time-frame for compliance.
- 6.16.2 The restoration of character could also mean the straightforward removal of items that detract from the character of the structure, for example inappropriate shop signage, aerials or air-handling units. If the notice relates to the removal of items that have an economical or physical function in the structure, their replacement in some form may be necessary. An acceptable replacement item should be discussed among all parties and the details agreed in advance of a planning application, to facilitate a quick decision.



*Restoration of character can sometimes be achieved simply by the removal or relocation of inappropriate additions (bottom).*

*However, where original elements such as windows have been lost (top) they can only be replaced in replica but this may be necessary to restore the character of the overall building or area*



**Table VIII An Outline of Planning Application Procedures for Works to Protected Structures**

