Legal developments

Judgement was handed down by the High Court on 9 April 2003 on a case that will be of interest to all practitioners. The case of **R (on the application of Sullivan) –v– Warwick DC & Others** (as yet unreported) concerned proposals for the re-development of the Regent Hotel in Leamington Spa. The Regent Hotel is a Grade II* listed building dating from 1819, the work of C S Smith of Warwick for a Mr John Williams. Constructed in Flemish bond with painted stucco facades, it is believed to be the second oldest purpose-built hotel in England and the oldest of its type to survive. It became known as the Regent Hotel when, shortly after it opened, the Prince Regent, the future King George IV, stayed there and gave permission for the name change.

Mr Justice Pitchford (the judge in the case) described it thus: 'The principal range on the east side of The Parade, fronting westwards, is a large four-storey rectangular block. Bays at each end of the block are stepped slightly forward. Its main elevations are clad in stucco, a feature familiar in Leamington Spa. Rear wings project eastwards from the northern and southern ends of the principal range to form, to the rear, a courtyard, since cluttered with a variety of modern additions ... The south wing ..., listed as "rear range of four lower storeys, seven first floor windows", is the subject of controversy. It is contemporary with the principal range but subordinate to it in architectural quality and status. Its four storeys reach the same height as the first three storeys in the principal range.'

The case concerned proposals to re-develop the Regent Hotel. The proposals involved the 'demolition' (post-Shimizu, of course, we must use the word 'demolition' relating to part of a building with some care!) of the southern wing of the hotel and its re-use for restaurant and bars on the ground floor and hotel use on the remaining floors. A new shopping street with residential above was proposed which ran to the rear of the hotel. English Heritage was consulted on the case, which was referred to its Historic Built Environment Advisory Committee (HBEAC). HBEAC was content with the proposals and no objection was raised with Warwick District Council. The Council subsequently granted planning permission and listed building consent for the proposals. The decision to grant those consents was the subject of the judicial review proceedings brought by Mr Sullivan on behalf of local residents groups who objected to the proposals and wished to see the hotel retained in its original form and run as a traditional hotel.

The argument put forward by those opposed to the scheme was that the loss of the southern wing to the hotel constituted the demolition of a 'significant part' of the listed building and that therefore, by virtue of paragraph 3.15A of PPG15, the tests in paragraph 3.19 of PPG15 – particularly the requirement to market the property before carrying out works – were triggered. The objectors contended that 'significant' meant architecturally or historically significant. English Heritage argued that it meant volumetrically significant – a significant proportion of the building – and had advised the local planning authority accordingly.

The judge's decision was that 'significant' did encompass architectural/historical significance and that therefore Warwick DC had been misdirected by English Heritage's advice in relation to paragraph 3.19. However, he decided not to quash the decisions because he concluded that if Warwick DC had been properly directed in respect of paragraph 3.19 it would have reached the same conclusion, so there was no point in remitting the matter back to it for reconsideration. It is not entirely clear how the judge came to his decision not to quash, but he may have been influenced by evidence put forward by Warwick DC and English Heritage. English Heritage argued that if the true construction of 'significance' were that contended for by Mr Sullivan (architectural or historic significance) the same result would be reached. English Heritage's view was that the southern wing was not architecturally significant. As the judge observed in his opening remarks (above) the southern wing was 'subordinate to [the principal range] in architectural quality and status'.

While the judgement is good news for practitioners – who on occasion may wish to argue for the retention of a small but architecturally significant part of a building – and brings welcome clarification, the judgement is not without its problems. For one thing, the judgement could be seen as leading to, in my opinion, the absurd situation where an owner of a listed house is required to put it on the market because he wants to remove a historically significant fireplace or cornice. For another, who decides whether the part of the building is significant? Presumably, the local planning authority, but PPG15 doesn't say that, so if the developer's expert disagrees, an appeal may be the only way to resolve the issue. □

Nigel Hewitson
Legal Director