

# Legal Developments

## Moving buildings

One of the things that has surprised me in my work for English Heritage is the relative frequency with which proposals are made to dismantle listed buildings and structures and rebuild them elsewhere – or even to move a structure intact to a new location.

These cases have caused confusion in the past. After all, surely a building ceases to be a building once it is taken apart and divorced from the land forming its address (often referred to by heritage professionals as the ‘legal’ part of the listing)? Not so, the High Court, in the shape of Mr Justice Sullivan, ruled last year in the case of *Judge v First Secretary of State and another* [2005] All ER (D) 409 (Apr).

The case concerned the proposed relocation of a statue of Sir Samuel Sadler as part of comprehensive redevelopment proposals for the centre of Middlesbrough. Included in the proposals was the redesign and remodelling of Victoria Square, in which Sir Samuel’s statue stood.

Middlesbrough Council applied to the First Secretary of State for listed building consent for what they described in their application as the ‘relocation’ of the statue. Consent was granted subject to conditions requiring the method of dismantling the structure to be approved and the structure to be re-erected in its proposed new location within one year of the consent.

This decision was challenged by Mr Judge on a number of grounds, but the one that concerns us here is that the First Secretary of State had no power under the Act to grant consent to ‘relocate’ the statue. It is true that that term is not used in the legislation, which refers only to demolition of buildings. But s.17 provides for conditions to be imposed requiring (among other things) ‘the reconstruction of the building ... with the use of the original materials so far as practicable’. Mr Justice Sullivan gave Mr Judge’s argument fairly short shrift and pointed out that the two processes expressly envisaged by the Act – demolition and reconstruction – amounted to relocation.

He considered the earlier case of *R (on the*

*application of Antique Country Buildings Ltd) and Others v Leominster DC* [1987] 56 PCR 240. Readers may recall that this case concerned a listed barn which was dismantled without listed building consent with a view to exporting the component parts to the USA – presumably to be re-erected there. The local planning authority issued a listed building enforcement notice requiring the building to be restored to its former state. In that case, the would-be exporter of the parts argued precisely that, once dismantled, the parts could no longer be considered to be a building. The judge disagreed and held that for the purposes of the then 1971 Act, ‘the word “building” is perfectly capable of meaning something which had been a listed building but has since been demolished’. Mr Justice Sullivan agreed, holding that it was ‘irrelevant’ whether the parts ceased to be part of the land.

Mr Judge sought permission to appeal to the Court of Appeal and was refused. Lord Justice Buxton added the following comment:

True it is, of course, that the [listed building consent] code in terms does not deal with the moving of a building. But I find it impossible to say that such a step is excluded from the code – that is to say, excluded from any possibility of receiving listed building permission [*sic*] – merely by the fact that an object of this sort is to be moved rather than left in place. If that were the case the barn referred to in the Leominster DC case would have ceased to be covered by the code, so that permission could not have been granted under the code, as soon as any part of it was dismantled. That, in my judgement, cannot be right.

At least one commentator has stated that this point ‘makes clear that when a listed building has under a listed building consent been dismantled and re-erected, the re-erected building remains listed’. This certainly goes beyond the view that English Heritage has previously taken, ie that the parts remain listed but that the re-erected whole needs to

be re-listed on its new site. It certainly seems to me that, practically speaking, at minimum, the list entry would need to be amended to reflect the new address. Of course the important issue is what view will the DCMS take? That remains to be seen.

### **Review of Charles Mynors, *Listed Buildings, Conservation Areas and Monuments***

Many practitioners have long regarded *Listed Buildings, Conservation Areas and Monuments* by Charles Mynors\* as an invaluable reference work. It is probably the only published work providing comprehensive coverage of the law relating to what we have in the last few years come to know as the historic built environment. So should practitioners invest in the fourth edition of the book, which was published in May? My answer is a resounding 'yes' – and not just because Mynors was kind enough to ask me to review his drafts and gracious enough to consider some of my suggestions.

The main reason is simply that there have been, over the years, significant changes in this area of law. Mynors himself notes that this fourth edition, at 950 pages, is about twice the length of the first, published in 1990 – not least because of the plethora of Regulations, Circulars and Court cases since then. The

fourth edition is in Mynors' words 'hopefully, up-to-date as at 1st January 2006'.

Key changes that will undoubtedly assist the practitioner include the inclusion for the first time of diagrams and illustrations of some key 'curtilage' cases. I am in no doubt that these will help anyone who wants to understand this potential minefield of a subject. I myself for the first time only truly understood the *Calderdale* case when I saw the illustration of its layout. (I had never understood why anyone would think that a row of cottages on the other side of a bridge over a valley from a mill could be in the mill's curtilage until I saw how narrow the valley was and that the cottages were parallel to the mill rather than as I had always envisaged the relationship. A picture really does paint a thousand words.)

Mynors has also thoughtfully re-ordered parts of the book to make it more easily usable by practitioners. Instead of separate chapters covering each of the different legal regimes in turn (listed buildings, conservation areas, scheduled monuments and so on) the new edition orders its chapters according to the key questions any owner contemplating changes to his property needs answered:

- What consents and permissions do I need? (The book makes far greater reference to planning permission, which is in many, if not most cases in addition to specific 'heritage consents'.)
- How do I get them?
- What will the decision-maker take into account in deciding whether I should get permission?
- What are my rights of appeal?
- What happens if I carry out works without consent?

Finally, Mynors has also covered for the first time the similar but subtly different versions of heritage law in Scotland and Northern Ireland, which will be good news for practitioners in those jurisdictions.

All in all a 'must have' for any practitioner's book shelf.

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\* Mynors, Charles, *Listed Buildings, Conservation Areas and Monuments*. 4th edition, Sweet and Maxwell (2006). Hardback, 950 pages. ISBN: 042 175 8309; price: £135

