



## Protecting theatres through Urgent Works, Repairs and Section 215 Notices

### Summary

This advice note looks at what can be achieved through statutory local planning authority powers served on owners in order to get theatres into good repair. This is one of a series of advice notes – others can be found on our website at [theatrestrust.org.uk/how-we-help/advice/advice-notes](https://theatrestrust.org.uk/how-we-help/advice/advice-notes) and we'll be adding more over the coming months.

### Who is this note for?

This advice note is aimed at community / volunteer groups and theatre operators / owners.

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### Thanks to our funders

These advice notes are part funded by Historic England, The Pilgrim Trust and Swire Charitable Trust.



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## **Introduction**

Swift action by local campaign groups can help save deteriorating theatre buildings. The loss or damage to masonry and roof coverings can be a major cause of decay. Vegetation growing out of parapets and blocked rainwater goods can lead very quickly to damp and water penetration.

Local councils have various planning powers that can put theatre buildings back into good repair. There is usually a commitment to working with owners alongside local groups to secure lasting repairs and productive reuse of theatres, particularly those at risk. The objective is to preserve that which exists, to prevent it from getting worse and to do so in a cost-effective manner.

## **Options for action**

### **Section 215 Notices**

In **England and Wales**, the simplest course of action a council can take to put a theatre building into a good state of repair is to serve a Section 215 Notice. This type of notice is specifically served where the condition of the theatre building is considered to have a harmful effect on the amenity of the area. The theatre building can be of any age and does not need to be formally designated i.e. a listed building. In **Scotland** the notice is served under Section 179 of the Town and Country Planning (Scotland) Act 1997. There is no equivalent notice in **Northern Ireland**.

If your local theatre is clearly in need of repair, for example there is Buddleia growing out of joints, has damaged stonework or terracotta and missing roof tiles letting in water, then it is worth checking with your local planning authority (LPA) to see if it would use its Section 215 planning powers to put the external appearance of the building back into good order.

### **When might a council take action?**

When considering if action should be taken the LPA has to determine if the amenity of part of its area is harmfully affected by the condition the theatre building. Section 215 of the Town & Country Planning Act 1990 provides it with the power to take steps requiring the building to be 'cleaned up'. The notice will set out the steps that need to be taken and the time within which they must be carried out.

### **The use of LPAs 215 powers**

However, the use of Section 215 powers by LPAs is discretionary and it is therefore up to the LPA to decide whether a notice under these provisions would be appropriate. LPAs will consider, for example, the condition of the building, the impact on the surrounding area and the scope of their powers. Local groups can help councils by pointing out the poor condition of the theatre building and by lobbying councillors for the need for action. Theatres Trust can also assist by supporting action.

Defining 'harm' is a subjective judgement. Before a notice is served, a letter is sent to the owners stating the LPAs intention to serve a notice. An appeal may be made to the magistrates court by those served with the notice.

### **Section 215 example: Hulme Hippodrome**

In December 2014 Manchester City Council served a Section 215 Notice on the Hulme Hippodrome incorporating a schedule of works to remove the disamenity being caused by

the building. Included in the notice were some repair works, principally to damaged windows. Although the owner undertook some of the works, they were never completed, and the council has been seeking agreement on how to finalise the works.

For further information on such notices please see:

England and Wales: <https://www.gov.uk/government/publications/town-and-country-planning-act-1990-section-215-best-practice-guidance>  
Scotland: <https://www.mygov.scot/amenity-notice-appeals/> and  
<http://www.legislation.gov.uk/ukpga/1997/8/contents>

## **Urgent Works Notice**

Another way of securing urgent repairs to a theatre building is through an Urgent Works Notice. Note however that the theatre has to be statutory listed. In **England and Wales** if the building is **not fully occupied**, a notice can be served by the local planning authority (LPA) under **Section 54** of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the owner. This enables the LPA to undertake urgent works of repair to those parts of the property that are not in use.

The kind of work, under this type of notice, can only ensure that the structure is weatherproof, safe from collapse and secure from theft. The notice describes the proposed works to be served and gives a minimum of seven days written warning. The owner can respond by undertaking the specified works. If the LPA has to undertake the works the costs can be recovered from the owner.

The owner has a period of 28-days to appeal against the notice on the following grounds: some or all of the works were unnecessary; temporary works have continued for an unreasonable length of time; the amounts were unreasonable and recovery would cause hardship.

## **Discussion with your local council**

Local campaign groups should discuss such notices with their local council to see if this is a course of action the local planning authority may be willing to undertake to secure repairs and future use of the theatre. Note that the LPA may be reluctant to serve a notice. This is because it would have to use what might be a considerable amount of public money, not only to undertake the works but also to recover the costs. However, it is always worth exploring such an option where a theatre is in poor repair and the Theatres Trust is always happy to assist in negotiations with the LPA.

There is similar legislation in **Scotland**. Section 49 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 enables LPAs to carry out any emergency works which appear to them to be urgently necessary for the preservation of a listed buildings in their area and, as modified by section 25 of the Historic Environment (Amendment) (Scotland) Act 2011, to undertake preventative works necessary to limit the deterioration of a building.

In **Wales**, provisions within Section 30 of the Historic Environment (Wales) Act 2016 extended the scope of urgent works to occupied as well as unoccupied buildings alike.

In **Northern Ireland**, action can be taken to protect unoccupied listed buildings, or the unused part of occupied listed buildings, under Section 161 of the Planning Act 2011.

## **Urgent Works Notice example: Swindon Mechanics' Institute**

In December 2009 Swindon Borough Council served an Urgent Works Notice on the owner of the Mechanics' Institute requiring it to carry out works to make the building safe, secure and weathertight. The owner failed to provide the necessary evidence to assure the council that the necessary works would be carried out to an appropriate standard within the timeframe specified within the Urgent Works Notice and therefore, as per the legal framework, the council determined to undertake the works itself. The works were reported to cost approximately £800,000.

Although the council sought to take the owner to court to recover the costs, the company registered as owning the building was dissolved, and the costs were never recovered. The building has since reverted to the Crown (when a company is dissolved any remaining assets pass to the Crown). However, the council still has a charge registered on the site as a result of monies still owed from the Urgent Works.

## **Repairs Notices**

Where a statutory listed theatre is in a very poor state of repair a council has the power to serve a Repairs Notice. A Repairs Notice can lead to compulsory purchase of a property by the local planning authority (LPA) if repairs are not carried out.

Under Section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in **England and Wales**, the LPA can serve a repairs notice on the owner requiring work to be carried out which the council considers necessary for the preservation of the listed theatre. If after at least two months there is no indication that reasonable steps are being taken to do the work, the council can begin compulsory purchase proceedings.

The repairs notice does not require the owner to carry out any works. It merely sets out the works necessary for the proper repair of the building and explains that the council can make a compulsory purchase order (CPO) after two months. The purpose of the notice is a warning. It gives the owner the opportunity to put to the council their own proposals for repairing the property. If they are acceptable, it is unlikely that a CPO will be needed.

## **Compulsory acquisition**

Section 47 of the same act enables a LPA to compulsorily acquire a listed theatre where reasonable steps are not being taken for properly preserving it. Requirements and duties of the purchasing authority are set out in government guidance and are complex and time-consuming, and will involve a public enquiry if the owner objects. The council will need to demonstrate that funding is in place both for the purchase and for the remedial work required. The CPO must also be confirmed by the Secretary of State.

In **Scotland**, repairs notices are served under Sections 42 and 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. These deal with the compulsory acquisition of listed building in need of repair.

In **Northern Ireland**, similar rules apply. If a listed theatre building has fallen into a poor state of repair and reasonable steps have not been taken to properly preserve it, the Department for Infrastructure may serve a repairs notice on the owner under Article 109(4) of the 1991 Planning Order.

## **Why might you want to consider this sort of action?**

Despite the time consuming nature of the procedures and potential costs, this should not put a local group off looking to secure the future of a listed theatre in poor repair. If a council appears unwilling to consider such notices, then ask the Theatres Trust for support. The theatre is likely to be a ‘Theatre at Risk’ and this route might be the only course of action to save it. Furthermore, grants are sometimes available from Historic England and Historic Scotland and other grant giving bodies to underwrite the costs of preparing and enforcing such notices.

CPOs work best for a local authority where the building is purchased and simultaneously sold to a developer who then repays the council’s costs. This is known as a ‘back-to-back’ arrangement, and involves an indemnity agreement with the final purchaser, made before the CPO process commences. If the project is not viable, the local authority may enter a back-to-back agreement with a voluntary sector body such as a building preservation trust (BPT).

## **Additional resources**

You can find out more about Urgent Work and Repairs Notices from:

Historic England: <https://historicengland.org.uk/advice/hpg/har/>

Historic Scotland: <https://www2.gov.scot/Publications/2004/12/20450/49056>

Wales: <https://cadw.gov.wales/advice-support>

Northern Ireland: <https://www.communities-ni.gov.uk/articles/heritage-risk>

## **The role of the Theatres Trust**

Theatres Trust is the national advisory public body for theatres and is a statutory consultee on theatres in the planning system. We campaign to save theatres that are under threat of closure or redevelopment, including publishing the annual Theatres at Risk Register. We can provide expertise in planning, heritage, listings, architecture and design, amongst other topics.

Contact us at [advice@theatrestrust.org.uk](mailto:advice@theatrestrust.org.uk) with information about your theatre and how we can help.