

FIRE PREVENTION AND INSURING CULTURAL HERITAGE IN THE NETHERLANDS

Buildings can suffer damage as a result of fire, lightning or storm. Whilst these risks can be reduced, even eliminated, insurance policies will have to be in place to ensure the future of a monument once such a catastrophe has taken place.

As far as fire prevention is concerned, there are numerous measures which can be implemented, including the installation of lightning conductors and sprinkler systems and the use of fire-resistant materials. Compartmentalisation of large wooden roof constructions (to ensure that fire does not spread to other parts) is also a possibility. In the Netherlands, expert advice on fire prevention is available from *Rijksdienst voor de Monumentenzorg* (Netherlands National Department for Cultural Heritage) and *Monumentenwacht Nederland* (MonumentWatch Netherlands). This article takes a brief look at the kind of advice which is available to owners of historic buildings with respect to their insurance. It should be clear that the Dutch situation will be described here: other European countries will of course have different regulations and insurance schemes.

Level of insurance

It is not always necessary to draw up an insurance policy for the total reconstruction of a historic building. If a historic building is totally destroyed, an insurance policy can be arranged taking into account the cost of reconstructing a similar building, built using modern methods and materials. However, most damage is usually partial, which means that part of the historic value of the building remains intact. For that reason, it's important to insure against all risks that may damage the historic value of the listed building.

For an owner of a building, arranging an insurance policy to protect his or her vital interests is nothing out of the ordinary.

Once a listed building in the Netherlands has been restored, the law stipulates that it must be covered by an insurance policy. This is partly due to the fact that the state provides a financial input the investment for which must remain protected. For this reason, an insurance policy must be in place prior to commencement of the restoration work to cover the grant provided by the state. Once the restoration work has been completed, this insurance policy must be continued.

The rationale behind this compulsory insurance scheme is that the historic value can be restored if possible after any disaster. The objective is not to reconstruct the historic value which has disappeared as a result of a disaster. In this respect, it is up to the owner to decide, in consultation with the government, between acceptable restoration, a completely new building or reconstruction. Any insurance payments will help prevent the future of a historic building, which has been hit by a disaster (and which may have become unusable), being endangered by a lack of funding.

In the Netherlands, in the event of a monument being totally destroyed, there is a statutory obligation to rebuild. The reasoning behind this is that, in a situation

where there is a loss of historic fabric, the historic value – from a conservation perspective – is not considered to have been lost.

Dutch legislation with respect to the preservation of historic buildings continues to apply, since in all cases the question will have to be answered – from a conservation point of view - as to whether the protected value still exists and whether restoration of this is possible.

A permit, to which special conditions apply, is always required both for reconstruction plans and for demolition of ruined parts.

If no historical value remains, the government will set in motion a procedure aimed at terminating the obligation to preserve, as laid down in Dutch legislation pertaining to listed buildings.

Insurance in the event of partial damage is slightly more complicated, because from time to time, a decision will have to be made as to where the dividing line is between desirable reconstruction and acceptable restoration of the damage in the form of an alternative new building, possibly built according to modern methods and with modern materials.

In the event of partial damage, on the one hand, there is no restoration obligation, but, on the other hand, the legal status of the listed building remains in place.

Fixing the amount of insurance

Deciding on what the right amount of insurance and premiums are, is a job for the insured party and the insurance company. The state does not require historic buildings to be subject to any special valuation. At the most, the costs of any restoration work carried out in the past may provide a yardstick for any repair costs expected to return it to its original condition. As far as insurance premiums are concerned these may be based on the cubic meterage of the building (for example, in the case of a historic dwelling which has no complicated roof constructions) and any historic artefacts that the building contains.

So it is the owner of the listed building who arranges the policy conditions with the insurance company. The essence is to find an acceptable balance. On the one hand, insurance is needed for the costs of reconstruction in the event of complete destruction and, on the other hand, in the event of partial damage, an adequate payment is needed to ensure the continued existence of the historic building.

It is important to arrange a policy in which the restoration costs of partial damage are compensated for in full. This kind of insurance has premium-related benefits in comparison to exclusive insurance for the value of the old building.

The “fork clause”

Underinsuring a historic building should be avoided at all costs because this will endanger its future existence. Attempts should be made to find a balance between the insured sum and the overall value of the building, so that the owner’s liability is minimised. To this end, there is the so-called “fork clause”.

The term is derived from the cutlery item of the same name having four prongs. The term indicates that the desired insurance is brought about in different ways:

the reconstruction value; the insured value; the discount percentage; and regular building inspection.

This form of insurance policy not only insures the reconstruction of the listed building, but also represents an amount that is sufficient to cover partial damage or an adequate replacement, or to fund the recovery of this partial damage. The outcome is usually a purposely chosen lower amount than is covered for the reconstruction value. This fork clause construction prevents underinsurance occurring. However, the insurance company will never pay out more than the fork clause amount, specifying also the insured value.

In a fork clause construction, the premium is calculated by providing a discount on the premium for cover against the full reconstruction value and is primarily suited to the insurance of larger historic buildings and complexes.

The fork clause takes into account a major insurance problem. In the event of underinsurance, for partial damage a so-called underinsurance factor applies. The insurance company is only obliged to pay out as a proportion of the insured amount to the non-insured amount.

Fixing the right level of insurance is therefore no easy task. The owner needs to calculate the amount to which a replacement provision can be met in the event of full destruction. In addition, the owner also needs to determine the amount which he or she believes is necessary to repair any partial damage. There are no general guidelines on how to arrive at these amounts which makes this kind of insurance quite complex. Nevertheless, such an insured value can be reached in the Netherlands so that a sensible insurance policy can be arranged, but establishing an insured amount for larger buildings in particular, such as churches, castles and stately homes, can often cause considerable headaches.

The advice involves valuating the reconstruction costs followed by a forecast of a partial destruction, whereby the reconstruction costs are calculated after this forecast partial disaster. This forecast is arrived at after making an analysis of the nature and size of a building or complex of buildings, the extent to which fire prevention measures have been taken, the situation of the building, accessibility for the fire services and whether the fire services are automatically called out in the event of fire.

All this enables an insight to be gained of the relationship between the reconstruction value and the value to be insured in a fork clause construction for the repair costs of a partial disaster. A calculation is made in consultation with the owner on the basis of this information and a submission made to the insurance company. If the latter agrees with the valuation, a policy is drawn up which will include an indexation, in order to prevent the insured amount being subjected to undesirable rates of inflation. This method of insurance has the added advantage that the amount is determined beforehand in the form of a report for the insurance and the way in which and the extent to which partial damage – covered by insurance payouts – will take place without there being any underinsurance.

For certain categories of listed buildings, an exemption may be granted with respect to this statutory obligation to insure. Take, for example, a situation

where only a very small economic value can be attributed to the listed building, as a result of which the premium is seen as extremely high – relatively speaking.

As already mentioned, in the Netherlands, insuring cultural heritage is an interaction between the insurance companies and the state.

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