



## HISTORIC ENVIRONMENT FORUM CONSULTATION: HEF HERITAGE PROTECTION REFORM PROPOSALS

### RESPONSE BY HISTORIC ENGLAND

6 October 2016

Historic England is very pleased to support the work of the Historic Environment Forum and its sub-group, the Historic Environment Planning Reform Group. Creative thinking to find ways to help applicants make successful applications for listing building consent (LBC), to bear down on the administration of listed building control and, as far as possible, to answer the reduction in staff resource in local planning authorities, is very positive and Historic England has taken an active part in facilitating these discussions. We look forward to seeing the results of this consultation.

We support the general thrust of these proposals and I summarise our response as follows:

- D1 and D2 (improving heritage-related guidance and advice, and highlighting the value of positive heritage management- Constructive Conservation) are uppermost in our minds as we continue to update and make clearer all our planning advice. Indeed, Constructive Conservation is a well-established Historic England position.
- We will be interested to see the outcome of discussions in the Client Demand Task Group, both on the 'supply-side' proposals and on D3-5. We are funding a project to research the use of expertise by heritage clients as part of this initiative.
- Proposal D6 sees further expert guidance/advice as part of a package specifically related to the improvement of the LBC process which encompasses proposals D6-9. Reducing the number of unnecessary applications for LBC by encouraging better thought-out proposals and therefore clearer applications, would be extremely useful and we believe advice on the practical matters exemplified in the consultation would help. We therefore support the need for succinct, topic-based advice to better inform the listed building consent process where a clear need can be identified and we consider this further under questions 4a and 4b.
- We give further detail below, in answer to questions 5a and 5b, on our response to proposal D7, concerning changes to the system of Design and Access Statements, and the drafting of advice on heritage statements. We wish to work with the sector to produce advice on heritage statements as part of a revised regime of Design, Heritage and Access Statements, and we therefore support further discussions on the place of Design and Access Statements in listed building consent applications.
- We have reservations about the use of LBCOs, as proposed in D8 and detailed below in response to question 6a, because of the difficulties of drafting such comprehensive orders as watertight but strictly proportionate control mechanisms. We therefore recommend that the draft LBCO now close to agreement, which is a more limited instrument covering as it does a relatively narrow range of heritage asset types, should be used as a worked example from which to learn about the scope of LBCOs. This would then help guide any future more widely-scoped LBCOs.

That leaves proposal D9, the use of accredited experts, which was originally considered in two different forms in the 2012 DCMS Consultation *Improving Listed Building Consent*. We appreciate that this is both a more limited measure and one which simply attempts to find a way of assisting applicants for listed building consent without reducing heritage protection. However, whilst there is no objection to the principle of making more use of private sector expertise to help deliver a more efficient system (indeed it is an obvious course), Historic England believes that its value is not yet fully explored and that more work is needed on how a system could be made to function successfully:

- We note that the consultation suggests that the independent expert would be under an express obligation to act in the public interest. A way needs to be found to embed this point in any new system; at present, LPAs have an express statutory duty to pay regard to the special interest of listed buildings – what is needed is something like that but without the need for legislative change. So we wonder whether, in each case, the report by the accredited expert could set out, as its conclusion, the matters which the LPA would need to decide. This open explanation of the case for and against a proposal would be an open appraisal of both the harm proposed and the need for it, i.e. a statement showing how the ‘overall harm’ is ‘acceptable in conservation terms’, and it would add to the speed which the case could be dealt with by the LPA. It could also factor in the wider considerations on an application, such as public benefits, though these may be difficult for an independent agent to assess without a good understanding of the full range of local authority responsibilities. Finally, we note that there are the planning applications which accompany LBC applications in perhaps 30% of cases, applications with which it would presumably be difficult for the accredited expert to deal.
- The ‘ready-to-determine’ application would be passed to the LPA which would be under the duty to pay regard to special interest. At that point, over-enthusiasm becomes the main risk in the new system, over-enthusiasm in two senses; on the one hand, from an accredited expert who, perhaps through enthusiasm rather than intention, tries to put rather too positive a perspective on a proposed change; on the other, and an acknowledged problem in the current system, over-enthusiasm in protection, again from the best of intentions, by the LPA in putting too negative a perspective on a proposed change. Further thought needs to be given to this, and to how LPAs without resource or experience in the system, can be freed to act in line with the NPPF policy and the legislation.
- The current accreditation schemes of the various professional bodies whose members might wish to become accredited agents start from different skill and philosophical perspectives. Some form of overarching accreditation system, whether as a ‘top-up’ or even as a quality control of the current accreditation systems, would therefore seem to be called for. Its form and its funding would need to be discussed with the professional bodies whose members currently inform LBC decisions.
- As part of the D9 procedure, the expert would have to certify that, in his/her opinion as an independent expert, the application was ‘acceptable in conservation terms’. What this would mean would need to be given in advice, based on NPPF/PPG criteria, as meaning that it would not cause harm overall to heritage significance. It must be clear in Government guidance that the LPA should challenge proposals where ‘harm overall’ falls outside the parameters of ‘acceptable in conservation terms’. The question of how LPAs should judge larger schemes against the wider planning situation has already been touched on above and should also be a matter for Government planning guidance.

In summary, we believe that the D9 accredited expert proposal has marked potential but there are still significant issues which will need to be more fully addressed. In particular, it seems to us that strong Government guidance will be needed, rather than sector advice, so that a system which would be neutral in terms of its impact on heritage protection could be introduced.

We now move on to answer the specific consultation questions.

**Question 1:** *Do you have specific suggestions of measures of heritage and planning outcome quality which fit the criteria set in paragraphs 2.4-2-5 above?*

These matters have been the subject of much discussion within the Historic Environment Planning Reform Group and we look forward to seeing the suggestions which will be made in answer to this question.

**Question 2:** *How can HEPRG or other heritage sector initiatives work with other stakeholders to identify and implement improvements to LA planning processes, systems, and structures (see S3, S4)? Are you able to help in this process?*

It is very useful that this work is being carried out through the Historic Environment Planning Reform Group. This enables as wide a cross-section of stakeholders and sector bodies to be involved as possible.

**Question 3a:** *Do you see the use of accredited professionals as paramount, and if so how could that 'step-change' on both the demand and supply sides be achieved?*

We have some reservations about proposal D9 as currently framed, but believe that a workable system may result, as long as the problems identified are overcome.

**Question 3b:** *Should the sector promote only those with formal historic environment accreditation, or should it also (either permanently, or as an interim measure) promote those without formal accreditation?*

This question needs to be answered as part of the work we recommend in answer to question 3a above.

**Question 3c:** *Can you think of further ways of incentivising and helping owners/ applicants to use heritage expertise?*

We look forward to hearing more of the suggestions as a result of this consultation.

**Question 4a:** *Do you support the proposals for further LBC advice in Chapter 6?*

The provision of further national advice, beyond the NPPF and the PPG and what is currently published by Historic England in the Good Practice Advice document and Historic England Advice document series could play an important part in encouraging better-thought out and clearer applications, and thus the reduction in work sorting out ill-judged applications which nevertheless could be improved and made acceptable. Historic England therefore supports the suggestion of further advice as long as it is succinct and topic-based, with a clearly-identified need. Historic England already provides advice of this kind in our Historic England Advice Note series and further advice notes are under development.

**Question 4b:** *What should be the format of this advice, and who should draft it, publish it, and endorse it?*

Historic England suggests that decisions on which body/bodies draft and publish such advice needs to be considered carefully to ensure that it carries maximum weight. As the Government's advisor on matters relating to the historic environment, we are already producing this kind of advice and with the capacity to produce further such advice, it would seem obvious that Historic England should draft and publish it.

DCLG does not these days either draft or publish advice of this detail, nor badge or endorse it. Some sort of implicit acceptance by Government would, however, be useful, for the advice to carry weight.

Historic England runs two strands of advice relating to the planning system, Good Practice Advice documents, which in their drafting and preparation are collective and consultative, in the case of the three so far published through the Historic Environment Forum; and Historic England Advice documents which are generated by Historic England, though HEF members are consulted, as needed. DCLG and DCMS are consulted on GPAs and HEANs, also as necessary.

The current list of Good Practice Advice documents comprises:

GPA 1 – The Historic Environment in Local Plans

GPA 2 - Managing Significance in Decision-Taking in the Historic Environment

GPA 3 – The Setting of Heritage Assets

Historic England Advice Notes comprise:

HEAN 1 – Conservation Area Designation, Appraisal and Management

HEAN 2 – Making Changes to Heritage Assets

HEAN 3 – The Historic Environment and Site Allocations in Local Plans

HEAN 4 – Tall Buildings

HEAN 5 – Setting up a Listed Building Heritage Partnership Agreement

HEAN 6 – Setting up a Local Listed Building Consent Order

HEAN 7 – Local Heritage Listing

HEAN 8 – Sustainability Appraisal – Strategic Environment Assessment and the Historic Environment (forthcoming)

**Question 5a:** *Do you think that publishing more advice on the heritage content of D&As (ie proposal (a)) would be enough to achieve the 'step-change' in heritage information and analysis HEF is seeking? Or is an explicit requirement for a heritage statement/analysis (ie proposal (b)) more likely to achieve that?*

The effectiveness of those Design and Access statements which we see in consultations of Historic England by local planning authorities on listed building consent applications can be variable, probably because there is no clear framework or advice for delivering useful and proportionate documents. This is unfortunate because all the indications are that an application which is accompanied by a well-thought through but proportionate explanation of the significance of a heritage asset, the impact of the proposal(s) on that significance, and how the design responds to minimise or mitigate the impact, is more likely to receive a swifter and more certain passage through the LBC process, to the benefit of both applicant and heritage asset. However, ensuring that the design and heritage aspects, as well as access aspects, are tightly interlinked – not always the case – is very important and the Design and Access Statement is the obvious vehicle for this. We would

therefore argue that an evolutionary approach is taken to this, in discussions with DCLG, with the resulting statement retitled as a Design, Heritage and Access Statement.

In the absence of detailed guidance on Design and Access Statements and heritage assets, the usefulness of a statement on the heritage aspects of applications of all kinds of consent to both owners and heritage assets increases. We therefore support the production of advice to clarify the NPPF requirement in paragraph 128 for the applicant to describe the significance of the affected heritage asset(s), the impact, etc, as long as that advice is both authoritative and proportionate, and the circumstances where alternatives are appropriate. For instance, where the works are simple and would not cause harm if carried out in a particular way, it may be reasonable and proportionate simply for the applicant and local planning authority to deal with the matter by a straightforward exchange of letters.

***Question 5b:** If so, should the term used be heritage statement, heritage analysis, heritage impact analysis, heritage and design analysis, etc?*

We have no very firm view but would suggest that the title Heritage Statement is simple and fully descriptive of such statements.

***Question 5c:** Do you think the replacement of a D&AS by a heritage analysis should also be applied to those conservation area and World Heritage Site applications which now require a D&AS, on the same 'one-in, one-out' basis?*

We are not arguing for the replacement of Design and Access Statements in full. These matters would need full discussion with DCLG and DCMS if they are to be taken further, as conservation areas and World Heritage Sites are area designations and therefore offer different development management issues than individual listed buildings.

***Question 6a:** Do you have any comments on this summary of the issues to be considered in drafting LBCOs (please focus comments on the principles and approach, rather than technicalities of repointing)?*

We have concerns about this proposal because it is hard to see how such a system could work simply across a class of listed building right across the country. Any such LBCO would have to be drawn up so as to give certainty of detailing but with sufficient flexibility to deal with a wide range of building types and circumstances. We have some experience of this because we are currently drawing up a LBCO for works to specific building types in a single ownership and it is proving challenging to strike the right balance between ensuring that significance would not be inadvertently lost while also relaxing control on things which matter little. We therefore recommend that the draft LBCO now close to agreement, which is a more limited instrument covering as it does a relatively narrow range of heritage asset types, should be used as a worked example from which to learn about the scope of LBCOs.

One alternative is to issue advice under proposal D6 which highlights what work requires LBC and what does not. Indeed, it has always been open for applicants and their agents to deal with these problems through a simple exchange of letters with the LPA, a straightforward solution which should be encouraged. And there is an alternative with potential in some circumstances in Local Listed Building Consent Orders (LLBCOs). We would highlight the LLBCO now operative in Port Sunlight (Wirral BC) which grants consent for some minor works to a large number of listed buildings in that garden suburb, including for the replacement of severely deteriorated or inappropriate yard gates, rear doors and windows, and to install or relocate a satellite dish in an appropriate location. A LLBCO would have the advantage of being locally generated and administered.

**Question 6b:** *Do you have suggestions on accompanying advice?*

Our experience is that a LBCO would need to be accompanied by comprehensive and authoritative guidance on the works granted consent and on the conservation principles which lie behind the proposed solutions. Therefore, the question of what accompanying advice should be provided would need considerable thought as would a watertight mechanism to tie the advice to the LBCO and to underline the principle of proportionality.

**Question 7a:** *To what extent (if at all) could the total time from logging/validating the D9 application to determination (usually eight weeks) be reduced?*

Our response on proposal D9 (accredited experts) is given in our covering note.

**Question 7b:** *HEPRG has not proposed any reduction in the timescale for consultation (usually 21 days from notification). Do you think there is scope to reduce this as well? Is the normal stage of formal validation by the LA still necessary?*

Please see our covering note.

**Question 8:** *Do you think it would be enough for the independent expert in D9 to be a current member of one of a specific list of conservation accreditation schemes/bodies? Or do you think that the D9 ‘top-up’ suggested in paragraphs 9.25 - 92.6 above is needed in addition?*

Please see our covering note.

**Question 9:** *Which schemes/bodies/grades of membership should be on this list? Should the list be limited to wider conservation accreditations (like for example AABC, the RIBA Conservation Register, RICS Building Conservation Accreditation Scheme, or IHBC full membership)? Should it also cover narrower accreditations which are subsets of a historic environment discipline (like the Conservation Accreditation Register of Engineers (CARE))? Should it include wider/different historic environment accreditations (like CIfA)?*

Please see our covering note.

**Question 10:** *Can you suggest further ways of promoting take-up by owners, and by experts?*

If the accreditation process was introduced, Historic England would work with the sector to promote the concept and to disseminate good practice.

**Question 11:** *Do you have any other suggestions for solutions or reforms which (importantly) would comply with HEPRG’s three fundamental principles set out in Chapter 1, paragraph 1.3?*

Historic England continues to review the heritage protection system to find ways to increase the efficiency of the way it operates. We plan to:

- Review the Draft Heritage Protection Bill (2008) and the recommendations of the Penfold Review to identify whether they contain initiatives that are worth pursuing further, perhaps in a modified form
- Identify whether there are changes proposed or enacted in Wales, Scotland or Northern Ireland which may be replicated in England to the benefit of the system

- Explore whether we might quality assure good quality services provided by Local Planning Authorities so that, with their agreement, our engagement in casework in their areas could be lighter-touch
- Consider further the benefits and dis-benefits of charging for listed building consent

***Question 12:** Do you have any general comments on these HEF proposals as a whole, and/or specific points which you have not already covered? (If your comments relate to specific parts of the proposals, please identify them with chapter or paragraph numbers).*

**Dr Richard Morrice FSA IHBC**

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Historic England

Direct Dial: 01892-528 485 Mobile: 07718 679698

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