Raynsford Review of Planning Response

12 October 2017

The Heritage Alliance

The Heritage Alliance is England's biggest coalition of heritage interests, bringing together over 100 mainly national organisations supported by over 7 million members, friends, volunteers, trustees and staff. From historic buildings and museums to canals, historic vehicles and steam railways, the Heritage Alliance's diverse membership owns, manages and cares for the vast majority of England's historic environment.

The Heritage Alliance is responding to this call for evidence as the protection of our heritage is a key function of the planning system. Heritage underpins communities' sense of identity and place, drives tourism and much more.

Although heritage protection is not mentioned in the review's supporting documents, it could be said to be one of the founding functions of the planning system. The Ancient Monuments Protection Act (1882) established a schedule of 50 prehistoric monuments. Subsequent amendments, in 1900 and 1913, allowed the inclusion of later monuments and introduced greater levels of protection, as well as criteria and fines to prevent damage. The listing of buildings of special architectural or historical interest was established in the Town and Country Planning Acts of 1944 and 1947.

2017 marks the 50th anniversary of another key development in heritage protection - the Civic Amenities Act 1967 which allowed for the creation of conservation areas. Today 2.2% of England (2,938 square kilometres) is a conservation area – an area larger than Luxembourg[1].

The proper operation of planning system is hampered by a severe lack of local authority funding for planning departments. This has resulted in the overall number of historic environment staff decreasing by 35% since 2006[2]. The reduced capacity of local authorities is a key factor causing issues with the operation of the existing system both for ordinary applications and heritage protection.

The Alliance agrees that there are concerns over the operation of the planning system. However, few within the heritage sector would argue that there is appetite for establishing a completely new system from scratch. Given the limited resources of stretched local authority planning departments it surely makes sense to reform and improve the system that is already in place.

For further detail on the Alliance's view on most recent proposed changes to the planning system please see our response to the Housing White Paper.

Many areas where the heritage protection system could be improved were considered in the draft Heritage Protection Bill which underwent pre-legislative scrutiny in summer 2008 but was dropped, due to a lack of legislative time, from subsequent parliamentary programmes despite strong all-party backing. The Bill, widely supported by the sector, contained a broad range of reforms. We have

[1] See Historic England 50 Years of Conservation Areas https://historicengland.org.uk/whats-new/features/conservation-areas-50-years/

[2] https://content.historicengland.org.uk/content/heritage-counts/pub/2016/heritage-indicators-2016.pdf

drawn out the key ones below, but the detailed work done for the preparation of this Bill should feed into any future major reform of the planning system.

The English planning system and sustainable development

● Does the planning system contribute to achieving sustainable development in the long-term public interest?

Many aspects of the planning system are designed to achieve sustainable development, yet this is not always achieved.

Para 7 of the NPPF sets out three dimensions to sustainable development: economic, social and environmental. The environmental aspect includes contributing to, protecting and enhancing our natural, built and historic environment.

However, para 14, which deals with the presumption in favour of sustainable development, (a) does not reiterate that sustainable development has the three elements set out above and (b) when it comes to the application of the principle in decision making, states LA's should be 'approving development' without delay rather than 'sustainable development'.

As a result, is not clear that planning decisions are always taken with the three elements of sustainable development clearly in mind. Often the focus by LAs seems to be very much on the development aspect. If sustainability is thought about, it is often in terms of protecting the environment rather than in the full terms set out in para 7 which include social aspects and enhancing the historic environment.

Therefore, it could be said that the presumption in favour of sustainable development results in development which is contrary to this definition and other aims of the NPPF such as the protection of heritage assets contrary to the long term public interest.

The Alliance expressed concern over proposed changes to the wording of the presumption which could exacerbate this problem in our responses to question 4 of the consultation on the Housing White Paper.

● Does the National Planning Policy Framework provide an effective framework for the delivery of sustainable development?

Largely the NPPF does provide such a framework but amending para 14 NPPF to both refer to the three elements of sustainable development and state sustainable development throughout, as we suggest above, would make it more effective.

The lack of resources in planning departments hinders the effective delivery of sustainable development. The NPPF currently expects users to have para 7 in mind when reading para 14 without explicitly saying so – this is perhaps unrealistic for an under resourced LA team. Most applications will not raise more complex issues which require competing interests to be balanced, so it would be better to have a reminder in the text of para 14.

Another issue undermining effectiveness is the interpretation of the NPPF by planning committees. Those on planning committees should be required to have formal and regular training on the NPPF to ensure that they properly understand and apply it.

The lack of resources means that LAs are often over reliant on information provided by developers without exposing it to effective scrutiny in the public interest.

In relation to heritage this is compounded by the fact that private sector consultants who carry out heritage assessments on behalf of developers don't have a duty to act in the best interest of the heritage they are assessing. While the vast majority of consultants will give proper impartial advice, there are numerous cases where consultants are clearly acting in the interests of the developer that they have been commissioned by – resulting in a conflict of interests. This is perhaps unsurprising as the firm hired will want to ensure that the developer uses them in future. For example, we're aware of a case where a heritage consultant stated that a building was of no heritage interest and should be demolished – which was subsequently listed.

A requirement to act in the best interest of heritage, and/or having the consultant commissioned by the LA but paid for by an applicant, would remove this conflict of interest.

- **How can effective changes be made to national policy on key issues such as the viability test?**

We echo CIfA's [Alliance member] comments in their response that changes to planning policy should only be made with a full understanding of the delicate balance to be maintained between the three dimensions of sustainable development. Changes to the NPPF to promote housing development cannot be viewed in isolation have the potential to impact policies protecting the historic environment.

We will focus on some key effective changes to national policy in terms of improving heritage protection.

Interim protection - A key area of change which the sector wants to see is interim protection for heritage assets and is among the changes we argue for in our Heritage Manifesto. Over 6000 people have so far signed a petition asking the Government to give interim protection to buildings proposed for listing. This would mean that a building is treated as listed until Historic England has determined whether it should be listed.

While Local Planning Authorities can serve a Building Preservation Notice (BPNs) to protect buildings they believe to be under immediate threat, they are not often used – often due to cost fears.

The petition was launched after an elaborate Jacobean ceiling was deliberately destroyed by a developer in Bristol before Historic England could assess the building for listing. This latest incident follows the demolition of the Carlton Tavern before listing in 2016. 2016 also saw the partial demolition of a 16th century Inn in Kent, due to become a McDonalds, before it could be listed. Perhaps the most famous example is the demolition of the art deco 1928 Firestone Factory in Brentford – demolished over a weekend before then minister Michael Heseltine listed the building.

Interim protection is not only something which benefit buildings it would help protect archaeological and marine sites. There is currently no protection available for marine sites that are being considered for designation. Consequently, some sites have been damaged or salvaged once a designation application has become public but before a designation order has been put in place

England now lags behind other areas of the UK which have introduced interim protection.

Reform of listed building consent – There is scope to take simple work outside the scope of listed building consent e.g. maintenance work on a listed building. A Historic Environment Forum sub group is currently working on how this can be taken forward.

A statutory requirement for local authorities to provide historic environment services and Historic Environment Records – These changes would mean that development is less likely to be slowed down by opposition.

Reform of Permitted development rights – There are several aspects of permitted development which could be reformed to improve heritage protection.

The first is the demolition of unlisted buildings outside of conservation areas – even if they are locally listed. This means that councils can't step in to prevent demolition even if the building is of heritage value and the community wants them to. This allows developers to side step the normal planning process as they can demolish a building then apply for a planning permission. While they may not get planning permission for a scheme to demolish and replace a much-loved local building, once it has already been demolished it is much more likely to be granted permission than if the building was still standing. This adds to the incentive to demolish historic buildings already created by the 20% VAT on work to historic buildings vs the 0% VAT for new builds.

Other permitted development rights also damage the historic built environment and other cohesively designed areas.

Perhaps the most dramatic example is hip to gable loft extensions which may be done differently on different houses result in matching semis, or ends of terraces having totally different roof lines- undermining the whole scheme intended by the architect or builder. This is especially visible on street corners.

The permitted development rights allowing porches to be added often results in what was a harmonious terrace of housing having multiple different jarring styles of porches in different materials added to the front. Similarly permitted development which allows the changing of features such as windows, front doors, roof materials have cumulatively caused significant degradation of the built environment outside conservation areas. This is just as true for estates built in the last 20 years where a scheme planned by an architect and approved by the planning process is slowly broken down by piecemeal changes with no oversight.

We all deserve to live in an attractive environment and amending permitted development rights could go a long way to achieve that. Limiting permitted development in these types of cases to replacement of like for like, or at least the same design if not materials, except where reverting to a previously lost historic design. This would slowly see an improvement, rather than a degradation, of the built environment. Of course, homeowners would still be free to do otherwise if they wished – but they would have to seek planning permission and consult neighbours. This would allow, for example, planning permission to require that any new porch on a terrace matched the materials and design of others already built.

The Alliance has expressed concerns over the proposed extension of permitted development rights in the Housing White Paper to allow building up wards and developments on publicly owned land.

<u>The scope of the planning system</u>

● How effective is the application of the plan-led planning system? Would a zonal planning system based on systems in the EU be more transparent and effective?

A zonal system would be a substantial change requiring much retraining and investment. There is little appetite within the heritage sector for such revolutionary change.

In any event a zonal system would still have to have a discretionary element to take account of heritage assets in decisions.

● Should land use control apply to all land uses, including agriculture and forestry, in light of the social and environmental challenges that we face?

The 2008 draft Heritage Protection Bill included revision of Class Consents to avoid ongoing damage to archaeological remains from agricultural activity.

CIfA argue that extensive damage occurs to heritage assets with archaeological interest through agricultural activity but notes that extension of the planning system's jurisdiction would need to be accompanied by a commensurate increase in resources available to local authorities to deal with such matters.

The Alliance's paper on a post Brexit CAP replacement looks at how heritage protection could be better served by changing blanket subsidies to farmers to instead pay them for specific environmental and heritage services.

Community involvement in planning

● How inclusive and effective are current approaches to community involvement in planning?

The heritage sector has tried to reach out to communities to involve them in planning processes. Examples include enriching the list -where the public adds information to online listing descriptions and programmes to encourage school children to list local war memorials.

Many local communities campaign to protect local heritage assets. This is often an adversarial process as consultation happens too late and is often not real consultation.

Those areas which have more engagement will be those with civic societies or similar bodies which often depend on having professionals /retirees in the area. Therefore, wealthier areas with more professionals will often have more community involvement. The neighbourhood planning system is far too complicated to inspire mass take up. It requires the dedication of a huge amount of time.

Planning notification requirements are old fashioned and often ineffective – for example a site notice down a dead end will not be seen anyone who lives in an area. However, that notice could be for a 15-storey tower which will impact a large number of people who might not find out about it till too late.

The current requirement for community consultation often equates to just jumping through hoops by a developer so that they can say they have done it. More should be done to encourage community consultation at a pre-application stage before a developer has spent lots of money drawing up designs it would have to spend money to alter again.

Community consultation at an early stage is vital for heritage as it often identifies heritage assets of features of heritage importance which developers are unaware of. This is even more important in the context of reduced local authority staff.

● What are the appropriate governance structures for the system in relation to democratic accountability and citizen rights? Should communities have the same appeal rights as developers?

Councils should make it easier for communities to subscribe online to be notified of planning applications in their area to ensure local people are able to take part in the planning process. Planning meetings should also be broadcast online to improve accountability.

It is unfortunate that there is not national uniformity over community involvement so that people better understand their rights. For example, only some local authorities allow communities to speak when planning applications are determined by planning committees. This lack of voice can build resentment especially when coupled with the inability to appeal decisions.

Accountability could be improved with more clarity over when decisions are taken by planning committee rather than a planning officer behind closed doors. This should not be a postcode lottery as this makes it harder for the system to be understood.

While developers should not be put to the expense of endless appeals, the current system is simply not fair to communities. A decision which is wrong in law and contrary to the NPPF, local plan or neighbourhood plan should be able to be appealed by local communities. Currently there is only a very small window of time to fundraise for the expensive option of judicial review. Allowing appeals where a decision is wrong in law would encourage councils to clearly set out how their decisions comply with local plans and NPPF. Communities would be able to appeal where the council has failed to clear give its reasons or has applied the plan wrongly or unreasonably.

The London Forum of Civic and Amenity Societies [Alliance member] considers that a wider third party right of appeal would lead to a sea-change in the approach of developers and local authorities to community engagement. Such a power would focus developers on bringing forward the best possible development schemes. A tribunal system, managed through the Planning Inspectorate, could ensure the right to appeal isn't abused as an aggrieved third party would submit their complaint to the tribunal for assessment, and only if it is deemed valid, would the appeal progress.

The London Forum of Civic and Amenity Societies also suggests a formal role within the planning system for accredited community groups. A mentioned above, many such organisations include retired and practicing professionals, often leaders in their professions. Given cuts to local authority staff such groups may have as much professional expertise as their local authorities and in some fields, more.

Councils could also refuse to consider applications where a developer has not properly consulted the community, and set out in their application what they have done in response to the issues raised because of the consultation.

● Should individuals have outcomes rights such as a right to a home?

Such a right would have the potential to override other considerations, and steam roller development through the process regardless of its impacts on neighbours, heritage assets or areas protected through planning policy.

It is difficult to see what this would mean in practice. Whose right to a home? The right to protect existing homes from development? Or those wanting to build to create future homes for others?

<u>Planning and taxation</u>

● How effective are the current mechanisms to capture land value increases that result from the grant of planning permission? Are such benefits being distributed fairly in the public interest? Could a national development charge based on 'betterment' values ever work?

No, the benefits are not being distributed in the public interest. For example, a developer owns a community asset of heritage value such as a pub – the community could afford to buy at its current value but before considering selling to the community the developer will apply for planning permission for residential use. If granted, the value of the asset will soar and the community will often be unable to raise money for the inflated price.

Thus, the benefit will go entirely to the developer rather than the community who may have used the asset for hundreds of years.

● Have recent reforms to compulsory purchase compensation resulted in a system which is fair to both landowners and taxpayers?

Compulsory purchase is the enforcement action of last resort to protect listed heritage assets. All enforcement action is very rarely taken by councils due the fact that the vast majority of private owners willingly invest their own funds in these nationally important buildings. However, in the few cases where enforcement action would be appropriate, the legal costs of taking action, lack of local authority staff and the possibility of paying compensation to the owner often put local authorities off taking any action at all. Therefore, nationally important listed buildings where an owner is not engaging whatsoever with a conservation plan, may slowly deteriorate. This means that the public purse may ultimately have to pay more to restore the building through grants or HLF. Where there is no engagement from an owner, thought should be given to how the enforcement process can be made easier for councils.

We are also aware of cases where councils have stated that they are unable to compulsory purchase prime city centre derelict land which affects the setting of conservation areas as it was not part of a big enough scheme to justify the use of compulsory purchase. The land is obviously being left to increase in value, but current powers mean that councils can do little to improve the setting of heritage assets in the long term.

Effective implementation

● How can the planning service be best resourced to meet current and future needs?

Research has shown that in 2016 there were 796.2 FTE jobs in the historic environment in Local Authorities. This included 271.7 Archaeology staff and 524.6 Conservation staff. The overall number of historic environment staff has decreased by 5.8 per cent since 2015 and 35 per cent since 2006.

A 35% decrease over ten years which is continuing will have a huge negative impact on the built environment and the outcomes which are achieved for heritage and communities.

Given this decrease in staff numbers, could councils be encouraged to use the skills of local volunteers and amenity societies to help fill the gap?

● What skills and expertise are appropriate for planners; and what does this imply for planning education?

From a heritage perspective it is vital that there is proper experience in local authorities to be able to scrutinise planning applications and to suggest how they can be modified to minimise harm. Planners need to have the ability to recognise issues relating to the historic environment but not necessarily to resolve them. That is the role of archaeologists, building conservation specialists and other historic environment practitioners who need to be able on an ongoing basis to acquire and demonstrate competence for the role which they play.

The system should also ensure that planning committees have regular training on the NPPF. It seems remiss that many councillors who decide on planning applications are not required to be properly regularly trained in how to apply the NPPF especially on complex applications involving heritage assets.

In this report of a London School of Economics event Suzannah Clarke, a Labour councillor for Grove Park since 2010, revealed she had only had “about two hours” training before joining a planning committee. She stated that it was “ludicrous” and “embarrassing” recalling one meeting where an attendee criticised the expertise of a planning committee as worse than that of “people at a bus

stop". In response, Sadiq Khan said he had served on planning committees for 12 years as a councillor in Tooting with no training at all.

This can hardly be a sensible situation for decisions which are required to comply with complex policy and will impact many people's lives for many years.

Currently, not all university courses relating to the built environment have a specific module covering the component elements of the historic environment. This is potentially serious because LPAs increasingly rely on development management staff for advice relating to the historic environment.

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